

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5042

62nd Legislature
2011 Regular Session

Passed by the Senate April 14, 2011
YEAS 45 NAYS 0

President of the Senate

Passed by the House April 4, 2011
YEAS 95 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5042** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5042

AS AMENDED BY THE HOUSE

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By Senate Health & Long-Term Care (originally sponsored by Senators Keiser, Pflug, Chase, Kohl-Welles, Conway, Roach, Shin, and McAuliffe; by request of Department of Social and Health Services)

READ FIRST TIME 02/08/11.

1 AN ACT Relating to protection of vulnerable adults; amending RCW
2 74.34.020 and 74.34.067; adding a new section to chapter 74.34 RCW; and
3 repealing RCW 74.34.021.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 74.34.020 and 2010 c 133 s 2 are each amended to read
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

9 (1) "Abandonment" means action or inaction by a person or entity
10 with a duty of care for a vulnerable adult that leaves the vulnerable
11 person without the means or ability to obtain necessary food, clothing,
12 shelter, or health care.

13 (2) "Abuse" means the willful action or inaction that inflicts
14 injury, unreasonable confinement, intimidation, or punishment on a
15 vulnerable adult. In instances of abuse of a vulnerable adult who is
16 unable to express or demonstrate physical harm, pain, or mental
17 anguish, the abuse is presumed to cause physical harm, pain, or mental
18 anguish. Abuse includes sexual abuse, mental abuse, physical abuse,

1 and exploitation of a vulnerable adult, which have the following
2 meanings:

3 (a) "Sexual abuse" means any form of nonconsensual sexual contact,
4 including but not limited to unwanted or inappropriate touching, rape,
5 sodomy, sexual coercion, sexually explicit photographing, and sexual
6 harassment. Sexual abuse includes any sexual contact between a staff
7 person, who is not also a resident or client, of a facility or a staff
8 person of a program authorized under chapter 71A.12 RCW, and a
9 vulnerable adult living in that facility or receiving service from a
10 program authorized under chapter 71A.12 RCW, whether or not it is
11 consensual.

12 (b) "Physical abuse" means the willful action of inflicting bodily
13 injury or physical mistreatment. Physical abuse includes, but is not
14 limited to, striking with or without an object, slapping, pinching,
15 choking, kicking, shoving, prodding, or the use of chemical restraints
16 or physical restraints unless the restraints are consistent with
17 licensing requirements, and includes restraints that are otherwise
18 being used inappropriately.

19 (c) "Mental abuse" means any willful action or inaction of mental
20 or verbal abuse. Mental abuse includes, but is not limited to,
21 coercion, harassment, inappropriately isolating a vulnerable adult from
22 family, friends, or regular activity, and verbal assault that includes
23 ridiculing, intimidating, yelling, or swearing.

24 (d) "Exploitation" means an act of forcing, compelling, or exerting
25 undue influence over a vulnerable adult causing the vulnerable adult to
26 act in a way that is inconsistent with relevant past behavior, or
27 causing the vulnerable adult to perform services for the benefit of
28 another.

29 (3) "Consent" means express written consent granted after the
30 vulnerable adult or his or her legal representative has been fully
31 informed of the nature of the services to be offered and that the
32 receipt of services is voluntary.

33 (4) "Department" means the department of social and health
34 services.

35 (5) "Facility" means a residence licensed or required to be
36 licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW,
37 nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36

1 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation
2 centers; or any other facility licensed or certified by the department.

3 (6) "Financial exploitation" means the illegal or improper use,
4 control over, or withholding of the property, income, resources, or
5 trust funds of the vulnerable adult by any person or entity for any
6 person's or entity's profit or advantage other than for the vulnerable
7 adult's profit or advantage. "Financial exploitation" includes, but is
8 not limited to:

9 (a) The use of deception, intimidation, or undue influence by a
10 person or entity in a position of trust and confidence with a
11 vulnerable adult to obtain or use the property, income, resources, or
12 trust funds of the vulnerable adult for the benefit of a person or
13 entity other than the vulnerable adult;

14 (b) The breach of a fiduciary duty, including, but not limited to,
15 the misuse of a power of attorney, trust, or a guardianship
16 appointment, that results in the unauthorized appropriation, sale, or
17 transfer of the property, income, resources, or trust funds of the
18 vulnerable adult for the benefit of a person or entity other than the
19 vulnerable adult; or

20 (c) Obtaining or using a vulnerable adult's property, income,
21 resources, or trust funds without lawful authority, by a person or
22 entity who knows or clearly should know that the vulnerable adult lacks
23 the capacity to consent to the release or use of his or her property,
24 income, resources, or trust funds.

