

Chapter 49.95 RCW
LONG-TERM CARE WORKERS

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RCW 49.95.005 Findings—Intent—2020 c 309. (1) The legislature finds that, as the citizens of Washington state age and their life expectancy increases, demand for long-term care is also on the rise. Like many Americans, Washingtonians prefer to stay in their own homes and communities as they age, fueling an increased demand for home-based long-term services and supports. Nationally, the direct care workforce is expected to increase by more than one million jobs, making this one of the fastest growing occupations in the country.

(2) As the state of Washington is a national leader in supporting individuals to receive services in their own homes where self-direction, autonomy, choice, and dignity is valued. The average needs and acuity levels of people served in their homes has increased and become more diverse. The prevalence of individuals with complex behaviors due to their disabilities is a growing issue experienced by individuals who need assistance with personal care tasks in their own homes and to be able to fully integrate in community living.

(3) The lack of workplace safety, including incidents of verbal and physical aggression, as well as sexual harassment, is an occupational hazard for many long-term care workers, including those who work in the homes of the person to whom they provide care. The risk may be outside the control of the individual receiving care due to the conduct of others in the home. The risk may be due to symptoms or conditions that can manifest with individuals communicating their needs in ways that an individual caring for the person may experience or interpret as harassment, abuse, or violence. In any event, caregivers should not have to experience discrimination, abusive conduct, and challenging behaviors without assistance or redress.

(4) Workers who have adverse experiences at work can manifest negative physical and mental health outcomes. These workers often leave the field of direct caregiving, resulting in fewer available caregivers in the workforce, increased turnover, and lower quality of care received by individuals in their own homes.

(5) Adequate preparation of caregivers helps both the caregiver and person receiving care. Caregivers should be equipped with information, including relevant care plans and behavioral support interventions, existing problem-solving tools, and strategies to improve safe care delivery.

(6) The legislature further finds that caregivers are the backbone of long-term services and supports in Washington. Therefore, the intent of chapter 309, Laws of 2020 is to reduce the instances of

harassment, discrimination, and abuse experienced by caregivers, and ensure that they feel safe while providing care while also prioritizing the continuity of care for individuals who rely on their assistance. This will improve the quality of care provided to Washingtonians and build a strong workforce to meet future care needs in the state. [2020 c 309 § 1.]

RCW 49.95.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abusive conduct" means conduct in a work setting that qualifies as workplace aggression, workplace violence, aggravated workplace violence, physical sexual aggression, rape, attempted rape, sexual contact, sexual harassment, workplace physical aggression, workplace verbal aggression, or inappropriate sexual behavior. For service recipients, behavior that meets the definition of subsection (3) of this section is not considered abusive conduct for the purposes of this chapter if expressly exempted from the applicable definition.

(2) "Aggravated workplace violence," "aggravated violence," or "aggravated violent act" means assault or physically threatening behavior involving the use of a lethal weapon or a common object used as a lethal weapon, regardless of whether the use of a lethal weapon resulted in injury.

(3) "Challenging behavior" means behavior by a service recipient that is specifically caused by or related to a disability that might be experienced by a long-term care worker as offensive or presenting a safety risk.

(4) "Covered employer" means:

(a) A consumer directed employer as defined in RCW 74.39A.009;
and

(b) A home care agency as defined in RCW 70.127.010.

(5) "Department" means the department of labor and industries.

(6) "Disability" has the same meaning as in RCW 49.60.040.

(7) "Discrimination" means employment discrimination prohibited by chapter 49.60 RCW, including discriminatory harassment. It shall not constitute discrimination for a recipient of personal care services as defined in RCW 74.39A.009 to refuse to hire or terminate an employment relationship with an employee based on gender preferences.

(8) "Discriminatory harassment" is unwelcome conduct that is based on a protected class listed in RCW 49.60.030(1) where the conduct is enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

"Discriminatory harassment" includes sexual harassment. For service recipients, behavior that meets the definition of subsection (3) of this section is not considered discriminatory harassment for purposes of this chapter.

(9) "Employee" means a long-term care worker as defined in RCW 74.39A.009 that is employed by a covered employer.

