

2011 DRAFTING REQUEST

Bill

Received: **07/05/2011**

Received By: **fknepp**

Wanted: **As time permits**

Companion to LRB:

For: **Terry Moulton (608) 266-7511**

By/Representing: **Rebekah Culotta**

May Contact:

Drafter: **fknepp**

Subject: **Health - miscellaneous
Health - public health**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Moulton@legis.wisconsin.gov**

Carbon copy (CC:) to: **tamara.dodge@legis.wisconsin.gov
fern.knepp@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Complementary and alternative health practices

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tdodge 07/06/2011 fknepp 07/18/2011	kfollett 08/03/2011		_____			
/P1			jfrantze 08/04/2011	_____	sbasford 08/04/2011		
/1	fknepp 09/09/2011	kfollett 09/20/2011	jfrantze 09/21/2011	_____	lparisi 09/21/2011	mbarman 10/26/2011	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

2011 DRAFTING REQUEST

Bill

Received: **07/05/2011**

Received By: **fknepp**

Wanted: **As time permits**

Companion to LRB:

For: **Terry Moulton (608) 266-7511**

By/Representing: **Rebekah Culotta**

May Contact:

Drafter: **fknepp**

Subject: **Health - miscellaneous**
Health - public health

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Moulton@legis.wisconsin.gov**

Carbon copy (CC:) to: **tamara.dodge@legis.wisconsin.gov**
fern.knepp@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Complementary and alternative health practices

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tdodge 07/06/2011 fknepp 07/18/2011	kfollett 08/03/2011		_____			
/P1			jfrantze 08/04/2011	_____	sbasford 08/04/2011		
/1	fknepp 09/09/2011	kfollett 09/20/2011	jfrantze 09/21/2011	_____	lparisi 09/21/2011		

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

2011 DRAFTING REQUEST

Bill

Received: **07/05/2011**

Received By: **fknepp**

Wanted: **As time permits**

Companion to LRB:

For: **Terry Moulton (608) 266-7511**

By/Representing: **Rebekah Culotta**

May Contact:

Drafter: **fknepp**

Subject: **Health - miscellaneous**
Health - public health

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Moulton@legis.wisconsin.gov**

Carbon copy (CC:) to: **tamara.dodge@legis.wisconsin.gov**
fern.knepp@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Complementary and alternative health practices

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tdodge 07/06/2011 fknepp 07/18/2011	kfollett 08/03/2011 1/1/11 9/20	2/20 12	2/21 pt7			
/P1			jfrantze 08/04/2011		sbasford 08/04/2011		

FE Sent For:

2011 DRAFTING REQUEST

Bill

Received: 07/05/2011

Received By: **fknepp**

Wanted: **As time permits**

Companion to LRB:

For: **Terry Moulton (608) 266-7511**

By/Representing: **Rebekah Culotta**

May Contact:

Drafter: **fknepp**

Subject: **Health - miscellaneous**
Health - public health

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Moulton@legis.wisconsin.gov**

Carbon copy (CC:) to: **tamara.dodge@legis.wisconsin.gov**
fern.knepp@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

re
Complimentary and alternative health practices

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	tdodge	<i>1P/1gf</i> <i>8/3</i>	<i>[Signature]</i> <i>8/4</i>	<i>pk</i> <i>[Signature]</i> <i>8/4</i>			

FE Sent For:

<END>

National Center

Knepp, Fern

From: Culotta, Rebekah
Sent: Tuesday, July 05, 2011 10:45 AM
To: Knepp, Fern
Subject: Email from LRB Website

Attachments: Exemptio bill Wisconsin 2011 #1.doc

Hi Fern,

I was directed to send this bill language to Tamara Dodge but she is out of the office. I am wondering if you are able to write a bill draft with the following language.



Exemptio bill
Wisconsin 2011 #.

Thank you,

Rebekah Culotta
Legislative Aide
Senator Terry Moulton
23rd Senate District

Email: rebekah.culotta@legis.wisconsin.gov
Toll-Free: 1-888-437-9436
Direct: (608) 266-7511

1 SECTION 1. 146.86 of the statutes is created to read:

2 **146.86 Provision of complementary and alternative health practices.**

3 1) In this section:

4 (a) "Complementary and alternative health service" means the broad domain of complementary
5 and alternative health care and healing methods and treatments including but not limited to the
6 following:

*MN
Law*

7 (a) Anthroposophy;

8 (b) Aromatherapy;

9 (c) Ayurveda;

10 (d) Biofeedback;

11 (e) Culturally traditional healing practices;

12 (f) Detoxification practices and therapies, including but not limited to saunas, foot baths,
13 baths including the addition of herbs or other substances, colon-hydrotherapy, other
14 hydrotherapies, and oxidative therapies;

15 (g) Energetic healing;

16 (h) Folk practices;

17 (i) Gerson therapy and colostrum therapy;

18 (j) Healing practices utilizing food and its extracts, vitamins, minerals, and dietary
19 supplements as defined by the federal Dietary Supplement and Health Education Act
20 (DSHEA) of 1994 as amended;

21 (k) Healing touch;

22 (l) Herbology or herbalism;

23 (m) Holistic kinesiology and other muscle testing techniques;

24 (n) Homeopathy and homeopathic remedies;

25 (o) Iridology;

26 (p) Magnetic therapy;

27 (q) Meditation;

28 (r) Mind-body healing practices;

29 (s) Natural elements and nutrients and physical forces of air, heat, cold, water, touch,
30 sound and light, as well as visualization and breathing techniques.

31 (t) Nutrition care services and consultations

32 (u) Polarity therapy;

33 (v) Traditional naturopathy;

34 (b) "Controlled substance" has the meaning given in s. 961.01 (4).

(c) "Deliver" has the meaning given in s. 450.01 (5).

- 1 (d) "Device" has the meaning given in s. 450.01 (6).
- 2 (e) "Dispense" has the meaning given in s. 450.01 (7).
- 3 (f) "Health care provider" has the meaning given in s. 146.81 (1) (a) to (hp) and
4 (q) to (s).
- 5 (g) "Prescription drug" has the meaning given in s. 450.01 (20).
- 6 **(2)** Notwithstanding ss. 256.15 (2), 440.982 (1), 441.06 (4), 441.15 (2), 446.02
7 (1), 447.03 (1) and (2), 448.03 (1) (a), (b), and (c) and (1m), 448.51 (1), 448.61, 448.961
8 (1) and (2), 449.02 (1), 450.03 (1), 451.04 (1), 454.04 (1), 455.02 (1m), 457.04 (4), (5),
9 (6), and (7), 459.02 (1), and 459.24 (1), a person who provides a complementary and
10 alternative health service does not violate s. 256.15 (2), 440.982 (1), 441.06 (4),
11 441.15 (2), 446.02 (1), 447.03 (1) and (2), 448.03 (1) (a), (b), and (c) and (1m), 448.51
12 (1), 448.61, 448.961 (1) and (2), 449.02 (1), 450.03 (1), 451.04 (1), 454.04 (1), 455.02
13 (1m), 457.04 (4), (5), (6), and (7), 459.02 (1), or 459.24 (1) unless the person providing
14 the complementary and alternative health service does any of the following:
- 15 (a) Punctures the skin, except by pricking a finger for purposes of blood screening.
 - 16 (b) Prescribes or administers X-ray services.
 - 17 (c) Prescribes, directly applies, delivers, or dispenses a prescription drug, a
18 controlled substance, or a device that may be prescribed, directly applied, delivered,
19 or dispensed only by a health care provider.
 - 20 (d) Performs a chiropractic adjustment or manipulation of joints or a spine.
 - 21 (e) Recommends to the individual receiving the complementary and
22 alternative health service that he or she discontinue treatment that is prescribed by
23 a health care provider.
 - 24 (f) Diagnoses and treats a health condition of the individual in a manner that
25 causes an imminent, foreseeable, and significant risk of recognizable and significant
26 physical or mental injury. None of the following are prohibited under this paragraph:
27 1. Use of medical terminology or common words to describe a health condition.
28 2. Advice that the individual should consult a health care provider in order to
rule out a diagnosable condition.