25 (7) "Financial institution" has the same meaning as in RCW
26 30.22.040 and 30.22.041. For purposes of this chapter only, "financial
27 institution" also means a "broker-dealer" or "investment adviser" as
28 defined in RCW 21.20.005.

29 (8) "Incapacitated person" means a person who is at a significant
30 risk of personal or financial harm under RCW 11.88.010(1) (a), (b),
31 (c), or (d).

32 (9) "Individual provider" means a person under contract with the
33 department to provide services in the home under chapter 74.09 or
34 74.39A RCW.

35 (10) "Interested person" means a person who demonstrates to the
36 court's satisfaction that the person is interested in the welfare of
37 the vulnerable adult, that the person has a good faith belief that the

1 court's intervention is necessary, and that the vulnerable adult is
2 unable, due to incapacity, undue influence, or duress at the time the
3 petition is filed, to protect his or her own interests.

4 (11) "Mandated reporter" is an employee of the department; law
5 enforcement officer; social worker; professional school personnel;
6 individual provider; an employee of a facility; an operator of a
7 facility; an employee of a social service, welfare, mental health,
8 adult day health, adult day care, home health, home care, or hospice
9 agency; county coroner or medical examiner; Christian Science
10 practitioner; or health care provider subject to chapter 18.130 RCW.

11 (12) "Neglect" means (a) a pattern of conduct or inaction by a
12 person or entity with a duty of care that fails to provide the goods
13 and services that maintain physical or mental health of a vulnerable
14 adult, or that fails to avoid or prevent physical or mental harm or
15 pain to a vulnerable adult; or (b) an act or omission that demonstrates
16 a serious disregard of consequences of such a magnitude as to
17 constitute a clear and present danger to the vulnerable adult's health,
18 welfare, or safety, including but not limited to conduct prohibited
19 under RCW 9A.42.100.

20 (13) "Permissive reporter" means any person, including, but not
21 limited to, an employee of a financial institution, attorney, or
22 volunteer in a facility or program providing services for vulnerable
23 adults.

24 (14) "Protective services" means any services provided by the
25 department to a vulnerable adult with the consent of the vulnerable
26 adult, or the legal representative of the vulnerable adult, who has
27 been abandoned, abused, financially exploited, neglected, or in a state
28 of self-neglect. These services may include, but are not limited to
29 case management, social casework, home care, placement, arranging for
30 medical evaluations, psychological evaluations, day care, or referral
31 for legal assistance.

32 (15) "Self-neglect" means the failure of a vulnerable adult, not
33 living in a facility, to provide for himself or herself the goods and
34 services necessary for the vulnerable adult's physical or mental
35 health, and the absence of which impairs or threatens the vulnerable
36 adult's well-being. This definition may include a vulnerable adult who
37 is receiving services through home health, hospice, or a home care

1 agency, or an individual provider when the neglect is not a result of
2 inaction by that agency or individual provider.

3 (16) "Vulnerable adult" includes a person:

4 (a) Sixty years of age or older who has the functional, mental, or
5 physical inability to care for himself or herself; or

6 (b) Found incapacitated under chapter 11.88 RCW; or

7 (c) Who has a developmental disability as defined under RCW
8 71A.10.020; or

9 (d) Admitted to any facility; or

10 (e) Receiving services from home health, hospice, or home care
11 agencies licensed or required to be licensed under chapter 70.127 RCW;
12 or

13 (f) Receiving services from an individual provider; or

14 (g) Who self-directs his or her own care and receives services from
15 a personal aide under chapter 74.39 RCW.

16 **Sec. 2.** RCW 74.34.067 and 2007 c 312 s 2 are each amended to read
17 as follows:

18 (1) Where appropriate, an investigation by the department may
19 include a private interview with the vulnerable adult regarding the
20 alleged abandonment, abuse, financial exploitation, neglect, or self-
21 neglect.

22 (2) In conducting the investigation, the department shall interview
23 the complainant, unless anonymous, and shall use its best efforts to
24 interview the vulnerable adult or adults harmed, and, consistent with
25 the protection of the vulnerable adult shall interview facility staff,
26 any available independent sources of relevant information, including if
27 appropriate the family members of the vulnerable adult.

28 (3) The department may conduct ongoing case planning and
29 consultation with: (a) Those persons or agencies required to report
30 under this chapter or submit a report under this chapter; (b)
31 consultants designated by the department; and (c) designated
32 representatives of Washington Indian tribes if client information
33 exchanged is pertinent to cases under investigation or the provision of
34 protective services. Information considered privileged by statute and
35 not directly related to reports required by this chapter must not be
36 divulged without a valid written waiver of the privilege.

1 (4) The department shall prepare and keep on file a report of each
2 investigation conducted by the department for a period of time in
3 accordance with policies established by the department.

