

ESHB 1904 - S COMM AMD

By Committee on Health & Long-Term Care

ADOPTED 04/11/2003

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 74.34.020 and 1999 c 176 s 3 are each amended to read  
4 as follows:

5 Unless the context clearly requires otherwise, the definitions in  
6 this section apply throughout this chapter.

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

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

19 (a) "Sexual abuse" means any form of nonconsensual sexual contact,  
20 including but not limited to unwanted or inappropriate touching, rape,  
21 sodomy, sexual coercion, sexually explicit photographing, and sexual  
22 harassment. Sexual abuse includes any sexual contact between a staff  
23 person, who is not also a resident or client, of a facility or a staff  
24 person of a program authorized under chapter 71A.12 RCW, and a  
25 vulnerable adult living in that facility or receiving service from a  
26 program authorized under chapter 71A.12 RCW, whether or not it is  
27 consensual.

28 (b) "Physical abuse" means the willful action of inflicting bodily  
29 injury or physical mistreatment. Physical abuse includes, but is not  
30 limited to, striking with or without an object, slapping, pinching,

1 choking, kicking, shoving, prodding, or the use of chemical restraints  
2 or physical restraints unless the restraints are consistent with  
3 licensing requirements, and includes restraints that are otherwise  
4 being used inappropriately.

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

10 (d) "Exploitation" means an act of forcing, compelling, or exerting  
11 undue influence over a vulnerable adult causing the vulnerable adult to  
12 act in a way that is inconsistent with relevant past behavior, or  
13 causing the vulnerable adult to perform services for the benefit of  
14 another.

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

19 (4) "Department" means the department of social and health  
20 services.

21 (5) "Facility" means a residence licensed or required to be  
22 licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW,  
23 nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36  
24 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation  
25 centers; or any other facility licensed by the department.

26 (6) "Financial exploitation" means the illegal or improper use of  
27 the property, income, resources, or trust funds of the vulnerable adult  
28 by any person for any person's profit or advantage.

29 (7) "Individual provider" means a person under contract with the  
30 department to provide services in the home under chapter 74.09 or  
31 74.39A RCW.

32 (8) "Mandated reporter" is an employee of the department; law  
33 enforcement officer; social worker; professional school personnel;  
34 individual provider; an employee of a facility; an operator of a  
35 facility; an employee of a social service, welfare, mental health,  
36 adult day health, adult day care, home health, home care, or hospice

1 agency; county coroner or medical examiner; Christian Science  
2 practitioner; or health care provider subject to chapter 18.130 RCW.

3 (9) "Neglect" means (a) a pattern of conduct or inaction by a  
4 person or entity with a duty of care that fails to provide the goods  
5 and services that maintain physical or mental health of a vulnerable  
6 adult, or that fails to avoid(~~s~~) or prevent(~~s~~) physical or mental  
7 harm or pain to a vulnerable adult; or (b) an act or omission that  
8 demonstrates a serious disregard of consequences of such a magnitude as  
9 to constitute a clear and present danger to the vulnerable adult's  
10 health, welfare, or safety.

11 (10) "Permissive reporter" means any person, employee of a  
12 financial institution, attorney, or volunteer in a facility or program  
13 providing services for vulnerable adults.

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

22 (12) "Self-neglect" means the failure of a vulnerable adult, not  
23 living in a facility, to provide for himself or herself the goods and  
24 services necessary for the vulnerable adult's physical or mental  
25 health, and the absence of which impairs or threatens the vulnerable  
26 adult's well-being. This definition may include a vulnerable adult who  
27 is receiving services through home health, hospice, or a home care  
28 agency, or an individual provider when the neglect is not a result of  
29 inaction by that agency or individual provider.

30 (13) "Vulnerable adult" includes a person:

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

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

34 (c) Who has a developmental disability as defined under RCW  
35 71A.10.020; or

36 (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 RCW;  
3 or

4 (f) Receiving services from an individual provider.

5 **Sec. 2.** RCW 74.34.035 and 1999 c 176 s 5 are each amended to read  
6 as follows:

7 (1) When there is reasonable cause to believe that abandonment,  
8 abuse, financial exploitation, or neglect of a vulnerable adult has  
9 occurred, mandated reporters shall immediately report to the  
10 department.

11 ~~((1f))~~ (2) When there is reason to suspect that sexual ~~((or~~  
12 ~~physical))~~ assault has occurred, mandated reporters shall immediately  
13 report to the appropriate law enforcement agency and to the department.

14 ~~((+2))~~ (3) When there is reason to suspect that physical assault  
15 has occurred or there is reasonable cause to believe that an act has  
16 caused fear of imminent harm:

17 (a) Mandated reporters shall immediately report to the department;  
18 and

19 (b) Mandated reporters shall immediately report to the appropriate  
20 law enforcement agency, except as provided in subsection (4) of this  
21 section.

22 (4) A mandated reporter is not required to report to a law  
23 enforcement agency, unless requested by the injured vulnerable adult or  
24 his or her legal representative or family member, an incident of  
25 physical assault between vulnerable adults that causes minor bodily  
26 injury and does not require more than basic first aid, unless:

27 (a) The injury appears on the back, face, head, neck, chest,  
28 breasts, groin, inner thigh, buttock, genital, or anal area;

29 (b) There is a fracture;

30 (c) There is a pattern of physical assault between the same  
31 vulnerable adults or involving the same vulnerable adults; or

32 (d) There is an attempt to choke a vulnerable adult.

33 (5) Permissive reporters may report to the department or a law  
34 enforcement agency when there is reasonable cause to believe that a  
35 vulnerable adult is being or has been abandoned, abused, financially  
36 exploited, or neglected.

1        ~~((3))~~ (6) No facility, as defined by this chapter, agency  
2 licensed or required to be licensed under chapter 70.127 RCW, or  
3 facility or agency under contract with the department to provide care  
4 for vulnerable adults may develop policies or procedures that interfere  
5 with the reporting requirements of this chapter.

6        ~~((4))~~ (7) Each report, oral or written, must contain as much as  
7 possible of the following information:

8        (a) The name and address of the person making the report;

9        (b) The name and address of the vulnerable adult and the name of  
10 the facility or agency providing care for the vulnerable adult;

11        (c) The name and address of the legal guardian or alternate  
12 decision maker;

13        (d) The nature and extent of the abandonment, abuse, financial  
14 exploitation, neglect, or self-neglect;

15        (e) Any history of previous abandonment, abuse, financial  
16 exploitation, neglect, or self-neglect;

17        (f) The identity of the alleged perpetrator, if known; and

18        (g) Other information that may be helpful in establishing the  
19 extent of abandonment, abuse, financial exploitation, neglect, or the  
20 cause of death of the deceased vulnerable adult.

21        ~~((5))~~ (8) Unless there is a judicial proceeding or the person  
22 consents, the identity of the person making the report under this  
23 section is confidential.

24        NEW SECTION.    **Sec. 3.** This act is necessary for the immediate  
25 preservation of the public peace, health, or safety, or support of the  
26 state government and its existing public institutions, and takes effect  
27 immediately."

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28        On page 1, line 2 of the title, after "reporters;" strike the

1 remainder of the title and insert "amending RCW 74.34.020 and  
2 74.34.035; and declaring an emergency."

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