

DEFINITIONS RELATING TO VULNERABLE ABUSE

(Derived from RCW 74.34.020):

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

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

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

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

"Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family,

friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

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

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

"Department" means the department of social and health services.

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

"Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage.

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

"Individual provider" means a person under contract with the department to provide services in the home under chapter 74.09 or 74.39A RCW.

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

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

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

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

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

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

"Vulnerable adult" includes a person:

- (a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or
- (b) Found incapacitated under chapter 11.88 RCW; or
- (c) Who has a developmental disability as defined under RCW 71A.10.020; or
- (d) Admitted to any facility; or
- (e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or
- (f) Receiving services from an individual provider.

[Critical issues in Vulnerable Adult abuse](#) (link here)

The Role of Culture in Elder Abuse

Cultural values, beliefs, and traditions significantly affect family life. They dictate family members' roles and responsibilities toward one another, how family members relate to one another, how decisions are made within families, how resources are distributed, and how problems are defined. Culture further influences how families cope with stress and determines if and when families will seek help from outsiders. Understanding these factors can significantly increase professionals' effectiveness. Colleagues, co-workers, and clients themselves, and members of the community members are workers' most valuable resource in understanding the role of culture. Although it is not possible to achieve an understanding of all the diverse cultures workers are likely to encounter, learning what questions to ask is an important first step:

- What role do seniors play in the family? In the community?
- Who, within the family, is expected to provide care to frail members? What happens when they fail to do so?
- Who makes decisions about how family resources are expended? About other aspects of family life?

- Who, within the family, do members turn to in times of conflict or strife?
- What conduct is considered abusive? Is it considered abusive to use an elder's resources for the benefit of other family members? To ignore a family member?
- (With immigrant seniors), when did they come to the U.S. and under what circumstances? Did they come alone or with family members? Did other family members sponsor them and, if so, what resources did those family members agree to provide? What is their legal status?
- What religious beliefs, past experiences, attitudes about social service agencies or law enforcement, or social stigmas may affect community members' decisions to accept or refuse help from outsiders?
- Under what circumstances will families seek help from outsiders? To whom will they turn for help (e.g. members of the extended family, respected members of the community, religious leaders, physicians)?
- What are the trusted sources of information in the community? What television and radio stations, shows, and personalities are considered reliable? What newspapers and magazines do people read?
- How do persons with limited English speaking or reading skills get their information about resources?

The answers to these questions can provide guidance to professionals in working with members of diverse ethnic and cultural communities. They will help workers understand expectations and dynamics within families and determine what services will be most appropriate and acceptable. They will help workers identify trusted persons who can be called upon for help. Finally, they can provide insight into promising approaches and vehicles for spreading the word about available services.

It is important for officers to remember, however, that just because a practice is acceptable within a culture does not mean that the practice is legal. A cultural tradition is not a defense or justification in the event of a crime, and should never be considered as such

Mental Capacity, Consent and Undue Influence

Evaluating alleged elder abuse often involves determining what an older person understands or understood in the past. Inducing someone to sign a legal document or give a gift, for example, may constitute abuse if the person does not fully understand the transaction, appreciate the value of what they are giving away, or comprehend the implications of what they are doing. One of the first questions often raised in abuse investigations is "did this person understand what he or she was doing when he gave a gift or transferred property. Was coercion, trickery, or undue influence employed?"

All Americans have a Constitutional right to exercise choice about how to live their lives. That extends to refusing help that is offered. If however, the person lacks sufficient mental capacity to make decisions, society may, under certain circumstances, intervene on their behalf without their consent. Consequently, another fundamental questions workers must consider when they offer help is "does this person have sufficient mental capacity to accept or refuse my help?" The appropriate level and type of help that is needed will also be dictated by the person's mental capacity.

In the past, the term "incompetent" was used to describe persons with diminished mental abilities. The term is rarely used by professionals any more because it is stigmatizing and implies a global deficit that has little practical meaning or application. As more is learned about mental function and greater attention is paid to preserving individuals' rights, greater emphasis is placed on identifying, in functional terms, specific mental tasks and skills people retain and lose. Describing a person's ability or "capacity" to perform particular tasks, such as remembering to pay one's bills or calculating how much change one is owed, is a more useful and meaningful way of looking at mental disability. It enables professionals to assess vulnerability more effectively and develop effective service plans. Understanding a client's mental capacity can help workers meet the vulnerable person's needs while avoiding unnecessary, restrictive, or intrusive interventions.

What is Mental Capacity?

Mental capacity is the term used to describe the cluster of mental skills that people use in their everyday lives. It includes memory, logic, the ability to calculate, and the "flexibility" to turn one's attention from one task to another. Mental status assessment is a complex process involving a variety of measurements carried out by trained professionals. Simple tests, such as the mini mental status exam, are commonly used in a variety of settings to provide workers with a general impression of the scope and extent of a person's deficits.

Mental capacity is affected by many factors. As people age, they may experience some natural decline in certain mental functions, particularly memory. Pronounced decline, however, signals illness or disease. A variety of factors, some of which are treatable, may contribute to mental decline. These include poor nutrition, depression, and interactions between medications. Time of day may also be a factor as some people are more alert at certain times of day than at others.

What is consent?

Consent is when someone accepts or agrees to something that somebody else proposes. For consent to be legal and proper, the person consenting needs to have sufficient mental capacity to understand the implications and ramifications of his or her actions.

What is undue influence?

