

# HOUSE BILL REPORT

## HB 2837

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### As Reported by House Committee On:

Financial Institutions & Insurance

**Title:** An act relating to underwriting medical malpractice coverage.

**Brief Description:** Underwriting medical malpractice coverage.

**Sponsors:** Representatives Schual-Berke, Benson, Cody, Simpson, G., Kagi, Lantz, Linville, Morrell, Wallace, Kenney, O'Brien, Miloscia, Sommers, Rockefeller, Moeller, Clibborn, Edwards, Darneille and Dickerson.

### Brief History:

#### Committee Activity:

Financial Institutions & Insurance: 1/27/04, 2/4/04 [DPS].

#### Brief Summary of Substitute Bill

- Defines the term "underwriting."
- Requires each medical malpractice insurer to file its underwriting rules and standards with the Insurance Commissioner.
- An insurer may only take an adverse action (deny, cancel, nonrenew or adjust premiums) against an insured based on the fact that the insured inquired about the nature or scope of the policy, notified the insurer about a potential claim, or had a claim closed with no payment only if there are other substantive underwriting factors that contribute to the adverse action.

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### HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Schual-Berke, Chair; Simpson, G., Vice Chair; Newhouse, Assistant Ranking Minority Member; Cooper, Hatfield, Santos and Simpson, D.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Cairnes, Carrell and Roach.

**Staff:** Carrie Tellefson (786-7127).

**Background:**

The Insurance Commissioner (Commissioner) is responsible for the licensing and regulation of insurance companies doing business in this state. This oversight includes approval of rates and rating plans. However, the Commissioner does not generally review an insurer's underwriting standards and does not receive information related to specific classes or types of insurance coverage provided.

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**Summary of Substitute Bill:**

The term "underwriting" is defined to include the process of selecting, rejecting, or pricing a risk, including evaluation, selection, and classifying a risk; application of rates and rating plans; and determining eligibility for coverage provisions, providing or limiting coverage amounts, or premium payment plans.

Malpractice insurers must file their underwriting rules and standards with the Insurance Commissioner at least 30 days before they become effective. Once filed, the standards are subject to public disclosure.

These filings must identify and explain the class, type, and extent of coverage; any changes to the underwriting standards; and how changes will impact future losses.

An insurer may take an adverse action (deny, cancel, nonrenew or adjust premiums) against a insured based on the fact that the insured has inquired about the nature or scope of the policy, has notified the insurer about a potential claim, or has had a claim closed with no payment only if there are other substantive underwriting factors that contribute to the adverse action.

Insurers that are ordered into rehabilitation under state law are exempt from the requirements of this act.

**Substitute Bill Compared to Original Bill:**

An insurer may take an adverse action (deny, cancel, nonrenew or adjust premiums) against an insured based on the fact that the insured inquired about the nature or scope of the policy, notified the insurer about a potential claim, or had a claim closed with no payment only if there are other substantive underwriting factors that contribute to the adverse action.

Insurers that are ordered into rehabilitation under state law are exempt from the requirements of this act.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** The Insurance Commissioner reviews rates for those insurers that are admitted in Washington. They do not review rates for non-admitted insurers. Underwriting guidelines include who the insurer will insure and what they will cover. This bill will help the Office of the Insurance Commissioner (OIC) because they will have notice in advance that rates are going to change. When a malpractice carrier files rates in order to change premiums, they make certain assumptions. If they make changes after making their assumptions, it could change the outcome. Underwriting guidelines are not reviewed in most states - only in a couple of highly regulated states. In those cases, the underwriting guidelines that would be reviewed would be in the personal lines (auto and homeowner) insurance market.

This bill does not give OIC authority to challenge an insurer's underwriting guidelines. It doesn't change the current situation or give the OIC more authority than it currently has.

The OIC has two levels of reviewing rates: (1) for personal lines insurance, the insurer must receive prior approval before using their proposed rates; and (2) for commercial lines (including medical malpractice) insurance, the insurer can use their proposed rates and file them with the OIC within 30 days. Once approved, rates are re-reviewed upon a change in rates.

Washington Casualty Company is currently subject to receivership. Washington Casualty has concerns related to fairness. There are two types of carriers: (1) admitted carriers regulated by the OIC for purposes of rates, forms, claims and payment practices; and (2) surplus lines, which are not regulated. Washington Casualty represents rural hospital districts. Currently, only four insurance entities are writing hospital malpractice insurance: AIG, Chubb, CNA, and Washington Casualty. Washington Casualty is the only admitted carrier in this group. The competition from the non-admitted carriers is great. They can change their rates without a rate filing. They can also tweak their forms without approval. Washington Casualty finds this to be very challenging. They would like to encourage a leveling of the playing field.

**Testimony Against:** This bill is another hoop they would have to jump through that their competitors would not. They would like to see hospital malpractice eliminated from this requirement or see an exclusion for companies that are in receivership. They are reluctant to support a bill that requires them to spend more time complying with regulations given their current status.

**Persons Testifying:** (In support) Lisa Smego, Office of Insurance Commissioner.

(Opposed) John Woodall, Washington Casualty Company.

**Persons Signed In To Testify But Not Testifying:** None.