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*Bill Analysis*  
*Legislative Service Commission*

## **H.B. 148**

127th General Assembly  
(As Introduced)

**Reps. Wachtmann, Fessler, Adams, Hughes, Aslanides, Wolpert, Setzer,  
Peterson, Blessing, J. McGregor**

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### **BILL SUMMARY**

- Creates the Office of Complementary or Alternative Health Care Practices in the Department of Commerce and specifies the Office's duties.
- Allows an individual, regardless of whether the individual is a licensed health care professional, to register with the Office to provide complementary or alternative health care services.
- Specifies requirements that an individual must satisfy in order to register with the Office.
- Specifies disclosure document requirements that a registrant must satisfy.
- Specifies activities in which a registrant under the bill cannot engage unless the registrant is a licensed health care professional acting within the scope of practice of the profession.
- Permits the Office to investigate registrants under the bill and nonregistrants, creates a complaint form to file with the Office regarding registrants and nonregistrants, and specifies procedures for those investigations.
- Specifies disciplinary actions that the Director may take against registrants and nonregistrants.
- Specifies that the bill does not alter the scope of practice of professions currently regulated under Ohio law and does not alter in any way the provisions of laws that prohibit fraud and the exploitation of patients and

that require licensees and certificate holders to practice within their respective standards of care.

- Maintains the current law prohibition against using the title "dietitian" without having the appropriate license but eliminates the prohibition against a person using any other title, designation, words, letters, abbreviation, or insignia or any combination thereof tending to indicate that the person is practicing dietetics.
- Creates the Complementary or Alternative Health Care Services Fund and allows county prosecutors to apply to the Director to receive money from that fund to prosecute individuals who violate the bill's provisions.

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## CONTENT AND OPERATION

### Ohio Consumer Health Freedom Act

The bill includes a title for the bill, stating that it be known as the "Ohio Consumer Health Freedom Act" (Section 3(A)). 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. (Sec. 4783.02.)

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 or, if an individual is a licensed health care professional, that individual is not acting as a licensed health care professional when providing treatment. "Complementary or alternative health care treatment" means 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. A "licensed health care professional" (hereafter "LHCP") means an individual who holds a current, valid license or certificate issued under the Dentists and Dental Hygienists Law (R.C. Chapter 4715.); the Nurses Law (R.C. Chapter 4723.); the Optometrists and Dispensing Opticians Law (R.C. Chapter 4725.); the Pharmacists and Dangerous Drug Law (R.C. Chapter 4729.); the Physician Assistants Law (R.C. Chapter 4730.); the Physicians and Limited Practitioners Law (R.C. Chapter 4731.); the Psychologists Law (R.C. Chapter 4732.); the Chiropractors Law (R.C. Chapter 4734.); the Occupational Therapists, Physical Therapists, and Athletic Trainers Law (R.C. Chapter 4755.); the Dietetics Law (R.C. Chapter 4759.); the Acupuncturists Law (R.C. Chapter 4762.); or Orthotists, Prothetists, and Pedorthists Law (R.C. Chapter 4779.). (Sec. 4783.01(A), (B), and (D).)

### Registration system for providers of alternative or complementary health care services

The bill creates the Office of Complementary or Alternative Health Care Practices in the Department of Commerce (see "Duties of Office of Complementary or Alternative Health Care Practices," below). The bill prohibits an individual, beginning one year after the bill's effective date, from providing complementary or alternative health care services unless that individual is registered with the Office (sec. 4783.03 and Section 4). If an individual provides alternative or complementary health care services without registering, that individual may be subject to disciplinary action (see "Investigations of and sanctions against nonregistrants," below). A person who provides care in

accordance with the creed or tenets of any recognized church or religious denomination to patients who rely upon treatment by prayer or spiritual means is not subject to the bill. (Sec. 4783.15.)

**Duties of the Office of Complementary or Alternative Health Care Practices**

The Office must do all of the following: (1) process all applications for registration (see "**Registration**," below), (2) investigate all complaints received regarding registrants and nonregistrants under the bill, and (3) serve as a clearinghouse of information regarding complementary or alternative health care treatments and individuals who provide complementary or alternative health care services through the development and performance of public education activities, including outreach. (Sec. 4783.04.)