In recent years, the subject of undue influence has received increasing attention in the field of elder abuse prevention. Simply stated, **undue influence** occurs when an individual is in a position of power or assumed power takes advantage of the dependencies of others. The person in the position of power uses various techniques or manipulations over time to gain influence and compliance. They may isolate the weaker person, promote dependency, or induce fear and distrust of others. Because undue influence, like mental capacity, raises the question of whether an individual is acting freely, the two concepts are often confused. Although diminished mental capacity

may contribute to a person's vulnerability to undue influence, the two are distinct and cognitive assessments cannot identify the presence of undue influence. It is typically courts that make determinations of whether or not undue influence has been exercised. In doing so, they consider a variety of factors, including whether the transaction took place at an appropriate time and in an appropriate setting and whether the older person was pressured into acting quickly or discouraged from seeking advice from others. Courts also consider the relationship between the parties, and the "fairness" of the transaction.

Elder Abuse and Substance Abuse

Substance abuse has been identified as the most frequently cited risk factor associated with elder abuse and neglect. It may be the victim and/or the perpetrator who has the substance abuse problem. Substance abuse is believed to be a factor in many types of elder abuse, including physical mistreatment, emotional abuse, financial exploitation, and neglect. It is also a significant factor in self-neglect.

Researchers and practitioners have observed the following patterns with respect to perpetrators of elder abuse who abuse drugs or alcohol:

- Persons with alcohol or substance abuse problems may view older family members, acquaintances, or strangers as easy targets for financial exploitation. The perpetrator may be seeking money to support a drug habit or because they are unable to hold a job and have no source of income.
- Perpetrators may move into an older person's home and use it as a base of operation for drug use or trafficking.
- The research on domestic violence shows that abusive partners are more likely to be violent while they're under the influence of drugs or alcohol. The relationship between domestic violence and substance abuse, however, is not fully understood. Although it has been assumed that alcohol and drugs reduce users' inhibitions, it has also been observed that perpetrators of domestic violence use drugs and alcohol to rationalize their behavior.

- Caregivers who are having difficulty coping with the demands of providing care may use drugs as a misguided coping mechanism (*Alcoholism and Elder Abuse*, Anetzberger, Korbin, and Austin, *Journal of Interpersonal Violence* Vol. 9 (2), 1994).

They have observed the following patterns with respect to victims who abuse drugs or alcohol:

- Alcoholic or substance abusing older persons are at risk for several reasons. They may have substance abuse related impairments, such as cognitive loss, that reduces their ability to resist or detect coercion or fraud. Physical disabilities associated with substance abuse increase risk by rendering the older person dependant on others for assistance or care, and giving caregivers physical access to the older person and their home. Caregivers are also likely to have access to an older person's financial resources and to wield significant influence.
- Seniors may be encouraged to take drugs or drink excessively, or even forced to do so. A perpetrator's motive may be to make the older person easier to exploit financially or, in the case of illegal drug use, less likely to report. Abusive caregivers may encourage older people to drink excessively or use drugs to make them more compliant or easier to care for.
- Some victims use drugs or alcohol as a coping mechanism to relieve their anxiety and fear.
- Seniors who have longstanding alcohol or substance abuse problems are likely to have poor relationships with their families or to be estranged entirely. If the older person needs care, their family members may be unwilling to help or may harbor resentments that impede their ability to provide good care.
- Older persons who self-neglect are likely to have substance abuse or alcohol problems (*The Association of elder abuse and substance abuse in the Illinois Elder Abuse System*, Hwalek, Neale, Goodrich, and Quinn, *The Gerontologist* Vol. 36 (5) 1996).

Autonomy and Self-Determination

Professional practice in the field of elder abuse prevention is guided by principles that highlight clients' freedom and civil liberties. In

working with victims and vulnerable persons, professionals look for ways to prevent abuse that promote autonomy and self-determination. Autonomy, which comes from the Greek word for "self rule," is the ability or capacity to make informed choices, free of coercion, based on one's own personal beliefs and values. All adults are presumed to have decision-making capacity and are therefore afforded the right to self-determination, that is, the freedom to make decisions for themselves in all areas of their lives. The concept of autonomy reinforces this right to be free from unwanted interference, which means that there must be legal justification for any curtailment of autonomy.

Exceptions to Client Autonomy

Although the principals of autonomy and least restrictive alternatives apply to most cases, there are two situations in which clients' personal freedom may be compromised in favor of other compelling interests. Two legal principles may come into play in those situations:

Parens Patriae:

When individuals are deemed incapable of protecting themselves from harm, society assumes responsibility for providing protection. Parens patriae, or the "state as parent," is a common law principle, which authorizes the state to act as a benevolent parent to protect its citizens who are impaired and cannot protect themselves. It allows for government entities, including APS, to initiate both voluntary and involuntary services for individuals who cannot protect themselves.

Police Power:

The right to autonomous decision-making must also be weighed against the State's interest in preserving and protecting life and property. The principle of police power gives police the authority to curtail and control certain personal behaviors to protect the public welfare, as well as individuals. Police may intervene to protect individuals and the community from physical harm or the threat of harm, loss of assets and property, and public nuisances.

Least restrictive alternatives

In offering service options to their clients, professionals look for the least restrictive alternatives - interventions that cause the least disruption or change in the older person's circumstances and which maximize their independence and freedom. For example, if an individual is having trouble managing his or her financial affairs as a result of forgetfulness or other cognitive impairments, a very effective means for stopping the abuse would be to petition a court to appoint a guardian. Guardianship, however, is a very restrictive alternative in the sense that it strips people of very basic civil liberties. The principle of least restrictive alternatives dictates that other less restrictive options, such as informal money management, should be considered prior to considering this option.