1 3. A statement that the individual's symptoms may be indicative of or
2 consistent with a specific medical condition.

3 (g) Hold himself or herself out as or implies that he or she is a health care
4 provider, if he or she does not hold the applicable certificate, permit, or license.

5 (3) A person who is not a health care provider acting under his or her certificate,
6 permit, or license as a health care provider and who charges a fee for a
7 complementary and alternative health service shall, before performing the service,
8 do all of the following:

9 (a) Provide to the individual to be served, in writing, all of the following
10 information:

11 1. The name, business address, and telephone number of the person who is
12 providing the complementary and alternative health service.

13 2. If the person is not a health care provider as defined in this act, then include the fact that
14 he/she does not hold a certificate, permit, or license as a health care
15 Provider from the state of Wisconsin.

16 3. A description of the complementary and alternative health service that the
17 person proposes to provide to the individual.

18 4. Any education, training, experience, credentials, or other qualifications the
19 person has with respect to the complementary and alternative health service that the
20 person proposes to provide to the individual.

21 (b) Post prominently in a location where the individual, will be receiving the
22 complementary and alternative health services, a written statement,
23 printed in not less than 12-point boldface type, the information listed in (a).

24 (c) Attempt to ensure that the individual who is going to receive a
25 complementary and alternative health service understands the statements under
26 pars. (a) and (b).

27 (d) Before the first instance of providing a complementary and alternative
28 health service to an individual, obtain a written acknowledgment from the
29 individual that he or she has been provided the written statement under par. (a). The
30 person who is going to provide the complementary and alternative health service
31 shall do all of the following:

32 1. Provide the individual receiving the service with a copy of the written
33 acknowledgment.

34 2. Keep the acknowledgment confidential.

35 3. Maintain the acknowledgment for 2 years from the date the individual signs

1 the acknowledgment.

2 (e) If the information that is required to be provided under par. (a) changes, do
3 all of the following:

4 1. Change the written statements under pars. (a) and (b) to reflect the changes
5 in the information.

6 2. Post the changed statement as required under par. (b).

7 3. Provide the changed statement to any individual who receives services after
8 the statement is changed.

9 4. Before the first instance of providing a complementary and alternative
10 health service to an individual after changing the written statement, obtain a
11 written acknowledgment from any individual who is going to receive complementary
12 and alternative health services under par. (d).

13 **(4)** (a) If the department is notified that a person is violating this section, the
14 department shall contact the alleged violator, determine if a violation has occurred,
15 and attempt to bring the alleged violator in compliance with this section.

16 (b) If the department fails to bring the alleged violator in compliance with this
17 section under par. (a), the department may serve a notice on the person ordering the
18 person to cease violating this section. The order shall be served in the manner
19 provided for the service of a summons under s. 801.11. The order is subject to judicial
20 review under ch. 227.

21 (c) If the department determines that a person continues to violate this section
22 after being served a notice under par. (b), the department shall serve a notice on the
23 person informing him or her that the department shall hold a hearing to determine
24 if the person is violating this section. The order shall be served in the manner
25 provided for the service of a summons under s. 801.11. The hearing shall be held not
26 sooner than 10 days after service of the notice. The person may present evidence,
27 subpoena witnesses, and be represented by counsel at the hearing. The department
28 shall record the proceedings.

29 (d) Within 30 days after the hearing is held, the department shall issue a
30 decision that includes findings of fact and conclusions of law based on the testimony
31 presented. If the department determines that a person continues to violate this
32 section after being served a notice under par. (b), the department may order the
33 person to pay a forfeiture not to exceed \$5,000. The violator shall be provided a copy
34 of the findings of fact, conclusions of law, and the order to pay the forfeiture. The
35 department's decision and order are subject to judicial review under ch. 227.

1 (e) In addition to the remedy under par. (d), if the department determines that
2 a person continues to violate this section after being served a notice under par. (b),
3 the department may petition the circuit court for a temporary restraining order or
4 permanent injunction to enjoin the person from violating this section.

5 **(5)** Any person suffering injury as the result of a violation of this section may
6 sue for damages and may recover treble the amount of his or her damages, together
7 with costs, including reasonable attorney fees, notwithstanding s. 814.04 (1).

8 **(END)**



In 7-18

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

CPS:
Fix request sheet please
OK

Regen

1 AN ACT to create 146.86 of the statutes; relating to: complementary and
2 alternative health services and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

3 SECTION 1. 146.86 of the statutes is created to read:

4 **146.86 Provision of complementary and alternative health practices.**

5 (1) In this section:

Ins. A →
Ins. 1-5

6 (a) "Complementary and alternative health service" means biologically-based
7 therapy, energy medicine, manipulative and body-based therapy, mind-body
8 intervention, holistic approaches to health, or any combination of those methods,
9 including any of the following:

10 1. Acupressure

SECTION 1

- 1 2. Aromatherapy.
- 2 3. A culturally traditional or folk healing practice.
- 3 4. A detoxification practice or therapy.
- 4 5. A healing practice using specific foods, food supplements, or nutrients.
- 5 6. A healing practice using the physical forces of heat, cold, water, touch, or
- 6 light.
- 7 7. Herbology or herbalism.
- 8 8. Meditation.

9 (b) "Controlled substance" has the meaning given in s. 961.01 (4).

10 (c) "Deliver" has the meaning given in s. 450.01 (5).

11 (d) "Device" has the meaning given in s. 450.01 (6).

12 (e) "Dispense" has the meaning given in s. 450.01 (7).

13 (f) "Health care provider" has the meaning given in s. 146.81 (1) (a) to (hp) and
14 (q) to (s).

15 (g) "Prescription drug" has the meaning given in s. 450.01 (20).

16 (2) Notwithstanding ss. 256.15 (2), 440.982 (1), 441.06 (4), 441.15 (2), 446.02
17 (1), 447.03 (1) and (2), 448.03 (1) (a), (b), and (c) and (1m), 448.51 (1), 448.61, 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), and 459.24 (1), a person who provides a complementary and
20 alternative health service does not violate s. 256.15 (2), 440.982 (1), 441.06 (4),
21 441.15 (2), 446.02 (1), 447.03 (1) and (2), 448.03 (1) (a), (b), and (c) and (1m), 448.51
22 (1), 448.61, 448.961 (1) and (2), 449.02 (1), 450.03 (1), 451.04 (1), 454.04 (1), 455.02
23 (1m), 457.04 (4), (5), (6), and (7), 459.02 (1), or 459.24 (1) unless the person providing
24 the complementary and alternative health service does any of the following:

****NOTE: I removed the references to ss. 252.23 (3) and 252.24 (3). These sections relate to tattooists and body piercers. Under the Wisconsin definitions of these activities, the person must puncture the skin, which is already prohibited by sub. (2) (a).

