

2SSB 6205 - S AMD 1035
By Senator Cleveland

ADOPTED 02/17/2020

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that, as the
4 citizens of Washington state age and their life expectancy increases,
5 demand for long-term care is also on the rise. Like many Americans,
6 Washingtonians prefer to stay in their own homes and communities as
7 they age, fueling an increased demand for home-based long-term
8 services and supports. Nationally, the direct care workforce is
9 expected to increase by more than one million jobs, making this one
10 of the fastest growing occupations in the country.

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

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

30 (4) Workers who have adverse experiences at work can manifest
31 negative physical and mental health outcomes. These workers often
32 leave the field of direct caregiving, resulting in fewer available

1 caregivers in the workforce, increased turnover, and lower quality of
2 care received by individuals in their own homes.

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

8 (6) The legislature further finds that caregivers are the
9 backbone of long-term services and supports in Washington. Therefore,
10 the intent of this act is to reduce the instances of harassment,
11 discrimination, and abuse experienced by caregivers, and ensure that
12 they feel safe while providing care while also prioritizing the
13 continuity of care for individuals who rely on their assistance. This
14 will improve the quality of care provided to Washingtonians and build
15 a strong workforce to meet future care needs in the state.

16 NEW SECTION. **Sec. 2.** The definitions in this section apply
17 throughout this chapter unless the context clearly requires
18 otherwise.

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

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

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

37 (4) "Covered employer" means:

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

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

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

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

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

10 (8) "Discriminatory harassment" is unwelcome conduct that is
11 based on a protected class listed in RCW 49.60.030(1) where the
12 conduct is enough to create a work environment that a reasonable
13 person would consider intimidating, hostile, or abusive.
14 "Discriminatory harassment" includes sexual harassment. For service
15 recipients, behavior that meets the definition of subsection (3) of
16 this section is not considered discriminatory harassment for purposes
17 of this chapter.

18 (9) "Employee" means a long-term care worker as defined in RCW
19 74.39A.009 that is employed by a covered employer.

20 (10) "Inappropriate sexual behavior" means nonphysical acts of a
21 sexual nature that a reasonable person would consider offensive or
22 intimidating, such as sexual comments, unwanted requests for dates or
23 sexual favors, or leaving sexually explicit material in view. An act
24 may be considered inappropriate sexual behavior independent of
25 whether the act is severe or pervasive enough to be considered sexual
26 harassment. For service recipients, behavior that meets the
27 definition of subsection (3) of this section is not considered
28 inappropriate sexual behavior for purposes of this chapter.

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

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

1 (13) "Rape" or "attempted rape" have the same meanings as in RCW
2 9A.44.040, 9A.44.050, and 9A.44.060.

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

7 (15) "Sexual harassment" has the same meaning as in RCW
8 28A.640.020. For service recipients, behavior that meets the
9 definition of subsection (3) of this section is not considered sexual
10 harassment for purposes of this chapter.

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

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

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

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

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

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

31 (19) "Workplace violence," "violence," or "violent act" means the
32 occurrence of physical assault, such as hitting or kicking, including
33 using a nonlethal weapon. For service recipients, behavior that meets
34 the definition of subsection (3) of this section is not considered
35 workplace violence for purposes of this chapter.

36 NEW SECTION. **Sec. 3.** (1) Beginning July 1, 2021, each covered
37 employer must adopt and maintain a comprehensive written policy
38 concerning how the covered employer shall address instances of
39 discrimination, abusive conduct, and challenging behavior and work to

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

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

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

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

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

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

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

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

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

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

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

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

39 (f) A list of resources about discrimination and harassment for
40 long-term care workers to utilize. At a minimum, the resources must

1 include contact information of the equal employment opportunity
2 commission, the Washington state human rights commission, and local
3 advocacy groups focused on preventing harassment and discrimination
4 and providing support for survivors; and

5 (g) Any additional components recommended by the work group
6 established in section 7 of this act for the purpose of preventing
7 discrimination and abusive conduct and responding to challenging
8 behavior.

9 NEW SECTION. **Sec. 4.** (1) Beginning July 1, 2021, each covered
10 employer shall implement a plan to prevent and protect employees from
11 abusive conduct, to assist employees working in environments with
12 challenging behavior, and work to resolve issues impacting the
13 provision of personal care. This plan should be reviewed and updated
14 as necessary and at least once every three years. The plan shall be
15 developed and monitored by a workplace safety committee. The members
16 of the workplace safety committee shall consist of individuals that
17 are employee-elected, employer-selected, and include at least one
18 service recipient representative. The number of employee-elected
19 members shall equal or exceed the number of employer-selected
20 members. A labor management committee established by a collective
21 bargaining agreement that receives formal input from representatives
22 of service recipients who wish to participate in the committee's
23 deliberations shall be sufficient to fulfill the requirement for a
24 workplace safety committee in this chapter.