(10) "Inappropriate sexual behavior" means nonphysical acts of a sexual nature that a reasonable person would consider offensive or intimidating, such as sexual comments, unwanted requests for dates or sexual favors, or leaving sexually explicit material in view. An act may be considered inappropriate sexual behavior independent of whether the act is severe or pervasive enough to be considered sexual harassment. For service recipients, behavior that meets the definition

of subsection (3) of this section is not considered inappropriate sexual behavior for purposes of this chapter.

(11) "Long-term care workers" means all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including individual providers of home care services, direct care workers employed by home care agencies or a consumer directed employer, and providers of home care services to persons with developmental disabilities under Title 71A RCW.

(12) "Physical sexual aggression" means any type of sexual contact or behavior, other than rape or attempted rape, that occurs without the explicit consent of the recipient. For service recipients, behavior that meets the definition of subsection (3) of this section is not considered physical sexual aggression for the purposes of this chapter.

(13) "Rape" or "attempted rape" have the same meanings as in RCW 9A.44.040, 9A.44.050, and 9A.44.060.

(14) "Sexual contact" has the same meaning as in RCW 9A.44.010. For service recipients, behavior that meets the definition of subsection (3) of this section is not considered sexual contact for the purposes of this chapter.

(15) "Sexual harassment" has the same meaning as in RCW 28A.640.020. For service recipients, behavior that meets the definition of subsection (3) of this section is not considered sexual harassment for purposes of this chapter.

(16) "Trauma-informed care" means a strength-based service delivery approach that:

(a) Is grounded in the understanding of and responsiveness to the impact of trauma;

(b) Emphasizes physical, psychological, and emotional safety for both providers and survivors; and

(c) Creates opportunities for survivors to rebuild a sense of control and empowerment.

(17) "Workplace physical aggression" means an occurrence of physically threatening behavior in a work setting, including threats of physical harm, or an occurrence of slapping, biting, or intentionally bumping. For service recipients, behavior that meets the definition of subsection (3) of this section is not considered workplace physical aggression for purposes of this chapter.

(18) "Workplace verbal aggression" means acts of nonphysical hostility or threats of violence in the work setting. "Workplace verbal aggression" includes verbal aggression such as insulting or belittling an individual. For service recipients, behavior that meets the definition of subsection (3) of this section is not considered workplace verbal aggression for purposes of this chapter.

(19) "Workplace violence," "violence," or "violent act" means the occurrence of physical assault, such as hitting or kicking, including using a nonlethal weapon. For service recipients, behavior that meets the definition of subsection (3) of this section is not considered workplace violence for purposes of this chapter. [2020 c 309 § 2.]

RCW 49.95.020 Discrimination, abusive conduct, and challenging behavior—Written policy required. (1) Beginning July 1, 2021, each covered employer must adopt and maintain a comprehensive written policy concerning how the covered employer shall address instances of discrimination, abusive conduct, and challenging behavior and work to

resolve issues impacting the provision of personal care. The covered employer must:

(a) Disseminate the comprehensive written policy to each employee at the beginning of employment, annually, and on the issuance of any substantive update to the comprehensive written policy;

(b) Post the comprehensive written policy in prominent locations at its place of business and in a prominent location on its website, such as an online payroll portal, if applicable. The covered employer must provide employees with a copy of the current policy within thirty days of the employee's date of hire, and at least once a year thereafter;

(c) Make the policy available in plain English and in each of the three languages spoken most by long-term care workers in the state;

(d) Review and update the adopted policy annually; and

(e) Ensure that all employees are aware of the current policy and the changes from the previous policy.

(2) At a minimum, the comprehensive written policy must include:

(a) A definition of discrimination, harassment, abusive conduct, and challenging behavior;

(b) A description of the types of discrimination and abusive conduct covered by the policy, with examples relevant to the long-term care workforce;

(c) The identification of multiple persons to whom an employee may report discrimination, abusive conduct, and challenging behavior;

(d) Stated permission and a process for allowing workers to leave situations where they feel their safety is at immediate risk. This process must include a requirement to notify the employer and applicable third parties such as department of social and health services case managers, emergency services, or service recipient decision makers as soon as possible. The process must not authorize abandonment as defined in RCW 74.34.020 unless the worker has called the phone number provided by the employer for emergency assistance and has a reasonable fear of imminent bodily harm;

