
HOUSE BILL 1861

State of Washington

61st Legislature

2009 Regular Session

By Representative Chase

Read first time 01/30/09. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to the protection of consumer access to
2 complementary and alternative health care practitioners; adding a new
3 chapter to Title 18 RCW; providing an effective date; and declaring an
4 emergency.

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

6 NEW SECTION. **Sec. 1.** This act may be known and cited as the
7 consumer protection of access to complementary and alternative health
8 care act.

9 NEW SECTION. **Sec. 2.** (1) The legislature finds that, based upon
10 a comprehensive report by the national institutes of health, a study
11 published by the *New England Journal of Medicine*, and other research
12 data, hundreds of thousands of individuals in this state are presently
13 receiving a substantial amount of health care from providers of health
14 care services who are not licensed, registered, or certified by this
15 state. Those studies further indicate that individuals from a wide
16 variety of age, ethnic, socioeconomic, and other demographic categories
17 use these health care services, often referred to as complementary and

1 alternative health care practices or natural healing therapies and
2 modalities.

3 (2) The legislature, in RCW 18.120.010, stated its intent that all
4 individuals should be permitted to enter into a health profession
5 unless there is an overwhelming need for the state to protect the
6 interests of the public by restricting entry into the profession and,
7 where such a need is identified, the regulation adopted by the state
8 should be set at the least restrictive level consistent with the public
9 interest to be protected. This continues to be the intent of the
10 legislature. However, notwithstanding this intent, a practitioner of
11 the healing arts who is not licensed, certified, or registered by this
12 state as a member of a health profession as defined in RCW
13 18.120.020(4) could currently be subject to investigations,
14 disciplinary actions, fines, penalties, the restriction of practice, or
15 the issuance of a cease and desist order although the practice does not
16 cross the threshold of state regulatory concern for the public as set
17 out in chapter 18.120 RCW.

18 (3) It is the intent of the legislature to protect the right of all
19 individuals to access every type of health care service and
20 practitioner that they desire whenever possible. Protecting consumer
21 access to health care services must include protecting consumer access
22 to health care services from practitioners who are not licensed,
23 certified, or registered by the state. This means that the health care
24 service practitioners who are not licensed, certified, or registered by
25 the state must be able to provide the services that individuals seek
26 without risking civil or criminal investigations or sanctions sought by
27 the state, its agencies, boards, or commissions.

28 (4) It is the intent of the legislature to allow health care
29 practitioners who are not licensed, certified, or registered by the
30 state, to provide any health care services sought by individuals,
31 unless there exists clear and convincing evidence that the specific
32 health care service causes serious physical or mental harm or causes
33 imminent and significant risk of discernable, significant, and serious
34 physical or mental injury, under the circumstances in which the health
35 care practitioner knew, or in the exercise of reasonable care should
36 have known, would result in such injury.

37 (5) It is recognized that this chapter may authorize conduct by
38 health care practitioners who are not licensed, certified, or

1 registered by the state, which may be interpreted by the department of
2 health or regulatory boards or commissions as overlapping with the
3 statutory definition of the unlicensed practice of a health profession
4 in RCW 18.120.020(4). It is the intent of this chapter to provide
5 those practicing under this chapter safe harbor from violations of
6 other provisions in this title.

7 (6) Because the legislature finds that health care services
8 provided by practitioners who are not regulated by the state are widely
9 used by consumers and desirable under certain circumstances, and in
10 order to maximize and protect consumer options in health care, the
11 legislature intends to remove current barriers to the public's access
12 to such practitioners providing health care services with appropriate
13 consumer protections, as provided in this chapter.

14 NEW SECTION. **Sec. 3.** The definitions in this section apply
15 throughout this chapter unless the context clearly requires otherwise.