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

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

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

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

38 (d) Processes covered employers may follow to engage the service
39 recipient in problem resolution with the goal of ending abusive or

1 discriminatory conduct while working to address issues impacting the
2 provision of personal care.

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

12 (4) In developing the plan required by subsection (1) of this
13 section, the covered employer shall consider any guidelines on
14 violence in the workplace or in health care settings issued by the
15 department of health, the department of social and health services,
16 the department of labor and industries, the federal occupational
17 safety and health administration, and the work group created in
18 section 7 of this act.

19 (5) Nothing in this chapter requires an individual recipient of
20 services to develop or implement the plan required by this section.

21 NEW SECTION. **Sec. 5.** (1)(a) Covered employers must inform an
22 employee of instances of discrimination and abusive conduct occurring
23 in or around the service recipient's home care setting prior to
24 assigning the employee to that service recipient, and throughout the
25 duration of service, if those instances are:

26 (i) Documented by the covered employer; or

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

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

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

33 (ii) By the covered employer; or

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

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

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

4 (3) If a covered employer miscategorizes an instance as
5 discrimination or abusive conduct that should have been categorized
6 as challenging behavior, or if a covered employer miscategorizes an
7 instance as challenging behavior that should have been categorized as
8 discrimination or abusive conduct, the covered employer must correct
9 the categorization, correct how the instance was reported under
10 section 6 of this act, and comply with any provisions under this
11 chapter applicable to addressing the behavior or conduct.

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

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

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

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

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

24 (6) Nothing in this section requires an individual recipient of
25 services to provide information required by this section to an
26 employee. Nothing in this chapter shall limit the rights of a
27 recipient of services under chapter 74.39A RCW to select, dismiss,
28 assign hours, and supervise the work of individual providers as in
29 RCW 74.39A.500(1)(b).

30 NEW SECTION. **Sec. 6.** (1) Covered employers are required to keep
31 a record of any reported incidents of discrimination or abusive
32 conduct experienced by an employee during the provision of paid
33 personal care services. The records must be kept for at least five
34 years following the reported act and must be made available for
35 inspection by the department or its agents upon request. If the
36 covered employer makes its records available to the exclusive
37 bargaining representative representing the employer's employees, the
38 exclusive bargaining representative may assess whether the employer
39 is meeting the data collection requirements in this section. The

1 department must take into consideration the exclusive bargaining
2 representative's assessment when determining whether an employer is
3 in compliance with this section. Covered employers must make
4 anonymized aggregate data of reported incidents available to the work
5 group created under section 7 of this act.

6 (2) The retained records must include:

7 (a) The covered employer's name and address;

8 (b) The date, time, and location of where the act occurred;

9 (c) The reporting method;

10 (d) The name of the person who experienced the act;

11 (e) A description of the person committing the act as:

12 (i) A service recipient;

13 (ii) Another resident of the home care setting;

14 (iii) A visitor to the home care setting;

15 (iv) Another employee;

16 (v) A manager or supervisor; or

17 (vi) Other;

18 (f) A description of the type of act as one or more of the
19 following:

20 (i) Discrimination, including discriminatory harassment;

21 (ii) Sexual harassment, inappropriate sexual behavior, or sexual
22 contact;

23 (iii) Physical sexual aggression;

24 (iv) Rape or attempted rape;

25 (v) Workplace verbal aggression;

26 (vi) Workplace violence;

27 (vii) Workplace physical aggression; or

28 (viii) Aggravated workplace violence;

29 (g) A description of the actions taken by the employee and the
30 covered employer in response to the act; and

31 (h) A description of how the incident was resolved.

32 (3) Nothing in this section requires an individual recipient of
33 services to keep, collect, or provide any data required by this
34 section to the department.

35 (4) Communication of the information in this section must be
36 tailored to respect the privacy of service recipients in accordance
37 with the federal health insurance portability and accountability act
38 of 1996.

1 NEW SECTION. **Sec. 7.** (1) The department of social and health
2 services must convene a stakeholder work group to recommend policy
3 changes and best practices for training employers, long-term care
4 workers, and service recipients to keep home care settings free from
5 discrimination and abusive conduct while maintaining the ability for
6 individuals who need services to access needed services while
7 maintaining the ability to provide services.

