

May 12, 2008

MODEL DRAFT Consumer Health Freedom and Access Act

A bill to be entitled

An act relating to access to the healing arts, creating (new sections); providing popular names; providing findings and intent; authorizing persons who are not health care practitioners licensed, certified, or registered by this state to provide certain health care services; prohibiting certain acts; requiring certain disclosure; providing penalties; amending (sections) relating to unlicensed practice of a health care profession, to conform.

Be It Enacted by the Legislature of the State of Montana:

Article 1. Section 1000 Montana Statutes, is created to read:

Section 1000. Consumer Health Freedom and Access Act

(1) POPULAR NAME.—

This section shall be known by the popular name "The Consumer Health Freedom and Access to Health Care Services Act."

(2) FINDINGS AND INTENT.--

(a) Based upon research data, it is evident that a significant number of Montanans are presently receiving a substantial amount of health care from providers of health care services who are not licensed, registered, or certified by this state.

(b) Notwithstanding the widespread utilization of these health care services by residents of this state, the provision of such services may be in technical violation of the occupations and professions practice acts governing licensed practitioners. As a result, a provider of the healing arts who is not licensed, certified, or registered by this state under an occupation or professions act could be subject to fines, penalties, and the restriction of his or her practice.

(c) Because this state finds that these health care services are widely used and desirable under certain circumstances as outlined in this [section] and in order to maximize and protect consumer options in health care and for the public's health and welfare, the Legislature intends to remove current barriers to the public's access to unlicensed practitioners providing health care services with appropriate consumer protections, as provided in this section.

(3) DEFINITION.—

As used in this section, "health care services" means health care and healing therapies and methods which are not prohibited by subsection (4) of this Act and which are provided by a person who is not licensed, certified, or registered, under the Occupation or Profession Title 37 of the Montana Code .

(4) PROHIBITED ACTS.--

(a) Notwithstanding any other provision of law, a person who provides health care services in accordance with this section, but who is not licensed, certified, or registered by this state to practice under an Occupations or Professions Act, , shall not be in violation of a law based on the unlicensed practice or provision of service of an Occupation or Profession regulated un Title 37 of the Montana Code. unless the person:

1. Performs surgery or any other procedure that punctures the skin except for finger pricking screening purposes of a person;
2. Prescribes or administers X-ray radiation to any person;
3. Prescribes or administers a legend drug, a device that requires a prescription for use., or controlled substance to any person;
4. Performs a chiropractic adjustment of the articulations of joints or the spine that uses a high velocity low amplitude thrusting force;
5. Diagnoses and treats a health condition of an individual, in a manner that causes that individual an imminent and significant risk of discernable and significant physical or mental injury, under

MODEL DRAFT Consumer Health Freedom and Access Act

circumstances in which the health care practitioner , in the exercise of reasonable care should have known, would result in such injury.

; or

6. Holds out, states, indicates, advertises, or implies to any person that he or she is licensed, certified, or registered, by this state to provide health care services.

(5) DISCLOSURE.--

(a) Any person providing health care services according to this Chapter shall, prior to providing such services, disclose to the client in a plainly worded written statement:

1. The practitioner's name, business address, and telephone number.
2. The fact that he or she is not licensed, certified, or registered, as a health care practitioner by this state.
3. The nature of the health care services to be provided.
4. The degrees, training, experience, credentials, or other qualifications if any of the practitioner regarding the health care services being provided.

(b) Reasonable accommodations shall be made for those clients who cannot read or who have communication impairments and those who do not read or speak the language of the providing practitioner.

(c) Before a practitioner provides health care services to a client for the first time, such practitioner must obtain a written acknowledgment from the client stating that he or she has been provided with the information described in this subsection. The client shall be provided with a copy of this written acknowledgment and it must be maintained for at least 2 years as a confidential health document by the person providing the services. If the disclosure information has changed then the practitioner has a duty to repeat part (a)(b)and (c) if a client obtains services after the change.

(d) A person who violates any provision of this chapter is subject to a cease and desist order under Title 37-1-411. However before enforcement proceedings begins regarding Section (5) on disclosure compliance, a notification, educational, or mediative approach must be utilized by the state and parties to bring a practitioner into compliance with this section. The order may apply only to the alleged act or practice constituting a violation.

(6) EXEMPTIONS

(a) This act does not apply to, control, or prevent any health care professional licensed, certified, or registered by this state, from practicing lawfully and according to a professional practice act or under other state law.

(b) This act does not apply to, control, or prevent any acts under 37-3-103 (g).