

# HOUSE BILL REPORT

## ESSB 5290

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### As Passed House - Amended:

April 3, 2007

**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:** By Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Keiser, Kohl-Welles and Clements; by request of Department of Labor & Industries).

### Brief History:

#### Committee Activity:

Commerce & Labor: 3/15/07, 3/23/07 [DPA].

#### Floor Activity:

Passed House - Amended: 4/3/07, 97-0.

### Brief Summary of Engrossed Substitute Bill (As Amended by House)

- 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.

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## HOUSE COMMITTEE ON COMMERCE & LABOR

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*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.*

**Majority Report:** Do pass as amended. Signed by 6 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Green, Moeller and Williams.

**Staff:** Sarah Beznoska (786-7109).

**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.

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#### **Summary of Amended 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 14 members appointed by the Director of the Department (Director). In making appointments, the Director must appoint 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, pain management, and occupational medicine.

At least two members must be physicians who are recognized for expertise in evidence-based medicine. The Director may choose up to two additional members, not necessarily from the nominations submitted, who have expertise in occupational medicine. The members of the Medical Advisory Committee are prohibited from being employees of the Department.

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. The members of the Chiropractic Advisory Committee are prohibited from being employees of the Department. 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 Chair and Ranking Minority members of the House Commerce and Labor Committee or the Senate Labor, Commerce, Research and Development Committee may request the committees to review a medical issue related to industrial insurance and provide a report. The committees are not required to act on the request.

The Workers' Compensation Advisory Committee (WCAC) may also request the committees to consider specific medical issues that have arisen multiple times during the work of the WCAC. The committees are not required to act on the request.

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:

- a summary of the types of issues reviewed by the committees and decisions in each matter;
- 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;
- the extent to which the committees conducted any peer reviews and the results of those reviews;
- the extent of any practice guidelines or coverage criteria developed by the committees and the success of those developments; and
- the extent to which the committees provided advice on coverage decisions and technology assessments.

The report must also contain a recommendation about whether the committees should continue as originally configured and whether any changes are needed.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(Information on Engrossed Substitute Senate Bill 5290) The issues that were addressed in the House version of this bill are embedded in the Senate version. However, the bill does not allow naturopaths to sit on the Medical Advisory Committee and that has been worked out with the naturopaths. There is no prohibition on the members being Department employees, but the Department is compelled to select from a list of clinical specialists so it is likely these people will not be Department employees.

The bill does give the committees the discretion to consider outside requests to review issues, but the committees are not required to respond to a request. This gives the committees discretion and allows them to prioritize their work.

(In support) None.

(Opposed) None.

**Persons Testifying:** Vickie Kennedy, Department of Labor and Industries.

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