8 (2) To the extent practicable, the following groups should be
9 represented in the work group, each group may have one
10 representative, unless otherwise specified:

11 (a) The department of social and health services;

12 (b) The department of labor and industries;

13 (c) The Washington state human rights commission;

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

18 (e) Two representatives from labor organizations representing
19 employees;

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

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

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

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

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

29 (k) Area agencies on aging; and

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

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

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

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

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

- 1 (d) Interactive teaching strategies that engage across multiple
2 literacy levels;
- 3 (e) Factors that are predictive of discrimination and abusive
4 conduct;
- 5 (f) The violence escalation cycle;
- 6 (g) De-escalation techniques to minimize abusive conduct or
7 challenging behavior;
- 8 (h) Strategies to prevent physical harm with hands-on practice or
9 role play;
- 10 (i) How incorporating information on trauma-informed care could
11 improve the effectiveness of training and reduce interruptions to the
12 provision of personal care;
- 13 (j) How incorporating person-centered planning practices could
14 minimize challenging behaviors and reduce interruptions to the
15 provision of personal care;
- 16 (k) Best practices for documenting and reporting incidents;
- 17 (l) The debriefing process for affected employees following
18 violent acts;
- 19 (m) Resources available to employees for coping with the effects
20 of violence;
- 21 (n) Culturally competent peer-to-peer training for the prevention
22 of discrimination and abusive conduct;
- 23 (o) Best practices for training service recipients on preventing
24 discrimination and abusive conduct in the home care setting;
- 25 (p) Best practices for training direct supervisors on preventing
26 and responding to reports of discrimination and abusive conduct in
27 the home care setting;
- 28 (q) Recommended best practices for workplace safety committees
29 referenced in section 4 of this act and recommended topics to be
30 included in prevention plans required in section 4 of this act;
- 31 (r) Other policy changes that will reduce discrimination and
32 abusive conduct in the workplace and best prepare employees to work
33 in environments where challenging behavior occurs; and
- 34 (s) Other best practices from trainings developed in other states
35 or for other industries to prevent discrimination and abusive conduct
36 in home care settings or the workplace.

37 (4) By December 1, 2021, the work group must submit to the
38 legislature a report with recommendations for training long-term care
39 workers, agency supervisors, and service recipients in order to
40 prevent discrimination and abusive conduct in the workplace, minimize

1 challenging behaviors, and reduce interruptions to the provision of
2 personal care. The report must also address issues regarding the
3 continuation of collecting and reviewing data, the future role of the
4 work group, and how the work group is measuring the efficacy of its
5 recommendations. The report may inform the prevention plans required
6 in section 4 of this act.

7 NEW SECTION. **Sec. 8.** (1) The department may conduct
8 investigations to ensure compliance when information is obtained that
9 a covered employer may be committing a violation under this chapter
10 or in response to complaints from employees or employee
11 representatives for the following requirements of this chapter:

12 (a) A written policy as required by section 3 of this act that
13 includes the minimum elements under section 3(2) of this act and is
14 updated annually;

15 (b) The written policy is provided to employees in accordance
16 with section 3(1) (a) through (c) and (e) of this act;

17 (c) A current plan as required by section 4 of this act that
18 includes the minimum elements under section 4(2) of this act;

19 (d) The prior notice requirement under section 5(1) of this act;

20 (e) The recordkeeping and retention requirements under section 6
21 of this act; and

22 (f) The retaliation prohibition under section 5(4) of this act
23 upon receipt of a complaint by an employee who believes that he or
24 she was subject to retaliation.

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

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

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

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

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

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

4 (8) Failure of a covered employer to comply with the requirements
5 under subsection (1)(a) through (e) of this section shall subject the
6 covered employer to citation under chapter 49.17 RCW. Claims of
7 retaliation under subsection (1)(f) of this section are subject to
8 the provisions of RCW 49.17.160.

9 NEW SECTION. **Sec. 9.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 10.** Sections 1 through 6 and 8 of this act
14 constitute a new chapter in Title 49 RCW."

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By Senator Cleveland

ADOPTED 02/17/2020

15 On page 1, line 2 of the title, after "workers;" strike the
16 remainder of the title and insert "adding a new chapter to Title 49
17 RCW; creating a new section; and prescribing penalties."

EFFECT: (1) Requires employers to correct miscategorizations of
conduct and for the workplace safety committee to annually review the
number of miscategorizations.

(2) Requires employers to provide the service recipient, upon
request, with a copy of the information about discrimination, abusive
conduct, and challenging behaviors that it shared with the employee.

(3) Requires employers to make anonymized aggregate data of
reported incidents to the work group.

(4) Requires, rather than permits, the work group to consider the
various topics listed in the bill when developing its report and
recommendations.

(5) Adds topics the work group must consider when developing its
report and recommendations.

(6) Requires the work group report to address issues regarding:
(a) The continuation of collecting and reviewing data; (b) the future
role of the work group; and (c) how the work group measures the
efficacy of its recommendations.

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