

A Bill

By:
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For An Act To Be Entitled

AN ACT TO PROVIDE A CONSUMER HEALTHCARE FREEDOM OF CHOICE; TO BROADEN THE RANGE OF HEALTHCARE OPTIONS; TO PROVIDE FOR THE PROTECTION OF THE PUBLIC; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO PROVIDE HEALTHCARE FREEDOM OF CHOICE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 17 is amended to add an additional chapter to read as follows:

17- -101. Title.

This chapter shall be known and may be cited as the "Healthcare Freedom Act".

17- -102. Findings and purpose.

(a) The General Assembly finds that:

(1) A significant number of consumers in this state are contracting for healthcare services from unlicensed noninvasive, natural, alternative, or complementary healthcare providers;

(2) The use of noninvasive, natural, alternative, or complementary healthcare modalities by an unlicensed provider of such modalities does not pose a known substantial risk to the health and safety of consumers;

(3) A consumer has the right to contract for healthcare services of his or her choice.

(b) This chapter is intended to:

(1) Protect the consumer by establishing standards of service for an unlicensed noninvasive, natural, alternative, or complementary healthcare provider;

(2) Provide the consumer with legal remedies that will insure accountability of an unlicensed noninvasive, natural, alternative, or complementary healthcare provider;

(3) Allow a consumer the right to choose the provider and modality of healthcare he or she will receive;

(4) Extend healthcare options to consumers;

(5) Allow a consumer to contract with an unlicensed noninvasive, natural, alternative, or complementary healthcare provider;

(6) Allow an unlicensed noninvasive, natural, alternative,

or complementary healthcare provider to render noninvasive healthcare services to a consumer; and

(7) Afford a licensed healthcare practitioner the right to use noninvasive natural, alternative, or complementary healthcare modalities without reprisal.

17- -103. Definitions.

As used in this chapter:

(1) "Allopathic" means conventional western medicine as practiced by a medical doctor who is licensed by the Arkansas State Medical Board;

(2) "Healthcare consumer" means a person who contracts with a licensed practitioner or with an unlicensed provider for healthcare services;

(3) "Homeostatic process" means the body's own self-healing mechanisms;

(4) "Licensed practitioner" means a person licensed by a board of the healing arts;

(5) "Natural, alternative, or complementary healthcare practices" means the broad domain of healing modalities that are nonmedical and noninvasive in nature that attempt to restore health through balancing, harmonizing, or promoting the body's own homeostatic process;

(6) "Noninvasive" means not breaking the skin;

(7) "Traditional naturopathy" means an alternative form of nondiagnostic, noninvasive, nonpharmaceutical healthcare that attempts to restore the entire body to a healthful state through counseling and natural healthcare by using such modalities as detoxification, purification, balancing, and strengthening of the entire body in an attempt to enhance the body's own natural healing ability; and

(8) "Unlicensed provider" means a person who:

(A) Provides noninvasive, natural, alternative, or complementary healthcare services;

(B) Uses modalities to restore health that are not medical in nature, that do not break the skin, and that are not known to be substantially harmful to the body; and

(C) Offers healthcare services for which there is no licensing offered by a board of the healing arts.

17- -104. Applicability.

(a) This chapter applies to licensed practitioners and to unlicensed providers who use noninvasive, natural, alternative, or complementary healthcare modalities that are not a part of allopathic medicine and include, but are not limited to, the following:

(1) Alternative services such as traditional naturopathy, culturally traditional healing practices, folk practices, homeopathy, aroma therapy, hypnotism, and Rife therapy;

(2) Mind-body interventions that include a variety of techniques and practices relating to meditation, prayer, mental healing, art, music, and dance that enhance the mind's capacity to affect bodily function and symptoms;

(3) Biologically-based therapies that use substances found in nature such as herbs, foods, minerals, and vitamins including dietary supplements and herbal products;

(4) Body-based methods that include movement of one (1) or more parts of the body;

(5) Energy therapies that manipulate biofields by placing the hands in or through these fields; and

(6) Bioelectromagnetic-based therapies that include pulsed fields, magnetic fields, alternating current fields, or direct current fields.

