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HOUSE BILL 2742

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State of Washington

63rd Legislature

2014 Regular Session

By Representative Cody

Read first time 01/29/14. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to requiring a rule-making process to interpret the  
2 scope of practice of a health care profession; reenacting and amending  
3 RCW 34.05.328; adding a new section to chapter 18.130 RCW; and creating  
4 a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds:

7 (a) A health care profession's scope of practice must be carefully  
8 regulated to prevent a practitioner from performing procedures, tasks,  
9 or other acts that exceed his or her level of training and education;

10 (b) When questions arise regarding the competency and authority of  
11 a health care profession to perform a particular act, the disciplining  
12 authority is authorized to adopt a rule interpreting the scope of  
13 practice;

14 (c) Recently, however, disciplining authorities have begun  
15 expanding scopes of practice without using a rule-making process; and

16 (d) Changing a scope of practice without a rule-making process  
17 deprives practitioners and other interested parties of notice and an  
18 opportunity for comment.

1 (2) Therefore, to protect the public health, safety, and welfare,  
2 the legislature intends to require disciplining authorities to engage  
3 in a rule-making process when expanding, modifying, or interpreting the  
4 scope of practice of a health care profession.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 18.130 RCW  
6 to read as follows:

7 (1) Beginning January 1, 2014, a disciplining authority may not  
8 expand, modify, or interpret the scope of practice of a health care  
9 profession except by a rule adopted under chapter 34.05 RCW. Any  
10 expansion, modification, or interpretation of a scope of practice by a  
11 disciplining authority on or after January 1, 2014, other than by rule,  
12 is void.

13 (2) A health care professional is not subject to disciplinary  
14 action for performing an act, task, or procedure between January 1,  
15 2014, and the effective date of this section if the disciplining  
16 authority interpreted the scope of practice to include the act, task,  
17 or procedure.

18 **Sec. 3.** RCW 34.05.328 and 2011 c 298 s 21 and 2011 c 149 s 1 are  
19 each reenacted and amended to read as follows:

20 (1) Before adopting a rule described in subsection (5) of this  
21 section, an agency must:

22 (a) Clearly state in detail the general goals and specific  
23 objectives of the statute that the rule implements;

24 (b) Determine that the rule is needed to achieve the general goals  
25 and specific objectives stated under (a) of this subsection, and  
26 analyze alternatives to rule making and the consequences of not  
27 adopting the rule;

28 (c) Provide notification in the notice of proposed rule making  
29 under RCW 34.05.320 that a preliminary cost-benefit analysis is  
30 available. The preliminary cost-benefit analysis must fulfill the  
31 requirements of the cost-benefit analysis under (d) of this subsection.  
32 If the agency files a supplemental notice under RCW 34.05.340, the  
33 supplemental notice must include notification that a revised  
34 preliminary cost-benefit analysis is available. A final cost-benefit  
35 analysis must be available when the rule is adopted under RCW  
36 34.05.360;

1 (d) Determine that the probable benefits of the rule are greater  
2 than its probable costs, taking into account both the qualitative and  
3 quantitative benefits and costs and the specific directives of the  
4 statute being implemented;

5 (e) Determine, after considering alternative versions of the rule  
6 and the analysis required under (b), (c), and (d) of this subsection,  
7 that the rule being adopted is the least burdensome alternative for  
8 those required to comply with it that will achieve the general goals  
9 and specific objectives stated under (a) of this subsection;

10 (f) Determine that the rule does not require those to whom it  
11 applies to take an action that violates requirements of another federal  
12 or state law;

13 (g) Determine that the rule does not impose more stringent  
14 performance requirements on private entities than on public entities  
15 unless required to do so by federal or state law;

16 (h) Determine if the rule differs from any federal regulation or  
17 statute applicable to the same activity or subject matter and, if so,  
18 determine that the difference is justified by the following:

19 (i) A state statute that explicitly allows the agency to differ  
20 from federal standards; or

21 (ii) Substantial evidence that the difference is necessary to  
22 achieve the general goals and specific objectives stated under (a) of  
23 this subsection; and

24 (i) Coordinate the rule, to the maximum extent practicable, with  
25 other federal, state, and local laws applicable to the same activity or  
26 subject matter.

27 (2) In making its determinations pursuant to subsection (1)(b)  
28 through (h) of this section, the agency must place in the rule-making  
29 file documentation of sufficient quantity and quality so as to persuade  
30 a reasonable person that the determinations are justified.

31 (3) Before adopting rules described in subsection (5) of this  
32 section, an agency must place in the rule-making file a rule  
33 implementation plan for rules filed under each adopting order. The  
34 plan must describe how the agency intends to:

35 (a) Implement and enforce the rule, including a description of the  
36 resources the agency intends to use;

37 (b) Inform and educate affected persons about the rule;

38 (c) Promote and assist voluntary compliance; and

1 (d) Evaluate whether the rule achieves the purpose for which it was  
2 adopted, including, to the maximum extent practicable, the use of  
3 interim milestones to assess progress and the use of objectively  
4 measurable outcomes.

5 (4) After adopting a rule described in subsection (5) of this  
6 section regulating the same activity or subject matter as another  
7 provision of federal or state law, an agency must do all of the  
8 following:

9 (a) Coordinate implementation and enforcement of the rule with the  
10 other federal and state entities regulating the same activity or  
11 subject matter by making every effort to do one or more of the  
12 following:

- 13 (i) Deferring to the other entity;
- 14 (ii) Designating a lead agency; or
- 15 (iii) Entering into an agreement with the other entities specifying  
16 how the agency and entities will coordinate implementation and  
17 enforcement.

