

Chapter 296-830 WAC
WORKPLACE VIOLENCE PREVENTION IN HEALTH CARE

NEW SECTION

WAC 296-830-100 Purpose and scope. (1) The purpose of this chapter is to establish program requirements for employers in the health care industry that address workplace violence and abusive conduct as required by chapters 49.19 and 49.95 RCW, and RCW 72.23.400 through 72.23.460.

(a) Part A, WAC 296-830-200 through 296-830-230, applies health care settings;

(b) Part B, WAC 296-830-300 through 296-830-330, applies to state hospitals; and

(c) Part C, WAC 296-830-400 through 296-830-450, applies to long-term care workers.

(2) Services provided in private residences by covered employers as defined by WAC 296-830-400 are not subject to Part A of this rule.

(3) Workplace violence and abusive conduct is a hazard in other healthcare facilities. Other rules applicable to workplace violence include:

(a) WAC 296-800-140, accident prevention program (APP);

- (b) WAC 296-800-130, safety committees and safety meetings;
- (c) WAC 296-800-110, employer responsibilities: Safe workplace;
- (d) WAC 296-800-160, personal protective equipment (PPE); and
- (e) Chapter 296-27 WAC, Recordkeeping and reporting.

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PART A: HEALTH CARE SETTINGS

NEW SECTION

WAC 296-830-200 Definitions. The following definitions apply to Part A unless the context clearly indicates otherwise:

- (1) **Department.** The department of labor and industries.
- (2) **Employee.** An employee of an employer who is employed in the business of his or her employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is his or her personal labor for an employer under this chapter whether by way of manual labor or otherwise.

(3) **Employer.** Based on chapter 49.17 RCW, an employer is any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any

business, industry, profession, or activity in this state and employs one or more employees, or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state and charitable organizations: Provided, that any persons, partnership, or business entity not having employees, and who is covered by the Industrial Insurance Act must be considered both an employer and an employee.

(4) **Health care setting:**

(a) Hospitals as defined in RCW 70.41.020;

(b) Home health, hospice, and home care agencies under chapter 70.127 RCW, subject to RCW 49.19.070;

(c) Evaluation and treatment facilities as defined in RCW 71.05.020;

(d) Behavioral health programs has the same meaning as community behavioral health program in RCW 71.24.025; and

(e) Ambulatory surgical facilities as defined in RCW 70.230.010.

(5) **Workplace violence, violence, or violent act.** Any physical assault or verbal threat of physical assault against an employee of a health care setting on the property of the health care setting.

"Workplace violence," "violence," or "violent act" includes any physical assault or verbal threat of physical assault involving the use of a weapon, including a firearm as defined in RCW 9.41.010, or a common object used as a weapon, regardless of whether the use of a weapon resulted in an injury.

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NEW SECTION

WAC 296-830-210 Workplace violence plan—Security and safety

assessment. (1) (a) Each health care setting must develop and implement a workplace violence prevention plan for the purposes of preventing violence and protecting employees from violence in the setting.

(b) In a health care setting with a safety committee established pursuant to WAC 296-800-13020, or a workplace violence committee that is comprised of employee-elected and employer-selected members where the number of employee-elected members equal or exceed the number of employer-selected members, the committee must develop, implement, and monitor progress on the workplace violence prevention plan.

(2) The workplace violence prevention plan must outline strategies that address security considerations and factors that may contribute to or prevent the risk of violence including, but not limited to, the following:

(a) The physical attributes of the health care setting, including security systems, alarms, emergency response, and security personnel available;

(b) Staffing, including staffing patterns, patient classifications, and procedures to mitigate employee's time spent alone working in areas at high risk for workplace violence;

(c) Job design, equipment, and facilities;

(d) First aid and emergency procedures;

(e) The reporting of violent acts;

(f) Employee education and training requirements and implementation strategy;

(g) Security risks associated with specific units, areas of the facility with uncontrolled access, late night or early morning shifts, and employee security in areas surrounding the facility such as employee parking areas; and

(h) Processes and expected interventions to provide assistance to an employee directly affected by a violent act.

