
**Labor & Workplace Standards
Committee**

HB 2681

Brief Description: Preventing harassment, abuse, and discrimination experienced by long-term care workers.

Sponsors: Representatives Stonier, Eslick, Harris, Macri, Thai, Riccelli, Sells, Robinson, Cody, Kilduff, Davis, Gregerson, Chapman, Tharinger, Ormsby, Walen, Tarleton, Ortiz-Self, Valdez, Shewmake, Lovick, Goodman, Frame, Orwall and Pollet.

Brief Summary of Bill

- Requires employers of long-term care workers to: (1) adopt and maintain written policies and strategic plans to address workplace abuse and discrimination; (2) disclose to its employees when the employer knows, or has reason to believe, that a recipient of care has engaged in discrimination or abusive conduct; (3) keep records of reported incidents; and (4) submit annual reports to the Department of Social and Health Services.
- Requires the Department of Labor and Industries to convene a stakeholder work group to recommend best practices for training covered employers, long-term care workers, and clients.
- Provides for civil penalties for noncompliance.

Hearing Date: 1/28/20

Staff: Trudes Tango (786-7384).

Background:

"Home care services" means nonmedical services provided to individuals needing assistance with various tasks, such as dressing, feeding, bathing, housekeeping, and meal preparing, in order for the person to remain living at home.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Clients may receive home care services from an "Individual Provider" or from an employee of a home care agency. "Individual Providers" (IPs) provide Medicaid-funded home care services to eligible adults and people with developmental disabilities. The state is the IP employer only for purposes of collective bargaining. In 2018, legislation was enacted directing the Department of Social and Health Services (DSHS) to contract with a Consumer Directed Employer (CDE) to act as the legal employer for IPs by July 1, 2021. Under the CDE, the client is the managing employer and has the primary right to select, dismiss, assign hours, and supervise the work of their IP.

The Washington Law Against Discrimination (WLAD) prohibits discrimination in employment based on race, creed, color, national origin, sex, marital status, age, disability, retaliation, sexual orientation, gender identity, honorably discharged veteran or military status, or use of a trained guide dog or service animal by a person with a disability. WLAD is administered by the Washington State Human Rights Commission (HRC), which investigates complaints of unfair practices.

Summary of Bill:

Employer Policy.

Consumer directed employers and home care agencies, referred to as "covered employers" under the bill, must adopt and maintain written policies on how it will address instances of discrimination and abusive conduct. A covered employer must:

- adopt a policy by January 1, 2021, in English and in three languages spoken most by its employees;
- review and update its policy annually;
- disseminate its policy to each employee at the beginning of employment, annually, and each time the policy is updated;
- post its policy in prominent locations at its place of business and on its website, if applicable; and
- ensure all its employees are properly trained on its policy.

The policy must, at a minimum, contain:

- a definition of discrimination, harassment, and abusive conduct;
- a description of prohibited behaviors, with examples;
- the persons to whom an employee may report;
- a description of multiple methods for reporting;
- stated permission and a process for employees to leave situations when their safety is at immediate risk;
- a stated prohibition against retaliation for actions related to disclosing, reporting, assisting in an investigation, or challenging discrimination or abusive conduct, and a statement on how the employer will protect employees against retaliation;
- resources for employees, such as contact information of the HRC; and
- any additional components recommended by the stakeholder work group.

Prevention Plan and Workplace Violence Committees.

Beginning January 1, 2021, and every three years, covered employers must implement a plan to prevent and protect employees from violence. The plan must be developed and monitored by a workplace violence committee that is made up of individuals who are employee-elected and

employer-selected, and that includes at least one client representative. The plan must outline strategies to address security considerations and factors that contribute to, or prevent, violence and abusive conduct.

The plan may include:

- emergency response processes and procedures;
- processes for reporting violent acts and abusive conduct;
- processes for identifying and responding to the root cause of a client's conduct;
- employee education and training requirements, based on recommendations of the stakeholder work group; and
- processes for intervening, and providing assistance to, an employee directly affected by a violent act.

Covered employers and workplace violence committees must annually review the frequency of incidents of workplace violence and abusive conduct, including identification of the causes for and consequences of violent acts and any emerging issues contributing to violence and abusive conduct.

Disclosure Requirements.

Prior to assigning an employee to a client, and throughout the duration of service, a covered employer must inform the employee if it knows or has reason to believe of discrimination and abusive conduct in or around a client's home. A covered employer may not terminate, reduce the pay, or not offer future assignments to an employee who requests reassignment due to alleged discrimination or abusive conduct.

Recordkeeping.

Covered employers must keep records of reported incidents and make them available for inspection by the DSHS. Records must be kept for five years and must include, among other things:

- the date, time, and location of the incident;
- the reporting method;
- the person who experienced the act;
- whether the actor was a client, resident in the home, visitor, another employee, manager, or other;
- a description of the type of act;
- what actions the employee and employer took in response; and
- how the incident was resolved.

Covered employers must submit to the DSHS aggregate data on the number of reported incidents and investigations, among other things.

Stakeholder Work Group.

The Department of Labor and Industries (L&I) must convene a stakeholder work group to recommend best practices for training covered employers, employees, and clients, to keep home care settings free from discrimination and abusive conduct.

The work group must submit a report to the Legislature by December 1, 2020, with recommendations for training. Training recommendations must include:

- minimum training requirements for workers, supervisors, and clients;
- recommended training modalities; and
- criteria for trainer organizations.

In developing training, the work group must consider, among other things:

- requiring classroom training;
- predictive behaviors of harassment and violence;
- de-escalation techniques; documenting and reporting; and
- best practices from other states.

To the extent practicable, the work group must include up to two representatives of:

- the DSHS, the L&I, the state HRC, labor organizations;
- organizations with experience training long-term care workers;
- the self-advocacy community; and
- subject matter experts.

Civil Penalties.

The L&I may investigate covered employers to ensure compliance with the policy, prevention plan, disclosure, and recordkeeping and reporting requirements. The L&I may assess civil penalties up to \$5,000 for each instance of noncompliance. Civil penalties must be deposited in the supplemental pension fund and penalties must cover the cost of enforcement. Any excess funds from civil penalties may be used to grant money to community organizations that will assist with enforcement. The L&I may work with stakeholders to develop the community enforcement grant program.

A covered employer's failure to comply with the requirements is evidence of a breach of duty of care.

Definitions.

Various terms are defined.

"Abusive conduct" means conduct in a work setting that qualifies as workplace aggression, workplace violence, sexual assault, or inappropriate sexual behavior.

"Discrimination" means employment discrimination prohibited under the WLAD, except that a recipient of personal care services may choose a provider based on gender preferences.

Appropriation: None.

Fiscal Note: Requested on January 21, 2020.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.