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## Health Care & Wellness Committee

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### HB 2338

**Brief Description:** Requiring a rule-making process to change the scope of practice of a health care profession.

**Sponsors:** Representatives Cody, Jinkins, Green and Morrell.

#### Brief Summary of Bill

- Prohibits a disciplining authority from expanding, modifying, or interpreting the scope of practice of a health care profession except by rule.
- Applies the significant legislative rules process under the Administrative Procedure Act to rules expanding, modifying, or interpreting scopes of practice.

**Hearing Date:** 1/30/14

**Staff:** Alexa Silver (786-7190).

#### **Background:**

##### Disciplining Authorities.

Credentialed health care providers are subject to professional discipline under the Uniform Disciplinary Act (UDA). Under the UDA, the disciplining authority may take action against a provider for a variety of reasons, including unlicensed practice and practice beyond the scope of practice as defined by law or rule. Depending on the profession, the disciplining authority may be the Secretary of Health or one of 16 different boards and commissions.

The Washington Constitution vests authority in the Legislature to enact laws to regulate the practice of medicine and surgery, as well as the sale of drugs and medicines. Health care professions' scopes of practice are statutorily defined and limited to ensure that only individuals who meet and maintain certain standards of competence may practice.

##### Rulemaking Under the Administrative Procedure Act.

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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.*

The Administrative Procedure Act (APA) establishes procedures under which state agencies adopt rules. An agency may not adopt rules absent a grant of authority by the Legislature.

To adopt a rule, an agency generally must comply with the following procedures:

- file a statement of inquiry with the Office of the Code Reviser to solicit public comment;
- cause a notice of proposed rulemaking to be published in the state register;
- hold a rulemaking hearing to provide an opportunity for oral comment;
- prepare a concise explanatory statement of the rule; and
- file the adopted rule with the Office of the Code Reviser.

Special provisions govern expedited rulemaking and the adoption of emergency rules and "significant legislative rules." A significant legislative rule is one that:

- adopts substantive provisions of law, the violation of which subjects the violator to a penalty or sanction;
- establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or
- adopts a new policy or regulatory program, or makes significant amendments to a policy or regulatory program.

Examples of the requirements for adoption of a significant legislative rule include a detailed statement of the goals and objectives of the statute that the rule implements, a determination that the rule is necessary to achieve those goals, an analysis of alternatives, and a determination that the benefits outweigh the costs.

**Summary of Bill:**

Beginning January 1, 2014, a disciplining authority may not expand, modify, or interpret a scope of practice except by a rule adopted under the Administrative Procedure Act (APA). Unless done by rule, an expansion, modification, or interpretation of a scope of practice on or after January 1, 2014, is void.

A health care professional, however, is not subject to discipline for performing an act, task, or procedure between January 1, 2014, and the effective date of the bill if the disciplining authority interpreted the profession's scope of practice to include that act, task, or procedure.

A rule of a disciplining authority that expands, modifies, or interprets a scope of practice must comply with the same process as significant legislative rules under the APA.

**Appropriation:** None.

**Fiscal Note:** Available.

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