(b) Service provided under this chapter by an unlicensed provider do not constitute the practice of medicine.

(c) The provisions of Arkansas Code §§ 17-80-109 and 17-95-202 do not apply to unlicensed providers who render services under this chapter.

(d) Except as provided in this chapter, an unlicensed provider is not in violation of any law of this state for providing noninvasive natural, alternative, or complementary healthcare service.

(e) An unlicensed provider practicing under this chapter is not eligible for licensure by any board of the healing arts merely by the fact of practice under this chapter.

(f) An unlicensed provider is not subject to the regulatory authority of any board of the healing arts.

(g) If a minor child does not respond to an alternative treatment modality, the use of the modality by a parent or a guardian of the minor child in no way affords any special protection from possible charges of maltreatment or neglect.

17- -105. Consumer rights.

A consumer seeking healthcare services under this chapter shall have the following rights:

(1) For a person eighteen (18) years of age or older, to evaluate, determine, and contract for the healthcare modality of his or her choice either from a licensed practitioner or from an unlicensed provider;

(2) For a parent or a legal guardian of a child under eighteen (18) years of age, an individual holding power of attorney over the healthcare of another person, or an individual designated to make healthcare decisions for another individual, to evaluate, determine, and contract for the modality of healthcare of his or her choice with either a licensed practitioner or with an unlicensed provider for healthcare services for the minor or the person in his or her care;

(3) To access and use for health purposes:

(A) Whole, natural, organic foods, and dietary supplements, as defined in Public Law 103-417, Dietary Supplement Health and Education Act of 1994, as in effect January 1, 2007, in strengths above the recommended daily allowances;

(B) Herbs for cooking;

(C) Herbs for health purposes; and

(D) Other over-the-counter natural health products;

(4) To receive and use educational materials concerning the historical use and benefits of noninvasive, natural, alternative, and complementary healthcare practices;

(5) To maintain the confidentiality of his or her condition, services received, and records in keeping with any state and federal laws pertaining to an individual's right to privacy concerning

healthcare; and

(6) To file a complaint or a civil suit against a licensed practitioner or an unlicensed provider who renders services under this chapter.

17- -106. Provider and practitioner rights.

(a) An unlicensed provider who is twenty-one (21) years of age or older may contract with a consumer to provide service in noninvasive, natural, alternative, or complementary healthcare modalities, or in any other noninvasive healing modality that is not licensed by this state.

(b) An unlicensed provider shall be afforded the protections of § 17-95-101, the "Good Samaritan" law.

(c) An unlicensed provider may refuse counsel or service to anyone the provider believes should seek advice or treatment from a licensed practitioner.

(d) A licensed practitioner may not be denied a license or renewal of a license to practice by a state board solely because the practitioner provides noninvasive natural, alternative, or complementary healthcare service under this chapter.

17- -107. Provider limitations.

An unlicensed provider may not:

(1) Use any title of a practitioner licensed under Title 17;

(2) Hold out, state, indicate, advertise, or imply to a person that he or she is a doctor, physician, or surgeon;

(3) Recommend the discontinuance of prescription drugs or controlled substances prescribed by a licensed practitioner;

(4) Perform:

(A) Surgery;

(B) Any procedure that punctures the skin; or

(C) Any procedure that is known or has been proven to be substantially harmful to the body;

(5) Administer, dispense, or recommend any product that is known or has been proven to be substantially harmful to the body in the dosages recommended;

(6) Provide:

(A) Services to a child under eighteen (18) years of age unless the child is accompanied by a parent, a guardian, or a person holding a healthcare power of attorney;

(B) Services if no informed consent agreement has been signed by the consumer; or

(C) A medical diagnosis;

