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HOUSE BILL 1726

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State of Washington

64th Legislature

2015 Regular Session

By Representatives Moeller, Jinkins, Tharinger, and Appleton; by request of Department of Social and Health Services

Read first time 01/27/15. Referred to Committee on Judiciary.

1 AN ACT Relating to modifying certain definitions concerning  
2 vulnerable adults, including the definitions of abuse and sexual  
3 abuse; and amending RCW 74.34.020 and 74.34.205.

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

5 **Sec. 1.** RCW 74.34.020 and 2013 c 263 s 1 are each amended to  
6 read as follows:

7 The definitions in this section apply throughout this chapter  
8 unless the context clearly requires otherwise.

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,  
12 clothing, 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  
18 mental anguish. Abuse includes sexual abuse, mental abuse, physical  
19 abuse, and personal or financial exploitation of a vulnerable adult,  
20 and improper use of restraint against a vulnerable adult which have  
21 the following meanings:

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

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

17 (c) "Mental abuse" means (~~(any willful action or inaction of~~  
18 ~~mental or verbal abuse. Mental abuse includes, but is not limited to,~~  
19 ~~coercion, harassment, inappropriately isolating a vulnerable adult~~  
20 ~~from family, friends, or regular activity, and verbal assault that~~  
21 ~~includes ridiculing, intimidating,))~~ a willful verbal or nonverbal  
22 action that threatens, humiliates, harasses, coerces, intimidates,  
23 isolates, unreasonably confines, or punishes a vulnerable adult.  
24 Mental abuse may include ridiculing, yelling, or swearing.

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

30 (e) "Improper use of restraint" means the inappropriate use of  
31 chemical, physical, or mechanical restraints. Improper use of  
32 restraint includes the use of chemical, physical, or mechanical  
33 restraints for convenience or discipline or in a manner that: (i) Is  
34 inconsistent with facility licensing or certification requirements;  
35 (ii) is not medically authorized; or (iii) otherwise constitutes  
36 abuse under this section.

37 (3) "Chemical restraint" means the administration of any drug to  
38 manage a resident's or client's behavior in a way that reduces the  
39 safety risk to the resident or others, has the temporary effect of

1 restricting the resident's freedom of movement, and is not standard  
2 treatment for the resident's medical or psychiatric condition.

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

7 ~~((4))~~ (5) "Department" means the department of social and  
8 health services.

9 ~~((5))~~ (6) "Facility" means a residence licensed or required to  
10 be licensed under chapter 18.20 RCW, assisted living facilities;  
11 chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family  
12 homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW,  
13 residential habilitation centers; or any other facility licensed or  
14 certified by the department.

15 ~~((6))~~ (7) "Financial exploitation" means the illegal or  
16 improper use, control over, or withholding of the property, income,  
17 resources, or trust funds of the vulnerable adult by any person or  
18 entity for any person's or entity's profit or advantage other than  
19 for the vulnerable adult's profit or advantage. "Financial  
20 exploitation" includes, but is not limited to:

21 (a) The use of deception, intimidation, or undue influence by a  
22 person or entity in a position of trust and confidence with a  
23 vulnerable adult to obtain or use the property, income, resources, or  
24 trust funds of the vulnerable adult for the benefit of a person or  
25 entity other than the vulnerable adult;

26 (b) The breach of a fiduciary duty, including, but not limited  
27 to, the misuse of a power of attorney, trust, or a guardianship  
28 appointment, that results in the unauthorized appropriation, sale, or  
29 transfer of the property, income, resources, or trust funds of the  
30 vulnerable adult for the benefit of a person or entity other than the  
31 vulnerable adult; or

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

37 ~~((7))~~ (8) "Financial institution" has the same meaning as in  
38 RCW ~~((30.22.040 and 30.22.041))~~ 30A.22.040 and 30A.22.041. For  
39 purposes of this chapter only, "financial institution" also means a  
40 "broker-dealer" or "investment adviser" as defined in RCW 21.20.005.

1       ~~((8))~~ (9) "Incapacitated person" means a person who is at a  
2 significant risk of personal or financial harm under RCW 11.88.010(1)  
3 (a), (b), (c), or (d).

4       ~~((9))~~ (10) "Individual provider" means a person under contract  
5 with the department to provide services in the home under chapter  
6 74.09 or 74.39A RCW.

7       ~~((10))~~ (11) "Interested person" means a person who demonstrates  
8 to the court's satisfaction that the person is interested in the  
9 welfare of the vulnerable adult, that the person has a good faith  
10 belief that the court's intervention is necessary, and that the  
11 vulnerable adult is unable, due to incapacity, undue influence, or  
12 duress at the time the petition is filed, to protect his or her own  
13 interests.

