
SENATE BILL 5755

State of Washington

61st Legislature

2009 Regular Session

By Senators Oemig, Swecker, Regala, Fairley, Pflug, Zarelli, Delvin, McCaslin, and Tom

Read first time 01/30/09. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to access to alternative health care practitioners;
2 and adding a new chapter to Title 18 RCW.

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

4 NEW SECTION. **Sec. 1.** This act may be known and cited as the
5 health care choice act.

6 NEW SECTION. **Sec. 2.** (1) The legislature finds that, based upon
7 a comprehensive report by the national institutes of health and other
8 research data, hundreds of thousands of individuals in this state are
9 presently receiving a substantial amount of health care from providers
10 of health care services who are not licensed, registered, or certified
11 by this state. Such health care services are often referred to as
12 complementary and alternative health care practices or natural healing
13 therapies and modalities.

14 (2) The legislature, in RCW 18.120.010, confirms its intent that
15 all individuals should be permitted to enter into a health profession
16 unless there is an overwhelming need for the state to protect the
17 interests of the public by restricting entry into the profession and,

1 if such a need is identified, the regulation adopted by the state
2 should be set at the least restrictive level consistent with the public
3 interest to be protected.

4 (3) It is the intent of the legislature to allow health care
5 practitioners who are not licensed, certified, or registered by the
6 state, to provide health care services, unless there is clear and
7 convincing evidence that the specific health care service causes
8 serious physical or mental harm or causes imminent and significant risk
9 of discernable, significant, and serious physical or mental injury,
10 under the circumstances in which the health care practitioner knew, or
11 in the exercise of reasonable care should have known, would result in
12 such injury.

13 (4) It is recognized that this chapter may authorize conduct by
14 health care practitioners who are not licensed, certified, or
15 registered by the state, which may be interpreted by the department of
16 health or regulatory boards or commissions as overlapping with the
17 statutory definition of the unlicensed practice of a health profession
18 in RCW 18.120.020(4). It is the intent of this chapter to provide
19 those practicing under this chapter safe harbor from violations of
20 other provisions in this title.

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

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

28 (a) Natural elements such as air, heat, water, and light;

29 (b) Class I or class II medical devices approved by the federal
30 food and drug administration;

31 (c) Other medical devices, tools, or procedures that may be
32 nontraditional, unique, or experimental;

33 (d) Vitamins, minerals, herbs, natural food products and their
34 extracts, and nutritional supplements;

35 (e) Dietary supplements as defined by the federal dietary
36 supplement and health education act of 1994;

37 (f) Homeopathic remedies;

1 (g) Detoxification practices, including but not limited to sauna,
2 foot baths, baths including the addition of herbs or other substances,
3 colon hydrotherapy, and oxidative therapies; and

4 (h) Traditional cultural health care practices.

5 (2) "Diagnosis" means an intentional statement that someone has a
6 specific medical condition reflected in the ICD-10 coding scheme or set
7 out in an authoritative textbook relied upon by licensed practitioners
8 of a specific regulated health care discipline.

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

15 (1) 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 (2) Performs surgery or any other procedure that harmfully severs
19 or punctures the tissue of the body, except for finger pricking for
20 screening purposes;

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

23 (4) Prescribes or dispenses corrective vision lenses or prescribes
24 or administers vision therapy;

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

29 (6) Performs a chiropractic adjustment of the articulations of
30 joints or the spine;

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

33 (8) Sets fractures;

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

1 programs, and is routinely practiced by members of that profession,
2 provided that it does not fall under any exception in this chapter and
3 is not routinely performed by laymen as self-care;

4 (10) Provides an initial diagnosis; or

5 (11) Diagnoses and treats a physical or mental condition of any
6 person that causes an individual serious physical or mental harm or
7 causes imminent and significant risk of physical or mental injury,
8 under the circumstances in which the health care practitioner knew, or
9 in the exercise of reasonable care should have known, would result in
10 such injury. Such injury or risk of injury must be proven by clear and
11 convincing evidence.

12 NEW SECTION. **Sec. 5.** (1) Any person providing health care
13 services who is not licensed, certified, or registered by this state
14 and who is advertising or charging a fee for health care services,
15 shall, prior to providing such services on a fee basis, disclose to the
16 individual, a written statement with the following provisions:

17 (a) A statement that the practitioner is not a state licensed,
18 certified, or registered practitioner;

19 (b) The practitioner's name, business address, and telephone
20 number;

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

22 (d) The highest academic degree or credential obtained by the
23 practitioner, the field of study or credential and the name of the
24 institution from which it was obtained.

25 (2) A written copy of this statement must be posted in a prominent
26 location in the office or treatment location of the practitioner
27 providing the service in at least a twelve-pitch font size, or shall be
28 incorporated in other written materials provided to the clients if the
29 practitioner does not physically meet with them in a fixed business
30 location. Reasonable accommodations shall be made for those clients
31 who cannot read or who have communication impairments and those who do
32 not read or speak English or the language of the providing
33 practitioner.

34 (3) The practitioner must also obtain informed consent prior to
35 providing services.

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

9 (b) The attorney general may bring an action to obtain a cease and
10 desist order against a practitioner for a violation. In any proceeding
11 under this chapter, the attorney general bears the burden of proof and
12 must meet that burden with clear and convincing evidence. However,
13 before enforcement proceedings may commence, good faith mediation must
14 be utilized by the state in an attempt to bring a practitioner into
15 voluntary compliance with this section.

16 (2) Notwithstanding state laws that define the unlicensed practice
17 of a health profession as defined in RCW 18.120.020(4), any alternative
18 or complementary health care services that are being provided or
19 practitioners that are providing services in compliance with this
20 chapter are outside the scope and jurisdiction of the professional
21 quality assurance commissions or regulatory boards and the uniform
22 disciplinary act under chapter 18.130 RCW.

23 NEW SECTION. **Sec. 7.** Any pending investigations or disciplinary
24 actions that could not be brought under the provisions of this chapter
25 shall be dismissed within thirty days of the effective date of this
26 act. Any disciplinary sanctions that have been imposed in pending or
27 final actions that could not be brought under the provisions of this
28 chapter, are revoked and must be expunged within sixty days of the
29 effective date of this act without application by the health care
30 practitioner. All fines or costs collected shall be refunded.

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

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

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