

SENATE BILL REPORT

SB 6205

As of January 17, 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: Senators Cleveland, Conway, Randall, Keiser, Mullet, Frockt, Billig, Saldaña, Dhingra, Van De Wege, Hunt, Kuderer, Lovelett, Stanford and Wilson, C.

Brief History:

Committee Activity: Health & Long Term Care: 1/15/20.

Brief Summary of Bill

- Requires home care agencies and the consumer directed employers to establish certain protocols related to employee discrimination and abuse.
- Requires the Department of Labor and Industries (L&I) to convene a stakeholder work group to recommend best practices for training employers, workers, and clients to keep home care settings free from discrimination and abusive conduct.
- Authorizes L&I to assess a civil penalty up to \$5,000 for instances of non-compliance.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Staff: LeighBeth Merrick (786-7445)

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, that requires 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.

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.

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). The HRC investigates complaints alleging unfair practices in violation of the WLAD. If the 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, the 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.

Summary of Bill: Policy. Home care agencies and the CDE are required to adopt and maintain a comprehensive written policy about how they will address instances of discrimination and abusive conduct by January 1, 2021. Abusive conduct includes workplace aggression, workplace violence, sexual assault, 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. The policy must:

- define discrimination, harassment, and abusive conduct in employment;
- describe behaviors prohibited by the policy and reporting methods;
- 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 utilize; and
- include any additional recommendations from the training work group convened by L&I.

The employer must review and update the policy annually, and ensure that all employees are aware and trained on 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, distributed electronically to employees, and available in English and the top three languages spoken most by employees.

Prevention Plan. Every three years, beginning January 1, 2021, home care agencies and the CDE are required to implement a plan protecting employees from violence. A workplace violence committee consisting of employee-elected individuals, employer-selected individuals, and at least one client representative, is required to develop and monitor the plan. The plan must outline strategies to address security considerations and factors contributing to, or preventing, violence and abusive conduct, and must be adjusted based on an annual review of incidents of workplace violence and abusive conduct in the home care setting. 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, L&I, the federal Occupational Safety and Health Administration, and the training work group convened by L&I. The plan may include processes for emergency response, reporting, identifying and responding to the root cause of the client's conduct, intervening and providing assistance to an employee directly affected by a violent act, and employee education and training requirements.

Informing Workers. Prior to assigning an employee to a client, and throughout the duration of service, home care agencies and the CDE are required to inform employees of instances of known discrimination and abusive conduct occurring in, or around the client's home or if they have reason to believe discriminatory or abusive conduct may occur in or around the client's home. Home care agencies and the CDE may not terminate, reduce pay, or not offer future assignments to an employee for requesting reassignment due to alleged discrimination or abusive conduct.

Recording and Reporting. Home care agencies and the CDE are required to 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. 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.

Home care agencies and the CDE must submit certain aggregate data about the reported incidents to L&I and make it available to the public upon the request. This includes the number by category and type, the number of initiated and concluded investigations, and the resolution of complaints by type of resolution. When providing this data to L&I or the public, the employer must also include the dates that their discrimination and abusive conduct policy and their prevention plan were most recently updated.

Training Work Group. L&I is directed to convene a stakeholder work group recommending best practices for training employers, long-term care workers, and clients 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 long-term care workers;
- organizations with experience training long-term care workers;
- the self-advocacy community; and
- subject matter experts deemed necessary by L&I.

The work group must report its training recommendations to the Legislature by December 1, 2020.

Enforcement. L&I is authorized to investigate home care agencies and the CDE to ensure compliance with the policy, prevention plan, informing workers, and recording and reporting requirements, and may assess a civil penalty of up to \$5,000 for each instance of noncompliance. The penalties must cover L&I's enforcement costs. If funds exceed L&I's enforcement costs, L&I must use the funds to grant money to community organizations that will assist L&I with enforcement.

Appropriation: None.

Fiscal Note: Requested on January 9, 2020.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: A tragedy occurred where an individual shot their former caregiver and their new client. This bill is aimed at protecting in-home care workers and equipping them with the tools to prevent violent situations. It will make the care environment safer for the caregiver and the people they care for. Caregivers face harassment and discrimination and are scared to report these instances in fear of retaliation. They are often women and people of color, and isolated. They do not have co-workers they can frequently check-in with. People that come into the client's home, frequently such as neighbors or other family members, are often the ones that are abusing the caregiver. When this happens the caregiver does not have a resource to assist them. The HRC and EEOC complaint process takes time, the DSHS case manager is only responsible for protecting the client, and APS does not have a mechanism for caregivers to report when they have been put in danger. Caregivers that are exposed to abuse, harassment, and discrimination can experience negative health outcomes and may leave the profession. This bill focuses on prevention and offers real solutions. It was crafted with significant input from caregivers, self-advocates, and the aging and disability communities, and we are committed to working with stakeholders to make the care environment safer for everyone.

CON: The bill does not recognize the power dynamics between the caregiver and the client and would negatively impact individuals with disabilities that struggle with communication. Often individuals with disabilities are mistakenly seen as violent when they struggle to communicate their needs. The union should create training on how to better support individuals in crisis that does not include the caregiver abandoning the client. The bill's reporting requirements could violate the client's privacy and the language about the non-malicious and malicious violence is too vague. The bill should be broadened to include all groups involved in the caregiver setting.

OTHER: Safety of the in-home care environment is a critical issue but the focus should be on the safety of the client. There is a power dynamic between the clients and caregivers. The bill will make it hard for individuals with developmental disabilities to receive care, and the proposed solutions proposed do not adequately address the problem. Who is responsible for enforcing the requirements, is there an option to include the training in the existing 70 hour training requirements, and would SB 6169 be a better vehicle to address these concerns?

L&I provided stakeholders with language for some clarifications regarding the definitions, and how civil penalty funds could be used and where they would be deposited. The number of people that will need services in their home will double in the next couple of decades, and adequate workforce is needed to address this. There are concerns about the tone of the bill, definitions, potential client abandonment, client privacy, and reporting requirements. DSHS should convene the work group rather than L&I, and it should include advocates and self-advocates receiving DDA services.

Persons Testifying: PRO: Senator Annette Cleveland, Prime Sponsor; Sterling Harders, President, SEIU775; Shaine Truscott, Director of Member Programs and Participation, SEIU 775; Darryl Johnson, in-home caregiver and agency provider; Danielle Green, in-home caregiver and independent provider; Melissah Watts, in-home caregiver and parent provider; Peter Nazzal, Long-Term Care Director, Catholic Community Services; April Sims, Washington State Labor Council Secretary Treasurer.

CON: Ivanova Smith, Self Advocates in Leadership; David Lord, Disability Rights Washington.

OTHER: Jeremy Norden-Paul, Developmental Disabilities Council, Executive Director; Bea Rector, Department of Social and Health Services; Tammy Fellin, Department of Labor & Industries; Noah Seidel, Office of Developmental Disabilities Ombuds.

Persons Signed In To Testify But Not Testifying: No one.