(e) A stated prohibition against retaliation for actions related to disclosing, challenging, reporting, testifying, or assisting in an investigation regarding allegations of discrimination, abusive conduct, or challenging behavior, and a description of how the employer will protect employees against retaliation;

(f) A list of resources about discrimination and harassment for long-term care workers to utilize. At a minimum, the resources must include contact information of the equal employment opportunity commission, the Washington state human rights commission, and local advocacy groups focused on preventing harassment and discrimination and providing support for survivors; and

(g) Any additional components recommended by the work group established in RCW 49.95.060 for the purpose of preventing discrimination and abusive conduct and responding to challenging behavior. [2020 c 309 § 3.]

RCW 49.95.030 Abusive conduct, challenging behavior prevention and assistance plan—Requirements. (1)(a) Beginning July 1, 2021, each covered employer shall implement a plan to prevent and protect employees from abusive conduct, to assist employees working in environments with challenging behavior, and work to resolve issues impacting the provision of personal care. This plan should be reviewed

and updated as necessary and at least once every three years. The plan shall be developed and monitored by a workplace safety committee. The members of the workplace safety committee shall consist of individuals that are employee-elected, employer-selected, and include at least one service recipient representative. The number of employee-elected members shall equal or exceed the number of employer-selected members. A labor management committee established by a collective bargaining agreement that receives formal input from representatives of service recipients who wish to participate in the committee's deliberations shall be sufficient to fulfill the requirement for a workplace safety committee in this chapter.

(b) If a workplace safety committee does not have the requisite number of employee-elected members or service recipient representatives because employees or service recipient representatives do not wish to participate in the workplace safety committee, the covered employer will be considered in compliance with the requirement to have a workplace safety committee if the covered employer has documented evidence showing it was unable to get employees or a service recipient representative to participate in the workplace safety committee.

(2) The plan developed under subsection (1) of this section, at a minimum, must include:

(a) Processes for intervening and providing assistance to an employee directly affected by challenging behavior including accessing technical assistance or similar resources, if available, to assist employees when challenging behavior occurs;

(b) Processes that covered employers may follow to engage appropriate members of the care team, such as case managers or health professionals when allegations of discrimination, abusive conduct, or challenging behaviors occur;

(c) The development of processes for reporting, intervening, and providing assistance to an employee directly affected by abusive conduct; and

(d) Processes covered employers may follow to engage the service recipient in problem resolution with the goal of ending abusive or discriminatory conduct while working to address issues impacting the provision of personal care.

(3) Each covered employer and workplace safety committee must annually review the frequency of incidents of discrimination and abusive conduct in the home care setting, including identification of the causes for, and consequences of, abusive conduct and any emerging issues that contribute to abusive conduct. As part of its annual review, the workplace safety committee must also review the number of miscategorizations in aggregate. The covered employer must adjust the plan developed under subsection (1) of this section as necessary based on this annual review.

(4) In developing the plan required by subsection (1) of this section, the covered employer shall consider any guidelines on violence in the workplace or in health care settings issued by the department of health, the department of social and health services, the department of labor and industries, the federal occupational safety and health administration, and the work group created in RCW 49.95.060.

(5) Nothing in this chapter requires an individual recipient of services to develop or implement the plan required by this section. [2020 c 309 § 4.]

RCW 49.95.040 Employer duty to inform. (1)(a) Covered employers must inform an employee of instances of discrimination and abusive conduct occurring in or around the service recipient's home care setting prior to assigning the employee to that service recipient, and throughout the duration of service, if those instances are:

(i) Documented by the covered employer; or

(ii) Documented by the department of social and health services and communicated to the covered employer.

(b) Covered employers must inform an employee, prior to assigning the employee to a service recipient, of a service recipient's challenging behavior that is documented:

(i) In the service recipient's care plan;

(ii) By the covered employer; or

(iii) By the department of social and health services and communicated to the covered employer.

(2)(a) Communication of the information in subsection (1) of this section must be tailored to respect the privacy of service recipients in accordance with the federal health insurance portability and accountability act of 1996.

(b) Upon request of the service recipient, a covered employer must provide a copy of the information the covered employer communicated to the employee under subsection (1) of this section.

