

HB 2343 - S COMM AMD

By Committee on Human Services & Corrections

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

3 "Sec. 1. RCW 74.34.020 and 2017 c 268 s 2 and 2017 c 266 s 12
4 are each reenacted and amended to read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

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,
10 clothing, 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
16 mental anguish. Inadvertent medication error does not constitute
17 abuse. Abuse includes sexual abuse, mental abuse, physical abuse, and
18 personal exploitation of a vulnerable adult, and improper use of
19 restraint against a vulnerable adult which have the following
20 meanings:

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

30 (b) "Physical abuse" means the willful action of inflicting
31 bodily injury or physical mistreatment. Physical abuse includes, but

1 is not limited to, striking with or without an object, slapping,
2 pinching, choking, kicking, shoving, or prodding. A physical action
3 taken to protect a vulnerable adult from imminent risk of serious
4 harm does not constitute physical abuse.

5 (c) "Mental abuse" means a willful verbal or nonverbal action
6 that threatens, humiliates, harasses, coerces, intimidates, isolates,
7 unreasonably confines, or punishes a vulnerable adult. Mental abuse
8 may include ridiculing, yelling, or swearing.

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

14 (e) "Improper use of restraint" means the inappropriate use of
15 chemical, physical, or mechanical restraints for convenience or
16 discipline or in a manner that: (i) Is inconsistent with federal or
17 state licensing or certification requirements for facilities,
18 hospitals, or programs authorized under chapter 71A.12 RCW; (ii) is
19 not medically authorized; or (iii) otherwise constitutes abuse under
20 this section.

21 (3) "Chemical restraint" means the administration of any drug to
22 manage a vulnerable adult's behavior in a way that reduces the safety
23 risk to the vulnerable adult or others, has the temporary effect of
24 restricting the vulnerable adult's freedom of movement, and is not
25 standard treatment for the vulnerable adult's medical or psychiatric
26 condition.

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

31 (5) "Department" means the department of social and health
32 services.

33 (6) "Facility" means a residence licensed or required to be
34 licensed under chapter 18.20 RCW, assisted living facilities; chapter
35 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes;
36 chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW,
37 residential habilitation centers; or any other facility licensed or
38 certified by the department.

39 (7) "Financial exploitation" means the illegal or improper use,
40 control over, or withholding of the property, income, resources, or

1 trust funds of the vulnerable adult by any person or entity for any
2 person's or entity's profit or advantage other than for the
3 vulnerable adult's profit or advantage. "Financial exploitation"
4 includes, but is not limited to:

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

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

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

21 (8) "Financial institution" has the same meaning as in RCW
22 30A.22.040 and 30A.22.041. For purposes of this chapter only,
23 "financial institution" also means a "broker-dealer" or "investment
24 adviser" as defined in RCW 21.20.005.

25 (9) "Hospital" means a facility licensed under chapter 70.41,
26 71.12, or 72.23 RCW and any employee, agent, officer, director, or
27 independent contractor thereof.

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

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

34 (12) "Interested person" means a person who demonstrates to the
35 court's satisfaction that the person is interested in the welfare of
36 the vulnerable adult, that the person has a good faith belief that
37 the court's intervention is necessary, and that the vulnerable adult
38 is unable, due to incapacity, undue influence, or duress at the time
39 the petition is filed, to protect his or her own interests.

1 (13)(a) "Isolate" or "isolation" means to restrict a vulnerable
2 adult's ability to communicate, visit, interact, or otherwise
3 associate with persons of his or her choosing. Isolation may be
4 evidenced by acts including but not limited to:

5 (i) Acts that prevent a vulnerable adult from sending, making, or
6 receiving his or her personal mail, electronic communications, or
7 telephone calls; or

8 (ii) Acts that prevent or obstruct the vulnerable adult from
9 meeting with others, such as telling a prospective visitor or caller
10 that a vulnerable adult is not present, or does not wish contact,
11 where the statement is contrary to the express wishes of the
12 vulnerable adult.

