



2011 SENATE BILL 280

November 4, 2011 - Introduced by Senators MOULTON, LASEE, GALLOWAY and GROTHMAN, cosponsored by Representatives RIPP, WILLIAMS, VAN ROY and RIVARD. Referred to Committee on Health.

- 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

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.

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This bill defines a complimentary and alternative health service as any health care 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 care 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.

Under the 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.

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

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 any health care
5 practice or method or healing therapy or modality that is not prohibited under sub.

6 (2) (a) to (f) and that is provided by an individual who is not a health care provider

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1 or who is a health care provider but is not acting under his or her certificate, permit,
2 or license as a health care provider.

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

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

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

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

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

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

10 **(2)** Notwithstanding ss. 256.15 (2), 440.982 (1), 441.06 (4), 441.15 (2), 446.02
11 (1), 447.03 (1) and (2), 448.03 (1) (a), (b), and (c) and (1m), 448.51 (1), 448.61, 448.961
12 (1) and (2), 449.02 (1), 450.03 (1), 451.04 (1), 454.04 (1), 455.02 (1m), 457.04 (4), (5),
13 (6), and (7), 459.02 (1), and 459.24 (1), a person who provides a complementary and
14 alternative health service does not violate s. 256.15 (2), 440.982 (1), 441.06 (4),
15 441.15 (2), 446.02 (1), 447.03 (1) and (2), 448.03 (1) (a), (b), and (c) and (1m), 448.51
16 (1), 448.61, 448.961 (1) and (2), 449.02 (1), 450.03 (1), 451.04 (1), 454.04 (1), 455.02
17 (1m), 457.04 (4), (5), (6), and (7), 459.02 (1), or 459.24 (1) unless the person providing
18 the complementary and alternative health service does any of the following:

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

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

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

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

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

4 (f) Makes a specific diagnosis using a medical term that is commonly used and
5 understood in conventional western medicine. None of the following are prohibited
6 under this paragraph:

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

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

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

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

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

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

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

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

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

4 4. A description of the complementary and alternative health service that the
5 person proposes to provide to the individual.

6 5. Any education, training, experience, credentials, or other qualifications the
7 person has with respect to the complementary and alternative health service that the
8 person proposes to provide to the individual.

9 (b) Post in a location that is readily visible to an individual who is going to
10 receive a complementary and alternative health service, a written statement,
11 printed in not less than 12-point boldface type, that contains the information in par.
12 (a) 1., 2., 3., and 5. and a description of the complementary and alternative health
13 services that the person generally provides.

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

17 (d) Before the first instance of providing a complementary and alternative
18 health service to an individual, obtain a written acknowledgment from the
19 individual that the individual has been provided the written statement under par.

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

22 1. Provide the individual receiving the service with a copy of the written
23 acknowledgment.

24 2. Keep the acknowledgment confidential.

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

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

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

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

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

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

14 (4) (a) If the department is notified that a person is violating sub. (3), the
15 department shall contact the alleged violator, determine if a violation has occurred,
16 and attempt to bring the alleged violator into compliance with sub. (3).

17 (b) If the alleged violator does not comply with sub. (3) in a reasonable amount
18 of time, as determined by the department, the department may serve a notice on the
19 person ordering the person to cease violating sub. (3). The order shall be served in
20 the manner provided for the service of a summons under s. 801.11. The order is
21 subject to judicial review under ch. 227.

22 (c) If the department determines that a person continues to violate sub. (3) after
23 being served a notice under par. (b), the department shall serve a notice on the person
24 informing him or her that the department will hold a hearing to determine if the
25 person is violating sub. (3). The department shall serve the notice in the manner

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1 provided for the service of a summons under s. 801.11. The department may not hold
2 the hearing sooner than 10 days after service of the notice. The person may present
3 evidence, subpoena witnesses, and be represented by counsel at the hearing. The
4 department shall record the proceedings.

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

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

16 (5) Any person suffering injury as the result of a provider of a complementary
17 and alternative health service doing any of the acts listed in sub. (2) (a) to (f) may sue
18 for damages and may recover treble the amount of his or her damages, together with
19 costs, including reasonable attorney fees, notwithstanding s. 814.04 (1).

20 (END)