(3) In developing and updating the workplace violence prevention plan, the health care setting must consider:

(a) Any guidelines on violence in the workplace or in health care settings issued by the department of health, the department of social and health services, the department of labor and industries, the federal occupational safety and health administration, medicare, and health care setting accrediting organizations; and

(b) The findings and recommendations in the summaries required by subsection (2) of this section.

(4) The health care setting or, if applicable, the committee under subsection (1)(b) of this section must conduct a comprehensive review and update of the workplace violence prevention plan at least once per calendar year.

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NEW SECTION

WAC 296-830-220 Violence prevention training. (1) Each health care setting must provide, at least annually, violence prevention training to all employees, volunteers, and contracted security personnel, identified by the plan in WAC 296-830-210.

(2) The training must occur within 90 days of the employee's initial hiring date unless the employee is temporary.

(3) Trainings may include, but are not limited to, classes that provide an opportunity for interactive questions and answers, hands-on training, video training, brochures, verbal training, or other verbal or written training that is determined to be appropriate under the plan.

(4) Trainings must address the following topics based upon the hazards identified in the plan required under WAC 296-830-210:

- (a) The health care setting's workplace violence prevention plan;
- (b) General safety procedures;
- (c) Violence predicting behaviors and factors;
- (d) The violence escalation cycle;
- (e) De-escalation techniques to minimize violent behavior;
- (f) Strategies to prevent physical harm with hands-on practice or role play;
- (g) Response team processes;
- (h) Proper application and use of restraints, both physical and chemical restraints;
- (i) Documentation and reporting incidents;

(j) The debrief process for affected employees following violent acts; and

(k) Resources available to employees for coping with the effects of violence.

(5) Training must be tailored to the specific health care setting, and to the specific duties and responsibilities of the employee receiving the training.

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NEW SECTION

WAC 296-830-230 Violent acts—Records. (1) Each health care setting must keep a record of any violent act against an employee occurring at the setting. Each record must be kept for at least five years following the act reported, and must be available for inspection by the department upon request during that time.

(2) At a minimum, the record must include:

(a) The health care setting's name and address;

(b) The date, time, and specific location at the health care setting where the act occurred;

(c) The name, job title, department or ward assignment, and staff identification or Social Security number of the victim if an employee;

(d) A description of the person against whom the act was committed as:

(i) A patient;

(ii) A visitor;

(iii) An employee; or

(iv) Other;

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

(i) A patient;

(ii) A visitor;

(iii) An employee; or

(iv) Other;

(f) A description of the type of violent act as a:

(i) Threat of assault with no physical contact;

(ii) Physical assault with contact but no physical injury;

(iii) Physical assault with mild soreness, surface abrasions, scratches, or small bruises;

(iv) Physical assault with major soreness, cuts, or large bruises;

(v) Physical assault with severe lacerations, a bone fracture, or a head injury; or

(vi) Physical assault with loss of limb or death;

(g) An identification of any body part injured;

(h) A description of any weapon used;

(i) The number of employees in the vicinity of the act when it occurred; and

(j) A description of actions taken by employees and the health care setting in response to the act;

(k) Employee injury and illness records that are provided to the department during the course of a workplace compliance investigation are not considered a violation of the Health Insurance Portability and Accountability Act (HIPAA).

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NEW SECTION

WAC 296-830-240 Investigations by health care settings. (1)

Every health care setting must conduct a timely investigation of every workplace violence incident.

(2) In each investigation required by this section, the health care setting must review the incident for purposes of identifying factors contributing to or causing workplace violence including, but not limited to, an assessment of:

(a) The details of the incident, such as the date, time, location, and nature of the conduct and harm;

(b) The details of any response and related remediation to prevent future incidents; and

(c) If applicable, a comparison of the actual staffing levels to the planned staffing levels at the time of incident.

(3) (a) The health care setting must submit to the committee identified under WAC 296-830-210 a summary of the following:

(i) The data required by WAC 296-830-230 and the findings of investigations required by this section during the relevant time period, with any personal information deidentified in compliance with the federal and state law;

(ii) An analysis of any systemic and common causes of the workplace violence incidents; and

(iii) Any relevant recommendations for modifying the plan under WAC 296-830-210 and other practices in order to prevent future incidents of workplace violence.