**Application for registration**

The bill requires the Director of Commerce to prescribe an application form to register individuals who wish to provide complementary or alternative health care services that requests all of the following information from the applicant:

- (1) The applicant's name, home and business addresses, telephone numbers, gender, and date and location of birth;
- (2) The modalities the applicant practices;
- (3) The training and education the applicant has received;
- (4) Whether the applicant has been convicted of or pleaded guilty to any of the misdemeanor offenses specified in the bill or a felony, and if the applicant has been convicted of or pleaded guilty to a felony, if that felony was subject to a procedure described under "**Allowing certain persons with a felony conviction to register**" below;
- (5) Any license or certificate the applicant holds as a LHCP or that was issued by another state that permits the applicant to engage in the practice of a health care profession similar to those for which licenses or certificates are issued under continuing law;

(6) Whether the applicant voluntarily surrendered a license or certificate issued by a Board<sup>1</sup> in Ohio after civil or criminal charges were filed against that applicant in Ohio or another jurisdiction;

(7) Any medical or physical conditions that may impair the applicant from providing complementary or alternative health care services;

(8) Any treatment for alcohol abuse, controlled substance abuse, prescription drug abuse, or illegal drug abuse that the applicant has received during the ten years immediately preceding the date the applicant submits the application;

(9) Any disciplinary action taken against the applicant by a state agency in a state that allows individuals to provide complementary or alternative health care services;

(10) Any current investigations involving the applicant conducted in a state that allows individuals to provide complementary or alternative health care services;

(11) Whether the applicant employs LHCPs or works under the supervision of a LHCP and, if so, the names and business information of those professionals. (Sec. 4783.05(A).)

The Director also must include the following statement in the application form:

"I hereby attest that the information given in this application, including all writings and exhibits attached hereto, is true and complete to the best of my knowledge. I understand that the making of a false statement on this application and in all writings and exhibits attached is punishable by criminal penalties."  
(Sec. 4783.05(B)(1).)

The Director must include the following agreement form in the application and include a place for the applicant's notarized signature:

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<sup>1</sup> Under the bill, "Board" means the State Dental Board; Board of Nursing; State Board of Optometry; State Board of Pharmacy; State Medical Board; State Board of Psychology; State Chiropractic Board; Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board; Ohio Board of Dietetics; or State Board of Orthotics, Prosthetics, and Pedorthics (sec. 4783.01(E)).

I, (name of applicant), hereby submit my application to become registered to provide complementary or alternative health care services in the State of Ohio, and agree to all of the following:

(a) To provide each recipient of my services with a copy of the disclosure form required by section 4783.09 of the Revised Code and to obtain a signed copy of that form prior to providing the services.

(b) To retain a copy of each signed disclosure form and all records of a recipient of my services for a period of five years after the last visit by the recipient.

(c) To refrain from engaging in the activities specified in division (A) of section 4783.08 of the Revised Code. (Sec. 4783.05(B)(2).)

Additionally, the Director, under the bill, must maintain a list of all registrants and a list of all disciplinary actions taken against registrants and must provide public access to both lists. (Sec. 4783.05(C).)

### **Registration**

Under the bill, the Office must register an applicant if the applicant meets all of the following criteria: (1) is at least 18 years of age, (2) provides to the Office evidence of graduation from the 12th grade or evidence of having an education equivalent to the 12th grade, (3) completes the application form prescribed by the Director and submits the form to the Office, (4) provides to the Office documentation listing the education and training the applicant has received, (5) if applicable, provides documentation that the applicant's felony was the subject of a procedure specified under "**Allowing certain persons with a felony conviction to register**," below, and (6) pays the registration fee of \$50 to the Office. (Secs. 4783.06(A) and (B) and 4783.14(A)(1).)

Except as provided under "**Allowing certain persons with a felony conviction to register**" below, the bill prohibits the Office from registering an applicant if the applicant has been convicted of or pleaded guilty to a misdemeanor specified in the bill or any felony or if the applicant's license or certificate to practice as a LHCP was suspended, placed on probation, or revoked by the board that administers and enforces the law under which the applicant was licensed or certified. (Sec. 4783.06(C).)

