

# HOUSE BILL REPORT

## HB 2154

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**As Reported by House Committee On:**  
Commerce & Labor

**Title:** An act relating to criteria for coverage of spinal cord stimulators and drug infusion pumps by the department of labor and industries.

**Brief Description:** Making spinal cord stimulators and drug infusion pumps available to injured workers.

**Sponsors:** Representatives Wood, Conway, Anderson, Tom, Ericksen and McCoy.

**Brief History:**

**Committee Activity:**

Commerce & Labor: 1/15/04, 1/22/04, 2/5/04 [DPS].

**Brief Summary of Substitute Bill**

- Requires the Department of Labor and Industries to develop treatment guidelines for spinal cord stimulators in accordance with certain standards.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins, Kenney and McCoy.

**Minority Report:** Without recommendation. Signed by 4 members: Representatives McMorris, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Crouse and Holmquist.

**Staff:** Jill Reinmuth (786-7134).

**Background:**

The Industrial Insurance Act (Act) specifies that injured workers are entitled to "proper and necessary medical and surgical services" and "proper and necessary hospital care and services." The Act authorizes the director of the Department of Labor and Industries (Department) to make determinations about the types of treatment to be provided to injured workers.

In most cases, these determinations require an individualized analysis to determine whether the treatment is "medically necessary." The Department's medical aid rules specify that

services which are controversial, obsolete, experimental, or investigational are presumed not be "medically necessary." The rules also require prior approval for treatment measures that are of an unusual, controversial, obsolete, or experimental nature.

Spinal cord stimulators and drug infusion pumps are surgically implanted devices that are designed to provide relief from chronic pain. In a significant decision in 1998, the Board of Industrial Insurance Appeals (Board) agreed with the Department that spinal cord stimulator treatment is controversial and, thus, must be presumed not to be medically necessary. However, the Board also determined that this presumption can be rebutted on a case-by-case basis. Thus, in an individual case, spinal cord stimulator treatment may be determined to be "medically necessary" and also "proper and necessary medical and surgical services." In such a case, the injured worker is entitled to spinal cord stimulator treatment.

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**Summary of Substitute Bill:**

The Department of Labor and Industries (Department) must develop treatment guidelines for spinal cord stimulators at least in accordance with relevant standards adopted by national payors and most state industrial insurance programs. The Department is not prevented from making decisions about whether the devices are appropriate in specific cases. The term "spinal cord stimulator" is defined.

**Substitute Bill Compared to Original Bill:**

A provision requiring the Department of Labor and Industries to develop treatment guidelines for spinal cord stimulators at least in accordance with standards adopted by national payors and state industrial insurance programs is added. The provisions explicitly providing that health services include the use of spinal cord stimulators, and specifying that such devices are deemed "corrective and rehabilitative" as well as "necessary and proper" are deleted. The definition of and all references to drug infusion pumps are deleted. The provision requiring liberal construction is also deleted.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** (In support) Intractable pain is pain that does not go away. Spinal cord stimulators are a device that can be used to treat such pain.

This device helps control my pain. I had sciatica in my lower back and down both of my legs to my toes. If you haven't experienced pain like this, you have no idea what it is like. My health insurance covered this device on a trial basis. It gave me relief from pain that I had had for 10 years.

In 2002 the Medical Advisory Industrial Insurance Committee (Committee) said that this device should be provided on a case-by-case basis. How the Department of Labor and Industries (Department) could say this device should not be covered is appalling and inconsistent with the record.

The Department's decision has been to ban the use of this device. It takes the position that it is never okay to use this device, and that the device is never medically appropriate or medically necessary. No one is proposing the promiscuous use of an expensive remedy. Preauthorization and utilization review would be required. A test on the individual would also be required.

The Department's position is unique in the developed world. The information about the workers' compensation system in British Columbia was incorrect. All employment benefit programs cover this device, but not with a blank check. No program has an across-the-board ban on this device.

The Washington State Medical Association (Association) provides a forum to discuss the standard of care. The Department would say that the standard of care is not the issue, but state law says otherwise. The Department will suggest having another study, which will just result in more delay.

(Neutral) The Association does not take positions on these issues. Instead, it convenes forums for doctors with the necessary expertise to share their opinions on these issues. Decisions on guidelines for use or coverage of certain devices are within the purview of the Department.

(Neutral with concerns) There are two areas of concern. First, there is an ongoing process in place to evaluate the use of spinal cord stimulators. That process should not be interrupted. Second, the legislative process should not be used in lieu of a medical determination.

After this bill was introduced last year, a process was developed to evaluate the use of spinal cord stimulators. Last fall, there was a literature review to determine how effective the device is in improving function, whether patients have any adverse events from its use, and what the costs associated with its use are. In November 2003 the literature review was presented to the Association. Although we expected to receive a written response from the Association following that meeting, a letter to Representative Conway dated January 13 indicated the Association will not respond in writing.

**Testimony Against:** Spinal cord stimulators are covered under the workers' compensation system in California. They are frequently used in combination with morphine. Pain clinics and other narcotics are also covered. More often than not, spinal cord stimulators do not provide any improvement. We need to make sure that treatments make a difference.

Using legislation to specify which devices are covered and which are not is inappropriate. We do not use this approach to make coverage decisions about any other devices. The purpose of treatment is to improve pain and function. It is not clear that this device improves function. This also may limit the Department's ability to close claims because of surgeries needed to maintain this device.

**Persons Testifying:** (In support) Representative Wood, prime sponsor; Linda Hull and Andy Dolan, Medtronic, Inc.; and Susan Pleas.

(Neutral) Bob Perna, Washington State Medical Association.

(Neutral with concerns) Bob Malooly and Gary Franklin, Department of Labor and Industries.

(Opposed) Katarina Zitnik Costco Wholesale; Kathleen Collins, Washington Self-Insurers Association; and Amber Balch Carter, Association of Washington Business.

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