



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1391/1
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2015 SENATE BILL 198

June 17, 2015 - Introduced by Senators MOULTON, LASEE and OLSEN, cosponsored by Representatives MURPHY, T. LARSON, QUINN and RIPP. Referred to Committee on Health and Human Services.

1 **AN ACT** *to amend* 440.21 (title) and 440.21 (1) to (3); and *to create* 440.207 of
2 the statutes; **relating to:** providing exemptions from practice protection laws
3 for complementary and alternative health care practitioners; requirements
4 and prohibitions for individuals who provide complementary and alternative
5 health care services; and enforcement of practice and title protection laws by
6 the Department of Safety and Professional Services.

Analysis by the Legislative Reference Bureau

This bill does the following: 1) establishes certain requirements and prohibitions for complementary and alternative health care (CAHC) practitioners; 2) provides exemptions for CAHC practitioners from prohibitions against acting without certain health-care related licenses, certificates, and other credentials if they comply with provisions in the bill; and 3) modifies the authority of the Department of Safety and Professional Services (DPS) to investigate and take action against individuals who practice or use a title without a license, certificate, or other credential.

Under current law, DPS, in conjunction with a number of credentialing boards attached to DPS (credentialing boards), regulates and provides for the credentialing of various types of professions, including a number of health-care related professions. Current law contains numerous prohibitions against engaging in certain health-care related practices and against using titles associated with

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certain health-care related professions without a required credential. Also under current law, DSPS may conduct investigations, hold hearings, and make findings as to whether a person has engaged in a practice or used a title without a required credential. If, after holding a public hearing, DSPS determines that a person has engaged in a practice or used a title without a required credential, DSPS may issue a special order enjoining the person from the continuation of the practice or use of the title or, in lieu of holding a public hearing, if DSPS has reason to believe that a person has engaged in a practice or used a title without a required credential, DSPS may petition the circuit court for a temporary restraining order or an injunction. Any person who violates such a special order, temporary restraining order, or injunction may be subject to certain civil or criminal penalties, and the attorney general or any district attorney may commence an action in the name of the state to recover a forfeiture for violating a special order issued by DSPS.

This bill establishes certain requirements pertaining to CAHC practitioners, which are not specifically regulated or required to hold a specific credential under current law.

The bill requires a CAHC practitioner to provide to each client, during or as soon as practicable following the initial client contact, certain information in a plainly worded written statement, including certain information about the CAHC practitioner, a notice explaining the fact that the CAHC practitioner is not licensed, certified, or registered to provide CAHC services and the nature of the services to be provided, and a list of any credentials held by the CAHC practitioner.

The bill requires a CAHC practitioner, before providing CAHC services to a client, to obtain a written and signed acknowledgment from the client stating that the client has received and understands the information required to be provided as described above. The bill requires the CAHC practitioner to provide a copy of the acknowledgment to the client and retain a copy of it for at least two years after the last date the CAHC practitioner provides CAHC services to the client.

The bill prohibits a person from acting as a CAHC practitioner if the person is or was a credentialed health care professional and had his or her credential revoked or suspended, unless the credential was subsequently reinstated; if the person was convicted of a felony and has not completed his or her sentence, including any probation, parole, or extended supervision; or if the person is an individual found incompetent by a court.

The bill prohibits a CAHC practitioner from taking other specific actions, including taking certain actions with respect to prescription drugs, recommending the discontinuation of treatment that is prescribed by a health care professional, making a medical diagnosis using a medical term that is commonly used and understood in diagnosing in conventional western medicine, holding himself or herself out as a credentialed health care professional without a credential, or providing CAHC services to a minor without the informed consent of the minor's parent or legal guardian.

Finally, the bill eliminates the authority of DSPS to investigate and take other actions, including issuing a special order and petitioning a circuit court for a restraining order, with respect to whether a person has engaged in a practice or used

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a title without a credential. The bill instead provides that DSPS may only investigate and take those actions with respect to whether a person has violated provisions in the bill.

