

**Judiciary Committee**

**HB 1726**

**Title:** An act relating to modifying certain definitions concerning vulnerable adults, including the definitions of abuse and sexual abuse.

**Brief Description:** Modifying certain definitions concerning the abuse of vulnerable adults.

**Sponsors:** Representatives Moeller, Jinkins, Tharinger and Appleton; by request of Department of Social and Health Services.

**Brief Summary of Bill**

- Makes changes to the definitions of "vulnerable adult," "abuse," and other terms applicable to abuse of vulnerable adults.
- Creates an affirmative defense to an allegation of physical abuse or improper use of restraint if the conduct was necessary to prevent an imminent danger of a substantial likelihood of harm.

**Hearing Date:** 2/5/15

**Staff:** Omeara Harrington (786-7136).

**Background:**

The Department of Social and Health Services (DSHS) investigates allegations of abandonment, abuse, financial exploitation, self-neglect, and neglect of vulnerable adults. The statutes regarding vulnerable adults require certain persons to report suspected incidents of mistreatment to the DSHS, and, in some cases, to law enforcement. Individuals found to have abused a vulnerable adult are prohibited from being employed in the care of vulnerable adults. In addition, a vulnerable adult, interested person on behalf of a vulnerable adult, or the DSHS may file a petition for an order for protection of a vulnerable adult who has been abandoned, abused, financially exploited, or neglected, or is threatened with such.

A vulnerable adult includes a person who:

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- is 60 years of age or older and has the functional, mental, or physical inability to care for himself or herself;
- is found to be incapacitated (meaning the individual is at a significant risk of personal harm based upon a demonstrated inability to adequately care for himself or herself);
- has a developmental disability as defined in statute;
- is admitted to a facility;
- is receiving services from a home health, hospice, or home care agency, or an individual provider; or
- self-directs his or her own care but receives services from a personal aide.

"Abuse," as it pertains to mistreatment of vulnerable adults, is defined as willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation:

- Sexual abuse refers to nonconsensual sexual contact, or sexual contact between a vulnerable adult and a facility staff person.
- Physical abuse is the willful infliction of bodily injury or physical mistreatment, and may include the use of physical or chemical restraints in a manner that is inappropriate or inconsistent with licensing requirements.
- Mental abuse is any willful action or inaction of mental or verbal abuse, including but not limited to: coercion, harassment, inappropriate isolation from friends, family, or regular activity, and verbal assault that includes ridicule, intimidation, yelling, or swearing.
- Exploitation is an act of forcing, compelling, or exerting undue influence over a vulnerable adult, causing that vulnerable adult to act inconsistently with relevant past behavior or causing the vulnerable adult to perform services for the benefit of another.

"Financial exploitation" is defined separately than "exploitation" and is the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of a vulnerable adult for any advantage other than the vulnerable adult's profit or advantage.

### **Summary of Bill:**

Several changes are made to the definitions of terms concerning vulnerable adults.

The definition of vulnerable adult includes any person the DSHS reasonably believes to have a developmental disability based on school or medical records (in addition to persons who have a developmental disability as defined in statute).

Abuse includes financial exploitation, as well as personal exploitation. Additionally, abuse includes the improper use of restraint against a vulnerable adult, meaning the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline in manner that is: (i) inconsistent with facility licensing or certification requirements; (ii) is not medically authorized; or (iii) otherwise constitutes abuse.

- Chemical restraint is defined as the administration of any drug to manage a resident's or client's behavior in a way that reduces the safety risk to the resident or others, restricts the resident's freedom of movement, and is not standard treatment for the resident's medical or psychiatric condition.
- Physical restraint is defined as the application of physical force without the use of any device, for the purpose of restraining the free movement of a resident's body. Physical

restraint does not include briefly holding without undue force in order to calm or comfort, or holding a hand for safe escort from one area to another.

- Mechanical restraint means any device attached or adjacent to the resident's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.

Sexual abuse includes nonconsensual sexual conduct, or sexual conduct between a vulnerable adult and a facility staff person, rather than sexual contact.

Mental abuse is a willful verbal or nonverbal action (rather than a willful action or inaction of mental or verbal abuse) that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling or swearing.

It is a defense to an allegation of physical abuse or improper use of restraint that the alleged perpetrator reasonably acted to prevent an imminent danger of a substantial likelihood of harm to any person, the conduct was necessary to prevent the harm, and the conduct was proportional to the danger. This defense must be proven by the alleged perpetrator by a preponderance of the evidence.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.