

HOUSE BILL REPORT

HB 1562

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to industrial insurance medical and chiropractic advisory committees for the department of labor and industries.

Brief Description: Establishing industrial insurance medical and chiropractic advisory committees.

Sponsors: Representatives Conway, Green, Williams, Moeller and Wood.

Brief History:

Committee Activity:

Commerce & Labor: 1/30/07, 2/22/07 [DPS].

Brief Summary of Substitute Bill

- Requires the Department of Labor and Industries to establish an industrial insurance Medical Advisory Committee and an industrial insurance Chiropractic Advisory Committee.
- Establishes requirements for the appointment of members of the industrial insurance Medical Advisory Committee and the industrial insurance Chiropractic Advisory Committee.
- Requires a report to the Legislature in 2011 related to the work of the industrial insurance Medical Advisory Committee and the industrial insurance Chiropractic Advisory Committee.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Crouse, Green, Moeller and Williams.

Staff: Sarah Beznoska (786-7109).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Industrial Insurance Medical Coverage Decisions

Industrial insurance is a no-fault state workers' compensation program that provides medical and partial wage replacement benefits to covered workers who are injured on the job or who develop an occupational disease. The Industrial Insurance Act states that a worker entitled to industrial insurance benefits is generally entitled to "proper and necessary medical and surgical services."

The Department of Labor and Industries (Department) has an Office of the Medical Director that periodically makes general policy decisions to include or exclude specific health care services or supplies as a covered benefit. In 1998, legislation was enacted providing that medical coverage decisions made by the Department 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 basic criteria used to make medical coverage decisions are set forth in rule. The Department considers information including scientific evidence, national and community-based opinions, informal syntheses of provider opinion, experience of the Department and other entities, and regulatory status.

The Department and self-insurers make claim-specific decisions regarding specific medical benefits for a particular worker. Under Department rule, when considering whether to provide coverage for a particular device for a worker, a self-insured employer or state fund claim manager makes a claim-specific decision to pay or deny payment for that device based on a number of factors, one of which is whether the accepted condition on that claim matches the approved category of injuries in the medical coverage decision.

Advisory Committees

Under Department rule, the Washington State Medical Association must appoint an Advisory and Utilization Review Committee to do the following:

- advise the Department with respect to policies affecting medical care and rehabilitation, quality control and supervision of medical care, and the establishment of rules and regulations;
- advise and assist the Department in the resolution of controversies, disputes and problems between the Department and the providers of medical care; and
- advise and assist the Department in the education of members of the medical community with regard to the roles of the physician, the Department and the employer in providing the needs and care of the injured worker.

The rule requires the Advisory and Utilization Review Committee to meet monthly and the Department may reimburse the members for each meeting. According to the Department, the Advisory and Utilization Review Committee has disbanded.

Current rule also requires the Director of the Department to appoint a Chiropractic Advisory and Utilization Review Committee to do the following:

- advise the Department on policies affecting chiropractic care, quality assurance, clinical management of cases, utilization review, and the establishment of rules;
- advise and assist the Department on the Department's relationship with providers of chiropractic care; and
- assist the Department in ensuring that injured workers receive good quality chiropractic care in a safe and effective manner.

The Chiropractic Advisory and Utilization Review Committee must meet monthly and the Department may reimburse the members for travel and incidental expenses related to the meetings.

Related Statewide Programs

In 2006, the Legislature directed the Health Care Authority to establish the state Health Technology Assessment Program in the Health Care Authority. As a part of the Health Technology Assessment Program, an 11-member Health Technology Committee selects health technologies for review, contracts for evidence-based assessments of the selected health technologies, and makes determinations about when selected health technologies will be considered covered benefits. The Department of Social and Health Services, the State Health Care Authority, and the Department of Labor and Industries must comply with determinations made by the Health Technology Committee.

In 2003, the Legislature directed the Health Care Authority to establish an evidence-based Prescription Drug Program. The Prescription Drug Program develops a statewide evidence-based preferred drug list for state programs.

Summary of Substitute Bill:

The Department of Labor and Industries (Department) is authorized to establish an industrial insurance Medical Advisory Committee and an industrial insurance Chiropractic Advisory Committee.

Medical Advisory Committee

The Medical Advisory Committee must advise the Department on matters related to providing safe, effective, and cost-effective treatments for injured workers. This includes, but is not limited to, the development of practice guidelines and coverage criteria, review of coverage decisions and technology assessments, review of medical programs, and review of rules pertaining to health care issues. The Medical Advisory Committee may provide peer review and advise and assist in the resolution of controversies, disputes, and problems between the Department and providers of medical care.

In advising the Department, the Medical Advisory Committee must consider the best available scientific evidence and expert opinion of committee members. The Department also may hire any expert or create an ad hoc group, committee, or subcommittee. In addition, the Medical

Advisory Committee may consult nationally recognized experts in evidence-based health care on particularly controversial issues.

The Medical Advisory Committee is comprised of up to 15 members appointed by the Director of the Department (Director). In making appointments, the Director must appoint 13 members using nominations from statewide clinical groups, specialties, and associations, including but not limited to the following: family or general practice, orthopedics, neurology, neurosurgery, general surgery, physical medicine and rehabilitation, psychiatry, internal medicine, osteopathic, naturopathic, pain management, radiology, and occupational medicine. The Department may appoint two additional members from any medical specialty. At least two members must be physicians who are recognized for expertise in evidence-based medicine. Members must not be Department employees, and the Medical Advisory Committee must choose a chair from among its members.