The bill provides that a CAHC practitioner does not violate any of the prohibitions against engaging in the practices of medicine and surgery, midwifery, nurse-midwifery, professional nursing, chiropractic, dentistry, perfusion, respiratory care, physical therapy, podiatry, occupational therapy, optometry, psychology, psychotherapy, clinical social work, marriage and family therapy, professional counseling, pharmacy, speech pathology, audiology, acupuncture, cosmetology, and selling and fitting hearing aids; the prohibition against claiming to provide dietetic services; or the prohibitions against acting as a physician assistant or as an ambulance service provider, with respect to the provision of CAHC services to a client if the CAHC practitioner provides that client with the statement required under the bill and does not violate the prohibitions in the bill, described above.

For purposes of the bill, "CAHC practitioner" is defined as an individual, other than a health care professional acting within the scope of his or her practice, who provides CAHC services to a client in exchange for compensation or who offers to do so. The bill defines "CAHC services" as any health care practice or method of healing therapy or modality that is not prohibited under the bill from being provided by a CAHC practitioner.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 440.207 of the statutes is created to read:

2 **440.207 Complementary and alternative health care services. (1)**

3 DEFINITIONS. In this section:

4 (a) "Client" means any individual who receives or makes an appointment to
5 receive complementary and alternative health care services from a complementary
6 and alternative health care practitioner.

7 (b) "Complementary and alternative health care practitioner" means an
8 individual, other than a health care professional acting within the scope of his or her
9 practice, who provides complementary and alternative health care services to a
10 client in exchange for compensation or who offers to do so.

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1 (c) “Complementary and alternative health care services” means any health
2 care practice or method of healing therapy or modality, other than one that a
3 complementary and alternative health care practitioner is prohibited from providing
4 under sub. (5) (b).

5 (d) “Dietary supplement” has the meaning given in 21 USC 321 (ff).

6 (e) “Health care professional” has the meaning given for “health care provider”
7 in s. 146.81 (1) (a) to (hp) and includes a licensed midwife, as defined in s. 440.9805
8 (2).

9 **(2) REQUIRED DISCLOSURES.** A complementary and alternative health care
10 practitioner shall provide to each client, during or as soon as practicable following
11 the initial client contact, the following information in a plainly worded written
12 statement:

13 (a) The name, business address, and business telephone number of the
14 complementary and alternative health care practitioner.

15 (b) A notice explaining all of the following:

16 1. That the complementary and alternative health care practitioner is not
17 licensed, certified, or registered by the state to provide complementary and
18 alternative health care services or, if the practitioner is a health care professional
19 who is not acting under his or her certificate, permit, or license, the fact that the
20 practitioner is providing a service that he or she is not licensed to provide.

21 2. The nature of the complementary and alternative health care services that
22 the complementary and alternative health care practitioner provides.

23 (c) A list of any degrees, training, experience, or other qualifications the
24 complementary and alternative health care practitioner has or holds regarding the
25 complementary and alternative health care services he or she provides.

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1 **(3) ACKNOWLEDGMENT OF DISCLOSURES.** Before providing complementary and
2 alternative health care services to a client, a complementary and alternative health
3 care practitioner shall obtain a written and signed acknowledgment from the client
4 stating that the client has received and understands the information provided as
5 required under sub. (2). The complementary and alternative health care practitioner
6 shall provide a copy of the acknowledgment to the client and shall retain a copy of
7 the acknowledgement for at least 2 years after the last date the complementary and
8 alternative health care practitioner provides complementary and alternative health
9 care services to the client.

