

HOUSE BILL REPORT

HB 2742

As Reported by House Committee On:
Health Care & Wellness
Appropriations Subcommittee on Health & Human Services

Title: An act relating to requiring a rule-making process to interpret the scope of practice of a health care profession.

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

Sponsors: Representative Cody.

Brief History:

Committee Activity:

Health Care & Wellness: 2/3/14 [DPS];

Appropriations Subcommittee on Health & Human Services: 2/6/14 [DPS(HCW)].

Brief Summary of Substitute Bill

- Prohibits a disciplining authority from interpreting the scope of practice of a health care profession except by rule.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Cody, Chair; Riccelli, Vice Chair; Schmick, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Clibborn, DeBolt, Green, G. Hunt, Jinkins, Manweller, Moeller, Ross, Tharinger and Van De Wege.

Minority Report: Without recommendation. Signed by 1 member: Representative Morrell.

Staff: Alexa Silver (786-7190).

Background:

Disciplining Authorities.

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.

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.

The Nursing Care Quality Assurance Commission is permitted by statute to adopt rules or issue advisory opinions in response to questions posed by professional health associations, nursing practitioners, and consumers regarding the authority of the different categories of nurses to perform particular acts.

Rulemaking Under the Administrative Procedure Act.

The Administrative Procedure Act 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.

Summary of Substitute Bill:

A disciplining authority may not expand the scope of practice of a profession under its authority. A disciplining authority may only interpret the scope of practice of a profession under its authority by a rule adopted under the Administrative Procedure Act (APA), and any interpretation of a scope of practice other than by rule is void. The Nursing Care Quality Assurance Commission (NCQAC), however, may continue to issue advisory opinions.

A licensed health care provider is not subject to disciplinary action or civil liability for performing an act, task, or procedure before the effective date of the bill if:

- the disciplining authority interpreted the scope of practice to include the relevant act, task, or procedure;
- the provider reasonably relied on that interpretation; and
- the provider performed the act, task, or procedure within the standard of care.

Substitute Bill Compared to Original Bill:

The substitute bill removes the requirement that a disciplining authority use rulemaking to expand or modify a scope of practice and instead prohibits a disciplining authority from

expanding a scope of practice. It adds the exception for advisory opinions issued by the NCQAC and removes the requirement to use the significant legislative rules process under the APA.

The substitute bill modifies the safe harbor to: include immunity from civil liability; require that the provider reasonably relied on the disciplining authority's interpretation; and require that the provider performed the act, task, or procedure within the standard of care.

The substitute bill also removes the retroactive application to January 1, 2014, and adds an immediate effective date.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support - From testimony on HB 2338, which is identical to HB 2742, except for the title, on January 30, 2014) Recently, the Board of Physical Therapy has considered interpreting its scope of practice to include dry needling, and the Chiropractic Quality Assurance Commission interpreted its scope of practice to include performing electrocardiograms. It is problematic for boards and commissions to go this far in interpreting the scope of practice without having input from other professions.

(In support on proposed substitute - From testimony on HB 2338, which is identical to HB 2742, except for the title, on January 30, 2014) This bill reminds the boards and commissions of their roles. The vast majority of boards and commissions operate consistent with their statutory authority, but occasionally they become confused. The proposed substitute bill will allow minor and technical changes to be made by the disciplining authority. Boards have interpreted dry needling to be within their scope of practice without any legal analysis, outside evidence, or input from stakeholders. Dry needling creates a real risk of injury.

(With concerns - From testimony on HB 2338, which is identical to HB 2742, except for the title, on January 30, 2014) There tends to be support for this bill, but the proposed substitute is being reviewed. The original bill raised concerns because it would remove the current statutory authority for the NCQAC to issue advisory opinions. These advisory opinions allow the NCQAC to let nurses know what is acceptable and already within the scope of practice. The NCQAC has issued several important advisory opinions over the last few years.

(Opposed - From testimony on HB 2338, which is identical to HB 2742, except for the title, on January 30, 2014) Only the Legislature, not boards and commissions, may expand a scope of practice. It is difficult for the Legislature to define scopes of practice broadly enough to

capture emerging practice modalities, but not so broadly that there are no boundaries. Boards do need the authority to interpret scopes of practice. Rulemaking will provide a transparent and public process.

Persons Testifying: (In support - From testimony on HB 2338, which is identical to HB 2742, except for the title, on January 30, 2014) Representative Cody, prime sponsor.

(In support on proposed substitute - From testimony on HB 2338, which is identical to HB 2742, except for the title, on January 30, 2014) Curtis Eschels, Washington East Asian Medicine Association; and Gail McGaffick, Washington State Podiatric Medical Association.

(With concerns - From testimony on HB 2338, which is identical to HB 2742, except for the title, on January 30, 2014) Melissa Johnson, Washington State Nurses Association, ARNPs United, Washington Association of Nurse Anesthetists; and Carl Nelson, Washington State Medical Association.

(Opposed - From testimony on HB 2338, which is identical to HB 2742, except for the title, on January 30, 2014) Kristi Weeks, Department of Health.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON HEALTH & HUMAN SERVICES

Majority Report: The substitute bill by Committee on Health Care & Wellness be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Morrell, Chair; Harris, Ranking Minority Member; Cody, Green, G. Hunt, Kagi, Ormsby, Ross, Schmick and Tharinger.

Staff: Mary Mulholland (786-7391).

Summary of Recommendation of Committee On Appropriations Subcommittee on Health & Human Services Compared to Recommendation of Committee On Health Care & Wellness:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 5, 2014.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.