### **Allowing certain persons with a felony conviction to register**

If an applicant has been convicted of or pleaded guilty to a felony, the bill prohibits the Office from using that conviction or plea to deny registration of the applicant if either of the following apply: (1) the applicant's conviction or plea is pardoned, annulled, reversed on appeal, or set aside, or the record of the conviction or the plea is sealed or expunged, or (2) if the conviction or plea was in a jurisdiction other than Ohio, the conviction or plea was subject to any procedure performed in that jurisdiction that is similar to pardoning, annulling, reversing on appeal, or setting aside an applicant's conviction or plea, or sealing or expunging the record of an applicant's conviction or plea as performed in Ohio. (Sec. 4783.06(D).)

The bill allows the Office to register an applicant who has been convicted of or pleaded guilty to a felony for violating prohibitions against engaging in specified professions relating to health care without a license or certificate if the actions that constituted the offense are permitted under the bill. Similarly, under the bill, the Office may register an applicant who held a license or certificate as a LHCP and that license or certificate was suspended, placed on probation, or revoked because the applicant engaged in practices that are permitted under the bill. (Sec. 4783.06(E) and (F).)

### **Renewal**

A registration issued under the bill is valid for one year. The bill requires the Director to adopt rules to determine the date on which the one-year period begins and ends and to prorate that time period for initial registrations. A registrant may renew the registrant's registration by submitting the renewal fee of \$50 to the Office within 30 days prior to expiration. (Secs. 4783.07 and 4783.14(A)(2).)

### **Use of titles**

Unless an exception specified in continuing law applies, Ohio's Dietetics Law (R.C. Chapter 4759.) prohibits both of the following:

(1) Any person from using the title "dietitian" unless the person holds a license issued under that law;

(2) 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.

Whoever violates the prohibitions under (1) or (2) immediately above is guilty of a minor misdemeanor. If the offender has been previously convicted once of a violation, then the violation is a fourth degree misdemeanor. If the offender has been previously convicted more than once of a violation, then the violation is a first degree misdemeanor. (Sec. 4759.02(B) and sec. 4759.99, not in the bill.)

The bill eliminates (2) above (sec. 4759.02(B)(2)). Additionally, the bill specifies that notwithstanding any provision of the Revised Code to the contrary, a registrant who provides complementary or alternative health care services may refer to the registrant's self using a title or qualification conferred on the registrant by virtue of degrees, training, experience, credentials, or other qualifications attained by the registrant. (Sec. 4783.06(G).)

### **Disclosure document**

Under the bill, a registrant must, prior to providing complementary or alternative health care services to an individual for the first time, provide a plainly worded written document to the recipient of the services that discloses all of the following information:

(1) The nature of the services to be provided, the theory on which the services are based, a description of each modality the registrant practices, and a description of the scope of each modality the registrant practices;

(2) The degrees, training, experience, credentials, or other qualifications held by the registrant with regard to the services to be provided and addresses and phone numbers to allow the recipient to obtain information about the registrant's degrees, training, experience, credentials, or other qualifications;

(3) A list of the prohibited activities described under "**Prohibited activities**" below;

(4) A list, by credentials only, of any LHCP that the registrant employs;

(5) A recommendation that the recipient visit the recipient's appropriate LHCP in addition to receiving complementary or alternative health care services from the registrant;

(6) A description of the procedure to file a complaint with the Office regarding the services provided by the registrant. (Sec. 4783.09(A).)

In addition to the information listed in (1) to (6) immediately above, a registrant must include either of the following statements in the document:

- If the registrant is not a LHCP, the following statement, placed at the beginning and end of the document, printed clearly in bold and in a font that is at least two points larger than the font used to disclose the other information required under the bill, that reads verbatim:

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

- If the registrant also is a LHCP, the following statement, placed at the beginning and the end of the document, printed clearly in bold and in a font that is at least two points larger than the font used to disclose the other information required under the bill, that reads:

**I HOLD THE FOLLOWING LICENSES AND CERTIFICATIONS ISSUED BY THE STATE OF OHIO: (list of licenses and certificates). HOWEVER, I AM PROVIDING MY SERVICES TO YOU AS A REGISTRANT WITH THE OFFICE OF COMPLEMENTARY OR ALTERNATIVE HEALTH CARE PRACTICES AND I AM NOT PROVIDING THESE SERVICES AS A LICENSED HEALTH CARE PROFESSIONAL. THE STATE HAS NOT ADOPTED ANY EDUCATION OR TRAINING REQUIREMENTS FOR UNLICENSED COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICE PROVIDERS.**

Additionally, all registrants must include the following statements in their disclosure document:

- A statement that describes any agreement or other arrangement between the registrant and another provider of complementary or alternative health care services or between the registrant and a LHCP whereby that registrant derives a financial or other benefit and the nature of any benefit resulting from an agreement or arrangement.
- A statement that the registrant will be available to consult with the recipient's appropriate LHCP regarding the services the registrant provides to the recipient.

