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Bill Analysis
Legislative Service Commission

S.B. 98

126th General Assembly
(As Introduced)

Sens. Clancy, Brady

BILL SUMMARY

- Creates the Ohio Consumer Health Freedom Act.
- Permits individuals to provide complimentary or alternative health care services without violating other specified laws if the individual does not engage in specified prohibited activities or fail to comply with the bill's disclosure requirements.
- Specifies disclosure requirements for individuals providing complimentary or alternative health care services.
- Specifies activities an individual providing complimentary or alternative health care services cannot engage in unless the individual is a licensed health care professional.
- Eliminates the authority of the Ohio Board of Dietetics to investigate a person not licensed by the Board unless the individual is using the title "dietitian" without holding a license from the Board.

CONTENT AND OPERATION

Regulation of dietetics

Scope of regulatory authority

(R.C. Chapter 4759.)

Under current law, the Ohio Board of Dietetics administers and enforces Ohio law concerning the practice of dietetics. Current law defines the "practice of dietetics," and therefore the scope of what type of activity the Ohio Board of Dietetics regulates, as any of the following (R.C. 4759.01(A)):

(1) Nutritional assessment to determine nutritional needs and to recommend appropriate nutritional intake, including enteral and parenteral nutrition;

(2) Nutritional counseling or education as components of preventive, curative, and restorative health care;

(3) Development, administration, evaluation, and consultation regarding nutritional care standards.

Under current law, any person who engages in these activities is subject to the Board's regulatory authority.

The bill limits who the Ohio Board of Dietetics regulates. Under the bill, only persons holding a license issued by the Board who engage in the activities above are subject to the Board's regulatory authority.

Restrictions on the practice of dietetics and title protection

(R.C. 4759.02)

Under current law, no person is permitted to practice, offer to practice, or hold out that the person practices dietetics unless the person is licensed by the Ohio Board of Dietetics or otherwise comes within an exception by participating in an academic or pre-professional program, or by holding a limited permit to practice dietetics.

The bill changes current law from a "practice protection" statute to a "title protection" statute. It does this by eliminating restrictions on practicing, offering to practice, or holding oneself out to practice dietetics without a license from the Board and retaining prohibitions on using the title "dietitian" unless the person is licensed by the Board or holds an inactive license. The bill also retains an existing provision that allows a person who is a dietitian registered by the Commission on Dietetic Registration to use the designation "registered dietitian" and the abbreviation "R.D." The bill also eliminates the exceptions allowing students and limited permit holders to practice or offer to practice or hold themselves out to practice dietetics without a license, but these individuals must be licensed to call themselves dietitians.

Current law also prohibits any person, except a person licensed by another board and acting within the scope of that person's practice, from using any title, designation, words, letters, abbreviations, or insignia or combination of any title, designation, words, letters, abbreviations, or insignia tending to indicate that the person is practicing dietetics. The bill eliminates this provision.

Ohio Consumer Health Freedom Act

(R.C. 4783.01 to 4783.05; Section 3(A))

The bill states that it be known as the "Ohio Consumer Health Freedom Act." The bill declares it to be the public policy of the state that the provision of complementary or alternative health care services enhances the health and welfare of the residents of Ohio and that the regulation or licensure of complementary or alternative health care service providers is inappropriate and unnecessary.

The bill defines "complementary or alternative health care service" as the provision of any complementary or alternative health care treatment to a patient by an individual who is not a licensed health care professional. "Complementary or alternative health care treatment" is defined as a method of treating an individual's health condition that is designed to be an alternative to prevailing or conventional methods used to treat the health condition. Complementary or alternative health care treatment may be provided in addition to or in place of other treatment options.

"Licensed health care professional" under the bill means an individual who holds a current, valid license or certificate issued under Ohio law regulating dentists and dental hygienists; nurses; optometrists and dispensing opticians; pharmacists; physician assistants; physicians and limited practitioners; chiropractors; occupational therapists, physical therapists, and athletic trainers; dietitians; acupuncturists; and practitioners of orthotics, prosthetics, or pedorthics.

Use of titles

(R.C. 4783.03(B))

The bill specifies that notwithstanding any provision of the Revised Code, an individual who provides complementary or alternative health care services may refer to the individual's self using a title or qualification conferred on the individual by virtue of degrees, training, experience, credentials, or other qualifications attained by the individual (sec. 4783.03(B)).