18 If the agency is unable to comply with this subsection (4)(a), the  
19 agency must report to the legislature pursuant to (b) of this  
20 subsection;

21 (b) Report to the joint administrative rules review committee:

- 22 (i) The existence of any overlap or duplication of other federal or  
23 state laws, any differences from federal law, and any known overlap,  
24 duplication, or conflict with local laws; and
- 25 (ii) Make recommendations for any legislation that may be necessary  
26 to eliminate or mitigate any adverse effects of such overlap,  
27 duplication, or difference.

28 (5)(a) Except as provided in (b) of this subsection, this section  
29 applies to:

30 (i) Significant legislative rules of the departments of ecology,  
31 labor and industries, health, revenue, social and health services, and  
32 natural resources, the employment security department, the forest  
33 practices board, the office of the insurance commissioner, and to the  
34 legislative rules of the department of fish and wildlife implementing  
35 chapter 77.55 RCW; (~~and~~)

36 (ii) A rule of a disciplining authority that expands, modifies, or  
37 interprets the scope of practice of a health care profession under  
38 section 2 of this act; and

1        (iii) Any rule of any agency, if this section is voluntarily made  
2 applicable to the rule by the agency, or is made applicable to the rule  
3 by a majority vote of the joint administrative rules review committee  
4 within forty-five days of receiving the notice of proposed rule making  
5 under RCW 34.05.320.

6        (b) This section does not apply to:

7        (i) Emergency rules adopted under RCW 34.05.350;

8        (ii) Rules relating only to internal governmental operations that  
9 are not subject to violation by a nongovernment party;

10       (iii) Rules adopting or incorporating by reference without material  
11 change federal statutes or regulations, Washington state statutes,  
12 rules of other Washington state agencies, shoreline master programs  
13 other than those programs governing shorelines of statewide  
14 significance, or, as referenced by Washington state law, national  
15 consensus codes that generally establish industry standards, if the  
16 material adopted or incorporated regulates the same subject matter and  
17 conduct as the adopting or incorporating rule;

18       (iv) Rules that only correct typographical errors, make address or  
19 name changes, or clarify language of a rule without changing its  
20 effect;

21       (v) Rules the content of which is explicitly and specifically  
22 dictated by statute;

23       (vi) Rules that set or adjust fees under the authority of RCW  
24 19.02.075 or that set or adjust fees or rates pursuant to legislative  
25 standards, including fees set or adjusted under the authority of RCW  
26 19.80.045;

27       (vii) Rules of the department of social and health services  
28 relating only to client medical or financial eligibility and rules  
29 concerning liability for care of dependents; or

30       (viii) Rules of the department of revenue that adopt a uniform  
31 expiration date for reseller permits as authorized in RCW 82.32.780 and  
32 82.32.783.

33       (c) For purposes of this subsection:

34       (i) A "procedural rule" is a rule that adopts, amends, or repeals  
35 (A) any procedure, practice, or requirement relating to any agency  
36 hearings; (B) any filing or related process requirement for making  
37 application to an agency for a license or permit; or (C) any policy

1 statement pertaining to the consistent internal operations of an  
2 agency.

3 (ii) An "interpretive rule" is a rule, the violation of which does  
4 not subject a person to a penalty or sanction, that sets forth the  
5 agency's interpretation of statutory provisions it administers.

6 (iii) A "significant legislative rule" is a rule other than a  
7 procedural or interpretive rule that (A) adopts substantive provisions  
8 of law pursuant to delegated legislative authority, the violation of  
9 which subjects a violator of such rule to a penalty or sanction; (B)  
10 establishes, alters, or revokes any qualification or standard for the  
11 issuance, suspension, or revocation of a license or permit; or (C)  
12 adopts a new, or makes significant amendments to, a policy or  
13 regulatory program.

14 (d) In the notice of proposed rule making under RCW 34.05.320, an  
15 agency must state whether this section applies to the proposed rule  
16 pursuant to (a)(i) or (ii) of this subsection, or if the agency will  
17 apply this section voluntarily.

18 (6) By January 31, 1996, and by January 31st of each even-numbered  
19 year thereafter, the office of regulatory assistance, after consulting  
20 with state agencies, counties, and cities, and business, labor, and  
21 environmental organizations, must report to the governor and the  
22 legislature regarding the effects of this section on the regulatory  
23 system in this state. The report must document:

24 (a) The rules proposed to which this section applied and to the  
25 extent possible, how compliance with this section affected the  
26 substance of the rule, if any, that the agency ultimately adopted;

27 (b) The costs incurred by state agencies in complying with this  
28 section;

29 (c) Any legal action maintained based upon the alleged failure of  
30 any agency to comply with this section, the costs to the state of such  
31 action, and the result;

32 (d) The extent to which this section has adversely affected the  
33 capacity of agencies to fulfill their legislatively prescribed mission;

34 (e) The extent to which this section has improved the acceptability  
35 of state rules to those regulated; and

36 (f) Any other information considered by the office of financial  
37 management to be useful in evaluating the effect of this section.

1        NEW SECTION.    **Sec. 4.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

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