- A statement that the registrant must not provide complementary or alternative health care services to either of the following persons unless the registrant has the consent of the person's parent or legal guardian: (1) any person who is less than 18 years of age or (2) any person that the registrant knows to be mentally incompetent. (Sec. 4783.09(A).)

**Written acknowledgment of receipt of disclosure document**

The bill requires each registrant to obtain from the recipient of the services a written acknowledgement that the recipient has been provided a document disclosing all the information required to be disclosed as described under "**Disclosure document**" above. A registrant must maintain that acknowledgement from every recipient of the registrant's services for at least five years after the date that a recipient receives services from the registrant for the final time. Additionally, a registrant must provide the recipient of the services with a copy of that acknowledgement. (Sec. 4783.09(B) to (D).)

**Recipient records**

The bill requires each registrant to create a record for each recipient of the registrant's services that consists of all of the following information:

- (1) The recipient's name;
- (2) The dates that the recipient receives services from the registrant;
- (3) A description of the recipient's condition;
- (4) The treatment or service the registrant provides to the recipient;
- (5) Any financial arrangement between the registrant and the recipient, including any payment arrangements made with a third party.

A registrant must maintain these records for a minimum of five years after the date that a recipient receives services from the registrant for the final time (sec. 4783.09(E) and (F)).

**Additional duties that a registrant must perform**

Under the bill, a registrant must consult with or refer a recipient of the registrant's services to an appropriate LHCP if the registrant determines, based on reasonable evidence, that no substantial progress has been made with respect to that recipient during the 30-day period immediately following the date of the recipient's initial visit with the registrant, unless the evaluation, treatment, or services are being provided for fitness, wellness, or prevention purposes; or the

recipient was diagnosed with a disease or condition prior to the recipient's initial visit to the registrant and evaluation, treatment, or services are being provided by the registrant for problems or symptoms associated with one or more of those previously diagnosed diseases or conditions. The bill requires a registrant to be available to consult with the appropriate LHCP who provides treatment to a recipient of the registrant's services regarding the services the registrant provides to the recipient. (Sec. 4783.09(G) and (H).)

Additionally, each recipient must create a notice that includes only the applicable verbatim statement described under "*Disclosure document*" above and must post that notice in a conspicuous place in the registrant's principal office or principal place of business (sec. 4783.09(I)).

### *Prohibited activities*

The bill prohibits a registrant from doing any of the following:

- (1) Performing surgery or any other procedure that punctures the skin;
- (2) Performing any adjustment of the articulation of the joints or spine of any individual;
- (3) Using or recommending any procedure involving ionizing radiation;<sup>2</sup>
- (4) Providing diagnosis of a disease;
- (5) Providing diagnosis or treatment of a physical or mental health condition of any individual that proximately causes physical or mental harm;
- (6) Counseling any individual to disregard the instruction or counsel of a LHCP or to discontinue any treatment prescribed or recommended by a LHCP;
- (7) Counseling any individual to discontinue use of any drug, dangerous drug, or therapeutic device prescribed to the individual by a licensed health professional authorized to prescribe drugs (see **COMMENT**);
- (8) Administering, prescribing, possessing for sale, selling, or dispensing any drug or medical oxygen;

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<sup>2</sup> "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 (sec. 4783.08(A)(3) and sec. 4773.01(C), not in the bill).

(9) Holding out, stating, indicating, advertising, or otherwise implying to any person that the registrant is licensed by this state to practice as a LHCP;

(10) Performing or providing enteral or parenteral nutrition;

(11) Promising a cure;

(12) Setting a fracture of a bone;

(13) Delivering a baby;

(14) Providing or performing an abortion;

(15) Inserting intra uterine devices;

(16) Providing complementary or alternative health care services to either of the following persons unless the registrant has the consent of the person's parent or legal guardian: (a) any person who is less than 18 years of age, or (b) any person that the registrant knows to be mentally incompetent;

(17) Failing to comply with disclosure document requirements described under "*Disclosure document*" above. (Sec. 4783.08(A).)