(b) (i) The summary must be submitted at least twice per year for any of the following health care settings:

(A) A critical access hospital under 42 U.S.C. Sec. 1395i-4;

(B) A hospital with fewer than 25 acute care beds in operation;

(C) A hospital certified by the Centers for Medicare and Medicaid Services as a sole community hospital that is not owned or operated by a health system that owns or operates more than one acute hospital licensed under chapter 70.41 RCW; or

(D) A hospital located on an island operating within a public hospital district in Skagit county.

(ii) The summary must be submitted at least quarterly for all other health care settings.

(4) This section does not affect or supersede any other state or federal law that prohibits or limits the disclosure of personally identifiable information.

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PART B: PUBLIC AND PRIVATE FACILITIES FOR MENTALLY ILL

NEW SECTION

WAC 296-830-300 Definitions. The following definitions apply to

Part B unless the context clearly indicates otherwise:

(1) **Department.** The department of labor and industries.

(2) **Employee.** An employee of an employer who is employed in the business of his or her employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is his or her personal labor for an employer under this chapter whether by way of manual labor or otherwise.

(3) **Employer.** Based on chapter 49.17 RCW, an employer is any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations: Provided, that any persons, partnership, or business entity not having employees, and who is covered by the Industrial Insurance Act must be considered both an employer and an employee.

(4) **Licensed physician.** An individual permitted to practice as a physician under the laws of the state, or a medical officer, similarly qualified, of the government of the United States while in this state in performance of his or her official duties.

(5) **Mentally ill person.** Any person who, pursuant to the definitions contained in RCW 71.05.020, as a result of a mental disorder presents a likelihood of serious harm to others or himself or herself or is gravely disabled.

(6) **Patient.** A person under observation, care, or treatment in a state hospital, or a person found mentally ill by the court, and not discharged from a state hospital, or other facility, to which such person had been ordered hospitalized.

(7) **Director.** The director of the department of labor and industries.

(8) **State hospital.** A hospital designated under RCW 72.23.020.

(9) **Violence or violent act.** Any physical assault or attempted physical assault against an employee or patient of a state hospital.

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NEW SECTION

WAC 296-830-310 Workplace safety plan. (1) Each state hospital

must develop and implement a plan to prevent and protect employees from violence at the state hospital. The plan must be developed with input from the state hospital's safety committee, which includes representation from management, unions, nursing, psychiatry, and key function staff as appropriate.

(2) The plan must address security considerations related to the following items, as appropriate to the particular state hospital, based upon the hazards identified in the assessment required under subsection (3) of this section:

(a) The physical attributes of the state hospital including access control, egress control, door locks, lighting, and alarm systems;

(b) Staffing, including security staffing;

(c) Personnel policies;

(d) First aid and emergency procedures;

(e) Reporting violent acts, taking appropriate action in response to violent acts, and follow-up procedures after violent acts;

(f) Development of criteria for determining and reporting verbal threats;

(g) Employee education and training; and

(h) Clinical and patient policies and procedures including those related to smoking; activity, leisure, and therapeutic programs; communication between shifts; and restraint and seclusion.

(3) Before developing the plan required under subsection (1) of this section, each state hospital must conduct a security and safety assessment to identify existing or potential hazards for violence and determine the appropriate preventive action to be taken. The assessment must include, but is not limited to, analysis of data on violence and worker's compensation claims during at least the preceding year, input from staff and patients such as surveys, and information relevant to subsection (2)(a) through (h) of this section.

(4) In developing the plan required by subsection (1) of this section, the state hospital may consider any guidelines on violence in the workplace or in the state hospital issued by:

- (a) The department of health;
- (b) The department of social and health services;
- (c) The department of labor and industries;
- (d) The federal occupational safety and health administration;
- (e) Medicare; and
- (f) State hospital accrediting organizations.

(5) The plan must be evaluated, reviewed, and amended as necessary by each state hospital's safety committee as identified in subsection (1) of this section, at least annually.

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NEW SECTION

WAC 296-830-320 Violence prevention training. (1) Each state hospital must provide, at least annually, violence prevention training to all employees, volunteers, and contracted security personnel, identified by the plan in WAC 296-830-210.