****NOTE: I eliminated the reference to s. 440.88 (5) and (6) in this subsection. Section 440.88 (5) and (6) prohibit representing oneself as a substance abuse counselor, clinical supervisor, or prevention specialist but do not prohibit the counseling or supervision activities. Similarly, I eliminated the reference to s. 460.02. Section 460.02 prohibits the use of the title of massage therapist or bodyworker but does not prohibit an uncredentialed person from performing massage or bodywork.

****NOTE: I eliminated the reference to s. 440.98 (8) and (9). These provisions relate to sanitarians, which do not seem similar to the health care provider occupations referenced by the other sections. Section 440.98 (8) and (9) provides sanctions for registered sanitarians for certain conduct but does not address practicing as a sanitarian without a registration.

- 1 (a) Punctures the skin, except by pricking a finger for purposes of blood
- 2 screening.
- 3 (b) Prescribes or administers X-ray services.
- 4 (c) Prescribes, directly applies, delivers, or dispenses a prescription drug, a
- 5 controlled substance, or a device that may be prescribed, directly applied, delivered,
- 6 or dispensed only by a health care provider.
- 7 (d) Performs a chiropractic adjustment or manipulation of joints or a spine.
- 8 (e) Recommends to the individual receiving the complementary and
- 9 alternative health service that he or she discontinue treatment that is prescribed by
- 10 a health care provider.
- 11 (f) Diagnoses and treats a health condition of the individual in a manner that
- 12 causes an imminent, foreseeable, and significant risk of recognizable and significant
- 13 physical or mental injury. None of the following are prohibited under this paragraph:
- 14 1. Use of medical terminology or common words to describe a health condition.
- 15 2. Advice that the individual should consult a health care provider in order to
- 16 rule out a diagnosable condition.

Ins. →
3-13

SECTION 1

1 3. A statement that the individual's symptoms may be indicative of or
2 consistent with a specific medical condition.

3 (g) Hold himself or herself out as or implies that he or she is a health care
4 provider, if he or she does not hold the applicable certificate, permit, or license.

5 (3) A person who is not a health care provider acting under his or her certificate,
6 permit, or license as a health care provider and who charges a fee for a
7 complementary and alternative health service shall, before performing the service,
8 do all of the following:

9 (a) Provide to the individual to be served, in writing, all of the following
10 information:

11 1. The name, business address, and telephone number of the person who is
12 providing the complementary and alternative health service.

13 2. If the person ~~does not hold a certificate, permit, or license as a~~ health care
14 provider, the fact that the person ~~is not a health care provider~~ or license as a
15 health care provider ^{in this state}

16 3. A description of the complementary and alternative health service that the
17 person proposes to provide to the individual.

18 4. Any education, training, experience, credentials, or other qualifications the
19 person has with respect to the complementary and alternative health service that the
20 person proposes to provide to the individual.

21 (b) Post prominently in a location ^{that is readily visible to} where an individual who is going to receive a
22 complementary and alternative health service ^{is present} a written statement,
23 printed in not less than 12-point boldface type, that contains all of the following
24 information ^{in par. (a) 1, 2, 3, and 4, and}

25 1. The name, business address, and telephone number of the person who is
going to provide the complementary and alternative health service.

Ins
4-A →

13
14
19
20
21
22
23
24
25

1 2. If the person who is going to provide the complementary and alternative
2 health service does not hold a certification, permit, or license as a health care
3 provider, the fact that the person is not a health care provider.

4 3. ^{3. a} A description of the complementary and alternative health services that the
5 person generally provides.

6 4. Any education, training, experience, credentials, or other qualifications the
7 person has with respect to the complementary and alternative health services
8 specified under subd. 3.

9 (c) Attempt to ensure that the individual who is going to receive a
10 complementary and alternative health service understands the statements under
11 par. (a) and (b).

12 (d) Before the first instance of providing a complementary and alternative
13 health service to an individual, obtain a written acknowledgment from the
14 individual that he or she ^{of the individual} has been provided the written statement under par. (a). The
15 person who is going to provide the complementary and alternative health service
16 shall do all of the following:

17 1. Provide the individual receiving the service with a copy of the written
18 acknowledgment.

19 2. Keep the acknowledgment confidential.

****NOTE: Under state law, only records prepared by health care providers are
confidential health documents. Therefore, I eliminated the reference to a confidential
health document, but still required that the records be kept confidential.

20 3. Maintain the acknowledgment for 2 years from the date the individual signs
21 the acknowledgment.

22 (e) If the information that is required to be provided under par. (a) changes, do
23 all of the following:

SECTION 1

1

1. Change the written statements under par. (a) and (b) to reflect the changes in the information.

2
3

2. Post the changed statement as required under par. (b).

4
5

3. Provide the changed statement to any individual who receives services after the statement is changed.

6
7
8
9

4. Before the first instance of providing a complementary and alternative health service to an individual after changing the written statement, obtain a written acknowledgment from any individual who is going to receive complementary and alternative health services under par. (d).

10
11
12

(4) (a) If the department is notified that a person is violating this section, the department shall contact the alleged violator, determine if a violation has occurred, and attempt to bring the alleged violator in compliance with this section.

13
14
15
16
17

(b) If the department fails to bring the alleged violator in compliance with this section under par. (a), the department may serve a notice on the person ordering the person to cease violating this section. The order shall be served in the manner provided for the service of a summons under s. 801.11. The order is subject to judicial review under ch. 227.

18
19
20
21
22
23
24
25

(c) If the department determines that a person continues to violate this section after being served a notice under par. (b), the department shall serve a notice on the person informing him or her that the department shall hold a hearing to determine if the person is violating this section. The order shall be served in the manner provided for the service of a summons under s. 801.11. The hearing shall be held not sooner than 10 days after service of the notice. The person may present evidence, subpoena witnesses, and be represented by counsel at the hearing. The department shall record the proceedings.

12

department shall hold a hearing to determine if the person is violating this section. The order shall be served in the manner provided for the service of a summons under s. 801.11. The hearing shall be held not

1 (d) Within 30 days after the hearing is held, the department shall issue a
2 decision that includes findings of fact and conclusions of law based on the testimony
3 presented. If the department determines that a person continues to violate this
4 section after being served a notice under par. (b), the department may order the
5 person to pay a forfeiture not to exceed \$5,000. The violator shall be provided a copy
6 of the findings of fact, conclusions of law, and the order to pay the forfeiture. The
7 department's decision and order are subject to judicial review under ch. 227.

8 (e) In addition to the remedy under par. (d), if the department determines that
9 a person continues to violate this section after being served a notice under par. (b),
10 the department may petition the circuit court for a temporary restraining order or
11 permanent injunction to enjoin the person from violating this section.