(7) Administer or recommend an X-ray;

(8) Prescribe, recommend, or administer a prescription drug or a controlled substance;

(9) Set a fracture;

(10) Engage in the practice of dentistry;

(11) Perform any chiropractic manipulation or adjustment of the joints;

(12) Practice massage for remuneration;

(13) Deliver an infant, except under § 17-95-101;

(14) Engage in the practice of:

- (A) Acupuncture;
- (B) Optometry;
- (C) Physical therapy;
- (D) Podiatry;
- (E) Osteopathy;
- (F) Nursing;
- (G) Veterinary medicine;
- (H) Allopathic medicine; or
- (I) Any other healing art licensed in Arkansas;

(15) Engage in:

- (A) Any contact with a consumer that may be reasonably interpreted by the consumer as sexual;
- (B) Sexual exploitation of a consumer; or
- (C) Healthcare service while intoxicated or under the influence of a controlled substance; or

(16) Reveal confidential information about a consumer, except as required or permitted by law.

17- -108. Provider responsibilities.

(a) (1) An unlicensed provider shall maintain confidential records for each consumer for a period of at least three (3) years.

(2) The records shall include:

- (A) The date on which service is provided;
- (B) The service provided;
- (C) The cost of service;
- (D) The provider's assessment; and
- (E) A signed, witnessed, and dated informed consent agreement.

(b) An unlicensed provider shall provide each consumer with an informed consent agreement, written in plain language, that contains the following:

(1) A statement that:

- (A) The unlicensed provider is not a licensed doctor, physician, or surgeon in the State of Arkansas;
- (B) The service to be rendered is an alternative or is complementary to healthcare service that is licensed by the state;
- (C) The consumer should first seek advice from a licensed practitioner for the treatment of any specific medical condition;

(D) The service provided by an unlicensed provider is not designed to replace the recommendations of a licensed practitioner; and

(E) Many natural noninvasive therapies and substances used by the provider are neither scientifically proven effective nor approved by the United States Food and Drug Administration;

(2) A statement of the nature of the service to be provided;

(3) A list of provider services and fees;

(4) Information on the payment policy for services rendered;

(5) A listing of the provider's degrees, training, experience, credentials, certification, or other qualifications as a healthcare provider;

(6) A confirmation statement that the consumer has read,

understands, and has received a copy of the informed consent agreement;

- (7) The date;
- (8) The signature of the consumer; and
- (9) The signature of a witness.

(c) An unlicensed provider who advertises shall disclose in the advertisement that he or she is not licensed by the state.

(d) An unlicensed provider shall refuse counsel or service to a consumer that the provider believes should seek advice or treatment from a licensed practitioner.

(e) (1) An unlicensed provider shall post his or her credentials in a conspicuous public place in his or her business facility.

(2) Credentials from a college, a school, a state, or a certification board that include the title "Doctor" may be posted in the business facility.

17- -109. Scope of this chapter.

(a) This chapter does not:

- (1) Affect the scope of practice of any licensed practitioner;
- (2) Limit the right of any person to seek relief for negligence or any other civil remedy against a person providing services under this chapter; or
- (3) Exempt any practitioner licensed by any state health board or commission from the laws governing that practitioner's license.

(b) This chapter does not apply to a person or a group:

- (1) Performing the healing practice of any religion or church, with or without compensation;
 - (2) Practicing spiritual healing, with or without compensation; or
 - (3) Domestically administering a family remedy.
- (4) Exempted under §§ 17-95-203(4), 17-87-103(5), (6), or 20-8-101(6) (B) (viii), (6) (C).

(c) This chapter does not control, prevent, or restrict:

(1) Practicing, servicing, marketing, or distributing food products, including dietary supplements as defined in Public Law 103-417, Dietary Supplement Health and Education Act of 1994, as in effect January 1, 2007;

(2) Informing a consumer about products under subdivision (c) (1) of this section; or

(3) Explaining the use of products under subdivision (c) (1) of this section.

