

HOUSE BILL REPORT

ESHB 1381

As Passed House:
March 11, 2013

Title: An act relating to administrative adjudicatory proceedings coming before the department of health.

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

Sponsors: House Committee on Government Accountability & Oversight (originally sponsored by Representatives Jinkins, Hunt, Wylie, Morrell, Cody, Green, Roberts, Clibborn, Ormsby, Reykdal and Ryu).

Brief History:

Committee Activity:

Government Accountability & Oversight: 2/5/13, 2/21/13 [DPS].

Floor Activity:

Passed House: 3/11/13, 97-0.

Brief Summary of Engrossed Substitute Bill

- Provides the Secretary of the Department of Health with specified authority to review the initial decisions of administrative law judges and issue final orders in administrative adjudicative proceedings.

HOUSE COMMITTEE ON GOVERNMENT ACCOUNTABILITY & OVERSIGHT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hurst, Chair; Condotta, Ranking Minority Member; Holy, Assistant Ranking Minority Member; Blake, Kirby, Moscoso, Shea and Smith.

Staff: Thamas Osborn (786-7129).

Background:

Specified Regulatory Functions of the Department of Health.

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.

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 Engrossed Substitute Bill:

In all administrative adjudicative proceedings before the Secretary or the DOH, the Secretary may delegate initial decision-making authority to a presiding officer. The presiding officer must enter an initial order subject to the review of the Secretary or his or her designee. The Secretary may, by rule, provide that initial orders in specified classes of cases may become final without further agency action unless, within a specified time period:

- the Secretary upon his or her own motion determines that the initial order should be reviewed; or
- a party to the proceedings files a petition for administrative review of the final order.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Presently, both the DOH and the OAH have ALJs conducting administrative hearings pursuant to the APA, but under the jurisdiction of separate agencies. By moving the DOH's ALJs to the OAH, as provided under the bill, all ALJs operating under the APA would be combined within the same agency. This would promote efficiency and encourage consistency in adjudicative proceedings conducted under the APA. Also, the bill gives the Secretary the authority to review the initial decisions of the ALJs, thus allowing an additional opportunity for administrative review before the courts become involved. This too would promote cost savings and make the administrative appeals process more efficient.

(Neutral) The provisions of the bill pertaining to transferring DOH's ALJs to the OAH gives rise to many concerns. Eliminating the exempt status of the ALJs employed by the OAH is problematic insofar as it would diminish the judicial independence of the ALJs. This exempt status has yielded beneficial results since 1981 and should therefore be retained. Also, the bill prohibits the hiring of any additional staff, whereas additional staff would be needed if the bill were to pass.

(Opposed) None.

Persons Testifying: (In support) Alia Griffing, Washington Federation of State Employees; Melissa Johnson, Physical Therapy Association; and Brad Tower, Physicians of Washington.

(Neutral) Lorraine Lee, Office of Administrative Hearings.

Persons Signed In To Testify But Not Testifying: None.