(3) If a covered employer miscategorizes an instance as discrimination or abusive conduct that should have been categorized as challenging behavior, or if a covered employer miscategorizes an instance as challenging behavior that should have been categorized as discrimination or abusive conduct, the covered employer must correct the categorization, correct how the instance was reported under RCW 49.95.050, and comply with any provisions under this chapter applicable to addressing the behavior or conduct.

(4) A covered employer may not terminate an employee, reduce the pay of an employee, or not offer future assignments to an employee for requesting reassignment due to alleged discrimination, abusive conduct, or challenging behavior.

(5) Nothing in this section prevents a covered employer from:

(a) Disciplining or terminating an employee if an allegation or request for reassignment was reasonably determined to be false or not made in good faith;

(b) Terminating an employee or reducing hours due to lack of suitable work; or

(c) Disciplining or terminating an employee for lawful reasons unrelated to their request for reassignment.

(6) Nothing in this section requires an individual recipient of services to provide information required by this section to an employee. Nothing in this chapter shall limit the rights of a recipient of services under chapter 74.39A RCW to select, dismiss, assign hours, and supervise the work of individual providers as in RCW 74.39A.500(1)(b). [2020 c 309 § 5.]

RCW 49.95.050 Records required of reported incidents. (1) Covered employers are required to keep a record of any reported incidents of discrimination or abusive conduct experienced by an employee during the provision of paid personal care services. The records must be kept for at least five years following the reported act and must be made available for inspection by the department or its agents upon request. If the covered employer makes its records

available to the exclusive bargaining representative representing the employer's employees, the exclusive bargaining representative may assess whether the employer is meeting the data collection requirements in this section. The department must take into consideration the exclusive bargaining representative's assessment when determining whether an employer is in compliance with this section. Covered employers must make anonymized aggregate data of reported incidents available to the work group created under RCW 49.95.060.

- (2) The retained records must include:
 - (a) The covered employer's name and address;
 - (b) The date, time, and location of where the act occurred;
 - (c) The reporting method;
 - (d) The name of the person who experienced the act;
 - (e) A description of the person committing the act as:
 - (i) A service recipient;
 - (ii) Another resident of the home care setting;
 - (iii) A visitor to the home care setting;
 - (iv) Another employee;
 - (v) A manager or supervisor; or
 - (vi) Other;
 - (f) A description of the type of act as one or more of the following:
 - (i) Discrimination, including discriminatory harassment;
 - (ii) Sexual harassment, inappropriate sexual behavior, or sexual contact;
 - (iii) Physical sexual aggression;
 - (iv) Rape or attempted rape;
 - (v) Workplace verbal aggression;
 - (vi) Workplace violence;
 - (vii) Workplace physical aggression; or
 - (viii) Aggravated workplace violence;
 - (g) A description of the actions taken by the employee and the covered employer in response to the act; and
 - (h) A description of how the incident was resolved.
- (3) Nothing in this section requires an individual recipient of services to keep, collect, or provide any data required by this section to the department.
- (4) Communication of the information in this section must be tailored to respect the privacy of service recipients in accordance with the federal health insurance portability and accountability act of 1996. [2020 c 309 § 6.]

RCW 49.95.060 Work group. (1) The department of social and health services must convene a stakeholder work group to recommend policy changes and best practices for training employers, long-term care workers, and service recipients to keep home care settings free from discrimination and abusive conduct while maintaining the ability for individuals who need services to access needed services while maintaining the ability to provide services.

- (2) To the extent practicable, the following groups should be represented in the work group, each group may have one representative, unless otherwise specified:
 - (a) The department of social and health services;
 - (b) The department of labor and industries;
 - (c) The Washington state human rights commission;

(d) Two representatives of covered employers, one of which is chosen by the association which represents home care agencies which contract with area agencies on aging for medicaid home care services, and one of which is representative of the consumer-directed employer;

(e) Two representatives from labor organizations representing employees;

(f) Two long-term care workers that work for a covered employer;

(g) Organizations with at least five years of experience providing training to at least ten thousand long-term care workers;

(h) Two representatives of disability advocacy organizations, at least one of whom represents individuals with developmental disabilities;

(i) Three service recipients, at least one of whom lives with a developmental disability and one of whom is over age sixty-five;

(j) A family member or guardian of a service recipient;

(k) Area agencies on aging; and

(l) No more than three subject matter experts determined to be necessary by the work group.