Chiropractic Advisory Committee

The Chiropractic Advisory Committee must advise the Department on matters related to providing safe, effective, and cost-effective chiropractic treatments for injured workers. The Chiropractic Advisory Committee may provide peer review and advise and assist in the resolution of controversies, disputes, and problems between the Department and providers of chiropractic care.

The Chiropractic Advisory Committee is comprised of nine members appointed by the Director. In making appointments, the Director must consider nominations from recognized statewide chiropractic groups such as the Washington State Chiropractic Association. At least two members must be chiropractors who are recognized for expertise in evidence-based practice or occupational health. Members must not be Department employees, and the Chiropractic Advisory Committee must choose a chair from among its members.

Provisions Applicable to Both Committees

Members of both committees are immune from civil liability for official acts performed in good faith for the committee and may be compensated for participation on the committee pursuant to a personal service contract between the member and the Department.

Members of both committees must disclose all potential conflicts of interest and must agree to conflict of interest terms and conditions determined by the Director.

The Director must determine when and how often each committee will meet and meetings are subject to the Open Public Meetings Act.

Both committees must coordinate with the state Health Technology Assessment Program and the state Prescription Drug Program, as necessary. Decisions of these two state programs hold greater weight than decisions by the Medical Advisory Committee or the Chiropractic Advisory Committee.

The Department must provide administrative support to both committees.

The House Commerce and Labor Committee, the Senate Labor, Commerce, Research and Development Committee, and the Workers' Compensation Advisory Committee may request the committees to review a medical issue related to industrial insurance and provide a report.

Both committees and the Department must report to the appropriate committees of the Legislature by June 30, 2011 on a variety of issues. These issues are: (1) a summary of the types of issues reviewed by the committees and decisions in each matter; (2) whether the committees became involved in the resolution of any disputes or controversies and the results of those disputes or controversies as a result of the involvement of the committees; (3) the extent to which the committees conducted any peer reviews and the results of those reviews; (4) the extent of any practice guidelines or coverage criteria developed by the committees and the success of those developments; and (5) the extent to which the committees provided advice on coverage decisions and technology assessments.

Substitute Bill Compared to Original Bill:

The substitute bill requires, instead of authorizing, the Department to establish the two committees.

The substitute bill adds naturopathy, pain management, and radiology to the list of specialties from which the Department must consider nominations for the Medical Advisory Committee.

The substitute bill increases the Medical Advisory Committee membership to 15. The Director must appoint 13 of those members from the list of nominations submitted by statewide clinical groups, specialties, and associations. The Director may appoint two additional members from any medical specialty in addition to the members appointed from the list. Each committee must choose a chair from among their members.

The substitute bill states that members of the committees must not be employees of the Department.

The substitute bill authorizes the Medical Advisory Committee to consult nationally recognized experts in evidence-based health care on particularly controversial issues.

The substitute bill authorizes the House Commerce and Labor Committee, the Senate Labor, Commerce, Research and Development Committee, and the Workers' Compensation Advisory Committee to request the Medical and Chiropractic Advisory committees to review a medical issue related to industrial insurance and report back.

The substitute bill requires both committees and the Department to report to the appropriate committees of the Legislature by June 30, 2011 on a variety of issues.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 22, 2007.

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

Staff Summary of Public Testimony:

(In support of original bill) This is an effort to address problems around access of treatment for injured workers. For many years, the Department of Labor and Industries (Department) had a good relationship with the state medical society, which volunteered to help the Department with difficult decisions. This was a substantial investment of personal time and money for the people helping out on a volunteer basis. The Washington State Medical Association (WSMA) incurred all of the administrative expenses. There were also liability concerns.

Under this bill, specialities would choose members to serve and the bill provides protection for legal exposures. A wide range of medical opinions would be involved to help make decisions that would allow the Department to protect workers at a reasonable rate.

There is an important history to the issue of what happened with the old Medical Advisory Committee and is not just an issue of remuneration. The WSMA felt their point of views and advice were not listened to by the Department.

There are some specific changes that are needed. Labor and business should have ex officio members on these committees. If the committees established in this bill were only dealing with technical issues, there would not be a place for labor or business as part of the deliberation. Looking at the language of the bill itself shows that the mandate of the advisory committee is broader than the question of whether or not something should be covered. Labor and business need an opportunity to resolve issues before it is too late and, based on the experience of the last Medical Advisory Committee, having labor and business members present is important.

The Department should be required to establish the committees instead of just being authorized to establish them. On page two of the bill, it should be clear that the Department must choose from the list of nominees presented by the medical specialities instead of just considering the nominees. Lastly, included in the list of specialities should be a clinical grouping that deals with pain management. Pain management is an important piece of dealing with workers' compensation.

The current Chiropractic Advisory Committee has been meeting regularly for almost 10 years without compensation of any kind. The Chiropractic Advisory Committee should be budgeted for 12 meetings a year instead of 10. The state chiropractic association does a rigorous interview process for members and has a good working relationship with the Department. The members are not opposed to an ex officio member, but would like the conversation to remain a clinical conversation.

The Association of Washington Business opposes the idea of adding ex officio members to the committees. The medical committees must be kept medical.

Naturopathic physicians should be included on the Medical Advisory Committee.

(Opposed) None.

Persons Testifying: (In support) Robert Malooly, Department of Labor and Industries; Robby Stern, Washington State Labor Council; Lori Bielinski, Washington State Chiropractic Association; Kris Tefft, Association of Washington Business; and Terry Kohl, Washington Association of Naturopathic Physicians.

Persons Signed In To Testify But Not Testifying: Judy Schurke, Department of Labor and Industries; and Rick Slunaker, Associated General Contractors.