16 (1) "Health care services" means health care and healing therapies
17 and methods that are not prohibited by section 4 of this act and that
18 are provided by a person who is not licensed, certified, or registered
19 as a health care practitioner by this state. "Health care services"
20 include, but are not limited to, the use of:

- 21 (a) Natural elements such as air, heat, water, and light;
- 22 (b) Class I or class II medical devices approved by the federal
23 food and drug administration for approved treatments as well as for
24 off-label use;
- 25 (c) Other medical devices, tools, or procedures that may be
26 nontraditional, unique, or experimental;
- 27 (d) Vitamins, minerals, herbs, natural food products and their
28 extracts, and nutritional supplements;
- 29 (e) Dietary supplements as defined by the federal dietary
30 supplement and health education act of 1994;
- 31 (f) Homeopathic remedies;
- 32 (g) Detoxification practices, including but not limited to sauna,
33 foot baths, baths including the addition of herbs or other substances,
34 colon hydrotherapy, and oxidative therapies; and
- 35 (h) Traditional cultural health care practices.

36 (2) "Diagnosis" means an intentional statement that someone has a
37 specific medical disease reflected in the ICD-10 coding scheme. If a

1 health care practitioner uses medical terminology or common words to
2 describe a health condition or advise a client to see a licensed,
3 certified, or registered health care practitioner in order to rule out
4 a diagnosable condition, it is not a diagnosis. A statement by a
5 health care practitioner who is not licensed, certified, or registered
6 that symptoms may be indicative of or consistent with a specific
7 medical condition, or that they have some probability significantly
8 less than one hundred percent of having a specific medical condition,
9 is not a diagnosis.

10 NEW SECTION. **Sec. 4.** Notwithstanding any other provision of law,
11 a person who provides health care services in accordance with this
12 chapter, but who is not licensed, certified, or registered by this
13 state as a health care professional or practitioner, shall not be in
14 violation of a law based on the unlicensed practice of a health
15 profession as defined in RCW 18.120.020(4) unless the person:

16 (1) Performs surgery or any other procedure that harmfully severs
17 or penetrates the tissue of the body, except for finger pricking for
18 screening purposes. Penetration of natural body cavities or orifices
19 is not penetration of tissues;

20 (2) Prescribes or administers X-ray radiation or any other form of
21 ionizing radiation to any person;

22 (3) Prescribes or dispenses corrective vision lenses or prescribes
23 or administers vision therapy;

24 (4) Prescribes or administers a legend drug or controlled substance
25 that state or federal law requires be prescribed or dispensed to the
26 end user exclusively by a licensed, certified, or registered health
27 care practitioner;

28 (5) Performs a chiropractic adjustment of the articulations of
29 joints or the spine;

30 (6) Provides deep stroking of the muscle tissue of the human body,
31 or represents that a practice is massage therapy;

32 (7) Sets fractures;

33 (8) Performs a health care service that is specifically described
34 as the exclusive purview of the licensed practitioner in the individual
35 practice acts of health professions as defined in RCW 18.120.020(4) and
36 is included in the curriculum of the profession's required educational
37 programs, and is routinely practiced by members of that profession,

1 provided that it does not fall under any exception in this chapter and
2 is not routinely performed by laymen as self-directed care in private
3 life;

4 (9) Intentionally diagnoses and treats a physical or mental
5 condition of any person that causes an individual serious physical or
6 mental harm or causes imminent and significant risk of discernable and
7 significant physical or mental injury, under the circumstances in which
8 the health care practitioner knew, or in the exercise of reasonable
9 care should have known, would result in such injury. The potential for
10 such injury must be easily recognizable and not remote or dependent
11 upon tenuous argument and must be proven by clear and convincing
12 evidence. Delay of conventional allopathic treatments alone cannot be
13 determined to be, or potentially to be, serious physical or mental
14 harm; or

15 (10) Holds out, states, indicates, advertises, or implies to any
16 person that he or she is a licensed, certified, or registered health
17 care practitioner under the laws of the state.

18 NEW SECTION. **Sec. 5.** (1) Any person providing health care
19 services who is not licensed, certified, or registered by this state
20 and who is advertising or charging a fee for health care services,
21 shall, prior to providing such services, disclose to the individual, in
22 a plainly worded written statement that the practitioner is not a state
23 licensed, certified, or registered practitioner.

