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*Bill Analysis*  
*Legislative Service Commission*

**H.B. 580**  
127th General Assembly  
(As Introduced)

**Rep. Adams**

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**BILL SUMMARY**

- Names the bill the Ohio Consumer Health Freedom Act and 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 Ohio's residents.
- Permits a practitioner of complimentary or alternative health care services to provide those services without being in violation of health care professional licensing laws if the practitioner does not engage in certain prohibited activities or fail to comply with the bill's disclosure requirements.
- Establishes disclosure requirements for practitioners of complimentary or alternative health care.
- Specifies activities a complimentary or alternative health care practitioner cannot engage in unless the practitioner is a licensed health care professional.
- Eliminates a provision that prohibits any person, other than a licensed health care professional and who is acting within the scope of professional practice, from using any designation tending to indicate that the person is practicing dietetics.

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## CONTENT AND OPERATION

### 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" and 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 Ohio's residents.

"Complementary or alternative health care services" is defined by the bill as the broad domain of health care and healing practices that does not include any of the activities the bill prohibits (see "Prohibited activities," below). Complementary or alternative health care services may be provided in addition to or in place of prevailing or conventional treatment options.

#### Use of titles

(R.C. 4783.03(B))

The bill specifies that notwithstanding any provision of the Revised Code, a complementary or alternative health care practitioner<sup>1</sup> may refer to the practitioner's self using a title or qualification conferred on the individual by virtue of degrees, training, experience, credentials, or other qualifications attained by the practitioner.

#### Information disclosure

(R.C. 4783.04)

The bill requires a complementary or alternative health care practitioner to do all of the following regarding information disclosure:

(1) Prior to providing complementary or alternative health care services to a recipient of services for the first time, provide a plainly worded, written document to the recipient that discloses that information described below;

(2) Obtain from the recipient a written acknowledgment that the recipient has been provided the documents;

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<sup>1</sup> "Complementary or alternative health care practitioner" means an individual who provides complementary or alternative health care services to a client and either is not a licensed health care professional or, if a licensed health care professional, is not holding the individual's self out as a licensed health care professional when providing services.

- (3) Provide the recipient with a copy of the acknowledgment; and
- (4) Maintain the acknowledgment for at least two years after the recipient receives services from the practitioner for the final time.

**Contents of disclosure**

(R.C. 4783.04(A)(1) through (A)(5))

The disclosure provided to a recipient of services must contain all of the following information:

- (1) The nature of the treatment to be provided;
- (2) The degrees, training, experience, credentials, or other qualifications held by the practitioner with regard to the services to be provided;
- (3) A statement that describes any arrangement between the practitioner and another complementary or alternative health care practitioner or between the practitioner and a licensed health care professional<sup>2</sup> whereby the practitioner derives a financial or other benefit, and the nature of the benefit;
- (4) One of the following statements (as applicable), printed clearly in not less than 11pt. font:

- (a) If the practitioner is not a licensed health care professional:

"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 PRACTITIONERS."

- (b) If the practitioner also is a licensed health care professional:

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<sup>2</sup> "Licensed health care professional" 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; psychologists; chiropractors; occupational therapists, physical therapists, and athletic trainers; dietitians; acupuncturists; and practitioners of orthotics, prosthetics, or pedorthics (R.C. 4783.01(E)). Limited practitioners of medicine are regulated by the State Medical Board and consist of massage therapists, cosmetic therapists, and certain practitioners of mechanotherapy and naprapathy.

"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 COMPLEMENTARY OR ALTERNATIVE HEALTH CARE PRACTITIONER AND I AM NOT PROVIDING SERVICES AS A LICENSED HEALTH CARE PROFESSIONAL. THE STATE HAS NOT ADOPTED ANY EDUCATION OR TRAINING REQUIREMENTS FOR UNLICENSED COMPLEMENTARY OR ALTERNATIVE HEALTH CARE PRACTITIONERS."

**Prohibited activities**

(R.C. 4783.03(A))

The bill prohibits complementary or alternative health care practitioners from doing any of the following:

- (1) Performing surgery or any other procedure that punctures the skin except pricking a finger for screening purposes;
- (2) Performing an adjustment of the articulation of the joints or spine of any individual;
- (3) Using or recommending any procedure involving ionizing radiation;<sup>3</sup>
- (4) Knowingly providing a medical diagnosis of a disease;
- (5) Providing diagnosis or treatment of a physical or mental health condition of an individual knowing that doing so directly poses to the individual diagnosed or treated a recognizable and imminent risk of significant and discernable physical or mental harm;
- (6) Knowingly counseling any individual to disregard the instruction or counsel of a licensed health care professional;

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<sup>3</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 (R.C. 4783.03(A)(3) and R.C. 4773.01(C), not in the bill).

