State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-3599/1
KP:amn&ahe

2017 BILL

1 AN ACT ***to create*** chapter 461 of the statutes; **relating to:** providing
2 complementary and alternative health care practitioners with exemptions
3 from practice protection laws, requirements and prohibitions for individuals
4 who provide complementary and alternative health care services, and
5 providing a penalty.

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, certifications, and other credentials if they comply with provisions in the bill; and 3) provides the Department of Safety and Professional Services with authority to investigate and take action against a CAHC practitioner for violating a provision in the bill.

Under current law, DSPS, in conjunction with a number of credentialing boards attached to DSPS, regulates and provides for the credentialing of various types of health-care professions. Current law contains numerous prohibitions against engaging in certain health-care related practices and against using titles associated with certain health-care related professions without a required credential.

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, before

first providing CAHC services to the client, certain information in a plainly worded written statement, including the following: 1) information about the CAHC practitioner; 2) a notice explaining that the CAHC practitioner is not practicing under a health–care related credential granted by the state; 3) information about the nature of the service to be provided; and 4) a list of any degrees, training, experience, or other qualification that the CAHC practitioner has.

The bill requires a CAHC practitioner, before providing CAHC services to a client, to obtain a written and signed acknowledgement from the client stating that the client has received the information required to be provided. The bill requires the CAHC practitioner to provide a copy of the acknowledgement to the client and to retain a copy of it for at least two years.

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 certain felonies and has not completed his or her sentence; or if the person is an individual found incompetent by a court.

The bill also prohibits a CAHC practitioner from taking other specific actions, including the following: 1) taking certain actions with respect to prescription drugs; 2) recommending the discontinuation of treatment that is prescribed by a health care professional; 3) making a diagnosis of a medical disease; or 4) holding himself or herself out as a credentialed health care professional without a credential.

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, massage or bodywork therapy, 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.

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.** Chapter 461 of the statutes is created to read:

2 **CHAPTER 461**

COMPLEMENTARY AND ALTERNATIVE
HEALTH CARE PRACTICES

461.01 Definitions. In this chapter:

(1) "Client" means an individual who receives or seeks to receive services from a complementary and alternative health care practitioner.

(2) "Complementary and alternative health care practitioner" means an individual, other than a health care professional acting within the scope of his or her practice, who provides or offers to provide complementary and alternative health care services to a client in exchange for compensation or holds himself or herself out to the public as a provider of complementary and alternative health care services.

(3) "Complementary and alternative health care service" means a health care practice or method of healing therapy or modality other than one that a complementary and alternative health care practitioner is prohibited from providing under s. 461.03 (1).

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

(5) "Credential" has the meaning given in s. 440.01 (2) (a).

(6) "Dangerous drug" means any of the following:

(a) A prescription drug, as defined in s. 450.01 (20).

(b) A drug that is required by federal law to be labeled as a drug that may only be prescribed to an animal.

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

461.02 Exemptions from requirements to hold credentials. Notwithstanding ss. 256.15 (2), 440.982 (1), 441.06 (4), 441.15 (2), 446.02 (1), 447.03

(1) and (2), 448.03 (1) (a), (b), and (c) and (1m), 448.51 (1), 448.61, 448.76, 448.961 (1) and (2), 449.02 (1), 450.03 (1), 451.04 (1), 454.04 (1), 455.02 (1m), 457.04 (4), (5), (6), and (7), 459.02 (1), 459.24 (1), and 460.02, a complementary and alternative health care practitioner does not violate any of the prohibitions against engaging in a practice without a credential under s. 256.15 (2), 440.982 (1), 441.06 (4), 441.15 (2), 446.02 (1), 447.03 (1) or (2), 448.03 (1) (a), (b), or (c) or (1m), 448.51 (1), 448.61, 448.76, 448.961 (1) or (2), 449.02 (1), 450.03 (1), 451.04 (1), 454.04 (1), 455.02 (1m), 457.04 (4), (5), (6), or (7), 459.02 (1), 459.24 (1), or 460.02 and may provide complementary and alternative health care services unless the complementary and alternative health care practitioner violates s. 461.03 or 461.04.

461.03 Prohibitions. (1) A complementary and alternative health care practitioner may not do any of the following:

(a) Perform surgery.

(b) Set fractures.

(c) Puncture the skin, except by pricking a finger for purposes of blood screening.

(d) Prescribe or administer X–ray services.

(e) Prescribe or administer a dangerous drug, controlled substance, or device, as defined in s. 450.01 (6), that may be prescribed or administered only by a health care professional.

(f) Perform a chiropractic adjustment or manipulation of joints or a spine.

(g) Hold out, state, or imply to a person that he or she is a health care professional.

(h) Recommend to a client that he or she discontinue current medical treatment that is prescribed by a health care professional.

(i) Make a diagnosis of a medical disease.

(2) A complementary and alternative health care practitioner may not do any of the following:

(a) Engage in any of the following:

1. Sexual contact, as defined in s. 939.22 (34), with a client.

2. Contact with a client that may be reasonably interpreted by the client as sexual.

3. Verbal behavior that is seductive or sexually demeaning to a client.

4. Sexual exploitation of a client or former client.

(b) Falsely advertise or provide false information about the complementary and alternative health care practitioner's degree, training, experience, or other qualification or about a complementary and alternative health care service.

