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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/16/09  
**LAST UPDATED** 03/19/09    **HB** CS/664/aHJC/aSPAC

**SPONSOR** HHGAC

**SHORT TITLE** Unlicensed Health Care Practice Act    **SB** \_\_\_\_\_

**ANALYST** Wilson

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	Indeterminate See Below	Indeterminate See Below	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Indeterminate See Below	Indeterminate See Below		Recurring	Various Boards' Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Attorney General's Office (AGO)  
 Department of Health (DOH)  
 Health Policy Commission (HPC)  
 Regulation & Licensing (RLD)

### SUMMARY

#### Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to the House Health and Government Affairs Committee substitute for House Bill 664, as amended does the following:

- Changes food supplements to dietary supplements;
- Adds holistic kinesiology and other muscle testing techniques to the list of complementary and alternative healing methods and treatments;

- Adds performing massage therapy on an individual pursuant to the Massage Therapy Practice Act to the list of prohibited acts by a complementary and alternative health care practitioner;
- Exempts employees or persons acting pursuant to the direction of licensed health care facilities or licensed health care providers while working within the scope of their employment or direction from the required duties of a complementary and alternative health practitioner;
- Exempts persons providing health care services pursuant to Medical Practices Act (Act) from the required duties of a complementary and alternative health practitioner. The Act includes some of the following: gratuitous services rendered in cases of emergency, the domestic administration of family remedies, the practice of midwifery as regulated in this state, commissioned medical officers of the armed forces of the United States, the practice of medicine by a physician, unlicensed in New Mexico, osteopathy, dentistry, podiatry, nursing, optometry; psychology, chiropractic, pharmacy, acupuncture and oriental medicine, physical therapy, or an act, task or function of laboratory technicians or technologists, x-ray technicians, nurse practitioners, medical or surgical assistants or other technicians or qualified persons permitted by law or established by custom as part of the duties delegated to them in the Act; and
- Cleans up numbering and other technical problems.

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment to the HHGAC substitute bill for HB 664 removes acupressure, body work, massage, massage therapy, craniosacral therapy and traditional oriental practices, such as Qi Gong energy healing from the list of complementary and alternative healing methods and treatments.

The amendment also removes the language stating “in a manner that is commonly recognized as outside the scope of acceptable health care practice” in the definition of sexual contact.

#### Synopsis of HHGAC Substitute Bill

The House Health and Government Affairs Committee substitute for House Bill 664 creates the Unlicensed Health Care Practice Act (Act) to permit a complementary and alternative health care practitioner who is not licensed, certified or registered in New Mexico as a health care practitioner shall not be in violation of any licensing law relating to health care services unless the unlicensed provider (1) engages in any activity prohibited by Section 4 of the bill, or (2) fails to fulfill the duties prescribed by the bill.

The bill prohibits a complementary and alternative health care practitioner from:

- a) performing surgery on an individual;
- b) setting fractures on an individual;
- c) administering x-ray radiation to an individual;
- d) illegally prescribing or dispensing prescription drugs or controlled substances to an individual;
- e) directly manipulating the joints or spine of an individual;
- f) physically invading the body except for the use of non-prescription topical creams, oils, salves, ointments, tinctures or any other preparations that may penetrate the skin without causing harm;

- g) making a recommendation to discontinue current medical treatment prescribed by a licensed health care practitioner;
- h) making a specific conventional medical diagnosis;
- i) having sexual contact with a current patient or former patient within one year of rendering service (the bill defines sexual contact in section 2);
- j) falsely advertising or providing false information in documents required to be provided to the patient under Section 5 of the bill;
- k) illegally using prescription drugs or controlled substances;
- l) revealing a patient's confidential information without the patient's written consent;
- m) engaging in fee splitting or kickbacks for referrals; or
- n) referring to the practitioner's self as a licensed doctor or physician or other occupational title pursuant to Chapter 61 NMSA 1978.

The following individuals shall not provide complementary and alternative health care services pursuant to this Act:

- former health care practitioners whose license, certification, or registration has been suspended or revoked by any health care board and not reinstated;
- individuals convicted of a felony for a crime against a person who have not satisfied the terms of their sentence; and
- individuals deemed mentally incompetent by a court of law shall not be allowed to provide health care services pursuant to the Act.

The bill describes the duties of a complementary and alternative health care practitioner who is an unlicensed health care practitioner as providing to a patient prior to rendering services a patient information document, either in writing in plain language that the patient understands or, if the patient cannot read, orally in a language the patient understands, containing the following information:

1. the health care practitioner's name, title, business address and telephone number;
2. the health care practitioner's licensure status;
3. a statement that the treatment to be provided by the health care practitioner is alternative or complementary to health care services provided by licensed health care practitioners;
4. nature of the health care services to be provided;
5. the health care practitioner's degrees, education, training, experience or other qualifications regarding the services to be provided;
6. the health care practitioner's fees per unit of service and method of billing for such services and patient's right to reasonable notice of changes in health care services or charges for health services;
7. a notice of patient's right to complete and current information concerning the health care practitioner's assessment and recommended health care services to be provided, including expected duration of treatment and patient's right to access the patient's records;
8. a statement that patient records and transactions with the health care practitioner are confidential unless the release is authorized in writing by the patient or by law;
9. a notice that the patient has a right to complete and current information concerning the practitioner's assessment and recommended health care services that are to be provided, including the expected duration of the health care services to be provided and the patient's right to be allowed access to the patient's records and written information from the patient's records; and

10. the name, address and telephone number of RLD and notice that the patient may file complaints with RLD. The health care practitioner also must obtain from a patient a written acknowledgement, or if the patient cannot write an oral acknowledgement witnessed by a third party, stating that the patient has been provided with a copy of the patient information document. The patient shall be provided with a copy of the written acknowledgement, which the health care practitioner shall maintain for three years.