(7) Knowingly 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 other than a homeopathic remedy,<sup>4</sup> device that requires a prescription from a licensed health professional authorized to prescribe drugs to obtain, or medical oxygen;

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

(10) Performing or providing enteral or parenteral nutrition;<sup>5</sup>

(11) Promising a cure;

(12) Setting a fracture of a bone;

(13) Providing or performing an abortion;

(14) Inserting intrauterine devices;

(15) Providing complementary or alternative health care services to an unemancipated person who is less than 18 years old or a person the practitioner knows to be mentally incompetent, unless the practitioner has the consent of the parent or legal guardian.

### **Investigations**

(R.C. 4783.05)

The bill provides that, notwithstanding any provision of the Revised Code, a complementary or alternative health care practitioner is not considered to have violated the bill or the laws regulating licensed health care professionals unless the

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<sup>4</sup> "Homeopathic remedy" means any substance that is labeled as being homeopathic and is either (1) listed in the Homeopathic Pharmacopoeia of the United States or an addendum or supplement to it or (2) defined as a drug under the federal "Food and Drug Cosmetic Act," 21 U.S.C. 321(g)(1)(A), and regulated pursuant to that act (R.C. 4783.01(D)). "Homeopathic" is not defined in the bill, but is defined in the American Heritage Dictionary (4th Edition) as "a system for treating diseases based on administration of minute doses of a drug that in massive amounts produces symptoms."

<sup>5</sup> "Enteral" and "parenteral" nutrition are ways of providing food through tubes inserted in a natural opening (enteral) or a vein (parenteral).

practitioner commits a prohibited act or fails to comply with the bill's disclosure requirements.

Under the bill, a board<sup>6</sup> that receives a complaint against a practitioner and determines that the subject matter of the complaint falls under the jurisdiction of another board must refer the complaint to the appropriate board. If the board determines that the subject matter of the complaint falls under its jurisdiction, the board must conduct a preliminary investigation to determine whether the practitioner who is the subject of the complaint is alleged to have committed an act that is prohibited under the bill or failed to comply with the bill's disclosure requirements.

If the preliminary investigation reveals no significant evidence of a violation or failure to comply, the bill prohibits the board from pursuing the matter further. However, if the preliminary investigation reveals significant evidence that a violation of the disclosure requirements occurred, the board must notify the practitioner of the finding and request that the practitioner comply with the requirements. If the preliminary investigation reveals significant evidence that the practitioner has engaged in activities prohibited under the bill, or the practitioner failed to comply with a board's request to comply with the disclosure requirements, the board must address the matter in the manner it addresses a matter involving an individual who engages in an activity for which the individual must have a license or certificate, including referring the matter to the appropriate prosecutorial authority.

**Professionals exempt from the bill**

(R.C. 4783.06)

The bill specifies that it does not apply to any of the following who holds the appropriate license or certificate: a dentist; dental hygienist; nurse; optometrist; dispensing optician; pharmacist; physician assistant; physician; limited practitioner; psychologist; chiropractor; occupational therapist; physical therapist; athletic trainer; dietitian; acupuncturist; or practitioner of orthotics, prosthetics, or pedorthics. It also does not apply to any person who is exempt from being required to obtain a license or certificate and by that exemption is permitted to engage in the activities of a licensed health care professional. The

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<sup>6</sup> The bill defines "board" as 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 (R.C. 4783.05(F)).

bill also specifies that it does not apply to a physician authorized by the State Medical Board to provide alternative medical treatments.

The bill further states that it does not change any professional scope of practice, any provisions concerning fraud and exploitations of patients, or any requirements regarding practice with the appropriate standard of care under current Ohio laws regulating the health care professionals listed above.

### **Intent of legislation**

(Section 3(B))

The bill states that the General Assembly declares, based on the findings described below, its intent to allow and protect 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 on studies, research, and public policy declarations by state governments, including a Proclamation issued by the Governor of Florida and laws enacted by 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 them 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 practitioner and the practitioner's clients and between a complementary or alternative health care practitioner and a licensed health care professional with regard to their mutual patients and clients.

(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 the public health and welfare will be enhanced by a public policy that declares 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.

### **Dietetics titles**

(R.C. 4759.02)

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

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## **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, (e) a physician assistant certified to prescribe, and (f) 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.

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## HISTORY

ACTION	DATE
Introduced	05-29-08

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