

POINT PAPER ON HOUSE BILL (HB) 1716

PURPOSE

To summarize why the Texas complementary and alternative health care community, and the Texas citizenry at large, strongly support passage of this bill.

SPECIFICS

- ***HB 1716 helps preserve thousands of entrepreneurial Texas complementary and alternative health care businesses.*** In many cases, it ensures thousands more Texans of unrestricted, informed access to their only readily available source of health care. This is especially true of the large Texas Hispanic community, where the positive influence of the “naturistas” has long been felt.

- ***HB 1716 empowers Texas consumers*** by providing a standardized information framework to enable them to make informed judgments about the vast range of complementary and alternative health care options available to them. Through mandatory disclosure of provider training, experience and practice modalities, it fills an urgent, currently unmet need to clearly outline both the consumer’s rights and the responsibilities of the practitioners who provide care.

- ***HB 1716 recognizes the safety of complementary and alternative modalities.*** This safety is convincingly demonstrated by the experience of other states with existing laws of this type; by hard analytical data; and by the risk analysis already performed by the insurance industry - reflected in the significantly lower liability rates offered to complementary and alternative practitioners (as opposed to those offered licensed practitioners like physicians).

- ***HB 1716 explicitly recognizes and respects the rights and privileges of licensed health care practitioners*** by delineating specifically prohibited acts which unlicensed practitioners may not perform. In so doing, it places unlicensed complementary and alternative health care practitioners on notice that violation of these prohibitions would subject them to the full range of existing legal penalties.

RECOMMENDATION: PLEASE lend your unequivocal support to passage of HB 1716 into law during the 2011 legislative session.

WHITE PAPER ON HOUSE BILL (HB) 1716

PURPOSE

To explain why the citizens of Texas, and the Texas complementary and alternative health care community, unequivocally and enthusiastically support this bill.

The Texas complementary and alternative medicine/health care (CAM) community, the largest of any state in the nation, encompasses the majority of the over 1,200 complementary and alternative health care professions. A federation of 19 CAM-related organizations, comprised of over 50,000 Texans, has allied themselves to form the Texas Health Freedom Coalition. The Coalition wishes to bring to the legislature's attention the collective position of the citizens of Texas in favor of this bill.

SPECIFICS

1. CAM USE NATIONALLY AND IN TEXAS.

The last survey on complementary and alternative health care use in the United States, published in July 2009 by the National Center for Health Statisticsⁱ, revealed that over 83 million Americans (38.3% of adults) used complementary and alternative health care in 2007, spending \$33.9 billion out of pocket. Additionally, in 2007, 38.1 million adults made an estimated 354.2 million visits to complementary and alternative health care practitioners.

The Texas Health Freedom Coalition performed a straight line interpolation of this data, using US Census Bureau 2007 population statistics. It estimated that **over 6.5 million Texans used CAM in 2007, spending over \$2.67 billion out of pocket. Additionally, an estimated 3.01 million Texans made approximately 28 million visits to Texas CAM practitioners in 2007.**

It is important to note that these figures do not include daily vitamin and mineral supplement use which, according to the National Institutes of Health's 2006 Conference Reportⁱⁱ, over half the US population (150.8 million Americans, and over 11.9 million Texans) consume on a regular basis.

This data indicates the growing recognition by the public that conventional medical modalities are but one aspect of total health and wellness care.

2. ECONOMIC AND SOCIETAL IMPACTS

The vast majority of the *thousands* of unlicensed Texas complementary and alternative health care professionals are entrepreneurs. Besides offering valuable and effective health care services, they generate considerable economic activity throughout their communities and the entire state. The products they offer their clients/patients, besides promoting and sustaining good health, permit the expansion of that segment of the Texas economy.

At the same time, many unlicensed Texas complementary/alternative health care professionals provide a majority of the economic support for their families. On a wider

level, these professionals offer their services across the entire state, in many cases in small communities where conventional medical services are limited or nonexistent.

This is especially true in the Texas Hispanic community, where “naturistas,” natural health professionals and esteemed members of the community at large, play a significant role in providing health care services in economically disadvantaged communities. These natural health professionals are, in many cases, the only health care providers many Hispanics have reasonable access to and can afford. Protection of their practices by this bill would have a positive impact on the “naturistas” themselves, *and* it would substantially reinforce the guidance explicitly set out by the Surgeon General to involve *all* community resources in solving community health problems.

3. CAM’s CONTRIBUTION TO HEALTH CARE COST SAVINGS

If the status quo remains, by the year 2017 one out of every five dollars of our gross domestic product will be spent on health care. The effectiveness of the recently enacted federal health care reform legislation in containing these costs is currently a matter of considerable debate.

The Congressional Research Service has identified health care spending as the single greatest threat to our nation’s long term economic well being. For example, according to a recent Harvard University study, medical bills are now the leading cause of personal bankruptcy in the USⁱⁱⁱ.

