SENATE BILL REPORT

SSB 5050

As Passed Senate, March 16, 1999

Title: An act relating to treatment of intractable pain with controlled substances.

Brief Description: Describing the treatment of intractable pain with controlled substances.

Sponsors: Senate Committee on Health & Long-Term Care (originally sponsored by Senators Prentice, Kline and Deccio).

Brief History:
Committee Activity: Health & Long-Term Care: 1/20/99, 2/17/99 [DPS].
Passed Senate, 3/16/99, 42-3.

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 5050 be substituted therefor, and the substitute bill do pass.

Signed by Senators Thibaudeau, Chair; Wojahn, Vice Chair; Costa, Deccio, Franklin, Johnson and Winsley.

Staff: Joan K. Mell (786-7447)

Background: Prior to 1992, the Washington State Medical Quality Assurance Commission (MQAC) had guidelines that did not recognize repeated prescribing of controlled drugs for the treatment of intractable pain. Physicians had adverse administrative actions taken against their licenses if they disregarded the guidelines.

Controversy ensued with research suggesting that low level opioids could be used to treat pain without significant addictive side effects. People suffering long-term debilitating pain could become functional when taking opioids and would choose to do so despite known side effects. These people were deprived access to the beneficial results of opioids as they were unable to find physicians willing to prescribe them.

In 1995, legislation passed that required the Department of Health (DOH) assist the regulatory boards and commissions in developing uniform guidelines for opiate therapy for acute pain. Guidelines were developed that permitted treatment of intractable pain with opioids. However, the guidelines carried minimal weight in convincing physicians that no action would be taken against their licenses. The guidelines were not detailed in describing the factual circumstances under which prescribing opioids would be considered acceptable by MQAC.

In an effort to formalize the guidelines, DOH undertook rulemaking and presently has draft rules available out for public comment. If adopted, the rules would prohibit license action against a physician "based solely on the quantity and/or frequency of controlled substance

usage" among other things. The rules are in the process of review and will not go into effect until later this year.

The Department of Labor and Industries (L&I) has pursued efforts in rulemaking and developing guidelines that seek common ground with DOH related to opioid treatment for intractable pain. Presently L&I has rules limiting reimbursement for opiates to 21 days without further justification. Many beneficiaries receive benefits beyond the 21 days. However, L&I is in the process of revamping its rules regarding drugs, not just opioids, and is developing new guidelines with procedural detail beyond that included in the DOH guidelines. The additional detail contemplated concerns differences between the agency purposes of L&I versus DOH. L&I, as an insurer for injured workers, must develop a manageable reimbursement scheme that accounts for the fact that workers' compensation does not cover palliative care. DOH is not an insurer and has broader standard of practice concerns. Despite these differences, L&I represents that its guidelines and rule changes will not conflict with DOH guidelines. These changes are not expected until June 1999.

Summary of Bill: Intractable pain is pain a person experiences despite reasonable efforts to alleviate the pain. Reasonable efforts– means efforts to find the source of pain and includes appropriate referrals by the attending physician.

Physicians could prescribe controlled substances, Schedules II-V, for intractable pain. Other health care providers are authorized to perform their functions related to intractable pain consistent with their practice. Opioids were the particular drugs originally contemplated with this legislation. However, other drugs in Schedule II-V may also be appropriate for treatment of intractable pain.

Despite the acceptance of drug treatment for intractable pain, the acceptance is premised upon prescribers following the accepted standard of care and providing informed consent. Cross references to the standard of care and informed consent statutes provide definition to standard of care and informed consent. Standard of care requires exercise of the degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he belongs, in the state of Washington, acting in the same or similar circumstances. Informed consent requires informing a patient of material facts relating to treatment among other things.

DOH must coordinate and assist the health professional boards and commissions in development of guidelines that provide a more specific evidentiary basis for providers to argue about the standard of care and informed consent in a particular case. A particular course of treatment is not spelled out as within the standard because the standard must be assessed upon the facts in each case according to the accepted practices at the time of treatment, not at the time this legislation is enacted. The guidelines can be updated. The Department of Labor and Industries must develop guidelines consistent with the Department of Health guidelines. Both agencies are given rulemaking authority.

Appropriation: None.

Fiscal Note: Requested on January 15, 1999.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: People suffer debilitating pain and are unable to access medication that enables them to function. Suffering is unnecessary. There were concerns expressed about access to care when the Department of Labor and Industries does not cover costs of medication.

Testimony Against: Agencies are concerned about public health, safety and welfare. The language of the bill could be clarified. The bill does not adequately address concerns raised by problems of intractable pain. Agencies are already in the process of making appropriate rules.

Testified: Lisa E. Hageman, American Society for Action on Pain (pro); Annette Sletterold, Arthritis Foundation; Cris Salsbury, WICPA (pro); Frank Kirk, American Cancer Society (pro); Pat Brown, DOH (con); Lee Glass, M.D., L&I (con).