

New Mexico

Notes: Introduced 1/17/2007, still in process. This bill does not fit any of the 2 general categories. On the surface it looks like a great way to do what we want it to do. Montana has a uniform licensing section, and it appears tailor-made for us. HOWEVER, read the Fiscal Note below the text of the bill. Here it points out the problems with the bill and underscores why this is probably not a good model for Montana to use.

SENATE BILL 18

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Steve Komadina

AN ACT

RELATING TO LICENSING; AMENDING THE UNIFORM LICENSING ACT TO PERMIT TRADITIONAL, CULTURAL, COMPLEMENTARY AND ALTERNATIVE HEALTH CARE WITHOUT A LICENSE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-1-3.2 NMSA 1978 (being Laws 2003, Chapter 334, Section 3) is amended to read:

"61-1-3.2. UNLICENSED ACTIVITY--DISCIPLINARY PROCEEDINGS-- CIVIL PENALTY--EXEMPTIONS.--

A. A person who is not licensed to engage in a profession or occupation regulated by a board is subject to disciplinary proceedings by the board.

B. A board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a person who, without a license, engages in a profession or occupation regulated by the board. In addition, the board may assess the

person for administrative costs, including investigative costs and the cost of conducting a hearing.

C. Nothing in the Uniform Licensing Act is to be construed as requiring licensure of a person engaged in traditional, cultural, complementary or alternative health care as long as that person does not claim to be engaged in the practice of medicine or in any other profession or occupation regulated by a board.

D. Nothing in the Uniform Licensing Act is to be construed to limit the public's right to access traditional, cultural, complementary or alternative health care practitioners, nor to limit the right of a nonlicensed traditional, cultural, complementary or alternative health care practitioner to practice."

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FISCAL IMPACT REPORT

SPONSOR

Komadina

ORIGINAL DATE

LAST UPDATED

01/26/2007

HB

SHORT TITLE

Permit Certain Unlicensed Health Care

SB 18

ANALYST

APPROPRIATION (dollars in thousands)

Appropriation

**Recurring
or Non-Rec**

Fund

Affected

FY07

FY08

NFI

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Medical Board (NMMB)

New Mexico Board of Nursing (NMBN)

SUMMARY

Synopsis of Bill

Senate Bill 18 proposes to exempt persons engaged in traditional, cultural, complementary or alternative health care from licensure requirements of the NM Uniform Licensing Act.

SIGNIFICANT ISSUES

The NM Medical Board indicates that the issue of unlicensed individuals practicing various forms of health care is of great concern because of the wide variety of individual training, methods utilized, efficacy or lack thereof, and the potential for public harm.

The board states that "...there are many, many traditional healers and practitioners of complementary and alternative health care who are competent, safe, honest and ethical, and who have nothing but the best interest of their clients at heart. However, there are also many individuals who are not well-trained, who use experimental and often harmful techniques, and who make false promises of efficacy to vulnerable patients."

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The Board of Nursing indicates that the Uniform Licensing Act does not appear to be the appropriate place to have this language. The board states that "... the Uniform Licensing Act is intended to give "due process" to those whose practice is regulated by virtue of having a license.

Exceptions to practice should be in each individual practice act." The nursing board indicates that while they are unsure of exactly where this kind of language should reside they feel that the ULA is specific to "licensees" and defines the legal due process that is afforded; and section 61-1-3.2 already clearly states that action is only taken on those that engage in a profession/occupation that is already required to have a license. As "alternative" providers are, in many cases, not licensed by a board, the nursing board argues that this is a "moot" point. The board states that it is only when a licensed health care provider puts themselves out as an "alternative" health care provider and also identifies themselves as a licensed healthcare provider (i.e., Doctor, Nurse, Respiratory Therapist, etc.) would a board have jurisdiction regarding the scope of practice of that

person. There is nothing in ULA that would currently prohibit any "alternative" provider from continuing their unlicensed practice.

OTHER SUBSTANTIVE ISSUES

In addition to the concerns mentioned above, the medical board additionally indicates that SB18 artificially puts two very distinct groups into one category. Indigenous, traditional and cultural healers in general utilize techniques that are non-invasive and that have been used for generations. The umbrella of "complementary and alternative health care" is broad enough to include trained practitioners who utilize non-invasive and well-tested therapies – but also poorly-trained practitioners who use techniques and therapies that are not only notwell-tested but for which there is sometimes significant evidence that they can actually be harmful. If the bill seeks to support traditional and indigenous healers they should be separated from complementary and alternative medicines which should receive a more critical evaluation.

Many practitioners of complementary and alternative health care have petitioned the Legislature for several years now to create licensing boards for their fields, precisely because they would like to have some measure of ensuring the qualifications and accountability of practitioners in their profession.

GM/nt