

HOUSE BILL REPORT

SHB 2822

As Passed Legislature

Title: An act relating to exempting department of labor and industries' medical coverage decisions from rule-making requirements.

Brief Description: Exempting agency medical coverage decisions by labor and industries from rule-making provisions.

Sponsors: By House Committee on Commerce/Lab (originally sponsored by Representative McMorris; by request of Department of Labor & Industries).

Brief History:

Committee Activity:

Commerce & Labor: 1/28/98, 2/5/98 [DPS].

Floor Activity:

Passed House: 2/13/98, 95-1.

Passed Legislature.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Boldt; Clements; Hatfield and Lisk.

Minority Report: Do not pass. Signed by 3 members: Representatives Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; and Cole.

Staff: Chris Cordes (786-7103).

Background: An injured worker entitled to compensation under the industrial insurance law must receive "proper and necessary" medical services during his or her period of disability, subject to certain limitations. The Department of Labor and Industries is responsible for supervising the "prompt and efficient" delivery of care and treatment provided to injured workers. The department is directed by statute to adopt rules and practices governing these services.

The state Administrative Procedure Act (APA) details procedures that state agencies must follow when adopting rules. Generally, a "rule" is any agency order or directive of

general applicability that subjects a person to a sanction if violated, or establishes or changes a procedure or qualification relating to, among other things, benefits or privileges conferred by law. Before adopting a rule, an agency must follow specified procedures, including publishing notice in the state register and holding a hearing. For some types of rules, agencies must solicit comments and otherwise involve interested parties before publishing notice of a proposed rule. Rules not adopted in accordance with the prescribed procedures are invalid.

The APA also regulates agency interpretive and policy statements. Interpretive statements provide a written opinion of the agency on a statute, court decision, or agency order, while policy statements describe the current approach of the agency with regard to implementation of a statute, court decision, or agency rule. Under the APA, interpretive and policy statements are advisory only.

Summary of Bill: Medical coverage decisions made by the Department of Labor and Industries under the industrial insurance law are not "rules" for the purposes of the state Administrative Procedures Act (APA) and are not subject to the APA's rule-making requirements. However, the criteria for establishing medical coverage decisions must be adopted by rule after consultation with the Workers' Compensation Advisory Committee.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The Department of Labor and Industries needs flexibility in implementing medical coverage decisions to ensure prompt response to new technology and medical innovations. If these decisions are made in rules, the rules quickly become outdated and response time is extended because of the rule-making process. Most medical policies are developed in consultation with various provider advisory committees. These committees review policies periodically to address concerns raised by the provider community. The department would still be required to adopt rules stating the criteria for making coverage decisions. The bill has no impact on the right of parties to appeal adverse decisions to the Board of Industrial Insurance Appeals.

Testimony Against: It is not clear why this bill is needed or what the problem is that the bill is addressing. Exempting "medical coverage decisions" from rule-making is too broad. The bill should be more specific about the issues that are to be exempted. The bill might have an impact on chiropractic coverage in the future and might result in shifting power over coverage decisions from the Board of Industrial Insurance Appeals to the department.

Testified: (In support) Suzanne Mager, Gary Franklin, and Jamie Lifka, Department of Labor and Industries; Mary Kay O'Neill and Cliff Webster, Washington State Medical Association; Clif Finch, Association of Washington Business; and Robby Stern, Washington State Labor Council. (With concerns) Michael Temple and Wayne Lieb, Washington State Trial Lawyers Association. (Opposed) Steve Wehrly, Washington Chiropractic Trust.