

**SENATE BILL**

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**State of Washington 61st Legislature 2010 Regular Session**

**By** Senators \_\_\_\_\_

AN ACT Relating to unregulated complementary and alternative health care practitioners; and adding a new chapter to Title 18 RCW.

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

NEW SECTION. **Sec. 1.** This act may be known and cited as the Alternative Health Care Safe Harbor Act.

NEW SECTION. **Sec. 2.** (1) The legislature finds that, based upon a July 2009 report from the National Institute of Health's National Center for Complementary and Alternative Medicine (NCCAM), 38% of Americans' use complementary and alternative medicine (CAM) based on 2007 survey data. It also found that Americans spent \$33.9 billion in out-of-pocket costs in a 12-month period for CAM. Based on this state's population (6,257,759 [2005]; 2% of the national population), \$678 million dollars were spent on CAM in Washington state. Many CAM practitioners are not licensed, registered, or certified by this state.

(2) The legislature, in RCW 18.120.010, confirms its intent that all individuals should be permitted to enter into an unregulated health profession unless there is an overwhelming need for the state to protect the interests of

the public by restricting entry into the profession and, if such a need is identified, the regulation adopted by the state should be set at the least restrictive level consistent with the public interest to be protected.

(3) It is the intent of the legislature to protect the right of complementary and alternative health care practitioners who are not licensed, certified, or registered by the state, to provide health care services; and, to protect access to such practitioners by consumers of complementary and alternative health care services, unless there is clear and convincing evidence that the specific health care service causes significant physical or mental harm; or, causes imminent and significant risk of discernable, significant, and serious physical or mental injury and the potential for such injury must be easily recognizable and not remote or dependent upon tenuous argument. The health care practitioner must have known, or in the exercise of reasonable care should have known, the health care services would result in such injury.

(4) It is recognized that this chapter will protect conduct of health care practitioners who are not licensed, certified, or registered by the state, which may be interpreted by the department of health, regulatory boards or commissions or the courts as overlapping with the statutory definition of the "practice of medicine" in RCW 18.71.011, or the statutory definition of any other practice of a health care profession listed in RCW 18.130.040(2). It is the intent of this chapter to provide

those practicing under this chapter safe harbor from violations of other professional health care practice acts.

(5) The legislature finds that this chapter will save costs of investigation, Cease and Desist Orders, compliance agreements, prosecutions and adjudications of unregulated health care practitioners by the Department of Health and the Department of Justice for conduct that does not pose a risk of significant injury to the public, and previously interpreted by the department of health, boards and commissions or the courts as the practice of a health care profession listed in RCW 18.130.040(2). This chapter may also save costs for the state because it protects access to lower cost health care practices for uninsured persons, at no cost to the state.

NEW SECTION. **Sec. 3.** The definitions in the Alternative Health Care Safe Harbor Act apply throughout this chapter unless the context clearly requires otherwise.

(1) "Complementary and alternative health care practitioner" means a person who provides complementary and alternative health care services.

(2) "Complementary and alternative health care services" means the broad range of complementary and alternative healing methods and treatments or natural healing therapies or modalities including, but not limited to use of:

- (a) Anthroposophy;
- (b) Aromatherapy;

- (c) Ayurveda;
- (d) Biofeedback;
- (e) Culturally traditional healing practices;
- (f) Detoxification practices and therapies, including but not limited to saunas, foot baths, baths including the addition of herbs or other substances, colon-hydrotherapy, other hydrotherapies, and oxidative therapies;
- (g) Energetic healing;
- (h) Folk practices;
- (i) Gerson therapy and colostrum therapy;
- (j) Healing practices utilizing food and its extracts, vitamins, minerals, and dietary supplements as defined by the federal Dietary Supplement and Health Education Act (DSHEA) of 1994 as amended;
- (k) Healing touch;
- (l) Herbology or herbalism;
- (m) Holistic kinesiology and other muscle testing techniques;
- (n) Homeopathy and homeopathic remedies;
- (o) Iridology;
- (p) Magnetic therapy;
- (q) Meditation;
- (r) Mind-body healing practices;
- (s) Natural elements and nutrients and physical forces of air, heat, cold, water, touch, sound and light, as well as visualization and breathing techniques.
- (t) Polarity therapy;
- (u) Traditional naturopathy;

(3) "Controlled substance" means a drug or substance listed in Schedules I through V of the Controlled Substances Act or rules adopted pursuant to that act;

(4) "Diagnosis" means an intentional statement that a person has a specific medical disease..

(5) "Health care services" means any service relating to the physical and mental health and wellness of a person; and

(6) "Legend drug" means any drug that requires a prescription by a licensed health care professional.

(7) "Licensed, Certified or Registered health care practitioner" means a person who is regulated by the State of Washington to provide health care services of a health care profession listed at RCW 18.130.040(2);

NEW SECTION. **Sec. 4.** A complementary and alternative health care practitioner who is not licensed, certified or registered in the State of Washington as a health care professional or practitioner, shall not be in violation of any licensing, certification or registration law relating to health care services pursuant to RCW Chapter 18 unless that individual:

(1) Engages in any activity prohibited in Section 5 of the Alternative Health Care Safe Harbor Act; or

(2) Fails to fulfill the duties set forth in Section 6 of the Alternative Health Care Safe Harbor Act.

