
SENATE BILL 6886

State of Washington

60th Legislature

2008 Regular Session

By Senators Oemig and Swecker

Read first time 01/31/08. Referred to Committee on Health & Long-Term Care.

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

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

5 NEW SECTION. **Sec. 1.** This act may be known and cited as the
6 access to alternative medicine act.

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

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

19 (3) It is the intent of the legislature to provide individuals a
20 right to access every type of health care service provided by health
21 care practitioners who are not licensed, certified, or registered by
22 the state for any individual seeking such services. Unrestricted
23 access to health care services, of necessity, means that the health
24 care service practitioners who are not licensed, certified, or
25 registered by the state must be able to provide the services that
26 individuals seek without risking civil or criminal investigations or
27 sanctions sought by 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 and desirable under certain circumstances, and in order to
10 maximize and protect consumer options in health care, the legislature
11 intends to remove current barriers to the public's access to such
12 practitioners providing health care services with appropriate consumer
13 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 condition reflected in the ICD-10 coding scheme or set

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

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

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

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

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

25 (4) 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 (5) Performs a chiropractic adjustment of the articulations of
30 joints or the spine;

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

33 (7) Sets fractures;

34 (8) 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-directed care in private
4 life;

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

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

19 NEW SECTION. **Sec. 5.** Any person providing health care services
20 who is not licensed, certified, or registered by this state and who is
21 advertising or charging a fee for health care services, shall, prior to
22 providing such services, disclose to the individual, in a plainly
23 worded written statement that the practitioner is not a state licensed,
24 certified, or registered practitioner. The practitioner must also
25 obtain informed consent prior to providing services, as that term has
26 been construed by common law.

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

35 (b) The attorney general may bring an action to obtain a cease and
36 desist order against a practitioner for a violation. In any proceeding

1 under this chapter, the attorney general bears the burden of proof and
2 must meet that burden with clear and convincing evidence. However,
3 before enforcement proceedings may commence, good faith mediation must
4 be utilized by the state in an attempt to bring a practitioner into
5 voluntary compliance with this section.

6 (2) Notwithstanding state laws that define the unlicensed practice
7 of a health profession as defined in RCW 18.120.020(4), any alternative
8 or complementary health care services that are not customarily within
9 the practice of health professions as defined in RCW 18.120.020(4) or
10 not included in the curriculum of the required education for those
11 professions, is outside the scope of the profession and, therefore,
12 outside the scope and jurisdiction of the professional quality
13 assurance commissions or regulatory boards.

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

22 NEW SECTION. **Sec. 8.** This act does not prevent any health care
23 professional who is licensed, certified, or registered by this state,
24 from providing health care services under this chapter. The scope of
25 licensure of all licensed practitioners includes anything an unlicensed
26 person can do.

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

29 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
30 preservation of the public peace, health, or safety, or support of the
31 state government and its existing public institutions, and takes effect
32 May 1, 2008.

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