13 (b) The term "isolate" or "isolation" may not be construed in a
14 manner that prevents a guardian or limited guardian from performing
15 his or her fiduciary obligations under chapter 11.92 RCW or prevents
16 a hospital or facility from providing treatment consistent with the
17 standard of care for delivery of health services.

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

25 (15) "Mechanical restraint" means any device attached or adjacent
26 to the vulnerable adult's body that he or she cannot easily remove
27 that restricts freedom of movement or normal access to his or her
28 body. "Mechanical restraint" does not include the use of devices,
29 materials, or equipment that are (a) medically authorized, as
30 required, and (b) used in a manner that is consistent with federal or
31 state licensing or certification requirements for facilities,
32 hospitals, or programs authorized under chapter 71A.12 RCW.

33 (16) "Neglect" means (a) a pattern of conduct or inaction by a
34 person or entity with a duty of care that fails to provide the goods
35 and services that maintain physical or mental health of a vulnerable
36 adult, or that fails to avoid or prevent physical or mental harm or
37 pain to a vulnerable adult; or (b) an act or omission by a person or
38 entity with a duty of care that demonstrates a serious disregard of
39 consequences of such a magnitude as to constitute a clear and present

1 danger to the vulnerable adult's health, welfare, or safety,
2 including but not limited to conduct prohibited under RCW 9A.42.100.

3 (17) "Permissive reporter" means any person, including, but not
4 limited to, an employee of a financial institution, attorney, or
5 volunteer in a facility or program providing services for vulnerable
6 adults.

7 (18) "Physical restraint" means the application of physical force
8 without the use of any device, for the purpose of restraining the
9 free movement of a vulnerable adult's body. "Physical restraint" does
10 not include (a) briefly holding without undue force a vulnerable
11 adult in order to calm or comfort him or her, or (b) holding a
12 vulnerable adult's hand to safely escort him or her from one area to
13 another.

14 (19) "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
18 state of self-neglect. These services may include, but are not
19 limited to case management, social casework, home care, placement,
20 arranging for medical evaluations, psychological evaluations, day
21 care, or referral for legal assistance.

22 (20) "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
27 who is receiving services through home health, hospice, or a home
28 care agency, or an individual provider when the neglect is not a
29 result of inaction by that agency or individual provider.

30 (21) "Social worker" means:

31 (a) A social worker as defined in RCW 18.320.010(2); or

32 (b) Anyone engaged in a professional capacity during the regular
33 course of employment in encouraging or promoting the health, welfare,
34 support, or education of vulnerable adults, or providing social
35 services to vulnerable adults, whether in an individual capacity or
36 as an employee or agent of any public or private organization or
37 institution.

38 (22) "Vulnerable adult" includes a person:

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

1 (b) Found incapacitated under chapter 11.88 RCW; or
2 (c) Who has a developmental disability as defined under RCW
3 71A.10.020; or
4 (d) Admitted to any facility; or
5 (e) Receiving services from home health, hospice, or home care
6 agencies licensed or required to be licensed under chapter 70.127
7 RCW; or
8 (f) Receiving services from an individual provider; or
9 (g) Who self-directs his or her own care and receives services
10 from a personal aide under chapter 74.39 RCW.
11 (23) "Vulnerable adult advocacy team" means a team of three or
12 more persons who coordinate a multidisciplinary process, in
13 compliance with chapter 266, Laws of 2017 and the protocol governed
14 by RCW 74.34.320, for preventing, identifying, investigating,
15 prosecuting, and providing services related to abuse, neglect, or
16 financial exploitation of vulnerable adults.
17 (24) "Willful" means that the individual must have acted
18 deliberately, not that the individual must have intended to inflict
19 injury or harm."

HB 2343 - S COMM AMD

By Committee on Human Services & Corrections

20 On page 1, line 1 of the title, after "to" strike "defining
21 willful" and insert "updating definitions" and on line 2, after
22 "adults;" strike the remainder of the title and insert "and
23 reenacting and amending RCW 74.34.020."

EFFECT: Clarifies that certain actions do not constitute abuse.

--- END ---