NEW SECTION. **Sec. 5.** Notwithstanding any other provision of law, a complementary and alternative health care practitioner shall not:

- (1) Hold out, state, indicate, advertise, or imply to any person that he or she is a licensed, certified, or registered health care practitioner under the laws of the state for complementary and alternative health care services.
- (2) Perform surgery or any procedure that severs or punctures the tissue of the body, except for finger pricking for screening purposes, or except for the use of non-prescription topical creams, oils, salves, ointments, tinctures or other preparations that may penetrate the skin without causing harm;
- (3) Set fractures on any persons;
- (4) Administer x-ray radiation or any other form of ionizing radiation to any persons;
- (5) Prescribe, dispense, administer, or use in client care, controlled substances or legend drugs;
- (6) Perform a chiropractic adjustment or manipulation of the articulations of the joints or the spine of any persons;
- (7) Use FDA Class III medical devices;
- (8) Perform massage therapy on an individual or provide deep stroking of the muscle tissue of the human body except as exempted in RCW 18.108.050 of the massage practitioners' statutes;
- (9) Diagnose or treat a physical or mental condition of any person and by doing so cause: (a any person

- significant physical or mental injury; or, (b) cause imminent and significant risk of discernable and significant physical or mental injury and the potential for such injury must be easily recognizable and not remote or dependent upon tenuous argument. The health care practitioner must have known, or in the exercise of reasonable care should have known, the health care services would result in such injury. Such injury or risk of injury must be proven by clear and convincing evidence;
- (10) Provide complementary or alternative health care services under this Act if that practitioner has previously held a license to practice medicine and that license was suspended, revoked or surrendered, unless the basis for suspension, revocation or surrender would have been protected under the provisions of this Act.

NEW SECTION. **Sec. 6.** (1) Any complementary and alternative health care practitioner providing health care services who is not licensed, certified or registered by this state; and, who is advertising or charging a fee for health care services; and, is not acting pursuant to the direction of licensed health care facilities or licensed health care practitioners while working within the scope of their employment or direction; shall disclose to a consumer in writing prior to rendering services, or orally for those who cannot read, the following information:

- (a) The complementary and alternative health care practitioner's name, title, business address and telephone number; and

(b) A statement that the complementary and alternative health care practitioner is not a state licensed, certified, or registered practitioner; and

(c) The nature of the health care services available; and

(d) the complementary and alternative health care practitioner's degrees, education, training, experience or other qualifications that relate to the complementary and alternative health care services to be provided; and

(e) The name, address and telephone number of the Attorney General Consumer Protection Division and a notice that the patient may file complaints with that office.

(2) A written copy of this statement must be posted in a prominent location in the office of the complementary and alternative practitioner providing the service in at least a twelve-pitch font size or, if the practitioner does not physically meet with the consumer in a fixed business location, then the practitioner shall provide the consumer with a copy of the statement.

NEW SECTION. **Sec. 7.** (1) (a) The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the Consumer Protection Act, Chapter 19.86 RCW. A

violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the Consumer Protection Act, Chapter 19.86. RCW.

(b) The Attorney General may bring an action to obtain a cease and desist order against a complementary and alternative health care practitioner for a violation of this chapter. In any proceeding under this chapter, the state bears the burden of proof and must meet the burden with clear and convincing evidence. However, before enforcement proceedings may commence, good faith mediation must be utilized by the state in an attempt to bring the complementary and alternative health care practitioner into voluntary compliance with this section. Sanctions and penalties for violations of this Chapter are those set in the Consumer Protection Act.

(2) Notwithstanding state laws that define the unlicensed practice of a licensed, certified or registered health profession as listed in RCW 18.130.040(2), complementary or alternative health care practitioners and the health care services they are providing under this chapter, are outside the jurisdiction of the professional health care quality assurance commissions or boards and the Secretary of the Department of Health under the Uniform Disciplinary Act, chapter 18.130 RCW, except for referral to the Attorney General under Section 7 (1)(b) of this chapter.

NEW SECTION. **Sec. 8.** Any pending investigations or adjudications, existing compliance agreements or cease and desist orders, or imposed fines and fees that could not be brought or obtained under the provisions of this chapter, shall be dismissed or vacated within ninety (90) days of an application by the sanctioned complementary and alternative health care practitioner. If the state fails to comply with this requirement, the applicant has a right to file an action in the Superior Court of the county of his/her residence, or Thurston County Superior Court. A applicant who prevails in Superior Court is entitled to reasonable attorney's fees and costs, including attorney's fees and costs on appeal, as determined by the court. The applicant must prove his/her right to a dismissal or vacation by a preponderance of the evidence.

NEW SECTION. **Sec. 9.** Except as set out in Section 5(10), this act does not prevent any health care professional who is licensed, certified, or registered by this state, from practicing their profession or from providing complementary and alternative health care under this chapter.

NEW SECTION. **Sec. 10.** If any part of this act is held by an appellate court of this state to be invalid, the remaining provisions of the act shall not be affected.

NEW SECTION. **Sec. 11.** Sections 1-10 of this act constitute a new chapter in Title 18 RCW.

NEW SECTION. **Sec. 12.** The effective date of the provisions of this act is July 1, 2010.

WA unregulated health care safe harbor bill draft  
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