(c) Violate a law relating to a dangerous drug or a controlled substance.

(d) Release a client's records or information about the client's transactions unless the release is authorized by the client in writing or otherwise provided by law.

(e) Give or receive, directly or indirectly, to or from any other person any fee, commission, rebate, or other form of compensation or anything of value for sending, referring, or otherwise inducing a person to communicate with a complementary and alternative health care practitioner in a professional capacity, or for any complementary and alternative health care service not actually rendered personally by the complementary and alternative health care practitioner.

(3) No person may act as a complementary and alternative health care practitioner if any of the following applies:

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

(b) The person was convicted of a felony against a person and has not completed his or her sentence, including any probation, parole, or extended supervision.

(c) The person was convicted of a felony, the circumstances of which relate to providing health care.

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

461.04 Required disclosures. (1) A complementary and alternative health care practitioner shall provide to a client all of the following:

(a) Reasonable notice of a change to complementary and alternative health care services provided.

(b) Reasonable notice of a change to a charge for a complementary and alternative health care service.

(c) Complete and current information concerning the complementary and alternative health care practitioner's assessment of the client and the recommended complementary and alternative health care service that is to be provided, including the expected duration of the service and access to the client's records and written information contained in the client's records.

(2) A complementary and alternative health care practitioner shall, before providing a complementary and alternative health care service, disclose to a client in a plainly worded written statement all of the following:

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

(b) The fact that the complementary and alternative health care practitioner is not practicing under a health care license, certification, or registration granted by this state.

(c) The nature of the complementary and alternative health care service to be provided.

(d) A list of any degree, training, experience, or other qualification the complementary and alternative health care practitioner has or holds regarding the complementary and alternative health care service to be provided.

(e) The complementary and alternative health care practitioner's fees per unit of service and the method of billing for such fees.

(f) A statement that the client has a right to reasonable notice of a change to complementary and alternative health care services provided or to a charge for a complementary and alternative health care service.

(g) A statement that the client has the right to complete and current information concerning the complementary and alternative health care practitioner's assessment and recommended complementary and alternative health care service that is to be provided, including the expected duration of the service to be provided and the client's right to be allowed access to the client's records and written information in the client's records.

(h) A statement that the complementary and alternative health care practitioner may not release a client's records or information about the client's transactions unless the release is authorized by the client in writing or otherwise provided by law.

(i) A statement that the client has a right to coordinated transfer if there is a change in the provider of complementary and alternative health care services.

(j) The name, address, and telephone number of the department and a statement that the client may file a complaint with the department regarding conduct that violates this chapter.

(3) A complementary and alternative health care practitioner shall display a written notice containing all of the information that is required under sub. (1) in a prominent location where complementary and alternative health care services are provided. The notice shall be written in not less than 12–point font size, and the complementary and alternative health care provider shall make a reasonable accommodation to disclose the information in the notice to a client who cannot read, who has a communication impairment, or who does not read or speak English or the same language as the complementary and alternative health care practitioner.

(4) (a) A client shall sign a written acknowledgment stating that the client has been provided with the information described under subs. (1) and (2) before a complementary and alternative health care practitioner may provide a complementary and alternative health care service to the client for the first time.

(b) If the information that is described under sub. (1) changes after a client signs the written acknowledgment under par. (a), the client shall sign another written acknowledgement stating that the client has been provided with the up–to–date information described under subs. (1) and (2) before a complementary and alternative health care practitioner may provide a complementary and alternative health care service to the client for the first time after the information changes.

(c) The complementary and alternative health care practitioner shall provide a client with a copy of a signed acknowledgement under par. (a) or (b) and shall maintain each signed acknowledgement for at least 2 years.

(5) If a complementary and alternative health care practitioner does not possess a credential, the complementary and alternative health care practitioner shall in each advertisement made for a complementary and alternative health care

service disclose that he or she has not been granted a license to practice a licensed health profession in this state.

(6) Subsections (2) to (5) do not apply to an employee of a licensed health care facility or an employee of or a person acting pursuant to the direction of a licensed health professional practicing within the scope of his or her practice.

461.05 Applicability. (1) Nothing in this chapter applies to, controls, or prevents any acts or persons that would otherwise already be exempt from professional practice acts.

(2) Nothing in this chapter limits the right of a person to seek relief for negligent or willful harm, or any other relief, against a complementary and alternative health care practitioner.

461.06 Enforcement. (1) If it appears upon the complaint of any person to the department that a complementary and alternative health care practitioner is violating this chapter, the department may investigate the alleged violation.

(2) If the department determines that a complementary and alternative health care practitioner has violated this chapter, the department may do any of the following:

(a) Provide a written notice to the complementary and alternative health care practitioner that requests that the complementary and alternative health care practitioner correct the activity that violates this chapter.

(b) For a violation of this chapter other than a violation of s. 461.04, issue a cease and desist order that prohibits the complementary and alternative health care practitioner from engaging in conduct that violates chs. 440 to 480.

(c) For a violation of this chapter other than a violation of s. 461.04, assess against the complementary and alternative health care practitioner a forfeiture of not more than $10,000 for each violation.

SECTION 2. Effective date.

(1) This act takes effect on July 1, 2018.

(END)