24 (a) The practitioner's name, business address, and telephone
25 number;

26 (b) The nature of the health care services to be provided; and

27 (c) The highest academic degree or credential obtained by the
28 practitioner, and the field of study or major for that degree or
29 credential shall be disclosed. If the degree or credential was
30 obtained from an institution that is not accredited or generally
31 recognized then the name of the institution shall also be disclosed.
32 The practitioner may, at their sole discretion, choose to disclose
33 additional degrees, experience, accomplishments, and qualifications.

34 (2) A written copy of said statement must be posted in a prominent
35 location in the office or treatment location of the practitioner
36 providing the service in at least a twelve-pitch font size, or shall be
37 incorporated in other written materials provided to the clients if the

1 practitioner does not physically meet with them in a fixed business
2 location. Reasonable accommodations shall be made for those clients
3 who cannot read or who have communication impairments and those who do
4 not read or speak English or the language of the providing
5 practitioner.

6 (3) Before a practitioner provides health care services to a client
7 for the first time, such practitioner must obtain a written
8 acknowledgment on paper, including by facsimile, or in digital form,
9 from the client stating that he or she has been provided with the
10 information described in this section. The client shall be provided
11 with a copy of this written acknowledgment and it must be maintained
12 for at least two years as a confidential health document by the person
13 providing the services. Preexisting clients may continue to be
14 provided services under whatever disclosure was legally operative at
15 the date of first service. Any acknowledgement by the client of lack
16 of practitioner licensing, registration, or certification by the state
17 shall be sufficient for clients under care prior to the effective date
18 of this act.

19 (4) Before enforcement proceedings begin regarding disclosure
20 compliance, a notification, educational, or mediative approach must be
21 utilized by the state and parties to bring a practitioner into
22 compliance with this section.

23 (5) The practitioner must also obtain informed consent prior to
24 providing services, as that term has been construed by common law.

25 NEW SECTION. **Sec. 6.** (1)(a) The legislature finds that the
26 practices covered by this chapter are matters vitally affecting the
27 public interest for the purpose of applying the consumer protection
28 act, chapter 19.86 RCW. A violation of this chapter is not reasonable
29 in relation to the development and preservation of business and is an
30 unfair or deceptive act in trade or commerce and an unfair method of
31 competition for the purpose of applying the consumer protection act,
32 chapter 19.86 RCW.

33 (b) The attorney general may bring an action to obtain a cease and
34 desist order against a practitioner for a violation. In any proceeding
35 under this chapter, the attorney general bears the burden of proof and
36 must meet that burden with clear and convincing evidence. However,

1 before enforcement proceedings may commence, good faith mediation must
2 be utilized by the state in an attempt to bring a practitioner into
3 voluntary compliance with this section.

4 (2) Notwithstanding state laws that define the unlicensed practice
5 of a health profession as defined in RCW 18.120.020(4), any alternative
6 or complementary health care services that are being provided or
7 practitioners that are providing services in compliance with this act
8 are outside the scope and jurisdiction of the professional quality
9 assurance commissions or regulatory boards.

10 NEW SECTION. **Sec. 7.** Any pending investigations or disciplinary
11 actions that could not be brought under the provisions of this chapter
12 shall be dismissed within thirty days of the effective date of this
13 act. Any disciplinary sanctions that have been imposed in pending or
14 final actions that could not be brought under the provisions of this
15 chapter, are revoked and must be expunged within sixty days of the
16 effective date of this act without application by the health care
17 practitioner. All fines or costs collected shall be refunded.

18 NEW SECTION. **Sec. 8.** This act does not prevent any health care
19 professional who is licensed, certified, or registered by this state,
20 from providing health care services under this chapter.

21 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act constitute
22 a new chapter in Title 18 RCW.

23 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of the
25 state government and its existing public institutions, and takes effect
26 May 1, 2009.

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