

BILL ANALYSIS

Senate Research Center
82R9045 SLB-F

S.B. 1084
By: Wentworth
Health & Human Services
4/25/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1084 provides a safe harbor to unlicensed practitioners who provide complementary and alternative health care services to an estimated 6.5 million Texans. Complementary and alternative health care services means the broad array of complementary and alternative healing methods, healing therapies, treatments, and services provided by persons not licensed by an occupational regulatory agency of this state. A person who provides complementary and alternative health care services under this legislation would not be practicing medicine as defined in Subtitle B (Physicians), Occupations Code.

There is an array of prohibited acts that a practitioner under S.B. 1084 cannot provide, such as surgery, x-ray radiation, prescription of legend and dangerous drugs, diagnosis of conventional medical disease, chiropractic adjustments, nor advertise or imply they are a physician or medical doctor.

This bill requires that before providing any services, a practitioner must provide the client a written statement disclosing that they are not licensed as a physician, and explaining what services are offered, what qualifications the practitioner has, and what the practitioner is prohibited from providing.

As proposed, S.B. 1084 amends current law relating to regulations on certain complementary and alternative health care services.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle M, Title 3, Occupations Code, by adding Chapter 704, as follows:

CHAPTER 704. COMPLEMENTARY AND ALTERNATIVE HEALTH CARE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 704.001. COMPLEMENTARY AND ALTERNATIVE HEALTH CARE SERVICES. (a) Defines "complementary and alternative health care services."

(b) Provides that complementary and alternative health care services include:

- (1) acupressure;
- (2) anthroposophy;
- (3) aromatherapy;
- (4) Ayurveda;

- (5) cranial sacral therapy;
- (6) culturally traditional healing practices;
- (7) detoxification practices and therapies;
- (8) energetic healing;
- (9) polarity therapy;
- (10) folk practices;
- (11) healing practices using food, food supplements, nutrients, and the physical forces of heat, cold, water, touch, and light;
- (12) Gerson therapy;
- (13) colostrum therapy;
- (14) healing touch;
- (15) herbology or herbalism;
- (16) homeopathy;
- (17) nondiagnostic iridology;
- (18) bodywork;
- (19) meditation;
- (20) mind-body healing practices;
- (21) naturopathy;
- (22) noninvasive instrumentalities; and
- (23) traditional Oriental practices, such as qigong energy healing.

Sec. 704.002. GENERAL APPLICABILITY. (a) Provides that this chapter applies to a person who provides a complementary and alternative health care service.

(b) Provides that this chapter does not:

- (1) limit the right of a person to obtain a civil remedy, including a remedy for negligence, against a person who provides a complementary and alternative health care service; or
- (2) control, prevent, or restrict a person from marketing or distributing a lawful food product, including a dietary supplement.

Sec. 704.003. APPLICABILITY OF OTHER LAW. Provides that, notwithstanding any other law, a person who provides complementary and alternative health care services in compliance with Sections 704.051 and 704.052 is not practicing medicine under Subtitle B (Physicians) and does not violate Subtitle B or another law of this state that requires a person to obtain an occupational license, registration, or certificate.

[Reserves Sections 704.004-704.050 for expansion.]

SUBCHAPTER B. REGULATION OF COMPLEMENTARY AND ALTERNATIVE
HEALTH CARE SERVICES

Sec. 704.051. PROHIBITED ACTS. Prohibits a person in connection with providing a complementary and alternative health care service from:

- (1) conducting surgery or any other procedure that punctures the skin or that harmfully invades the body, other than pricking a finger to obtain a small amount of blood for screening purposes;
- (2) administering to or prescribe for another person x-ray radiation;
- (3) administering to or prescribe for another person legend drugs, dangerous drugs, or controlled substances;
- (4) recommending that a person discontinue medical care or a medical treatment prescribed by a licensed health care practitioner;
- (5) providing a conventional medical disease diagnosis;
- (6) performing a chiropractic adjustment of an articulation of the spine; or
- (7) representing, stating, indicating, advertising, or implying that the person is a physician, surgeon, or medical doctor or that the person is licensed, certified, or registered by this state to practice a health care profession.

Sec. 704.052. REQUIRED DISCLOSURE. (a) Requires a person, before providing a complementary and alternative health care service, to:

- (1) provide to the client a written statement in plain language:
 - (A) stating that the person is not licensed by this state as a health care or healing arts practitioner;
 - (B) describing the nature of the services to be provided and the theory of treatment on which the services are based;
 - (C) detailing the education, training, experience, or other qualifications of the person with regard to the service being provided and stating whether any degree disclosed by the person is recognized by this state; and
 - (D) containing a statement including certain required language in bold print;
 - (2) obtain a signed acknowledgment from the client that the client has been provided a copy of the statement required by Subdivision (1); and
 - (3) provide a copy of the statement and signed acknowledgment to the client.
- (b) Requires the complementary and alternative health care service provider to retain a copy of the signed acknowledgment under Subsection (a)(2) until the second anniversary of the date the statement is signed.

Sec. 704.053. REBUTTABLE PRESUMPTION. Provides that it is a rebuttable presumption that a person who provides the statement required by Section 704.052(a)(1) is not practicing medicine under Subtitle B.

Sec. 704.054. DEFENSE. Provides that it is a defense to prosecution under Section 32.52 (Fraudulent, Substandard, or Fictitious Degree), Penal Code, that the person:

(1) disclosed information to a client about a degree lawfully obtained by the person from a school inside or outside the United States; and

(2) stated whether the degree is recognized by this state as required by Section 704.052(a)(1)(C).

SECTION 2. Effective date: upon passage or September 1, 2011.