10 **(4) EXEMPTIONS FROM REQUIREMENTS TO HOLD CREDENTIALS.** Notwithstanding ss.
11 256.15 (2), 440.982 (1), 441.06 (4), 441.15 (2), 446.02 (1), 447.03 (1) and (2), 448.03
12 (1) (a), (b), and (c) and (1m), 448.51 (1), 448.61, 448.76, 448.961 (1) and (2), 449.02
13 (1), 450.03 (1), 451.04 (1), 454.04 (1), 455.02 (1m), 457.04 (4), (5), (6), and (7), 459.02
14 (1), and 459.24 (1), a complementary and alternative health care practitioner does
15 not violate any of the prohibitions against engaging in a practice without a license
16 or credential under s. 256.15 (2), 440.982 (1), 441.06 (4), 441.15 (2), 446.02 (1), 447.03
17 (1) and (2), 448.03 (1) (a), (b), and (c) and (1m), 448.51 (1), 448.61, 448.76, 448.961
18 (1) and (2), 449.02 (1), 450.03 (1), 451.04 (1), 454.04 (1), 455.02 (1m), 457.04 (4), (5),
19 (6), and (7), 459.02 (1), or 459.24 (1) if he or she complies with sub. (2) and does not
20 violate sub. (5).

21 **(5) PROHIBITIONS.** (a) No person may act as a complementary and alternative
22 health care practitioner if any of the following applies:

23 1. The person is or was a health care professional and had his or her credential
24 revoked or suspended, unless the credential was subsequently reinstated.

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1 2. The person was convicted of a felony and has not completed his or her
2 sentence, including any probation, parole, or extended supervision.

3 3. The person is an individual found incompetent, as defined in s. 54.01 (16).

4 (b) No complementary and alternative health care practitioner may do any of
5 the following:

6 1. Puncture the skin, except by pricking a finger for purposes of blood
7 screening.

8 2. Engage in the practice of radiography, as defined in s. 462.01 (5).

9 3. Prescribe, directly apply, deliver, or dispense a prescription drug, a controlled
10 substance, or a device that may be prescribed, directly applied, delivered, or
11 dispensed only by a health care professional. The terms used in this subdivision have
12 the meanings given in s. 450.01.

13 4. Perform a chiropractic adjustment or manipulation of joints or a spine.

14 5. Recommend to a client that he or she discontinue treatment that is
15 prescribed by a health care professional.

16 6. Make a specific medical diagnosis using a medical term that is commonly
17 used and understood in diagnosing in conventional western medicine, except that
18 none of the following are prohibited under this subdivision:

19 a. Using medical terminology or common words to describe a health condition.

20 b. Advising a client to consult a health care professional in order to rule out a
21 diagnosable condition.

22 c. Making a statement that a client's symptoms may be indicative of or
23 consistent with a specific medical condition.

24 7. Hold himself or herself out as or imply that he or she is a health care
25 professional if he or she does not hold the applicable certificate, permit, or license.

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1 8. Provide complementary and alternative health care services to a minor
2 unless an informed consent form has been signed by his or her parent or legal
3 guardian.

4 **SECTION 2.** 440.21 (title) of the statutes is amended to read:

5 **440.21** (title) **Enforcement of certain laws requiring credential by**
6 **department.**

7 **SECTION 3.** 440.21 (1) to (3) of the statutes are amended to read:

8 440.21 (1) The department may conduct investigations, hold hearings, and
9 make findings as to whether a person has engaged in a practice or used a title without
10 a credential required under chs. 440 to 480 violated s. 440.207.

11 (2) If, after holding a public hearing, the department determines that a person
12 has engaged in a practice or used a title without a credential required under chs. 440
13 to 480 violated s. 440.207, the department may issue a special order enjoining the
14 person from the continuation of the practice or use of the title further providing
15 complementary and alternative health care services, as defined in s. 440.207 (1) (c).

16 (3) In lieu of holding a public hearing, if the department has reason to believe
17 that a person has engaged in a practice or used a title without a credential required
18 under chs. 440 to 480 violated s. 440.207, the department may petition the circuit
19 court for a temporary restraining order or an injunction as provided in ch. 813.

20

(END)