

Implementation Date of Law: July 1, 2021

Subject: Discrimination, abusive conduct, and challenging behaviors

Authority: RCW: 49.95 (.005, .010, .020, .030, .040, .050, .060, .070); MB H21-039

Policy:

The agency will comply with all provisions of MB H21-039 based on all provisions of Title 49, Chapter 49.95 RCW concerning how KWA shall address instances of discrimination, abusive conduct, and challenging behaviors and work to resolve issues impacting the provisions of in-home care.

Purpose: To assist caregivers working in environments with challenging behaviors, and work to resolve issues impacting the provisions of personal care, and to ensure compliance with long-term care workers harassment, abuse and discrimination law.

Definitions:

"Abusive conduct" means 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.

"Challenging behavior" means behavior by a client 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.

"Aggravated workplace violence," "aggravated violence," or "aggravated violent act" means 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.

"Discrimination" means 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 a caregiver based on gender preferences.

"Discriminatory harassment" is 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.

"Employee" means a long-term care worker as defined in RCW [74.39A.009](#) that is employed by a covered employer. KWA is a covered home care agency employer RCW [70.127.010](#). KWA refers to their long-term care - employees as caregivers.

"Harassment" that may include, but is not limited to, discussing sexual activities, telling off-color jokes concerning sex or gender, unnecessary touching, commenting on physical attributes, displaying sexually suggestive pictures, using demeaning or inappropriate terms, using indecent gestures, using crude language, sabotaging the victim's work, or engaging hostile physical contact.

"Inappropriate sexual behavior" means 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.

"Long-term care workers" means 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.

"Offensive conduct" may include, but is not limited to, offensive jokes, slurs, name calling, threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, or interference with work performance.

"Physical sexual aggression" means any type of sexual contact or behavior, other than rape or attempted rape, that occurs without the explicit consent of the recipient.

"Rape" or **"attempted rape"** have the same meanings as in RCW [9A.44.040](#), [9A.44.050](#), and [9A.44.060](#).

"Sexual contact" has the same meaning as in RCW [9A.44.010](#).

"Sexual harassment" has the same meaning as in RCW [28A.640.020](#).

"Workplace physical aggression" means an occurrence of physically threatening behavior in a work setting, including threats of physical harm, or an occurrence of slapping, biting, inappropriate grabbing, or intentionally bumping.

"Workplace verbal aggression" means 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.

"Workplace violence," "violence," or "violent act" means the occurrence of physical assault, such as hitting or kicking, including using a nonlethal weapon.

Procedure:

1. KWA shall disseminate the written HAD policy to each caregiver at the beginning of employment (within 30 days), annually, and on the issuance of any substantive update to the written policy.
2. KWA shall post the written HAD policy in a prominent location for caregivers in each home care office.
3. KWA shall post the HAD policy on agency website.
4. KWA HAD policy shall be made available in plain English and in each of the three languages spoken most by KWA caregivers (Korean, Spanish, and Vietnamese).
5. KWA shall review and update the policy annually.
6. **Offensive conduct** may include, but is not limited to, offensive jokes, slurs, name calling, threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, or interference with work performance;

Workplace violence may include, but is not limited to, hitting, punching, kicking, biting, pinching, throwing objects;

Harassment that may include, but is not limited to, discussing sexual activities, telling off-color jokes concerning sex or gender, unnecessary touching, commenting on physical attributes, displaying sexually suggestive pictures, using demeaning or inappropriate terms, using indecent gestures, using crude language, sabotaging the victim's work, or engaging hostile physical contact;

Discrimination may be, but is not limited to, the basis of race, color, national origin, gender, sexual orientation, citizenship status, language spoken.

The following are example descriptions of the types of discrimination, abusive conduct and challenging behaviors covered by the HAD policy. This list is not an all-inclusive.

Harassment Examples:

- Inappropriate comments made to staff, “This caregiver isn’t pretty enough for a woman,” and/or, “You should leave your spouse for me.
- Service recipient should not call the caregiver nor have the caregiver’s phone number, and harassment is service recipient calling a caregiver’s cell phone multiple times in one day or calling after asked to stop.
- Demanding a specific gender of caregiver, and a service recipient should never ask a caregiver out on a date.
- Yelling at a caregiver and locking the caregiver out is not acceptable behavior.
- Aggressive animals that are not confined.
- Blaming the caregiver for issues or ailments the caregiver has not control over to other professionals, supports, medical team members or physicians.
- Badgering the caregiver until physical leaving premises and requesting to no longer work with this service recipient.
- Mean, nasty, and aggressive disposition.

Abuse Examples:

- Emotionally manipulating the caregiver to do tasks that are not on the assessment/plan of care.
- Caregiver being caught between family or household members fight with service recipient, and they try to pull the caregiver into the argument.
- Being terrified at work because of violence in the home between family or other residents.
- Ill-suited comments made regarding caregiver body.
- Drunk individuals in the home acting unbecoming and/or angry.
- Having an object thrown at caregiver or in the vicinity to cause harm.
- Retaliation and/or violent behavior when caregiver denies unacceptable requests (i.e.; refusal to buy marijuana).
- Being pinched (on the derriere) and told you are sexy.
- Physical harm such as being hit, slapped, pinched or kicked.
- Sexual advances or comments of any kind.
- Degrading and/or nasty acts such as making a mess on purpose and telling the caregiver to clean it up.
- Mean, nasty, and aggressive verbal assault.