### *Investigation of registrants*

The bill specifies a complaint form that an individual must use to file a complaint with the Office regarding a registrant or nonregistrant. The form includes questions regarding the complainant if the complainant is not the recipient of the registrant's services, a request for a description of the incident involved, and a request for information regarding the ailment for which the recipient was seeking treatment from the registrant. The complaint form also includes a warning that the information obtained pursuant to an active investigation against a person providing complementary or alternative health care services is not a public record and is not subject to discovery in a civil action under the bill. The warning also states that the information the complainant provides to the Office as part of the complaint will be investigated and used as part of the investigation of the practitioner's conduct. The warning further states that in some circumstances, the information the complainant provides the Office will be disclosed to certain other persons or entities, including health-related licensing boards, law enforcement agencies, and any other government agency deemed necessary by the Office. The complaint form also includes a records release statement form and a waiver statement concerning privileged communications. (Sec. 4783.10(A).)

The bill permits the Director to adopt rules to amend the complaint form to ask for additional information, except that the Director cannot adopt a rule allowing an individual to submit a form anonymously. Additionally, at the Director's discretion, the Office may accept an individual's complaint and investigate that complaint if the individual does not use the form specified in the bill but includes all of the information required in that form when submitting the complaint. (Sec. 4783.10(B).)

Except as described under "Referring complaints and investigations" below, upon the receipt of a complaint from an individual regarding a registrant, the Office may investigate the complaint. A registrant must cooperate with an investigation implemented by the Office, and a registrant may be subject to disciplinary action as described below under "Disciplinary action against registrants" if the registrant fails to cooperate with an investigation, except that the failure to cooperate must not constitute grounds for discipline if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence at issue. (Sec. 4783.11(A).)

#### Subpoenas issued by Director

The Director, on behalf of the Office, may issue a subpoena to compel attendance of a witness or a subpoena duces tecum to produce all necessary documents and other evidentiary material. The bill requires the Director to narrowly tailor the subpoena issued to address only the subject matter specified in a complaint and to consult with the Attorney General prior to issuing a subpoena for medical information concerning the recipient of the registrant's services and for any record maintained by a registrant for services provided to that recipient. Before issuance of a subpoena for such information, the Director must determine whether there is probable cause to believe that a violation of the bill or any rule adopted under it alleged in the complaint has occurred and whether the information sought is relevant to the alleged violation and material to the investigation. The subpoena must apply only to records that cover a reasonable period of time surrounding the alleged violation that are maintained by the registrant who is the subject of the complaint and by any LHCP listed on the complaint form. If a person fails to testify or comply with a subpoena issued by the Director, the Director may apply to the appropriate court of common pleas for an order compelling compliance with the Director's subpoena. A subpoena for a hearing may be served upon the individual named in the manner provided in the Administrative Procedure Act (R.C. 119.09, not in the bill). (Sec. 4783.11(A).)

The bill specifies procedures and requirements for service of a subpoena issued under the bill. The bill also allows the Director to administer oaths to witnesses. (Sec. 4783.10(A).)

### **Notice to an individual being investigated by the Office**

Under the bill, the first time the Office contacts a registrant about a complaint, the Office must inform the registrant in writing of all of the following:

- (1) That the registrant is the subject of an investigation.
- (2) That the registrant is required to cooperate with the investigation and comply with any subpoenas issued.
- (3) That the registrant has the right to seek legal counsel prior to providing any information or cooperating with the investigation.
- (4) Information about compliance with laws that may affect compliance with a subpoena. (Sec. 4783.11(B).)

### **Confidentiality of an investigation**

The bill states that information received by the Office pursuant to an investigation is not subject to Ohio's Public Records Law (R.C. 149.43, not in the bill) and is not subject to discovery in any civil action. Under the bill, the Office must disclose to the individual who is the subject of the complaint the name of the individual who submitted the complaint to the Office or if the complainant is not a recipient of the registrant's services, the name of the recipient specified in the complaint, but otherwise the Office must not disclose the name of the complainant or recipient to the general public without proper authorization from the complainant or recipient. (Sec. 4783.11(C).)