12 (5) Any person suffering injury as the result of a violation of this section may
13 sue for damages and may recover treble the amount of his or her damages, together
14 with costs, including reasonable attorney fees, notwithstanding s. 814.04 (1).

****NOTE: Please note the changes to sub. (4) from the requested language. Are the
changes okay?

(END)

Ins
7-14

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB
FFK:.....

INS 1-5

****NOTE: Please review the definition of complementary and alternative health service (CAHS) to confirm that it is consistent with your intent. Also, please note that there are consequences to the definition being either under-inclusive or over-inclusive. If the definition is too narrow, providers that you intend to be exempt from the licensing statutes will not be covered. On the other hand, if the definition is too broad, providers who do not consider themselves to be providers of CAHSs will be subject to the notice requirements in sub. (3) of this bill. You may also wish to consider condensing the list of examples of CAHSs. A list following "including" is non-exclusive. Therefore, eliminating an example from the list does not mean that it is not included in the definition. Finally, I think it is useful to say what these headings treatments are complementary or alternative to. I used the term "conventional medicine." If you are aware of a more accurate or descriptive term, please let me know.

X
+
For example, a person teaching a meditation class may not intend to provide the class as complementary or alternative medicine but under this bill may be required to provide the information in sub. (3).

END INS 1-5

INS 3-13

****NOTE: As drafted, a person who provides a CAHS may diagnose and treat a health condition so long as they do not do so in a manner that causes "imminent, foreseeable, and significant" risk of injury. This means that a person who provides a CAHS and diagnoses and treats in a manner that does not cause "imminent, foreseeable, and significant" risk of injury is not subject to applicable licensing statutes. However, whether the manner in which the diagnosis or treatment occurred will often be subjective and may require a court or administrative proceeding to determine whether this paragraph applies. This means that a provider may not know at the time of the diagnosis or treatment whether the provider will be protected from an applicable licensing statute. You may wish to consider a more objective condition.

END INS 3-13

INS 4-4

****NOTE: As drafted, the consequence for a person who provides a CAHS and does any of the actions described in pars. (a) to (g) is to lose the exemption provided in sub. (2) (intro.) from an applicable licensing statute. Is this consistent with your intent?

END INS 4-4

INS. 7-14

****NOTE: Is it your intention that this subsection apply to a person who provides a CAHS and does one of the actions described in sub. (2) (a) to (g)? Or, is it your intent that the sole consequence of the actions described in sub. (2) (a) to (g) is to be subject to the applicable licensing statute? As drafted, it is not clear what is intended by a "violation of this section." I recommend clarifying the phrase "violation of this section" to indicate exactly which actions trigger a person's right to recover treble damages and attorneys fees. This same issue applies to the use of the phrase "violating this section" in sub. (4) & what actions are subject to sanctions by the department.

END INS. 7-14

X
and

1 SECTION 1. 146.86 of the statutes is created to read:

2 **146.86 Provision of complementary and alternative health practices.**

3 ~~1) In this section:~~

4 (a) "Complementary and alternative health service" means the broad domain of complementary
5 and alternative health care and ^a healing methods and ^{or} treatments ^{or} including but not limited to ^{all of} the
6 following:

that is provided in addition to or in place of conventional medicine,

7 (a) 1. Anthroposophy,

8 (b) 2. Aromatherapy,

9 (c) 3. Ayurveda,

10 (d) 4. Biofeedback,

11 (e) 5. Culturally traditional healing practices,

12 (f) 6. Detoxification practices and therapies, including but not limited to saunas, foot baths,
13 baths including the addition of herbs or other substances, colon-hydrotherapy, other
14 hydrotherapies, and oxidative therapies.

15 (g) 7. Energetic healing,

16 (h) 8. Folk practices,

17 (i) 9. Gerson therapy and colostrum therapy,

18 (j) 10. Healing practices utilizing food and its extracts, ^{vitamins} ^{minerals} and dietary
19 supplements as defined ^{by} the federal Dietary Supplement and Health Education Act
20 (DSHEA) of 1994 as amended; *in 21 USC 321 (ff).*

21 (k) 11. Healing touch,

22 (l) 12. Herbology or herbalism,

23 (m) 13. Holistic kinesiology and other muscle testing techniques,

24 (n) 14. Homeopathy and homeopathic remedies,

25 (o) 15. Iridology,

26 (p) 16. Magnetic therapy,

27 (q) 17. Meditation,

28 (r) 18. Mind-body healing practices,

29 (s) 19. Natural elements and nutrients and physical forces of air, heat, cold, water, touch,
30 sound and light, as well as visualization and breathing techniques.

31 (t) 20. Nutrition care services and consultations,

32 (u) 21. Polarity therapy,

33 (v) 22. Traditional naturopathy.

34 (b) "Controlled substance" has the meaning given in s. 961.01 (4).

(c) "Deliver" has the meaning given in s. 450.01 (5).

INS. WA

End INS.

Knepp, Fern

From: Culotta, Rebekah
Sent: Tuesday, August 30, 2011 12:11 PM
To: Knepp, Fern
Subject: Draft

Attachments: 11-2331P1 1st Draft of WIHFC bill response to Legis counsel.doc

Dear Fern,

I have attached the changes we would like to make to LRB-2331/P1. Please let me know if you have any additional questions before submitting the draft to us.

Thank you,



11-2331P1 1st
Draft of WIHFC b...

Rebekah Culotta
Legislative Aide
Senator Terry Moulton
23rd Senate District

Email: rebekah.culotta@legis.wisconsin.gov
Toll-Free: 1-888-437-9436
Direct: (608) 266-7511



State of Wisconsin

2011 - 2012 LEGISLATURE

LRB-2331/P1 FFK:kjf:jf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT to create 146.86 of the statutes; relating to: complementary and 2 alternative health services and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

3 SECTION 1. 146.86 of the statutes is created to read:

4 146.86 Provision of complementary and alternative health practices.

5 (1) In this section:

6 (a) "Complementary and alternative health service" means the broad domain of health care practices, healing therapies and modalities, and methods that are not prohibited by section 146.86(2) and that are provided by an individual who is not a health care provider or who is not a health care provider acting under his or her certificate, permit, or license as a health care provider.

7

Deleted:
Deleted: complementary and alternative
Deleted: and a
Deleted: may be
Deleted: licensed
Deleted: professional
Deleted: or treatments
Deleted: that is provided in addition to or in place of conventional medicine.
Deleted: 8 including but not limited to all of the following: ¶
9 1. Anthroposophy. ¶
2. Aromatherapy. ¶
2011 - 2012 Legislature - 2 -
LRB-2331/P1 FFK:kjf:jf ¶
SECTION 1 ¶
1 3. Ayurveda. ¶
2 4. Biofeedback. ¶
3 5. Culturally traditional healing practices. ¶
4 6. Detoxification practices and therapies. ¶
5 7. Energetic healing. ¶
6 8. Folk practices. ¶
7 9. Gerson therapy and colostrum therapy. ¶
8 10. Healing practices utilizing food and its extracts; vitamins; minerals; and ¶
9 dietary supplements as defined in
21 USC 321 (ff). ¶
10 11. Healing touch. ¶
11 12. Herbology or herbalism. ¶
12 13. Holistic kinesiology and other muscle testing techniques. ¶
13 14. Homeopathy and homeopathic remedies. ¶
14 15. Iridology. ¶
15 16. Magnetic therapy. ¶
16 17. Meditation. ¶
17 18. Mind-body healing practices. ¶
18 19. Natural elements and nutrients and physical forces of air, heat, cold, water. ¶
19 touch, sound, and light, as well as visualization and breathing techniques. ¶
20 20. Nutrition care services and consultations. ¶
21 21. Polarity therapy. ¶
22 22. Traditional naturopathy.

