

SENATE BILL REPORT

E2SSB 6205

As Amended by House, 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: Health & Long Term Care: 1/15/20, 2/03/20 [DPS-WM, DNP].
Ways & Means: 2/10/20, 2/11/20 [DP2S, w/oRec, DNP].

Floor Activity:

Passed Senate: 2/17/20, 37-11.

Passed House: 3/04/20, 74-23.

Brief Summary of Engrossed Second Substitute Bill

- Requires home care agencies and the consumer directed employers to establish certain protocols related to employee discrimination and abuse.
- Requires the Department of Social and Health Services to convene a stakeholder work group to recommend best practices for training employers, workers, and service recipients to keep home care settings free from discrimination and abusive conduct.
- Authorizes L&I to enforce certain requirements relating to the policy, plan, informing workers, recordkeeping and retaliation.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 6205 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Cleveland, Chair; Randall, Vice Chair; O'Ban, Ranking Member; Conway, Dhingra, Frockt, Keiser, Muzzall, Rivers and Van De Wege.

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 Senator Becker.

Staff: LeighBeth Merrick (786-7445)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6205 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Billig, Carlyle, Conway, Darneille, Dhingra, Hasegawa, Hunt, Keiser, Liias, Pedersen and Van De Wege.

Minority Report: That it be referred without recommendation.

Signed by Senators Brown, Assistant Ranking Member, Operating; Muzzall, Schoesler, Wagoner, Warnick and Wilson, L..

Minority Report: Do not pass.

Signed by Senators Honeyford, Assistant Ranking Member, Capital; Becker.

Staff: Maria Hovde (786-7474)

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. 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 Engrossed Second Substitute Bill: 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 that is 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 utilize; and
- include any additional recommendations from the training work group convened by DSHS.

The employer must review and update the policy annually, and ensure that 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. A labor management committee established by a collective bargaining agreement that receives 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, 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, 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 must 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 of 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, prevention plan, informing workers, retaliation, and recordkeeping requirements. Employers that are found to be non compliant by L&I, must be subjected to citations under the Washington Industrial Safety and Health Act.

Appropriation: None.

Fiscal Note: Available.

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 on Original Bill (Health & Long Term Care): *The committee recommended a different version of the bill than what was heard.* 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 (Health & Long Term Care): 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 (Health & Long Term Care): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: Being a caregiver is intimate work, and it is often done by women and people of color. These individuals need basic tools and information for their safety. This is a critical first step in helping these individuals to know what to expect and what to do if a situation becomes unsafe. Long-term care workers need more training on how to set boundaries and to deescalate situations.

CON: The idea of a work group is excellent, and we want caregiving to be safe and respectful. But this issue is broader than what is covered in the bill, and we need to know what the impact will be to covered employers.

Persons Testifying (Ways & Means): PRO: Sterling Harders, President, SEIU 775; Darryl Johnson, in-home caregiver; Danielle Green, in-home caregiver.

CON: David Lord, citizen.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.

EFFECT OF HOUSE AMENDMENT(S):

- Provides that if a workplace safety committee does not have the required employee representatives or a service recipient representative, the employer will be considered in compliance with the requirement to have a workplace safety committee if the employer has documented evidence showing it was unable to get employees or a service recipient representative to participate.