The bill permits the Office to share any information the Office receives pursuant to an investigation, including medical information about the recipient of the registrant's services and records maintained by the registrant or a LHCP for the recipient, with law enforcement agencies, other licensing boards, and other governmental agencies that are prosecuting, adjudicating, or investigating violations of statutes or administrative rules alleged to have been committed by the registrant. If a complainant did not sign a waiver authorizing disclosure of the complainant's name to anyone other than the individual who is the subject of the complaint, or a recipient did not sign a waiver authorizing disclosure of the recipient's identity and medical information, the Office and any agency or board that receives related information or records must take all measures necessary to protect the complainant's identity or the recipient's identity, medical information, and records, notwithstanding any conflicting provision of the Revised Code or procedure of the agency or board that applies when it is dealing with other information or records in its possession. In a judicial proceeding, the information may be admitted into evidence only in accordance with the Rules of Evidence, but

a court must require that appropriate measures are taken to ensure that any part of the information that contains names or other identifying information about a recipient or complainant whose identity was protected by the Office when the information was in the Office's possession is protected during the proceeding. The measures the court may take to ensure that the identity of a complainant or recipient is not disclosed to the public include sealing its records or deleting specific information from its records. (Sec. 4783.11(C).)

### **Referring complaints and investigations**

The bill requires the Office to forward the results of an investigation of a complaint to the Director and to include any recommendations for disciplinary action if the registrant engaged in an activity described under "**Prohibited activities**" above. After a hearing held in accordance with the Administrative Procedure Act in which the Director finds that a violation of the bill has occurred, the Director may impose the disciplinary action recommended by the Office or any other appropriate disciplinary action described under "**Disciplinary actions against registrants**" below. Any civil penalties collected pursuant to disciplinary action must be deposited in the Complementary or Alternative Health Care Services Fund. (Sec. 4783.11(D) and (G).)

In addition to referring the results of an investigation to the Director, the Office may refer those results to the appropriate board so that the board may investigate for a potential violation of the prohibition against engaging in the activity that the board regulates without the appropriate license or certificate. A registrant may be subject to prosecution under other licensing laws in addition to any disciplinary action taken by the Director. If the Office receives a complaint regarding a registrant and the complaint indicates that the registrant was acting or presenting the person's self as a LHCP at the time the registrant provided complementary or alternative health care services, the Office must refer the complaint to the appropriate board for investigation of the registrant's practices. (Sec. 4783.11(E).)

### **Disciplinary action against registrants**

Under the bill, in accordance with the Administrative Procedure Act and except as limited below, the Director, upon receiving the results of an investigation conducted under the bill, may suspend or revoke a registration, impose restrictions upon a registrant's practice, impose a fine not exceeding \$10,000 for each prohibited activity in which the registrant engaged, censure or reprimand a registrant, impose a fee to cover the costs of an investigation, or take any other action justified if a registrant engages in an activity described under "**Prohibited activities**" above. (Sec. 4783.08(A) and (C).)

The bill states that any disciplinary action taken against a registrant for failure to comply with the disclosure document requirements (see "**Disclosure document**," above) must be based on the number of times the registrant has been investigated for failure to provide the document, regardless of the number of persons to whom the registrant failed to provide the document (sec. 4783.08(B)). The Director must not take any disciplinary action specified above against a registrant who also is a LHCP if at the time the registrant engaged in a prohibited activity, the registrant was acting in the registrant's capacity as a LHCP and was practicing within the appropriate scope of practice for that profession. (Sec. 4783.08(D).)

### **Civil action against registrants**

If a registrant is found to have engaged in any prohibited activity except for a prohibited activity involving a disclosure document (see "**Prohibited activities**" and "**Disclosure document**" above), a recipient of that registrant's services who suffers harm as a result of the registrant engaging in that activity may file a claim to recover the fees that recipient paid to that registrant. The recipient may file the claim in the court of common pleas where the violation occurred. An action for the recovery of fees under the bill must be brought within one year after a recipient knows or should have known that the registrant engaged in a prohibited activity. (Sec. 4783.13.)