FFK:kjf:ff
SECTION 1

who do not consider themselves to be providers of CAHSs will be subject to the requirements in sub. (3) of this bill. For example, a person teaching a meditation class may not intend to provide the class as complementary or alternative medicine but under this bill may be required to provide the information in sub. (3). You may also wish to consider condensing the list of examples of CAHSs. A list following "including" is nonexclusive. Therefore, eliminating an example from the list does not mean that it is not included in the definition. Finally, I think it is useful to say what these healing treatments are complementary or alternative to. I used the term "conventional medicine." If you are aware of a more accurate or descriptive term, please let me know.

1 (b) "Controlled substance" has the meaning given in s. 961.01 (4). 2

(c) "Deliver" has the meaning given in s. 450.01 (5). 3 (d) "Device" has the meaning given in s. 450.01 (6). 4

(e) "Dispense" has the meaning given in s. 450.01 (7). 5

(f) "Health care provider" has the meaning given in s. 146.81 (1) (a) to (hp) and 6 (q) to (s). 7

(g) "Prescription drug" has the meaning given in s. 450.01 (20). 8

(2) Notwithstanding ss. 256.15 (2), 440.982 (1), 441.06 (4), 441.15 (2), 446.02 9 (1), 447.03 (1) and (2), 448.03 (1) (a), (b), and (c) and (1m), 448.51 (1), 448.61, 448.961 10 (1) and (2), 449.02 (1), 450.03 (1), 451.04 (1), 454.04 (1), 455.02 (1m), 457.04 (4), (5), 11 (6), and (7), 459.02 (1), and 459.24 (1), a person who provides a complementary and

12 alternative health service does not violate s. 256.15 (2), 440.982 (1), 441.06 (4),

13 441.15 (2), 446.02 (1), 447.03 (1) and (2), 448.03 (1) (a), (b), and (c) and (1m), 448.51

Deleted: I prefer a more objective definition without comparison to conventional care, even if you retain the list such as Michigan introduced version as follows:¶

¶
"COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICE" MEANS¶
4 THE BROAD DOMAIN OF HEALTH CARE PRACTICES, HEALING THERAPIES AND¶
5 MODALITIES, AND METHODS THAT ARE NOT PROHIBITED BY SECTION xxxx¶
6 AND ARE PROVIDED BY AN INDIVIDUAL WHO IS NOT A LICENSED HEALTH CARE¶
7 PROFESSIONAL. HB 4789
<http://www.legislature.mi.gov/docu-ments/2011-2012/billsintroduced/House/htm/2011-HB-4789.htm> You can always put "such as" and add the list if you want it.¶

The goal is to not have the definition and list tied to the jurisdiction of the exemption, but rather have the fact that a healer is not licensed or registered be the deciding factor for the right to be exempted (thus the "including but not limited to language" is then acceptable)¶

Deleted: who is not licensed, certified, or registered in Wisconsin as a health care provider, (if you do not have in the definition that they are not licensed, then you have to put it here, but I would encourage you to read Michigan bill)

14 (1), 448.61, 448.961 (1) and (2), 449.02 (1), 450.03 (1), 451.04 (1), 454.04 (1), 455.02

15 (1m), 457.04 (4), (5), (6), and (7), 459.02 (1), or 459.24 (1) unless the person providing,

Deleted: 16

the complementary and alternative health service does any of the following:

17 (a) Punctures the skin, except by pricking a finger for purposes of blood

18 screening.

(b) Prescribes or administers X-ray services.

*definition of
n.c provider
is someone
w/ or license*

SECTION 1

- 1 (c) Prescribes, directly applies, delivers, or dispenses a prescription drug, a
- 2 controlled substance, or a device that may be prescribed, directly applied, delivered,
- 3 or dispensed only by a licensed health care provider.
- 4 (d) Performs a chiropractic adjustment or manipulation of joints or a spine.
- 5 (e) Recommends to the individual receiving the complementary and
- 6 alternative health service that he or she discontinue treatment that is prescribed by
- 7 a health care provider.

ed, a person who provides a CAHS may diagnose and treat a health condition so long as they do not do so in a manner that causes "imminent, foreseeable, and significant" risk of injury. This means that a person who provides a CAHS and diagnoses and treats in a manner that does not cause "imminent, foreseeable, and significant" risk of injury is not subject to applicable licensing statutes. However, whether the manner in which the diagnosis or treatment occurred will often be subjective and may require a court or administrative proceeding to determine whether this paragraph applies. This means that a provider may not know at the time of the diagnosis or treatment whether the provider will be protected from an applicable licensing statute. You may wish to consider a more objective condition.

(f) Makes a specific conventional medical diagnosis.

- 16 (g) Hold himself or herself out as or implies that he or she is a health care
- 17 provider, if he or she does not hold the applicable certificate, permit, or license.

****NOTE: As drafted, the consequence for a person who provides a CAHS and does any of the actions described in pars. (a) to (g) is to lose the exemption provided in sub. (2) (intro.) from an applicable licensing statute. Is this consistent with your intent?

Deleted: 8 (f) Diagnoses and treats a health condition of the individual in a manner that ¶
9 knowingly causes a client an imminent, foreseeable, and significant risk of recognizable and significant ¶
10 physical or mental injury. None of the following are prohibited under this paragraph. ****

Deleted: Each state deals with this broad threshold issue differently. Local attorneys are the best source of what they want this to be. I would do what New Mexico did if I were you. No lengthy risk paragraph, just a prohibition about conventional diagnosis. For example also this type of prohibition paragraph is not in the Louisiana law ¶

and for example: ¶
Minnesota says: ¶
may not provide a medical diagnosis or recommend ¶

discontinuance of medically prescribed treatments ¶
and also may not do ¶

(f) Conduct likely to deceive, defraud, or harm the public ¶
or demonstrating a willful or careless disregard for the health, ¶
welfare, or safety of a complementary and alternative health ¶

care client; or any other practice that may create danger to any ¶
client's life, health, or safety, in any of which cases, proof ¶
of actual injury need not be established. ¶

California says: ¶
(5) Willfully diagnoses and treats a physical or mental condition ¶
of any person under circumstances or conditions that cause or create ¶
a risk of great bodily harm, serious physical or mental illness, or ¶
death. ¶

New Mexico says: ¶
H. make a specific conventional medical diagnosis. ¶

Louisiana: ¶
No prohibition language about diagnosis ¶

¶
<#>11 1. Use of medical terminology or common words to describe a health condition. ¶

<#>12 2. Advice that the individual should consult a health care provider in order to ¶

<#>13 rule out a diagnosable condition. ¶

<#>14 3. A statement that the individual's symptoms may be indicative of or ¶

<#>15 consistent with a specific medical condition. ¶

9-8-11

Moulton's Office - go with NM language, incorporate NM definition + keep exceptions that are in the /PI

1 (3) A person who is not a health care provider acting under his or her certificate,
2 permit, or license as a health care provider and who charges a fee for a
3 complementary and alternative health service shall, before performing the service,
4 do all of the following:

5 (a) Provide to the individual to be served, in writing, all of the following
6 information:

7 1. The name, business address, and telephone number of the person who is
8 providing the complementary and alternative health service.