4 (5) If the department has reason to believe that the vulnerable
5 adult has suffered from abandonment, abuse, financial exploitation,
6 neglect, or self-neglect, (~~(abandonment, or financial exploitation,)~~)
7 and lacks the ability or capacity to consent, and needs the protection
8 of a guardian, the department may bring a guardianship action under
9 chapter 11.88 RCW.

10 (6) When the investigation is completed and the department
11 determines that an incident of abandonment, abuse, financial
12 exploitation, neglect, or self-neglect has occurred, the department
13 shall inform the vulnerable adult of their right to refuse protective
14 services, and ensure that, if necessary, appropriate protective
15 services are provided to the vulnerable adult, with the consent of the
16 vulnerable adult. The vulnerable adult has the right to withdraw or
17 refuse protective services.

18 (7) The department's adult protective services division may enter
19 into agreements with federally recognized tribes to investigate reports
20 of abandonment, abuse, financial exploitation, neglect, or self-neglect
21 of vulnerable adults on property over which a federally recognized
22 tribe has exclusive jurisdiction. If the department has information
23 that abandonment, abuse, financial exploitation, or neglect is criminal
24 or is placing a vulnerable adult on tribal property at potential risk
25 of personal or financial harm, the department may notify tribal law
26 enforcement or another tribal representative specified by the tribe.
27 Upon receipt of the notification, the tribe may assume jurisdiction of
28 the matter. Neither the department nor its employees may participate
29 in the investigation after the tribe assumes jurisdiction. The
30 department, its officers, and its employees are not liable for any
31 action or inaction of the tribe or for any harm to the alleged victim,
32 the person against whom the allegations were made, or other parties
33 that occurs after the tribe assumes jurisdiction. Nothing in this
34 section limits the department's jurisdiction and authority over
35 facilities or entities that the department licenses or certifies under
36 federal or state law.

37 (8) The department may photograph a vulnerable adult or their
38 environment for the purpose of providing documentary evidence of the

1 physical condition of the vulnerable adult or his or her environment.
2 When photographing the vulnerable adult, the department shall obtain
3 permission from the vulnerable adult or his or her legal representative
4 unless immediate photographing is necessary to preserve evidence.
5 However, if the legal representative is alleged to have abused,
6 neglected, abandoned, or exploited the vulnerable adult, consent from
7 the legal representative is not necessary. No such consent is
8 necessary when photographing the physical environment.

9 ((+8)) (9) When the investigation is complete and the department
10 determines that the incident of abandonment, abuse, financial
11 exploitation, or neglect has occurred, the department shall inform the
12 facility in which the incident occurred, consistent with
13 confidentiality requirements concerning the vulnerable adult,
14 witnesses, and complainants.

15 NEW SECTION. **Sec. 3.** A new section is added to chapter 74.34 RCW
16 to read as follows:

17 (1) When the department opens an investigation of a report of
18 abandonment, abuse, financial exploitation, or neglect of a vulnerable
19 adult, the department shall, at the time of the interview of the
20 vulnerable adult who is an alleged victim, provide a written statement
21 of the rights afforded under this chapter and other applicable law to
22 alleged victims or legal guardians. This statement must include the
23 department's name, address, and telephone number and may include other
24 appropriate referrals. The statement must be substantially in the
25 following form:

26 "You are entitled to be free from abandonment, abuse, financial
27 exploitation, and neglect. If there is a reason to believe that you
28 have experienced abandonment, abuse, financial exploitation, or
29 neglect, you have the right to:

30 (a) Make a report to the department of social and health services
31 and law enforcement and share any information you believe could be
32 relevant to the investigation, and identify any persons you believe
33 could have relevant information.

34 (b) Be free from retaliation for reporting or causing a report of
35 abandonment, abuse, financial exploitation, or neglect.

36 (c) Be treated with dignity and addressed with respectful language.

1 (d) Reasonable accommodation for your disability when reporting,
2 and during investigations and administrative proceedings.

3 (e) Request an order that prohibits anyone who has abandoned,
4 abused, financially exploited, or neglected you from remaining in your
5 home, having contact with you, or accessing your money or property.

6 (f) Receive from the department of social and health services
7 information and appropriate referrals to other agencies that can
8 advocate, investigate, or take action.

9 (g) Be informed of the status of investigations, proceedings, court
10 actions, and outcomes by the agency that is handling any case in which
11 you are a victim.

12 (h) Request referrals for advocacy or legal assistance to help with
13 safety planning, investigations, and hearings.

14 (i) Complain to the department of social and health services,
15 formally or informally, about investigations or proceedings, and
16 receive a prompt response."

17 (2) This section shall not be construed to create any new cause of
18 action or limit any existing remedy.

19 NEW SECTION. **Sec. 4.** RCW 74.34.021 (Vulnerable adult--Definition)
20 and 1999 c 336 s 6 are each repealed.

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