There is potential for huge systemic health care cost savings by embracing complementary and alternative health care as an integral part of our health care system. For example, the final report of a 2006 Lewin Group study^{iv}, commissioned by the Dietary Supplement Education Alliance (DSEA), shows that **over the period 2008-2012, appropriate use of select dietary supplements would improve the health of key populations and save the nation more than \$24 billion in healthcare cost avoidance. When interpolated for Texas population, the savings to Texas exceeds \$1.87 billion.**

To cite just one example from this study, appropriate use of calcium with vitamin D for the Medicare population shows potential avoidance of approximately 776,000 hospitalizations for hip fractures over five years, as well as avoidance of stays in skilled nursing facilities for some proportion of patients. The five-year (2008-2012) estimated net cost associated with avoidable hospitalization for hip fracture is approximately \$16.1 billion.

This study examined only four nutrients; existing data indicates that much larger savings could potentially accrue by large scale employment of complementary and alternative health care as an adjunct to conventional medicine.

Additionally, **a recent pilot study, conducted by a major state level health care insurance carrier^v, employed complementary and alternative practitioners (chiropractors) as primary care providers for a large test group. Medical insurance claims from the group dropped by 50% over two years, and in excess of 70% over the remainder of the study. Also, “clinical and cost utilization based on 70,274 member-months over a 7-year period demonstrated decreases of:**

- 60.2% in-hospital admissions;

- 59.0% hospital days;

- 62.0% outpatient surgeries and procedures; and

- 85% pharmaceutical costs when compared with conventional medicine IPA performance for the same health maintenance organization product in the same geography and time frame.”

4. CITIZEN EMPOWERMENT

At present, there is no generally accepted framework to permit the citizens of Texas to exercise informed consent prior to accepting complementary/alternative treatment from an unlicensed practitioner. At the same time, **the Commissioner of the Texas Department of State Health Services (DSHS) has indicated that attempting to individually license every complementary and alternative profession "is cost prohibitive given the large number of licenses and regulations that would have to be created"** (Letter to Rep. Patrick Rose from David L. Lakey, MD, Commissioner, Texas Department of State Health Services, October 24, 2007). As outlined below, these modalities do not pose a level of risk to the citizens of Texas that require such aggressive oversight measures.

These practitioners are currently operating without any uniform guidelines as to what information they should be providing their clients prior to the provision of service. **This bill strikes a balance between the two extremes of no regulation and licensure/registration by establishing a citizen-empowering framework that places the mechanism of choice where it belongs: in the hands of the individual consumer. This framework can be created *at no cost to the state of Texas.***

5. THE SAFETY OF COMPLEMENTARY AND ALTERNATIVE HEALTH CARE

A primary and repeated objection presented by opponents of unlicensed complementary and alternative health care is its perceived or asserted lack of safety. Interestingly enough, when pressed for specifics, these groups are not able to cite meaningful statistics to support their case, relying almost exclusively on a "trust me, I'm the expert" strategy to oppose such legislation.

In most cases, the organizations which oppose such practices purport to do so "to protect the public." In reality, it is apparent that a major contributing factor to their opposition is their perception that unlicensed practitioners pose a direct threat to their professional and personal economic interests. This injects an apparent element of conflict of interest into their arguments.

In contrast, there is much meaningful data which demonstrates the inherent safety of these modalities:

a. Positive Governmental Experience with Unlicensed Complementary and Alternative Health Care Safety. **The state of Minnesota, which enacted the nation's first health freedom bill in 2000, experienced only 84 complaints in the first seven years after its law was enacted, and less than half of those complaints were actionable.** There was so little investigation and enforcement activity during the first four years that the governor of Minnesota tried to eliminate the office governing alternative practice in order to save the state money. His efforts were unsuccessful, but the state's record provides evidence that allowing these modalities to be practiced in the open does not present a threat to public safety. Other states which have enacted safe harbor laws (e.g., California, Idaho, Louisiana, Oklahoma, New Mexico and Rhode Island) are experiencing similar results.

b. Evidence That Complementary/Alternative Modalities Are Safe. There is little detrimental data on the safety of properly administrated complementary/alternative health care. **A statement issued by the US House Government Reform Committee in 2005 clearly recognized the safety of CAM: "As for the safety of supplements, an**

interesting comparison was published last year: 106,000 people die a year from prescription drugs; 42,000 a year from automobile accidents. It is more likely you will be struck by lightning and die in this country than it is that you will die from using a dietary supplement, with just 16 deaths reported from that last year.”

While there have been isolated sensational incidents of unlicensed complementary and alternative practitioners around the country being successfully prosecuted for misconduct, in each case they were rightly held accountable for violations of *existing* fraud, malpractice and misrepresentation laws, and evidence revealed that they were knowingly administering improper services. This is in clear contrast to the reputable conduct of the hundreds of thousands of practitioners who daily provide safe, quality services to their clients across the nation.