9 2. If the person is not a health care provider, the fact that the person does not
10 hold a certificate, permit, or license as a health care provider in this state.

11 3. A description of the complementary and alternative health service that the
12 person proposes to provide to the individual.

13 4. Any education, training, experience, credentials, or other qualifications the
14 person has with respect to the complementary and alternative health service that the
15 person proposes to provide to the individual.

16 (b) Post in a location that is readily visible to an individual who is going to
17 receive a complementary and alternative health service, a written statement,

18 printed in not less than 12-point boldface type that contains the information in par.

19 (a) 1., 2., and 4. and a description of the complementary and alternative health
20 services that the person generally provides.

Deleted:



21 (c) Attempt to ensure that the individual who is going to receive a

22 complementary and alternative health service understands the statement under

23 par. (a).

24 (d) Before the first instance of providing a complementary and alternative

health service to an individual, obtain a written acknowledgment from the

SECTION 1

1 individual that the individual has been provided the written statement under par.

2 (a). The person who is going to provide the complementary and alternative health

3 service shall do all of the following:

4 1. Provide the individual receiving the service with a copy of the written

5 acknowledgment.

6 2. Keep the acknowledgment confidential.

7 3. Maintain the acknowledgment for 2 years from the date the individual signs

8 the acknowledgment.

9 (e) If the information that is required to be provided under par. (a) changes, do

10 all of the following:

11 1. Change the written statement under par. (a) to reflect the changes in the

12 information.

13 2. Post the changed statement as required under par. (b).

14 3. Provide the changed statement to any individual who receives services after

15 the statement is changed.

16 4. Before the first instance of providing a complementary and alternative

17 health service to an individual after changing the written statement, obtain a

18 written acknowledgment from any individual who is going to receive complementary

19 and alternative health services under par. (d).

20 (4) (a) If the department is notified that a person is violating ~~section 146.86(3)~~, the

21 department shall contact the alleged violator, determine if a violation has occurred,

Deleted: this

22 and attempt to bring the alleged violator into compliance with this section.

Deleted: department fails to bring the alleged violator into compliance

23 (b) If the ~~the~~ alleged violator does not comply with,

Deleted: this

24 section ~~146.86(3)~~ in a reasonable period of time, the department may serve a notice on the

Deleted: under par. (a)

person ordering the

person to cease violating this section. The order shall be served in the manner

FFK:kjfjf
SECTION 1

1 provided for the service of a summons under s. 801.11. The order is subject to judicial
2 review under ch. 227.

3 (c) If the department determines that a person continues to violate this section
4 after being served a notice under par. (b), the department shall serve a notice on the
5 person informing him or her that the department will hold a hearing to determine
6 if the person is violating this section. The department shall serve the notice in the
7 manner provided for the service of a summons under s. 801.11. The department may
8 not hold the hearing sooner than 10 days after service of the notice. The person may
9 present evidence, subpoena witnesses, and be represented by counsel at the hearing.
10 The department shall record the proceedings.

11 (d) Within 30 days after the hearing is held, the department shall issue a
12 decision that includes findings of fact and conclusions of law based on the testimony
13 presented. If the department determines that a person continues to violate this
14 section after being served a notice under par. (b), the department may order the
15 person to pay a forfeiture not to exceed \$5,000. The violator shall be provided a copy
16 of the findings of fact, conclusions of law, and the order to pay the forfeiture. The
17 department's decision and order are subject to judicial review under ch. 227.

18 (e) In addition to the remedy under par. (d), if the department determines that
19 a person continues to violate this section after being served a notice under par. (b),
20 the department may petition the circuit court for a temporary restraining order or
21 permanent injunction to enjoin the person from violating this section.

22 (5) Any person suffering injury as the result of a violation of section 146.86(2) may

Deleted: this

23 sue for damages and may recover treble the amount of his or her damages, together

24 with costs, including reasonable attorney fees, notwithstanding s. 814.04 (1).

SECTION 1

****NOTE: Is it your intention that this subsection apply to a person who provides a CAHS and does one of the actions described in sub. (2) (a) to (g)? Or, is it your intent that the sole consequence of the actions described in sub. (2) (a) to (g) is to be subject to the applicable licensing statute? As drafted, it is not clear what is intended by a "violation of this section." I recommend clarifying the phrase "violation of this section" to indicate exactly which actions trigger a person's right to recover treble damages and attorneys fees. This same issue applies to the use of the phrase "violating this section" in sub. (4) and what actions are subject to sanctions by the department.

It is our intention that section 146.86(5) apply to a person who provides a CAHS and does one of the actions described in 146.86(2)(a)-(g); meaning commission of prohibited act triggers a person's right to recover treble damages and attorney fees.
It is our intention that section 146.86(4) apply to a person who provides a CAHS and fails to provide one of the disclosures described in 146.86(3)(a)-(e); meaning failure to disclose triggers potential sanctions by the department.

(END)

Deleted: In some states they have the violation section apply to only the prohibited acts section and not the mandatory disclosure section. In some states it applies to the entire Act. I prefer to see civil and mediative language for the mandatory disclosure violations.¶

***NOTE: Please review the definition of "complementary and alternative health service" (CAHS) to confirm that it is consistent with your intent. Also, please note that there are consequences to the definition being either under-inclusive or over-inclusive. If the definition is too narrow, providers that you intend to be exempt from the licensing statutes will not be covered. On the other hand, if the definition is too broad, providers



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2331/P1
FFK:kjf:jf

1

RMK

In 9-9-11

Out 9-21-11

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

1 AN ACT to create 146.86 of the statutes; relating to: complementary and
2 alternative health services and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

Analysis
Input →

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

3 SECTION 1. 146.86 of the statutes is created to read:

4 146.86 Provision of complementary and alternative health practices.

5 (1) In this section:

Ins.
1-5

6 (a) ~~Complementary and alternative health service~~ means a healing method
7 or treatment that is provided in addition to or in place of conventional medicine,
8 including all of the following:

1. Anthroposophy.

2. Aromatherapy.

10

- 1 3. Ayurveda.
- 2 4. Biofeedback.
- 3 5. Culturally traditional healing practices.
- 4 6. Detoxification practices and therapies.
- 5 7. Energetic healing.
- 6 8. Folk practices.
- 7 9. Gerson therapy and colostrum therapy.
- 8 10. Healing practices utilizing food and its extracts; vitamins; minerals; and
- 9 dietary supplements as defined in 21 USC 321 (ff).
- 10 11. Healing touch.
- 11 12. Herbology or herbalism.
- 12 13. Holistic kinesiology and other muscle testing techniques.
- 13 14. Homeopathy and homeopathic remedies.
- 14 15. Iridology.
- 15 16. Magnetic therapy.
- 16 17. Meditation.
- 17 18. Mind-body healing practices.
- 18 19. Natural elements and nutrients and physical forces of air, heat, cold, water,
- 19 touch, sound, and light, as well as visualization and breathing techniques.
- 20 20. Nutrition care services and consultations.
- 21 21. Polarity therapy.
- 22 22. Traditional naturopathy.