Discrimination Examples:

- Service recipient or decision maker demanding/accepting only specific gender of caregiver.
- Sending caregiver away or firing because of a language or accent barrier other than American English or ESL.
- Service recipient refuses to take a caregiver due to disability such as hearing impairment, etc.
- Sending caregiver away or termination by service recipient because of religious stereotype or dress.
- Service recipient asking about vaccines or refuses services from anyone who has not had the Covid-19 vaccine.

7. In the event of HAD incident, the caregiver will complete HAD report with KWA admin staff.
 - a) The caregiver shall contact their home care supervisor immediately to report harassment, abuse, discrimination, and/or challenging behavior.

1. If the supervisor is unavailable, the caregiver should make the report with the administrative assistant.
- b) Supervisor will complete HAD incident report, investigation, and document incident and follow ups in chart notes.
8. In the event a caregiver feels their safety is at imminent risk, caregiver must follow this process for permission to leave the situation:
 - a) Caregiver should call 911 if the situation warrants.
 - b) The caregiver should attempt to separate themselves from the situation and contact their home care supervisor prior to leaving the property of the client. (example – go outside of the home to call their home care supervisor for advice)
 - c) The process must not authorize abandonment as defined in RCW 74.34.020 unless the worker has called the phone number provided by the supervisor or if during afterhours the KWA emergency assistance line for their region and has a reasonable fear of imminent bodily harm.
 - d) The Supervisor must notify applicable third parties such as department of social and health services case managers/Area Agency on Aging case managers of incident; and/or client decision makers; and/or POA as soon as possible of incident.
9. Clients are prohibited against retaliation towards caregiver for actions related to disclosing, challenging, reporting, testifying, or assisting in an investigation regarding allegations of discrimination, abusive conduct, or challenging behavior.
 - a) The caregiver must report acts of retaliation by a client to their supervisor who will compile information and provide it to their regional manager for investigation and follow up.
 - b) In the event of client retaliation, the caregiver will be removed from providing services to the client.
 - c) Acts of retaliation from a client will be taken seriously, reported to the referring agency and are subject to termination of in home care services from agency.
10. Resource about discrimination and harassment:
 - a) KWA HR Department
 - b) SEIU 775 NW - Employee Assistance Program
 - c) EEOC
1.800.669.4000
<https://www.eeoc.gov/field-office/washington/location>
 - d) Washington State Human Rights Commission
<https://www.hum.wa.gov/>
1.800.233.3247
11. KWA staff will comply with duty to inform caregivers of any known history of instances of discrimination and abusive conduct or challenging behaviors prior to assigning the caregiver to that client and document conversation and concerns related in chart notes; and throughout the duration of service if those instances are:
 - a) Documented by KWA; or
 - b) Documented by the department of social and health services and communicated to KWA covered employer; or
 - c) Covered in the client's care plan; or
 - d) Communication of any known HAD type incidence shall follow federal health insurance portability and accountability act of 1996 (HIPAA).
12. Upon written, signed and dated request of the client/POA, KWA supervisor shall share information that was communicated to the caregiver regarding harassment, abuse and/or discrimination concerns related to in home care services for said client.
13. If KWA mis-categorizes an instance as discrimination or abusive conduct that should have been categorized as challenging behavior or mis-categorizes an instance as challenging behavior that should have been categorized as discrimination or abusive conduct, KWA shall correct the categorization, correct how the instance was reported under RCW 49.95.050, and comply with any provisions under this

chapter applicable to addressing the behavior or conduct.

14. KWA will not terminate caregiver, reduce the pay of caregiver, or not offer future assignments to caregiver for requesting reassignment due to alleged discrimination, abusive conduct, or challenging behavior.
15. RCW 49.95 does not prevent KWA from:
 - a) Disciplining or terminating caregiver if an allegation or request for reassignment was reasonably determined to be false or not made in good faith;
 - b) Terminating caregiver or reducing hours due to lack of suitable work; or
 - c) Disciplining or terminating caregiver for lawful reasons unrelated to their request for reassignment.
16. Client recipient of in home care services are not required to provide information regarding RCW 49.95 to caregiver. Caregiver shall communicate directly with supervisor regarding concerns and reporting harassment, abusive conduct, discrimination and/or challenging behavior.
17. KWA shall keep a record of any reported incidents of discrimination or abusive conduct experienced by a caregiver during the provision of paid personal care services.
 - a) Supervisors will provide the original HAD incident report to Compliance Officer and keep a copy of HAD incident report in client (client receiving care where incident occurred) and caregiver file (caregiver who HAD act was directed toward).
 - b) Compliance Officer will record incident report on the KWA HAD incident tracking form by year and store original HAD reports by location and year for five years from the report date. When KWA is asked, Compliance Officer will make available anonymized aggregate data of reported incidents to IHC Director and third parties (DSHS workgroup and/or exclusive bargaining representative representing KWA caregivers, etc.).
18. This policy and procedure will be reviewed and KWA will implement policies and best practices for training employees, long-term workers and clients in additional components recommended by the work group established in RCW 49.95.060 for the purpose of preventing discrimination and abusive conduct and responding to challenging.