(3) In developing the report required by subsection (4) of this section, the work group shall consider:

(a) Using new employee orientation to emphasize the prevention of discrimination and abusive conduct;

(b) The extent to which current training content could be modified to cover content within existing hours of required training such as basic, modified basic, and/or continuing education;

(c) Requiring training about discrimination and abusive conduct for all employees;

(d) Interactive teaching strategies that engage across multiple literacy levels;

(e) Factors that are predictive of discrimination and abusive conduct;

(f) The violence escalation cycle;

(g) De-escalation techniques to minimize abusive conduct or challenging behavior;

(h) Strategies to prevent physical harm with hands-on practice or role play;

(i) How incorporating information on trauma-informed care could improve the effectiveness of training and reduce interruptions to the provision of personal care;

(j) How incorporating person-centered planning practices could minimize challenging behaviors and reduce interruptions to the provision of personal care;

(k) Best practices for documenting and reporting incidents;

(l) The debriefing process for affected employees following violent acts;

(m) Resources available to employees for coping with the effects of violence;

(n) Culturally competent peer-to-peer training for the prevention of discrimination and abusive conduct;

(o) Best practices for training service recipients on preventing discrimination and abusive conduct in the home care setting;

(p) Best practices for training direct supervisors on preventing and responding to reports of discrimination and abusive conduct in the home care setting;

(q) Recommended best practices for workplace safety committees referenced in RCW 49.95.030 and recommended topics to be included in prevention plans required in RCW 49.95.030;

(r) Other policy changes that will reduce discrimination and abusive conduct in the workplace and best prepare employees to work in environments where challenging behavior occurs; and

(s) Other best practices from trainings developed in other states or for other industries to prevent discrimination and abusive conduct in home care settings or the workplace.

(4) By December 1, 2021, the work group must submit to the legislature a report with recommendations for training long-term care workers, agency supervisors, and service recipients in order to prevent discrimination and abusive conduct in the workplace, minimize challenging behaviors, and reduce interruptions to the provision of personal care. The report must also address issues regarding the continuation of collecting and reviewing data, the future role of the work group, and how the work group is measuring the efficacy of its recommendations. The report may inform the prevention plans required in RCW 49.95.030. [2020 c 309 § 7.]

RCW 49.95.070 Compliance investigations—When authorized. (1)

The department may conduct investigations to ensure compliance when information is obtained that a covered employer may be committing a violation under this chapter or in response to complaints from employees or employee representatives for the following requirements of this chapter:

(a) A written policy as required by RCW 49.95.020 that includes the minimum elements under RCW 49.95.020(2) and is updated annually;

(b) The written policy is provided to employees in accordance with RCW 49.95.020(1) (a) through (c) and (e);

(c) A current plan as required by RCW 49.95.030 that includes the minimum elements under RCW 49.95.030(2);

(d) The prior notice requirement under RCW 49.95.040(1);

(e) The recordkeeping and retention requirements under RCW 49.95.050; and

(f) The retaliation prohibition under RCW 49.95.040(4) upon receipt of a complaint by an employee who believes that he or she was subject to retaliation.

(2) The department may prioritize investigations as needed to allow for timely resolution.

(3) Nothing in this chapter limits the department's ability to investigate under any other authority.

(4) Nothing in this chapter limits a worker's right to pursue private legal action.

(5) Nothing in this chapter authorizes the department to investigate individual allegations of harassment, abuse, or discrimination made by employees against recipients of care or other individuals.

(6) The department of social and health services and its agents shall not be liable for the acts or omissions of a covered employer that are in violation of this chapter.

(7) Covered employers shall not be liable for the acts or omissions of the department of social and health services or agents thereof that are in violation of this chapter.

(8) Failure of a covered employer to comply with the requirements under subsection (1)(a) through (e) of this section shall subject the covered employer to citation under chapter 49.17 RCW. Claims of

retaliation under subsection (1)(f) of this section are subject to the provisions of RCW 49.17.160. [2020 c 309 § 8.]