### **Investigation of and sanctions against nonregistrants**

Upon the receipt of a complaint described under "**Investigation of registrants**" above involving a nonregistrant, the Office may investigate any individual who allegedly has violated the prohibition against an individual providing complementary or alternative health care services unless that individual is registered with the Office. The Office must follow the requirements for disclosing the identity of a complainant or recipient of the individual's services, disclosing the recipient's medical information and records, obtaining subpoenas, and conducting investigations as specified in the bill for investigations of a violation of the bill committed by a registrant (see "**Investigation of registrants**," above). If, after investigation, the Office determines that reasonable evidence exists that the individual has violated that prohibition, the Office must submit a written report to the Director. The Office must include a recommendation in the report that the Director should take one or more of the following actions against the individual:

- (1) Impose a fine against the individual of not more than \$10,000;
- (2) Censure or reprimand the individual;

- (3) Impose a fee to cover the costs of an investigation;
- (4) Take any other action the Director considers necessary.

Under the bill, prior to imposing a recommended disciplinary action, the Director must provide a notice and a hearing in the same manner as prescribed in the Administrative Procedure Act. If the Director finds after the conclusion of the hearing that the individual has violated the prohibition against providing complementary or alternative health care services without being registered, the Director may take the recommended action or any other appropriate action described above. Any civil penalties collected must be deposited into the Complementary or Alternative Health Care Services Fund. (Sec. 4783.12.)

### **Affect on health care professions**

The bill states that nothing in the bill modifies or changes the scope of practice of any licensee or certificate holder under the Dentists and Dental Hygienists Law; the Nurses Law; the Optometrists and Dispensing Opticians Law; the Pharmacists and Dangerous Drug Law; the Physician Assistants Law; the Physicians and Limited Practitioners Law; the Psychologists Law; the Chiropractors Law; the Occupational Therapists, Physical Therapists, and Athletic Trainers Law; the Dietetics Law; the Acupuncturists Law; or Orthotists, Prothetists, and Pedorthists Law, nor does it alter in any way the provisions of those laws that prohibit fraud and the exploitation of patients and that require licensees and certificate holders to practice within their respective standards of care. (Sec. 4783.15.)

### **Complementary or Alternative Health Care Services Fund**

The bill requires the Office to charge a \$50 fee to register with the Office or to renew a registration. The bill permits the Director to adopt rules in accordance with the Administrative Procedure Act to adjust the amount of the fees charged under the bill to cover the costs of administering and enforcing the bill. (Sec. 4783.14(A) and (B).)

The bill creates the Complementary or Alternative Health Care Services Fund in the state treasury. The Director and the Office must deposit all moneys received pursuant to the bill into that fund. Money in the fund must be used to pay the administrative expenses of the Office and costs for the enforcement of the bill and to assist in the payment of the costs of prosecution for a crime committed by a registrant in the course of the registrant's practice. If, at the end of a fiscal year, the Director determines that excess moneys exist in the fund, the Director may coordinate with the Director of Budget and Management to transfer the excess funds to the Division of Administration Fund.

If a registrant commits a crime in the course of the registrant's practice, a prosecutor may apply to the Director of Commerce to receive money from the fund to pay for the prosecution of that crime. The prosecutor must specify the name of the registrant, the alleged crime committed by the registrant, and the amount the prosecutor wishes to receive from the fund. The Director must distribute funds at the Director's discretion and to the extent that funds are available. If a prosecutor receives court costs from the prosecution, the prosecutor must use those court costs to repay the Director the amount the prosecutor received from the fund. The Director must deposit the amount received from a prosecutor into the fund. (Sec. 4783.14(C).)

### **Statement of legislative intent**

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 (Section 3(D)). 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 LHCP with regard to their mutual patients. (Section 3(B).)

The bill states that the General Assembly acknowledges Ohioans' desire for broader access to complementary or alternative health care therapies. (Section 3(C).)

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## COMMENT

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 drug" 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 the Pure Food and Drug Law (R.C. Chapter 3715.) or the 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: (a) a dentist licensed under the Dentists and Dental Hygienists Law, (b) a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner who holds a certificate to prescribe issued under the Nurses Law, (c) an optometrist licensed under the Optometrists and Dispensing Opticians Law to practice optometry under a therapeutic pharmaceutical agents certificate, (d) a physician authorized under the Physicians and Limited Practitioners Law to practice medicine and surgery, osteopathic medicine and surgery, or podiatry, (e) a physician assistant who holds a certificate to prescribe issued under the Physician Assistants Law, and (f) a veterinarian licensed under the Veterinarians Law (R.C. Chapter 4741.).

(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. (Secs. 4783.01(C) and 4729.01, not in the bill.)

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## HISTORY

ACTION	DATE
Introduced	04-12-07

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