The bill authorizes RLD to take one or more of the following actions pursuant to the Uniform Licensing Act against the complementary and alternative health care practitioner if the practitioner is found to have violated the Unlicensed Health Care Services Act:

- a) provide written notice to the practitioner requesting the practitioner to correct the activity that is a violation of the Unlicensed Health Care Services Act; this action shall be the first option if the offense is a violation of the disclosure requirements of the act;
- b) issue a cease and desist order against the complementary and alternative health care practitioner pertaining to the provision of complementary and alternative health care services; or
- c) impose a civil penalty not to exceed \$10,000 form each violation.

The bill further authorizes the superintendent of RLD to promulgate rules as necessary to implement its provisions.

### **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

RLD notes there is no FTE or funding appropriation for implementation of the Act which will impact RLD staffing. Boards that are fully funded through licensing fees will have to provide support staff to enforce the provisions of the Act. As a result, the performance of those boards will be negatively impacted and services for licensees who pay fees for licensing will be reduced or at the very least strained.

There is no way to determine how much revenue the penalty section of this bill will provide, but it will probably be very minimal.

### **SIGNIFICANT ISSUES**

The bill defines a “complementary and alternative health care practitioner” as an individual who provides complementary and alternative health care services, and “complementary and alternative health care services” means the broad domain of complementary and alternative healing methods and treatments including:

1. acupressure;
2. anthroposophy;
3. aroma therapy;
4. ayurveda;

5. cranial sacral therapy;
6. culturally traditional healing practices;
7. detoxification practices and therapies;
8. energetic healing;
9. polarity therapy;
10. folk practices;
11. healing practices utilizing food, food supplements, nutrients, and the physical forces of heat, cold, water, touch, and light;
12. Gerson therapy and colostrum therapy;
13. healing touch;
14. herbology or herbalism;
15. homeopathy;
16. non diagnostic iridology;
17. body work, massage, and massage therapy;
18. meditation;
19. mind-
20. body healing practices;
21. naturopathy;
22. noninvasive instrumentalities; and
23. traditional Oriental practices, such as Qi Gong energy healing.

The AGO provided the following:

This bill appears to allow a complementary and alternative health care practitioner practicing pursuant to the Act, with the exception of the acts prohibited under Section 4, to engage in the practice of complementary and alternative health care services defined and regulated by the various health care practice acts found in Chapter 61, NMSA 1978.

On its face, the bill does not restrict unlicensed complementary and alternative health care practitioners engaging in the practice of complementary and alternative health care services only to the extent his or her services do not fall within the various definitions of health care services for which a license is required.

The bill seems to put the State's imprimatur on alternative and non-medical therapies provided by unlicensed complementary and alternative health care practitioners without any oversight and virtually no regulation. The bill requires no standards or guidelines relating to the education, training, qualifications, or standards of practice for unlicensed health care practitioners. There seems to be little or no protection of the public from unscrupulous persons who may take advantage of vulnerable people by offering treatments with questionable health benefit.

It is not clear whether the due process provisions of the Act relating to notice and the opportunity to be heard, as well as the right to appeal any disciplinary action taken by RLD, will apply to unlicensed health care practitioners.

#### **ADMINISTRATIVE IMPLICATIONS**

The requirement to promulgate rules and implement investigations and disciplinary action will require RLD to provide administrative support. The cost of this administrative support is indeterminate because it is unknown how many complaints and investigations the department will be required to process.

## OTHER SUBSTANTIVE ISSUES

The Journal of Complementary and Integrative Medicine publishes significant research focusing on evidence concerning the efficacy and safety of complementary and alternative medical whole systems, practices, interventions and natural health products, including herbal medicines. The interest in Complementary and Alternative Medicine (CAM) and whole systems of health care among the public, patients, health care practitioners, researchers, industry, and government regulators continues to grow. CAM practices, are acupuncture, chiropractic, homeopathic, Chinese medicine, and other ethnic herbal medicinal practices.

As is true for health care professions generally, the form of legislative authorization in which a state chooses to sanction the practice of an alternative modality may be through licensure, certification, or registration with the appropriate administrative entity.

State laws conferring licensure on alternative practitioners generally represent the most formal and extensive authorization of practice rights and typically specify the scope of practice for the therapy, the academic, examination, and other qualifications requisite to acquisition of a license, the regulatory authority of an administrative unit, grounds for disciplinary action against practitioners, and penalties for violations of the licensure act.

According to the Native American Tradition Healing Fact sheet number 708, Native American traditional healing is a holistic approach to health. Each tribe has its own healing traditions. Traditional healers do not follow a standard procedure. Instead, they apply their skills to each person individually. By themselves, techniques such as sweat lodges or vision quests are not traditional healing. They have the most meaning as part of an overall healing tradition.

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