Disclosures

(R.C. 4783.04)

The bill requires an individual who is not a licensed health care professional, prior to providing complementary or alternative health care services, to disclose to the recipient of the services in a plainly worded statement the following information:

(1) The nature of the services to be provided and the theory on which the services are based;

(2) The degrees, training, experience, credentials, or other qualifications held by the individual with regard to the services to be provided;

(3) A statement, printed clearly in not less than 11-point font, that reads verbatim:

"I AM NOT LICENSED BY THE STATE OF OHIO AS A HEALTH CARE PROFESSIONAL. THE STATE HAS NOT ADOPTED ANY EDUCATIONAL OR TRAINING REQUIREMENTS FOR UNLICENSED COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICE PROVIDERS."

(4) A statement that describes any agreement or other arrangement between the individual and another provider of complementary or alternative health care services or between the individual and a licensed health care professional whereby the individual derives a financial or other benefit and the nature of any benefit resulting from this agreement or arrangement.

The bill also requires that the individual providing complementary or alternative health care services obtain from the recipient of the services a written acknowledgement that the recipient has been provided the statement described above. The individual must maintain this acknowledgement for at least two years, and provide the recipient a copy of the acknowledgement.

Prohibited activities

(R.C. 4783.03(A))

The bill prohibits any individual other than a licensed health care professional who provides complementary or alternative health care services from doing any of the following:

(1) Performing surgery or any other procedure that punctures the skin;

(2) Performing a chiropractic adjustment of the articulation of the joints or spine of any individual;

(3) Using or recommending any procedure involving ionizing radiation;¹

(4) Willfully providing diagnosis of an allopathic disease;

(5) Willfully providing diagnosis or treatment of a physical or mental health condition of any individual that directly poses to the individual diagnosed or treated a recognizable and imminent risk of significant and discernable physical or mental harm;

(6) Willfully counseling any individual to disregard the instruction or counsel of a licensed health care professional;

(7) Willfully counseling any individual to discontinue use of any dangerous drug, drug, or therapeutic device prescribed to the individual by a licensed health professional authorized to prescribe drugs (see **COMMENT**);

(8) Administering or prescribing any drug or medical oxygen;

(9) Holding out, stating, indicating, advertising, or otherwise implying to any person that the individual is licensed by this state to practice as a health care professional.

Investigations

(R.C. 4783.05)

Notwithstanding any provision of the Revised Code, under the bill an individual who provides complementary or alternative health care services is not considered to have violated a provision of the bill or the laws regulating licensed health care professionals unless the individual commits an act described under "**Prohibited activities**," above or fails to comply with the bill's disclosure requirements (see "**Disclosures**," above).

Under the bill, a board² that receives a complaint against a provider of complementary or alternative health care services who is not licensed by that

¹ "Ionizing radiation" is defined as any electromagnetic or particulate radiation that interacts with atoms to produce ionization in matter, including x-rays, gamma rays, alpha and beta particles, high speed electrons, neutrons, and other nuclear particles (R.C. 4783.03(A)(3) and R.C. 4773.01(C), not in the bill).

² The bill defines "board" as the State Dental Board; Board of Nursing; State Board of Optometry; State Board of Pharmacy; State Medical Board; State Chiropractic Board; Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board; Ohio Board of Dietetics; or State Board of Orthotics, Prosthetics, and Pedorthics (R.C. 4783.05(A)).

board to practice as a licensed health care professional must, if the board determines that the subject matter of the complaint falls under the jurisdiction of another board, refer the complaint to the appropriate board. If the board determines that the subject matter of the complaint falls under the board's jurisdiction, the board must conduct a preliminary investigation of the complaint to determine whether the individual who is the subject of the complaint is alleged to have committed a violation of the acts that are prohibited under specified parts of the bill (see "*Prohibited activities*," above) or failed to comply with the disclosure requirements of the bill. If the preliminary investigation reveals no significant evidence that a violation or failure to comply occurred, the bill prohibits the board from pursuing the matter further. If the preliminary investigation reveals significant evidence that a violation or failure to comply occurred, the board may pursue the matter in accordance with the board's investigative and disciplinary procedures.

