

HOUSE BILL REPORT

HB 1613

As Reported by House Committee On:
Labor

Title: An act relating to treatment to protect life or alleviate pain of injured workers with permanent partial disabilities.

Brief Description: Authorizing treatment to protect life or alleviate pain of injured workers with permanent partial disabilities.

Sponsors: Representatives Pollet, Haler, Reykdal, Sells, Dunshee, Walkinshaw and Gregerson.

Brief History:

Committee Activity:

Labor: 2/5/15, 2/19/15 [DPS].

Brief Summary of Substitute Bill

- Allows the Supervisor of Industrial Insurance to authorize medications and related treatment after claim closure in certain cases of permanent partial disability to protect the worker's life.

HOUSE COMMITTEE ON LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Moeller and Ormsby.

Minority Report: Do not pass. Signed by 3 members: Representatives Manweller, Ranking Minority Member; G. Hunt, Assistant Ranking Minority Member; McCabe.

Staff: Joan Elgee (786-7106).

Background:

Workers who, in the course of employment, are injured or disabled from an occupational disease are entitled to benefits. Depending on the disability, workers are entitled to medical,

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temporary time-loss, and vocational rehabilitation benefits, as well as benefits for permanent disabilities.

A worker is entitled to permanent total disability (PTD) benefits when he or she has suffered certain amputations, loss of eyesight, paralysis, or has a condition permanently incapacitating the worker from performing work at any gainful occupation. Workers awarded a PTD receive monthly benefits for life. If a permanent partial disability (PPD) results from an injury, a worker receives a one-time award under a disability schedule. However, if the award is more than three times the average monthly wage, payment is made monthly.

The Director of the Department of Labor and Industries (Director) appoints an assistant, known as the Supervisor of Industrial Insurance (Supervisor).

Medical treatment through the industrial insurance system ends at specified points. For a PPD, treatment ends when the compensation award is made; however, if the worker returns to work before the award is made, treatment ends when time-loss benefits end. For a PTD, treatment ends when the worker begins receiving monthly PTD benefits. A proviso states that the Supervisor may authorize continued medical and surgical treatment for accepted conditions when the treatment is necessary to protect the workers' life or provide for the administration of medical and therapeutic measures which are necessary to alleviate continuing pain from the industrial injury. Opioids and certain other drugs are not permitted. The Department has interpreted the proviso to apply only to PTD claims. In *Department of Labor & Industries v. Slaugh (Slaugh)*, the Court of Appeals, Division III, construed the statute as consistent with the Department's interpretation, and held that the Supervisor's exercise of discretion was limited to PTD claims.

A worker may seek to reopen a claim if aggravation of an injury occurs. The Director may at any time authorize medical and surgical services if aggravation is shown.

Summary of Substitute Bill:

The Supervisor may, solely in the Supervisor's discretion, authorize continued medications and related treatment after claim closure in certain PPD cases where medications and related treatment are required for the workers' accepted physical condition and are deemed necessary to protect the worker's life. Opioids and certain other drugs are not permitted.

Substitute Bill Compared to Original Bill:

The original bill authorized the Supervisor to exercise the same discretion for PPD claimants as for PTD claimants. The substitute bill authorizes the Supervisor to exercise discretion in PPD cases only in certain cases where medications and related treatment (not surgical treatment) are required for the worker's physical condition and are deemed necessary to protect the worker's life (and not to alleviate pain). The intent section is changed to reflect the substitute bill and to delete references to the *Slaugh* case.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill fixes a grave injustice. If a worker has a PTD, the worker can get ongoing medical treatment to live without pain. The Department exercises the discretion sparingly, such as for asthma medications or blood thinners. This bill extends the same discretion to workers with PPDs. The only difference is that a worker with a PPD can return to work. The bill is rational, will save money, and will get workers back to work. Denying treatment in these cases defeats the purpose of the workers' compensation system. The bill avoids costs being shifted to private medical insurance, and workers will not have to worry about medical treatment. Workers will have access to new treatments as they are developed and will not have to prove worsening.

Don Slaugh was exposed to unknown chemicals and developed beryllium disease and other diseases. Under the Court of Appeal's bizarre interpretation of the statute, he was denied treatment that would enable him to be productive. The court had to break a very long sentence into multiple sentences. Don Slaugh was denied treatment because of the placement of a semi-colon.

(With concerns) If treatment after closure helps close claims, that is good. The concern is with the discretion and that there not be a free-for-all. Sideboards with factors are needed. A medical review may help.

(Opposed) The concept of closing cases but allowing limited benefits for maintenance medications is interesting.

Persons Testifying: (In support) Representative Pollet, prime sponsor; Terri Herring-Puz, Washington State Association for Justice; Joe Kendo, Washington State Labor Council; and Kris Wiest.

(With concerns) Kris Tefft, Washington Self-Insurers Association; Bob Battles, Association of Washington Business; and Vickie Kennedy, Department of Labor and Industries.

(Opposed) Tom Kwieciak, Building Industry Association of Washington.

Persons Signed In To Testify But Not Testifying: None.