(2) Initial training must occur prior to assignment to a patient unit, and in addition to employee's ongoing training as determined by the plan.

(3) The training must address the following topics based upon the hazards identified in the assessment required under WAC 296-830-310:

- (a) General safety procedures;
- (b) Personal safety procedures and equipment;
- (c) The violence escalation cycle;
- (d) Violence-predicting factors;

(e) Obtaining patient history for patients with violent behavior or a history of violent acts;

(f) Verbal and physical techniques to de-escalate and minimize violent behavior;

(g) Strategies to avoid physical harm;

(h) Restraining techniques;

(i) Documenting and reporting incidents;

(j) The process whereby employees affected by a violent act may debrief;

(k) Any resources available to employees for coping with violence;

(l) The state hospital's workplace violence prevention plan;

(m) Use of the intershift reporting process to communicate between shifts regarding patients who are agitated; and

(n) Use of the multidisciplinary treatment process or other methods for clinicians to communicate with staff regarding patient treatment plans and how they can collaborate to prevent violence.

(4) Training must be tailored to the physical location(s), and to the specific duties and responsibilities of the employee receiving the training.

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NEW SECTION

WAC 296-830-330 Record of violent acts. (1) Each state

hospital must keep a record of any violent act against an employee occurring at the state hospital. Each record must be kept for at least five years following the act reported and must be available for inspection by the department of labor and industries upon request during that time.

(2) At a minimum, the record must include:

(a) A full description of the violent act;

(b) When the violent act occurred;

(c) Where the violent act occurred;

(d) To whom the violent act occurred;

(e) Who perpetrated the violent act;

(f) The nature of the injury;

(g) Weapons used;

(h) Number of witnesses;

(i) Action taken by the state hospital in response to the violence; and

(j) Any other information necessary for the state hospital to comply with expectations of the joint commission on hospital accreditation related to violence against patients.

(3) Employee injury and illness records that are provided to the department during the course of a workplace compliance investigation are not considered a violation of the Health Insurance Portability and Accountability Act (HIPAA).

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PART C: LONG-TERM CARE WORKERS

NEW SECTION

WAC 296-830-400 Definitions. The following definitions apply to Part C unless the context clearly indicates otherwise:

(1) **Abusive conduct.** 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. For service recipients, behavior that meets the definition of subsection (3) of

this section is not considered abusive conduct for the purposes of Part C if expressly exempted from the applicable definition.

(2) **Aggravated workplace violence, aggravated violence, or aggravated violent act.** Assault or physically threatening behavior involving the use of a lethal weapon or a common object used as a lethal weapon, regardless of whether the use of a lethal weapon resulted in injury.

(3) **Challenging behavior.** 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.

(4) **Covered employer.**

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

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

(5) **Department.** The department of labor and industries.

(6) **Disability.** As defined in RCW 49.60.040.

(7) **Discrimination.** Employment discrimination prohibited by chapter 49.60 RCW, including discriminatory harassment. It shall not constitute discrimination for a recipient of personal care services as

defined in RCW 74.39A.009 to refuse to hire or terminate an employment relationship with an employee based on gender preferences.

(8) **Discriminatory harassment.** Unwelcome conduct that is based on a protected class listed in RCW 49.60.030(1) where the conduct is enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. "Discriminatory harassment" includes sexual harassment. For service recipients, behavior that meets the definition of subsection (3) of this section is not considered discriminatory harassment for purposes of Part C.

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

(10) **Inappropriate sexual behavior.** Nonphysical acts of a sexual nature that a reasonable person would consider offensive or intimidating, such as sexual comments, unwanted requests for dates or sexual favors, or leaving sexually explicit material in view. An act may be considered inappropriate sexual behavior independent of whether the act is severe or pervasive enough to be considered sexual harassment. For service recipients, behavior that meets the definition of subsection (3) of this section is not considered inappropriate sexual behavior for purposes of Part C.

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

(12) **Physical sexual aggression.** Any type of sexual contact or behavior, other than rape or attempted rape, that occurs without the explicit consent of the recipient. For service recipients, behavior that meets the definition of subsection (3) of this section is not considered physical sexual aggression for the purposes of Part C.