Intent of legislation

(Section 3)

The bill states that the General Assembly of the State of Ohio declares, based on the findings of the bill described below, its intent to allow, protect, and encourage the performance, delivery, and public access to complementary or alternative health care services in Ohio, subject only to the limitations and restrictions provided in the bill. The bill asserts that the General Assembly of the State of Ohio finds the following:

(1) Based upon studies, research, and public policy declarations by state governments, including a Proclamation issued by the Governor of Florida, and laws enacted by the states of California, Idaho, Minnesota, and Rhode Island, it is evident that millions of Americans and hundreds of thousands of Ohioans presently receive a substantial amount of their health care from providers of complementary or alternative health care services.

(2) Numerous studies--including a comprehensive report by the National Institutes of Medicine and a study published by the New England Journal of Medicine--demonstrate that individuals who utilize complementary or alternative health care services vary widely in age, ethnicity, socioeconomic status, and other demographic categories.

(3) Notwithstanding the widespread use of complementary or alternative health care services, for Ohioans, access to these services has been hampered and the flow of information about these services inhibited.

(4) Ohio has failed to openly acknowledge the existence of health care therapies and methods that are not suitable for regulation or licensure under the

state's policing power. As a result, the providers of these services, who are not licensed by the state as health care professionals, cannot openly offer their services for fear of fines, penalties, or the restriction of their practice based on charges that such providers are in violation of Ohio's professional licensing laws, notwithstanding that the delivery of health care services by such providers has not been shown to pose a recognizable and imminent risk of significant and discernable harm to the public's health, safety, or welfare.

(5) Ohio's failure to acknowledge complementary or alternative health care services impedes the beneficial exchange of health care information between a complementary or alternative health care service provider and the provider's clients and between a complementary or alternative health care service provider and a licensed health care professional with regard to their mutual patients.

(6) The unregulated practice of complementary or alternative health care services is suitable and desirable for the public health and welfare.

The bill states that the General Assembly acknowledges Ohioans' desire for broader access to complementary or alternative health care therapies. The General Assembly recognizes that public health and welfare will be enhanced by a public policy providing that a profession or occupation is not subject to regulation by the state unless, and then only to the extent that, the profession or occupation has been shown to pose a recognizable and imminent risk of significant and discernable harm to the health, safety, or welfare of the public.

COMMENT

(R.C. 4729.01, not in the bill)

The bill uses terms defined in continuing law as follows:

(1) "Drug" means:

(a) Any article recognized in the United States Pharmacopoeia and National Formulary, or any supplement to them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(b) Any other article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(c) Any article, other than food, intended to affect the structure or any function of the body of humans or animals;



(d) Any article intended for use as a component of any article specified in division (a), (b), or (c), but does not include devices or their components, parts, or accessories.

(2) "Dangerous drugs" means:

(a) Any drug to which either of the following applies: (1) under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, the drug is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without prescription" or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" or any similar restrictive statement, or the drug may be dispensed only upon a prescription, or (2) under Ohio's pure food and drug law (R.C. Chapter 3715.) or controlled substances law (R.C. Chapter 3719.), the drug may be dispensed only upon a prescription.

(b) Any drug that contains a schedule V controlled substance and that is exempt from the Controlled Substances Law or to which that law does not apply.

(c) Any drug intended for administration by injection into the human body other than through a natural orifice of the human body.

(3) "Licensed health professional authorized to prescribe drugs" or "prescriber" means an individual who is authorized by law to prescribe drugs or dangerous drugs or drug therapy related devices in the course of the individual's professional practice, including only the following who are licensed in Ohio: (a) a dentist, (b) a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner who holds a certificate to prescribe, (c) an optometrist who holds a therapeutic pharmaceutical agents certificate, (d) a physician authorized to practice medicine and surgery, osteopathic medicine and surgery, or podiatry, and (e) a veterinarian.

(4) "Prescription" means a written, electronic, or oral order for drugs or combinations or mixtures of drugs to be used by a particular individual or for treating a particular animal, issued by a licensed health professional authorized to prescribe drugs.

HISTORY

ACTION	DATE	JOURNAL ENTRY
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