(d) An unlicensed provider who offers health counseling as a free service to purchasers of health products shall be exempt from §§

17- -107 (6) (B) and 17- -108.

17- -110. Cities and counties.

(a) No town, city, or county government may:

(1) Impose restrictions on the authority and rights provided under this chapter; or

(2) Add to the requirements of this chapter.

17- -111. Penalty.

(a) A parent, guardian, person holding healthcare power of attorney, an individual designated to make healthcare decisions for another individual, or a consumer receiving healthcare services may file a complaint in a court of competent jurisdiction in the city or county in which the provider resides or practices against an unlicensed provider who provided a service and is accused of violation of any of the following:

- (1) Malpractice or gross incompetence;
- (2) Fraudulent advertising; or
- (3) Any other act in violation of this chapter.

(b) The prosecuting attorney of the county in which the violation occurs may file charges against the unlicensed provider.

(c) (1) A violation of this chapter is a misdemeanor.

(2) Upon a finding of guilty or entry of a plea of guilty or nolo contendere, the unlicensed provider may be sentenced to:

(A) Public service of not less than forty (40) hours nor more than three hundred twenty (320) hours;

(B) A fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500);

(C) Imprisonment in the county jail for a period of not less than one (1) month nor more than eleven (11) months; or

(D) Any combination of public service, fine, and imprisonment under subdivisions (2) (A) through (C) of this section.

(3) A cease and desist order may be issued to repeat offenders.

(d) Upon a finding of guilty, a plea of guilty or nolo contendere, and sentencing by the judge, the clerk of the court shall provide the following information to the Director of the Department of Health and Human Services:

- (1) The defendant's name;
- (2) The defendant's county of residence;
- (3) The names of counties where the defendant practices;
- (4) The date of violation;
- (5) The charge;
- (6) The date of sentencing; and
- (7) The sentence.

(e) The director shall retain for public review all records of defendants found guilty of violations of this chapter.

17- -112. Health Care Freedom Fund.

(a) There is created on the books of the Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State a special revenue fund to be known as the "Healthcare Freedom Fund".

(b) (1) All moneys collected under § 17- -111 shall be deposited into the State Treasury to the credit of the fund as special revenues.

(2) The fund shall also consist of any other revenues as may be authorized by law.

(c) The fund shall be used by the Department of Health and Human Services to inform healthcare consumers about the benefits of noninvasive, natural, alternative, and complementary healthcare.

SECTION 2. EMERGENCY CLAUSE.

It is found and determined by the General Assembly of the State of Arkansas that based upon a comprehensive report by the National Institute of Medicine and other studies, including a study published by the New England Journal of Medicine, it is evident that millions of consumers are presently receiving a substantial volume of healthcare services from unlicensed noninvasive, natural, alternative, or complementary healthcare providers. Those studies further indicate that consumers using services provided by unlicensed providers represent a wide range of age, ethnic, socioeconomic, educational, and other demographic categories. Notwithstanding the widespread consumer use of services provided by unlicensed providers, the provision of many of these services may be in technical violation of the Arkansas Medical Practices Act and other healing arts licensure acts. Unlicensed providers could therefore be subject to fines, penalties, and the restriction of their services under the Arkansas Medical Practices Act and other healing arts licensure acts even though there is no demonstration that their services are substantially harmful to the consumer. The General Assembly intends, by enactment of this act, to allow access by consumers to services of unlicensed providers who are not providing services that require medical training and medical credentials. The General Assembly further finds that these unlicensed nonmedical and noninvasive, natural, alternative, and complementary healthcare services do not pose a substantial known risk to the health and safety of Arkansas consumers, and that restricting access to these services due to technical violations of the Arkansas Medical Practices Act and other healing arts licensure acts is not warranted. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

- (1) The date of its approval by the Governor;
- (2) If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill; or
- (3) If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.