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

(14) **Sexual contact.** As defined in RCW 9A.44.010. For service recipients, behavior that meets the definition of subsection (3) of this section is not considered sexual contact for the purposes of Part C.

(15) **Sexual harassment.** Has the same meaning as in RCW 28A.640.020. For service recipients, behavior that meets the definition of subsection (3) of this section is not considered sexual harassment for purposes of Part C.

(16) **Trauma-informed care.** A strength-based service delivery approach that:

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

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

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

(17) **Workplace physical aggression.** An occurrence of physically threatening behavior in a work setting, including threats of physical harm, or an occurrence of slapping, biting, or intentionally bumping. For service recipients, behavior that meets the definition of subsection (3) of this section is not considered workplace physical aggression for purposes of Part C.

(18) **Workplace verbal aggression.** Acts of nonphysical hostility or threats of violence in the work setting. "Workplace verbal aggression" includes verbal aggression such as insulting or belittling an individual. For service recipients, behavior that meets the definition of subsection (3) of this section is not considered workplace verbal aggression for purposes of Part C.

(19) **Workplace violence, violence, or violent act.** The occurrence of physical assault, such as hitting or kicking, including using a nonlethal weapon. For service recipients, behavior that meets the definition of subsection (3) of this section is not considered workplace violence for purposes of Part C.

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NEW SECTION

WAC 296-830-410 Discrimination, abusive conduct, and challenging behavior—Written policy required. (1) Each covered employer must adopt and maintain a written policy that meets the requirements of Part C that describes how the covered employer will address instances of discrimination, abusive conduct, and challenging behavior and resolve issues impacting the provision of personal care. The covered employer must:

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

(b) Post the written policy in prominent locations at its place of business and in a prominent location on its website, such as an

online payroll portal, if applicable. The covered employer must provide employees with a copy of the current policy within 30 days of the employee's date of hire, and at least once a year thereafter;

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

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

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

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

(a) A definition of discrimination, harassment, abusive conduct, and challenging behavior as defined in this chapter;

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

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

(d) Stated permission and a process for allowing workers to leave situations where they feel their safety is at immediate risk. This process must include a requirement to notify the employer and applicable third parties such as department of social and health services case managers, emergency services, or service recipient

decision makers as soon as possible. The process must not authorize abandonment as defined in RCW 74.34.020 unless the worker has called the phone number provided by the employer for emergency assistance and has a reasonable fear of imminent bodily harm;

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

(f) A list of resources about discrimination and harassment for long-term care workers to utilize. At a minimum, the resources must include contact information of the equal employment opportunity commission, the Washington state human rights commission, and local advocacy groups focused on preventing harassment and discrimination and providing support for survivors.

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NEW SECTION

WAC 296-830-420 Abusive conduct, challenging behavior prevention, and assistance—Requirements. (1) Each covered employer

must implement a plan and adjust the plan developed under this subsection as necessary based on this annual review 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 personal care.

(2) The plan should be reviewed and updated as necessary and at least once every three years.

(3) The plan must be developed and monitored by a workplace safety committee. The members of the workplace safety committee must consist of:

(a) Individuals that are employee-elected, employer-selected, and include at least one service recipient representative;

(b) The number of employee-elected members must equal or exceed the number of employer-selected members; and

(c) 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 shall be sufficient to fulfill the requirement for a workplace safety committee in Part C.

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

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

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

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

(d) Processes covered employers may follow to engage the service recipient in problem resolution with the goal of ending abusive or discriminatory conduct while working to address issues impacting the provision of personal care.

(5) Each covered employer and workplace safety committee must annually review the frequency of incidents of discrimination and abusive conduct in the home care setting, including identification of the causes for, and consequences of, abusive conduct and any emerging issues that contribute to abusive conduct. As part of its annual

review, the workplace safety committee must also review the number of miscategorizations in aggregate.

(6) In developing the plan required by subsection (1) of this section, the covered employer must consider any guidelines on violence in the workplace or in health care settings issued by:

- (a) The department of health;
- (b) The department of social and health services;
- (c) The department of labor and industries;
- (d) The federal occupational safety and health administration;

and

- (e) The work group created in RCW 49.95.060.