14       ~~((11))~~ (12) "Mandated reporter" is an employee of the  
15 department; law enforcement officer; social worker; professional  
16 school personnel; individual provider; an employee of a facility; an  
17 operator of a facility; an employee of a social service, welfare,  
18 mental health, adult day health, adult day care, home health, home  
19 care, or hospice agency; county coroner or medical examiner;  
20 Christian Science practitioner; or health care provider subject to  
21 chapter 18.130 RCW.

22       ~~((12))~~ (13) "Mechanical restraint" means any device attached or  
23 adjacent to the resident's body that he or she cannot easily remove  
24 that restricts freedom of movement or normal access to his or her  
25 body.

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

35       ~~((13))~~ (15) "Permissive reporter" means any person, including,  
36 but not limited to, an employee of a financial institution, attorney,  
37 or volunteer in a facility or program providing services for  
38 vulnerable adults.

39       ~~((14))~~ (16) "Physical restraint" means the application of  
40 physical force without the use of any device, for the purpose of

1 restraining the free movement of a resident's body. The term physical  
2 restraint does not include briefly holding without undue force a  
3 resident or client in order to calm or comfort him or her, or holding  
4 a resident's or client's hand to safely escort a resident from one  
5 area to another.

6 (17) "Protective services" means any services provided by the  
7 department to a vulnerable adult with the consent of the vulnerable  
8 adult, or the legal representative of the vulnerable adult, who has  
9 been abandoned, abused, financially exploited, neglected, or in a  
10 state of self-neglect. These services may include, but are not  
11 limited to case management, social casework, home care, placement,  
12 arranging for medical evaluations, psychological evaluations, day  
13 care, or referral for legal assistance.

14 ~~((15))~~ (18) "Self-neglect" means the failure of a vulnerable  
15 adult, not living in a facility, to provide for himself or herself  
16 the goods and services necessary for the vulnerable adult's physical  
17 or mental health, and the absence of which impairs or threatens the  
18 vulnerable adult's well-being. This definition may include a  
19 vulnerable adult who is receiving services through home health,  
20 hospice, or a home care agency, or an individual provider when the  
21 neglect is not a result of inaction by that agency or individual  
22 provider.

23 ~~((16))~~ (19) "Social worker" means:

- 24 (a) A social worker as defined in RCW 18.320.010(2); or  
25 (b) Anyone engaged in a professional capacity during the regular  
26 course of employment in encouraging or promoting the health, welfare,  
27 support, or education of vulnerable adults, or providing social  
28 services to vulnerable adults, whether in an individual capacity or  
29 as an employee or agent of any public or private organization or  
30 institution.

31 ~~((17))~~ (20) "Vulnerable adult" includes a person:

- 32 (a) Sixty years of age or older who has the functional, mental,  
33 or physical inability to care for himself or herself; or  
34 (b) Found incapacitated under chapter 11.88 RCW; or  
35 (c) Who has a developmental disability as defined under RCW  
36 71A.10.020, or who the department reasonably believes has a  
37 developmental disability based on school or medical records; or  
38 (d) Admitted to any facility; or

1 (e) Receiving services from home health, hospice, or home care  
2 agencies licensed or required to be licensed under chapter 70.127  
3 RCW; or

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

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

7 **Sec. 2.** RCW 74.34.205 and 1999 c 176 s 16 are each amended to  
8 read as follows:

9 (1) Any vulnerable adult who relies upon and is being provided  
10 spiritual treatment in lieu of medical treatment in accordance with  
11 the tenets and practices of a well-recognized religious denomination  
12 may not for that reason alone be considered abandoned, abused, or  
13 neglected.

14 (2) Any vulnerable adult may not be considered abandoned, abused,  
15 or neglected under this chapter by any health care provider,  
16 facility, facility employee, agency, agency employee, or individual  
17 provider who participates in good faith in the withholding or  
18 withdrawing of life-sustaining treatment from a vulnerable adult  
19 under chapter 70.122 RCW, or who acts in accordance with chapter 7.70  
20 RCW or other state laws to withhold or withdraw treatment, goods, or  
21 services.

22 (3) It is a defense to an allegation of physical abuse or  
23 improper use of restraint that the alleged perpetrator reasonably  
24 acted to prevent an imminent danger of a substantial likelihood of  
25 harm to any person, the alleged perpetrator's conduct was necessary  
26 to prevent the harm, and the alleged perpetrator's conduct was  
27 proportional to the danger. It is the alleged perpetrator's duty to  
28 prove this defense by a preponderance of the evidence in any civil  
29 adjudicative hearing.

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