****NOTE: Please review the definition of "complementary and alternative health service" (CAHS) to confirm that it is consistent with your intent. Also, please note that there are consequences to the definition being either under-inclusive or over-inclusive. If the definition is too narrow, providers that you intend to be exempt from the licensing statutes will not be covered. On the other hand, if the definition is too broad, providers

who do not consider themselves to be providers of CAHSs will be subject to the requirements in sub. (3) of this bill. For example, a person teaching a meditation class may not intend to provide the class as complementary or alternative medicine but under this bill may be required to provide the information in sub. (3). You may also wish to consider condensing the list of examples of CAHSs. A list following "including" is nonexclusive. Therefore, eliminating an example from the list does not mean that it is not included in the definition. Finally, I think it is useful to say what these healing treatments are complementary or alternative to. I used the term "conventional medicine." If you are aware of a more accurate or descriptive term, please let me know.

1 (b) "Controlled substance" has the meaning given in s. 961.01 (4).

2 (c) "Deliver" has the meaning given in s. 450.01 (5).

3 (d) "Device" has the meaning given in s. 450.01 (6).

4 (e) "Dispense" has the meaning given in s. 450.01 (7).

5 (f) "Health care provider" has the meaning given in s. 146.81 (1) (a) to (hp) and ✓
6 (q) to (s) *and includes a person licensed under 440.982(1), 454.04(1), or 459.02(1)*

7 (g) "Prescription drug" has the meaning given in s. 450.01 (20).

8 (2) Notwithstanding ss. 256.15 (2), 440.982 (1), 441.06 (4), 441.15 (2), 446.02
9 (1), 447.03 (1) and (2), 448.03 (1) (a), (b), and (c) and (1m), 448.51 (1), 448.61, 448.961
10 (1) and (2), 449.02 (1), 450.03 (1), 451.04 (1), 454.04 (1), 455.02 (1m), 457.04 (4), (5),
11 (6), and (7), 459.02 (1), and 459.24 (1), a person who provides a complementary and
12 alternative health service does not violate s. 256.15 (2), 440.982 (1), 441.06 (4),
13 441.15 (2), 446.02 (1), 447.03 (1) and (2), 448.03 (1) (a), (b), and (c) and (1m), 448.51
14 (1), 448.61, 448.961 (1) and (2), 449.02 (1), 450.03 (1), 451.04 (1), 454.04 (1), 455.02
15 (1m), 457.04 (4), (5), (6), and (7), 459.02 (1), or 459.24 (1) unless the person providing
16 the complementary and alternative health service does any of the following:

17 (a) Punctures the skin, except by pricking a finger for purposes of blood
18 screening.

19 (b) Prescribes or administers X-ray services.

1 (c) Prescribes, directly applies, delivers, or dispenses a prescription drug, a
2 controlled substance, or a device that may be prescribed, directly applied, delivered,
3 or dispensed only by a health care provider.

4 (d) Performs a chiropractic adjustment or manipulation of joints or a spine.

5 (e) Recommends to the individual receiving the complementary and
6 alternative health service that he or she discontinue treatment that is prescribed by
7 a health care provider.

Ins.
4-8

8
9
10

(f) Diagnoses and treats a health condition of the individual in a manner that
causes an imminent, foreseeable, and significant risk of recognizable and significant
physical or mental injury. None of the following are prohibited under this paragraph:

****NOTE: As drafted, a person who provides a CAHS may diagnose and treat a
health condition so long as they do not do so in a manner that causes "imminent,
foreseeable, and significant" risk of injury. This means that a person who provides a
CAHS and diagnoses and treats in a manner that does not cause "imminent, foreseeable,
and significant" risk of injury is not subject to applicable licensing statutes. However,
whether the manner in which the diagnosis or treatment occurred will often be subjective
and may require a court or administrative proceeding to determine whether this
paragraph applies. This means that a provider may not know at the time of the diagnosis
or treatment whether the provider will be protected from an applicable licensing statute.
You may wish to consider a more objective condition.

11 1. Use of medical terminology or common words to describe a health condition.

12 2. Advice that the individual should consult a health care provider in order to
13 rule out a diagnosable condition.

14 3. A statement that the individual's symptoms may be indicative of or
15 consistent with a specific medical condition.

16 (g) Hold^s himself or herself out as or implies that he or she is a health care
17 provider, if he or she does not hold the applicable certificate, permit, or license.

****NOTE: As drafted, the consequence for a person who provides a CAHS and does
any of the actions described in pars. (a) to (g) is to lose the exemption provided in sub. (2)
(intro.) from an applicable licensing statute. Is this consistent with your intent?

1 (3) A person who is not a health care provider acting under his or her certificate,
2 permit, or license as a health care provider and who charges a fee for a
3 complementary and alternative health service shall, before performing the service,
4 do all of the following:

5 (a) Provide to the individual to be served, in writing, all of the following
6 information:

7 1. The name, business address, and telephone number of the person who is
8 providing the complementary and alternative health service.

9 2. If the person is not a health care provider, the fact that the person does not
10 hold a certificate, permit, or license as a health care provider in this state.

11 ~~4~~ 3. A description of the complementary and alternative health service that the
12 person proposes to provide to the individual.

13 ~~5~~ 4. Any education, training, experience, credentials, or other qualifications the
14 person has with respect to the complementary and alternative health service that the
15 person proposes to provide to the individual.

16 (b) Post in a location that is readily visible to an individual who is going to
17 receive a complementary and alternative health service, a written statement,
18 printed in not less than 12-point boldface type, that contains the information in par.

19 (a) 1., 2., ^{3.,} and ~~4.~~ ^{5.} and a description of the complementary and alternative health
20 services that the person generally provides.

21 (c) Attempt to ensure that the individual who is going to receive a
22 complementary and alternative health service understands the statement under
23 par. (a).

24 (d) Before the first instance of providing a complementary and alternative
25 health service to an individual, obtain a written acknowledgment from the

3. If the person is a health care provider who is not acting under his or her certificate, permit, or license as a health care provider, the fact that the person is providing a service that he or she is not licensed to provide.

1 individual that the individual has been provided the written statement under par.

2 (a). The person who is going to provide the complementary and alternative health
3 service shall do all of the following:

4 1. Provide the individual receiving the service with a copy of the written
5 acknowledgment.

6 2. Keep the acknowledgment confidential.

7 3. Maintain the acknowledgment for 2 years from the date the individual signs
8 the acknowledgment.

9 (e) If the information that is required to be provided under par. (a) changes, do
10 all of the following:

11 1. Change the written statement under par. (a) to reflect the changes in the
12 information.

13 2. Post the changed statement as required under par. (b).

14 3. Provide the changed statement to any individual who receives services after
15 the statement is changed.

16 4. Before the first instance of providing a complementary and alternative
17 health service to an individual after changing the written statement, obtain a
18 written acknowledgment from any individual who is going to receive complementary
19 and alternative health services under par. (d).