Additionally, data gathered from across the world has consistently demonstrated the safety and efficacy of complementary and alternative modalities. Risk assessment studies conducted in both Canada and Australia disclosed that use of natural therapies were thousands of times safer than the use of major medical procedures or prescription drugs. The German government commissioned the publishing of an entire schedule of herbs for its practitioners, an explicit recognition of their safety.

c. The U.S. Insurance Industry Explicitly Recognizes the Safety of Complementary and Alternative Health Care. In contrast to the tens of thousands of dollars some licensed health care professionals must spend annually for malpractice insurance, unlicensed complementary and alternative practitioners spend a fraction of that amount. For example, **a practitioner working part time under the insurance category of “Allied Health Professional – Nutritionist” can purchase a comprehensive liability policy (\$3 million total coverage and \$1 million per incident) for a premium of less than \$200 annually.**

d. No Real Evidence of Harm. Given all the above, when opponents argue against legislation such as this bill on safety grounds, it is only fair to ask in return: “Where are the bodies?” “Where are the toxic medications?” Hundreds of well designed studies from across the globe explicitly recognize and support the safety and effectiveness of complementary and alternative health care. Additionally, one has only to look around the state of Texas to see *thousands* of practitioners already providing safe, effective services, as they have for many years. If these practices were not safe or effective, we would have had numerous, well publicized incidents and complaints to that effect by now.

This bill asks the legislature to publicly acknowledge a long standing status quo: The safety of unlicensed complementary and alternative health care as practiced in the state of Texas is self evident and should be publicly recognized as such.

6. RESPECT FOR LICENSED HEALTH CARE PROFESSIONS

The granting of licensure to a health care professional whose specialty requires it as a condition of practice is truly a landmark event in that professional’s career. It signifies that the respective community recognizes the professional has achieved the acceptable level of expertise to safely offer his/her services to the public.

Within the unlicensed complementary/alternative community the equivalent recognition is bestowed by either graduation from a recognized specialty institution, passage of the appropriate Board examination at the state or national level, or acceptance into the appropriate professional organization.

The Texas Health Freedom Coalition strongly believes that the professional prerogatives of licensed health care practitioners should be respected and enforced.

However, such licensure should be neither intentionally nor inadvertently exercised in a manner which confers unfair economic advantage upon the licensees with respect to the unlicensed community. Therefore, the language of this bill strikes the correct balance between the freedom of Texas consumers to intelligently choose among the variety of unlicensed complementary/alternative therapies, and protection of the hard won, deservedly bestowed, unique professional prerogatives of licensed health care practitioners.

At the same time, the Coalition echoes the conclusions of the White House CAM Commission on the conflicting outcomes of licensure: “For many CAM providers, licensure presents a tension between the desire to increase standardization of CAM education, training, and practices across states and the desire to keep CAM practice flexible, non-standardized, and linked to subjective, interpersonal and intuitive aspects of care.” ***Given the inherent safety of complementary/alternative modalities (see section 4. above) and the greatly increased costs to the state of establishing a licensure or registration framework (see section 3. above), we do not believe that either licensure or registration is the appropriate or cost effective avenue to pursue when establishing a regulatory framework for Texas unlicensed complementary/alternative health care practitioners.***

SUMMARY

Unlicensed complementary/alternative health care practitioners and modalities form an indispensable part of the whole that is the Texas health care system. Enactment of this bill into law will preserve the developing positive, synergistic relationship between the conventional medical and unlicensed complementary/alternative sectors of the state’s health care community, a relationship that holds the promise of delivering more comprehensive, higher quality and more cost effective health care to Texas consumers.

RECOMMENDATION

We respectfully request that you unequivocally support enactment of HB 1716 into law during the 2011 legislative session.

ⁱ National Health Statistics Reports, Number 18, July 30, 2009, *Costs of Complementary and Alternative Medicine (CAM) and Frequency of Visits to CAM Practitioners: United States, 2007* by Richard L. Nahin, Ph.D., M.P.H., National Institutes of Health; Patricia M. Barnes, M.A.; Barbara J. Stussman, B.A.; and Barbara Bloom, M.P.A., Division of Health Interview Statistics

ⁱⁱ *National Institutes of Health State-of-the-Science Conference Statement: Multivitamin/Mineral Supplements and Chronic Disease Prevention*, NIH State-of-the-Science Panel, *Annals of Internal Medicine*, 5 September 2006, pgs. 364-371.

ⁱⁱⁱ http://www.consumeraffairs.com/news04/2005/bankruptcy_study.html

^{iv} *Effect of Selected Dietary Supplements on Health Care Reduction – Study Update* Submitted By: Dobson | DaVanzo Prepared By: Joan E. DaVanzo, PhD, MSW Jean Freeman, MA, The Lewin Group, June 5, 2007

^v *Clinical Utilization and Cost Outcomes From an Integrative Medicine Independent Physician Association: An Additional 3-Year Update*, *Journal of Manipulative and Physiological Therapeutics*, May 2007, pgs. 263-269, Sarnat, R. MD, Winterstein, J. DC, Cambron, J. DC, PhD