

HOUSE BILL REPORT

E2SSB 6205

As Passed House - Amended:

March 4, 2020

Title: An act relating to preventing harassment, abuse, and discrimination experienced by long-term care workers.

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

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Cleveland, Conway, Randall, Keiser, Mullet, Frockt, Billig, Saldaña, Dhingra, Van De Wege, Hunt, Kuderer, Lovelett, Stanford and Wilson, C.).

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/24/20, 2/27/20 [DP].

Floor Activity:

Passed House - Amended: 3/4/20, 74-23.

Brief Summary of Engrossed Second Substitute Bill (As Amended by House)

- Requires employers of long-term care workers to: (1) adopt and maintain written policies and strategic plans to address workplace abuse, discrimination, and challenging behavior; (2) disclose to its employees documented instances of discrimination, abusive conduct, and challenging behavior; (3) keep records of reported incidents; and (4) comply with other requirements.
- Requires the Department of Social and Health Services to convene a stakeholder work group to recommend best practices for training and to address other issues.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 4 members: Representatives Sells, Chair; Chapman, Vice Chair; Gregerson and Ormsby.

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.

Minority Report: Do not pass. Signed by 2 members: Representatives Mosbrucker, Ranking Minority Member; Hoff.

Staff: Trudes Tango (786-7384).

Background:

"Home care services" is defined as 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. Recipients of services may receive home care services from an "Individual Provider" (IP) or from an employee of a home care agency.

Individual Providers provide Medicaid-funded home care services to eligible adults and people with developmental disabilities. 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 a 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, 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. The 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 they will address instances of discrimination, abusive conduct, and challenging behavior. "Challenging behavior" is defined as 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.

A covered employer must:

- adopt a policy by July 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 aware of the current policy.

At a minimum, the policy must contain:

- a definition of discrimination, harassment, abusive conduct, and challenging behavior;
- a description of the types of discrimination and abusive conduct covered by the policy;
- identification of persons to whom an employee may report discrimination, abusive conduct, and challenging behavior;
- 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, abusive conduct, or challenging behavior, and a statement on how the employer will protect employees against retaliation;
- a list of resources for employees, such as contact information for the HRC; and
- any additional components recommended by the stakeholder work group.

Prevention Plan and Workplace Safety Committees.

Beginning July 1, 2021, covered employers must 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 care. The plan must be developed and monitored by a workplace safety committee that is made up of individuals who are employee-elected, employer-selected, and includes at least one representative of service recipients. The plan must be reviewed and updated at least once every three years.

At a minimum, plans must include:

- processes for intervening and providing assistance to employees directly affected by challenging behavior;
- processes that covered employers may follow to engage appropriate members of the care team when allegations of discrimination, abusive conduct, or challenging behaviors occur;
- the development of processes for reporting, intervening, and providing assistance to an employee directly affected by abusive conduct; and
- processes covered employers may follow to engage the service recipient in problem resolution.

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

Disclosure Requirements.

Covered employers must inform an employee of discrimination and abusive conduct prior to assigning the employee to the service recipient, and throughout the duration of the service, if those instances are documented by the covered employer, or documented by the DSHS and communicated to the covered employer. Covered employers must inform the employee of challenging behavior if the challenging behavior is documented in the service recipient's care plan, or by the covered employer, or by the DSHS and communicated to the covered employer.

A covered employer may not terminate an employee, reduce the employee's pay, or not offer future assignments to an employee for requesting reassignment due to alleged discrimination, abusive conduct, or challenging behavior. A covered employer is not prevented from disciplining or terminating an employee if an allegation or request for reassignment was reasonably determined to be false or not made in good faith.

The disclosure requirements do not impose a requirement on a recipient of care to provide information of discrimination, abusive conduct, or challenging behavior to an employee.

Recordkeeping.

Covered employers must keep records of reported incidents of discrimination or abusive conduct experienced by an employee and must make the records available for inspection by the Department of Labor and Industries (L&I). If the covered employer makes its records available to the exclusive bargaining representative of the employer's employees, the exclusive bargaining representative may assess whether the employer is meeting the data collection requirements. The L&I must consider the exclusive bargaining representative's assessment when determining whether an employer is in compliance.

Records must be kept for five years and must include, among other things:

- the covered employer's name and address;
- the date, time, and location of the incident;
- the reporting method;
- the name of the person who experienced the act;
- a description of the person committing the act as: a service recipient, another resident in the home, visitor, another employee, manger, supervisor, or other;
- a description of the type of act;
- a description of the actions the employee and employer took in response; and
- a description of how the incident was resolved.

A covered employer must make corrections if an instance of abusive conduct, discrimination, or challenging behavior has been miscategorized, and workplace safety committees must annually review the number of miscategorizations. Covered employers must also make anonymized aggregate data on reported incidents available to the stakeholder work group.

Compliance.

The L&I may investigate covered employers to ensure compliance with the policy, prevention plan, disclosure, recordkeeping, and reporting requirements. A covered employer that fails to comply with the requirements is subject to citations under the Washington Industrial Safety and Health Act.

Stakeholder Work Group.

The DSHS must convene a stakeholder work group to recommend policy changes and best practices for training covered employers, employees, and service recipients. To the extent practicable, the following groups should be represented in the work group:

- the DSHS;
- the L&I;
- the HRC;

- two representatives of covered employers;
- two representatives from labor organizations representing employees;
- two long-term care workers;
- organizations with at least five years of experience providing training to at least 10,000 long-term care workers;
- two representatives of disability advocacy organizations, at least one of whom represents individuals with developmental disabilities;
- three service recipients, at least one of whom lives with a developmental disability and one of whom is over age 65;
- a family member or guardian of a service recipient;
- Area Agencies on Aging; and
- no more than three subject matter experts determined to be necessary by the work group.

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

- the extent to which current training content could be modified to cover content within existing hours of required training;
- requiring training about discrimination and abusive conduct for all employees;
- factors that are predictive of discrimination and abusive conduct;
- de-escalation techniques to minimize abusive conduct or challenging behavior; and
- other practices, strategies, and resources specifically listed.

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. The work group must also address the continuation of collecting and reviewing data, the future role of the work group, and how the work group measures the efficacy of its recommendations.

Definitions.

Various terms are defined. "Abusive conduct" is defined as 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.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Historically, caregivers have generally been low-income women of color who are not protected by labor standards. People deserve to be safe and respected at work. The bill makes long-term care workers' working environments safer by creating prevention and reporting standards. Long-term care workers can experience abuse and discrimination in the

work environment from friends, family, or neighbors of the care recipient. The bill strikes a balance between the needs of the caregiver and the people they serve. The bill has been worked on by many stakeholders, including the disability and developmental disability communities. The result is a more person-centered bill. The outcome of the bill will be improved communication, retention of workers, more safety, and higher quality services. The work group will allow for a robust discussion for clients and the workforce.

(Opposed) The bill has been substantially improved, but it is still not ready. There needs to be clear distinctions between incidents that occurred due to abuse or because of challenges associated with someone's disability. The bill allows a CDE, which is a new concept and does not even exist yet, to make critical determinations about a person's behavior.

Persons Testifying: (In support) Madeleine Foutch, Service Employees International Union 775; Darryl Johnson; and Bea Rector, Department of Social and Health Services.

(Opposed) David Lord, Disability Rights Washington.

Persons Signed In To Testify But Not Testifying: None.