20 (4) (a) If the department is notified that a person is violating this section the
21 department shall contact the alleged violator, determine if a violation has occurred,
22 and attempt to bring the alleged violator into compliance with this section.

23 (b) If the department fails to bring the alleged violator into compliance with this
24 section under par. (a) *does not comply with sub. (3) in a reasonable amount of time, as determined by the department* the department may serve a notice on the person ordering the
25 person to cease violating this section. The order shall be served in the manner

Sub. (3)

sub. (3)

sub. (3)

1 provided for the service of a summons under s. 801.11. The order is subject to judicial
2 review under ch. 227.

3 (c) If the department determines that a person continues to violate ^{sub. (3)} ~~this section~~
4 after being served a notice under par. (b), the department shall serve a notice on the
5 person informing him or her that the department will hold a hearing to determine
6 if the person is violating ^{sub. (3)} ~~this section~~. The department shall serve the notice in the
7 manner provided for the service of a summons under s. 801.11. The department may
8 not hold the hearing sooner than 10 days after service of the notice. The person may
9 present evidence, subpoena witnesses, and be represented by counsel at the hearing.
10 The department shall record the proceedings.

11 (d) Within 30 days after the hearing is held, the department shall issue a
12 decision that includes findings of fact and conclusions of law based on the testimony
13 presented. If the department determines that a person continues to violate ~~this~~
14 ^{sub. (3)} ~~section~~ after being served a notice under par. (b), the department may order the
15 person to pay a forfeiture not to exceed \$5,000. The violator shall be provided a copy
16 of the findings of fact, conclusions of law, and the order to pay the forfeiture. The
17 department's decision and order are subject to judicial review under ch. 227.

18 (e) In addition to the remedy under par. (d), if the department determines that
19 a person continues to violate ^{sub. (3)} ~~this section~~ after being served a notice under par. (b),
20 the department may petition the circuit court for a temporary restraining order or
21 permanent injunction to enjoin the person from violating ^{sub. (3)} ~~this section~~.

22 (5) Any person suffering injury as the result of a ~~violation of this section~~
23 sue for damages and may recover treble the amount of his or her damages, together
24 with costs, including reasonable attorney fees, notwithstanding s. 814.04 (1).

provider of a complementary and alternative health service
doing any of the acts listed in sub. (2)(a) to (f)

****NOTE: Is it your intention that this subsection apply to a person who provides a CAHS and does one of the actions described in sub. (2) (a) to (g)? Or, is it your intent that the sole consequence of the actions described in sub. (2) (a) to (g) is to be subject to the applicable licensing statute? As drafted, it is not clear what is intended by a "violation of this section." I recommend clarifying the phrase "violation of this section" to indicate exactly which actions trigger a person's right to recover treble damages and attorneys fees. This same issue applies to the use of the phrase "violating this section" in sub. (4) and what actions are subject to sanctions by the department.

1

(END)

ANALYSIS INS

Under current law, a person must have a license, certificate, or permit (license) to practice medicine and surgery, 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, barbering or cosmetology, aesthetics, electrology, manicuring, and selling and fitting hearing aids. Additionally, a license is required under current law to practice as a physician assistant or to act as an ambulance service provider.

This bill allows a person who provides a complimentary and alternative health service (CAHS provider) to practice any of the above activities without a license as long as they do not do any of the following:

- 1) Puncture the skin, except by pricking a finger for purposes of blood screening.
- 2) Prescribe or administer X-ray services.
- 3) Prescribe or dispense a prescription drug, a controlled substance, or other device that may only be prescribed or dispensed by a licensed health care provider.
- 4) Perform a chiropractic adjustment or manipulation of joints or a spine.
- 5) Recommend that a patient discontinue treatment that is prescribed by a licensed health care provider.
- 6) Make a specific diagnosis using medical terms that are used in conventional western medicine.

This bill ~~specifies that~~ ^{defines} a complimentary and alternative health service as any health practice or method or healing therapy or modality that is not one of the prohibited acts listed above and that is provided by an individual who is not licensed to provide the health practice, healing therapy, or modality, or method. Under this bill, if a CAHS provider does one of the prohibited acts listed above, he or she is subject to any applicable penalties for unauthorized practice. Additionally, a person who suffers an injury due to a CAHS provider doing one of the prohibited acts, may sue the CAHS provider and may recover treble damages and costs, including attorney fees.

Under this bill, before providing a complementary and alternative health service for a fee, a CAHS provider must provide a consumer with written information that contains the CAHS provider's contact information; the fact that the CAHS provider is not licensed as a health care provider; a description of the complementary and alternative health service that is to be provided; and the CAHS provider's education or other qualifications that relate to the service that is to be provided. The CAHS provider must also obtain written acknowledgment from the consumer that he or she received the required written information and post a similar written statement in a place that is visible to consumers. This bill also requires a CAHS provider to update the required written information to reflect any relevant changes and to obtain a new written acknowledgment from a consumer before performing a complementary and alternative health service after the written information is changed.

X Under ^{the} ~~this~~ bill, a CAHS provider who fails to provide a consumer with the required written information or fails to obtain the consumer's written acknowledgment may be subject to a forfeiture. The Department of Health Services may also pursue a temporary restraining order or permanent injunction against the offending CAHS provider.

END ANALYSIS INS

INS. 1-5

~~no #~~ Any health care practice or method or healing therapy or modality that is not prohibited under sub. (2) (a) to (f) and that is provided by an individual who is not a health care provider or who is a health care provider but is not acting under his or her certificate, permit, or license as a health care provider.

END INS. 1-5

INS. 4-8

~~no #~~ Makes a specific diagnosis using a medical term that is commonly used and understood in conventional western medicine.

END INS. 4-8

Parisi, Lori

From: Knepp, Fern
Sent: Tuesday, October 25, 2011 4:12 PM
To: Parisi, Lori
Subject: FW: definition of conventional medical diagnosis

Please jacket LRB -2331 for Moulton's office.

Thank you,
Fern

From: Duerkop, Nathan
Sent: Tuesday, October 25, 2011 4:10 PM
To: Knepp, Fern
Subject: RE: definition of conventional medical diagnosis

Yes please!

From: Knepp, Fern
Sent: Tuesday, October 25, 2011 2:02 PM
To: Duerkop, Nathan
Subject: RE: definition of conventional medical diagnosis

I don't recall a request to have the bill jacketed but those requests don't always go through me. Our computer system indicates that it has not been jacketed. Would you like to have it jacketed?

Fern

From: Duerkop, Nathan
Sent: Tuesday, October 25, 2011 2:00 PM
To: Knepp, Fern
Subject: RE: definition of conventional medical diagnosis

Hi Fern,

I realized I don't have the jacketed version of LRB2331 "health freedom" in our office. Do you know if I ever requested it?
Thanks,

Nathan

From: Knepp, Fern
Sent: Thursday, September 08, 2011 10:55 AM
To: Duerkop, Nathan
Subject: RE: definition of conventional medical diagnosis

Yes, that is how I will draft the next version.

Thanks,
Fern

From: Duerkop, Nathan
Sent: Thursday, September 08, 2011 10:53 AM