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

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NEW SECTION

WAC 296-830-430 Abusive conduct prevention and challenging behavior training. (1) Annually, as set forth in the plan developed under subsection (3) of this section, each covered employer must

provide abusive conduct prevention and challenging behavior training to all applicable employees, as determined by the plan.

(2) The training must occur within 90 days of the employee's initial hiring date.

(3) The method and frequency of training may vary according to the information and strategies identified in the plan developed under this section.

(4) Trainings may include, but are not limited to, classes that provide an opportunity for interactive questions and answers, hands-on training, video training, brochures, verbal training, or other verbal or written training that is determined to be appropriate under the plan.

(5) Trainings must address the following topics, based upon the hazards identified in the plan, required under this section:

(a) A definition of discrimination, harassment, abusive conduct, and challenging behavior as defined by this chapter;

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

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

(d) The process for workers to leave situations where they feel their safety is at immediate risk;

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

(f) Explain and provide resources about discrimination and harassment for long-term care workers to utilize.

(6) Training must be tailored to the specific duties and responsibilities of the employee receiving the training.

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NEW SECTION

WAC 296-830-440 Employer duty to inform. (1) (a) Covered employers must inform an employee of instances of discrimination and abusive conduct occurring in or around the service recipient's home care setting prior to assigning the employee to that service recipient, and throughout the duration of service, if those instances are:

(i) Documented by the covered employer; or

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

(b) Prior to assigning the employee to a service recipient, covered employers must inform an employee of a service recipient's challenging behavior that is documented:

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

(ii) By the covered employer; or

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

(2) (a) Communication of the information in subsection (1) of this section must be tailored to respect the privacy of service recipients in accordance with the federal Health Insurance Portability and Accountability Act of 1996.

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

(3) If a covered employer miscategorizes an instance as discrimination or abusive conduct that should have been categorized as challenging behavior, or if a covered employer miscategorizes an instance as challenging behavior that should have been categorized as

discrimination or abusive conduct, the covered employer must correct the categorization, correct how the instance was reported under WAC 296-830-450, and comply with any provisions under this chapter applicable to addressing the behavior or conduct.

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

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

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

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

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

(6) Nothing in this section requires an individual recipient of services to provide information required by this section to an employee. Nothing in Part C shall limit the rights of a recipient of services under chapter 74.39A RCW to select, dismiss, assign hours,

and supervise the work of individual providers as in RCW 74.39A.500

(1) (b) .

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NEW SECTION

WAC 296-830-450 Records required of reported incidents. (1)

Covered employers are required to keep a record of any reported incidents of discrimination or abusive conduct experienced by an employee during the provision of paid personal care services. The records must be kept for at least five years following the reported act and must be made available for inspection by the department or its agents upon request.

(2) If the covered 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 in this section. The department must take into consideration the exclusive bargaining representative's assessment when determining whether an employer is in compliance with this section.

(3) The retained records must include:

- (a) The covered employer's name and address;
- (b) The date, time, and location of where the act occurred;
- (c) The reporting method;
- (d) The name of the person who experienced the act;
- (e) A description of the person committing the act as:
 - (i) A service recipient;
 - (ii) Another resident of the home care setting;
 - (iii) A visitor to the home care setting;
 - (iv) Another employee;
 - (v) A manager or supervisor; or
 - (vi) Other;
- (f) A description of the type of act as one or more of the following:
 - (i) Discrimination, including discriminatory harassment;
 - (ii) Sexual harassment, inappropriate sexual behavior, or sexual contact;
 - (iii) Physical sexual aggression;
 - (iv) Rape or attempted rape;
 - (v) Workplace verbal aggression;
 - (vi) Workplace violence;
 - (vii) Workplace physical aggression; or

(viii) Aggravated workplace violence;

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

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

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

(5) Communication of the information in this section must be tailored to respect the privacy of service recipients in accordance with the federal Health Insurance Portability and Accountability Act of 1996.

(6) Employee injury and illness records that are provided to a labor and industries compliance safety and health investigator during the course of a workplace compliance investigation are not considered a violation of the Health Insurance Portability and Accountability Act (HIPAA) .

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