

# FINAL BILL REPORT

## E2SSB 6205

---

---

### C 309 L 20

Synopsis as Enacted

**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.).

**Senate Committee on Health & Long Term Care**  
**Senate Committee on Ways & Means**  
**House Committee on Labor & Workplace Standards**

**Background:** Home care is a nonmedical service provided to individuals needing assistance with various tasks such as toileting, bathing, dressing, and meal preparation to remain living in their own home. Clients may receive home care from an individual provider or from an employee of a home care agency. Individual providers (IPs) providing Medicaid funded home care services are jointly employed by the state and client. The Legislature passed a law in 2018, requiring 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.

Federal law and the Washington Law Against Discrimination (WLAD) prohibit 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 dog guide or service animal by a person with a disability. WLAD is administered by the Washington State Human Rights Commission (HRC). HRC investigates complaints alleging unfair practices in violation of WLAD. If HRC finds there is reasonable cause to believe discrimination has occurred, it must first try to eliminate the unfair practice via conference and conciliation. If the parties do not reach an agreement, HRC must refer the matter to an administrative judge for a determination. In 2019, the Legislature passed a law requiring employers of certain isolated workers to adopt a sexual harassment policy, provide mandatory sexual harassment training, provide a list of resources to employees, and provide a panic button to each isolated worker. The law does not include home care workers.

---

*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.*

**Summary:** Policy. Home care agencies and the CDE must adopt and maintain a comprehensive written policy about how they will address instances of discrimination, abusive conduct, and challenging behavior by July 1, 2021. Abusive conduct includes workplace aggression, workplace violence, aggravated workplace violence, physical sexual aggression, rape, attempted rape, sexual contact, sexual harassment, workplace verbal aggression, or inappropriate sexual behavior. Discrimination includes existing prohibited practices and discriminatory harassment, but does not include a client refusing to hire or terminate an employee based on gender preferences. Challenging behavior is behavior by a service recipient caused by or related to a disability that might be experienced by the employee as offensive or presenting a safety risk. The policy must:

- define discrimination, harassment, abusive conduct, and challenging behavior;
- describe the types of discrimination and abusive conduct covered by the policy;
- identify multiple people to whom an employee may report discrimination, abusive conduct, and challenging behavior;
- include permission and a process allowing workers to leave situations where they feel their safety is at immediate risk;
- include prohibition against retaliation and describe how the employer will protect employees against retaliatory behavior;
- provide resources for a worker to use; and
- include any additional recommendations from the training work group convened by DSHS.

The employer must review and update the policy annually, and ensure all employees are aware of the policy. The policy must be disseminated to each employee at the beginning of employment, annually, and when substantive updates occur, posted in prominent locations at the place of business, and available in English and the top three languages spoken most by long-term care workers in the state.

Prevention Plan. Beginning July 1, 2021, home care agencies and the CDE must implement a plan to prevent and protect employees from abusive conduct, assist employees working in environments with challenging behavior, and work to resolve issues impacting the provision of personal care.

A workplace safety committee consisting of employee-elected individuals, employer-selected individuals, and at least one service recipient representative, must develop and monitor the plan and review the number of miscategorizations in aggregate. If the workplace committee does not have the required number of members, the employer must document evidence showing they were unable to get employees or service representatives to participate. A labor management committee established by a collective bargaining agreement receiving formal input from representatives of service recipients who wish to participate in the committee's deliberations is sufficient to fulfill the requirement for a workplace safety committee. The plan should be reviewed and updated as necessary, at least every three years, and must be adjusted based on the work place safety and employer's annual review of incidents of discrimination and abusive conduct in the home care setting.

The plan must include processes for intervening and assisting employees affected by challenging behaviors and abusive conduct, engaging appropriate members of the care team

when allegations of discrimination, abusive conduct, or challenging behaviors occur and engaging the service recipient in problem resolution.

In developing the plan, the employer must consider any guidelines on violence in the workplace or in health care settings issued by the Department of Health (DOH), DSHS, the Department of Labor and Industries (L&I), the federal Occupational Safety and Health Administration, and the training work group convened by DSHS.

Informing Workers. Prior to assigning an employee to a service recipient and throughout the duration of service, home care agencies and the CDE must inform employees of instances of discrimination and abusive conduct occurring in, or around the service recipient's home care setting, if those incidents are documented by the employer or DSHS. Prior to assigning an employee to a service recipient, home care agencies and the CDE must inform employees of a service recipient's challenging behavior that is documented in the service recipient's care plan, by the employer, or by DSHS and communicated to the employer. Upon request of the service recipient, an employer must provide the service recipient with a copy of the information that was communicated to the employee. Home care agencies and the CDE may not terminate or reduce pay, or not offer future assignments to an employee for requesting reassignment due to alleged discrimination, abusive conduct, or challenging behavior.

Recordkeeping. Home care agencies and the CDE must keep a record of any reported incidents of discrimination or abusive conduct experienced by an employee while providing home care services. The records must be kept for at least five years and made available for inspection by L&I. Anonymized aggregate data of the reported incidents must be made available to the training work group. If the 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. L&I must take into consideration this assessment when determining compliance with recordkeeping. The records must include certain information about the incident including:

- the employer's name and address;
- the date, time, and location of where the incident occurred;
- the reporting method;
- the person who experienced the act;
- a description of the person committing the act and the type of act; and
- a description of the actions taken by the employee and employer in response to the act and how the incident was resolved.

The employer must correct any miscategorizations of instances as discrimination, abusive conduct, or challenging behavior.

Training Work Group. DSHS must convene a stakeholder work group recommending 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 these services and maintaining the ability to provide services. The work group must include:

- representatives from DSHS, L&I, HRC, home care agencies and the CDE, labor organizations representing employees, disability advocacy organizations, and area agencies on aging;
- organizations with at least five years experience training at least 10,000 long-term care workers;
- service recipients;
- a family member or guardian of a service recipient;
- the self-advocacy community; and
- subject matter experts deemed necessary by the work group.

The work group must consider specific items in developing their recommendations and report its training recommendations to the Legislature by December 1, 2021. 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 measures the efficacy of its recommendations.

Enforcement. L&I is authorized to investigate home care agencies and the CDE to ensure compliance with the policy, the prevention plan, informing workers, retaliation, and recordkeeping requirements. Employers found to be noncompliant by L&I, must be subjected to citations under the Washington Industrial Safety and Health Act.

**Votes on Final Passage:**

Senate	37	11	
House	74	23	(House amended)
Senate	40	9	(Senate concurred)

**Effective:** June 11, 2020