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# Government Accountability & Oversight Committee

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## HB 1381

**Brief Description:** Regarding administrative adjudicatory proceedings coming before the department of health.

**Sponsors:** Representatives Jenkins, Hunt, Wylie, Morrell, Cody, Green, Roberts, Clibborn, Ormsby, Reykdal and Ryu.

### Brief Summary of Bill

- Establishes that all administrative adjudicative matters coming before the Department of Health (DOH) or its Secretary must be conducted by the Office of Administrative Hearings (OAH).
- Establishes that all employees of the DOH serving as presiding officers in administrative adjudicatory proceedings are transferred to the jurisdiction of the OAH and will retain the civil service status they had prior to the transfer.
- Establishes that the existing bargaining unit of the employees transferred from the DOH to the OAH shall be considered to be the appropriate bargaining unit for these employees following their transfer to the OAH, subject to modification by the Public Employment Relations Commission (PERC) if deemed appropriate.
- Establishes that all administrative law judges employed by the OAH lose their exempt status and become civil service employees.
- Provides the Secretary of the DOH with specified authority to review the initial decisions of administrative law judges and issue final orders in adjudicative proceedings.

**Hearing Date:** 2/5/13

**Staff:** Thamas Osborn (786-7129).

### Background:

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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.*

## Specified Regulatory Functions of the Department of Health.

The powers, authority, and functions of the Department of Health (DOH) are extremely broad and include the regulation of:

- specified health care providers and entities under the Uniform Disciplinary Act (chapter 18.130 RCW);
- the dispensation and distribution of controlled substances (chapter 69.45 RCW);
- specified aspects of the Uniform Controlled Substances Act (chapter 69.50 RCW); and
- local health departments and officers (chapter 70.05 RCW).

The DOH is authorized to conduct administrative adjudicatory actions for regulatory violations by those persons and entities falling within the purview of its authority. Such adjudicatory actions are subject to the requirements of the Administrative Procedures Act (APA) and are conducted by presiding officers employed by the DOH.

## Overview of the Health Professions Disciplinary Process.

Credentialed health care providers are subject to professional discipline under the Uniform Disciplinary Act (UDA). The UDA authorizes the DOH and other specified agencies, boards, and commissions to take action against a provider for a variety of reasons, including unprofessional conduct, unlicensed practice, and the mental or physical inability to practice skillfully or safely.

Under the UDA, responsibilities in the disciplinary process are divided between the Secretary of the DOH (Secretary) and many health profession boards and commissions, collectively known as "disciplining authorities". A "disciplining authority" is defined to mean an agency, board, or commission having the authority to take disciplinary action against a holder of, or applicant for, a professional or business license upon a finding of a violation of the UDA or other regulatory provision pertaining to specified health care-related professions. The DOH acts as the disciplining authority for many specified health care providers, and various statutorily designated boards and commissions serve as the disciplining authority for the remainder.

The UDA requires a disciplining authority to use either a designated "presiding officer" or the Office of Administrative Hearings (OAH) for the purpose of conducting adjudicative proceedings. The presiding officer may either be the Secretary or his or her designee. In the context of proceedings under the UDA, presiding officers are the functional equivalent of an administrative law judge (ALJ) and are analogous to the ALJs that conduct adjudicative hearings within the OAH. These presiding officers employed by the DOH are often referred to as "health law judges."

Presiding officers issue initial orders that are subject to review by the disciplining authority, which must then issue the final order. However, in most cases a disciplinary authority may delegate to the presiding officer the authority to issue the final order. However, final decisions regarding the *disposition of a license* must be made by the disciplining authority unless such decision making power is expressly delegated to the presiding officer. In cases pertaining to *standards of practice, or where clinical expertise is necessary*, certain specified disciplining authorities may not delegate final decision making power to the presiding officer.

Formal adjudicative hearings convened under the authority of the UDA must conform to the requirements of the APA.

### Office of Administrative Hearings.

The OAH is an independent state agency responsible for the review of the actions of other state agencies. The Director of the OAH is the Chief Administrative Law Judge, appointed by the Governor and confirmed by the Senate. Hearings before the OAH are presided over by an ALJ. The hearings are conducted in accordance with statutory procedures outlined in the APA, and are generally less formal than court proceedings.

### **Summary of Bill:**

#### Personnel Transfers, Employee Status, and Jurisdictional Changes

All adjudicative proceedings coming before the Secretary or the DOH must be conducted by the OAH.

All employees of the DOH serving as presiding officers in administrative adjudicatory proceedings are transferred to the jurisdiction of the OAH. Upon transfer to the OAH, these employees will continue to perform their usual duties upon the same terms per their employment by the DOH, without any loss of rights. All transferred employees will continue to be subject to state civil service law. In addition, all ALJs employed by the OAH are made subject to state civil service law and will lose their status as exempt employees.

The DOH is authorized to transfer administrative staff to the OAH, as necessary, based upon the anticipated workload resulting from the transfer of the presiding officers. However, the DOH and the OAH are prohibited from adding full-time staff in response to the transfers authorized under the act, except for those staff explicitly made subject to the transfer.

Unless modified by the Public Employment Relations Commission (PERC), the existing bargaining unit of the employees transferred from the DOH to the OAH shall be considered to be the appropriate bargaining unit for these employees following their transfer to the OAH. The PERC is authorized to review the appropriateness of the collective bargaining unit transferred from the DOH to the OAH and, if deemed appropriate, the bargaining unit shall continue to employ its existing bargaining representative. If the PERC determines that the existing collective bargaining unit is inappropriate, it may modify the unit and order an election.

#### Adjudicative Proceedings Involving the DOH.

In all adjudicative proceedings before the Secretary or the DOH, initial orders issued by an ALJ are subject to review by the Secretary or his or her designee. However, the Secretary may, by rule, establish that initial orders in specified classes of cases may become final without further agency action, unless:

- the Secretary determines that a particular case warrants additional administrative review; or
- a party to the proceedings files a petition for administrative review of the initial order.

### Adjudicative Proceedings Under the UDA.

All adjudicative proceedings arising under the authority of the UDA must be conducted by the OAH. The ALJs employed by the OAH will act as presiding officers in conducting such hearings and will issue initial orders.

In all adjudicative proceedings arising under the UDA and involving disciplining authorities other than the Secretary, final decisions regarding licensing matters must be made by the disciplining authority unless such authority is expressly delegated to the ALJ acting as the presiding officer. In cases pertaining to standards of practice or where clinical expertise is necessary, the disciplining authority may not delegate its authority to issue the final order if such order involves the disposition of a license or the imposition of sanctions.

In all adjudicative proceedings arising under the UDA and in which the Secretary serves as the disciplining authority, initial orders issued by an ALJ are subject to review by the Secretary or his or her designee. However, the Secretary may, by rule, establish that initial orders in specified cases may become final without further agency action, unless:

- the Secretary determines that a particular case warrants additional administrative review;  
or
- a party to the proceedings files a petition for administrative review of the initial order.

**Appropriation:** None.

**Fiscal Note:** Requested.

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