A BILL FOR AN ACT

CONCERNING ALTERNATIVE HEALTH CARE PRACTITIONERS, AND, IN
CONNECTION THEREWITH, ENACTING THE "COLORADO
NATURAL HEALTH CONSUMER PROTECTION ACT" TO PROVIDE
AN EXEMPTION FROM STATE REGULATION FOR UNLICENSED
COMPLEMENTARY AND ALTERNATIVE HEALTH CARE
PRACTITIONERS, REQUIRE A PERSON PROVIDING
COMPLEMENTARY AND ALTERNATIVE HEALTH CARE SERVICES
TO DISCLOSE TO CLIENTS THE PERSON'S EDUCATIONAL
BACKGROUND AND THE NATURE OF THE SERVICES TO BE
provided, and PROHIBIT COMPLEMENTARY AND ALTERNATIVE
HEALTH CARE PRACTITIONERS FROM ENGAGING IN SPECIFIED
ACTIVITIES THAT ONLY STATE-REGULATED HEALTH CARE

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.
Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

Existing law regulates the practice of certain health care professions, including the practice of medicine. These laws prohibit unlicensed persons from engaging in certain activities constituting, among other practice areas, the practice of medicine. Current law does not specifically address, prohibit, or permit the practices of persons who provide traditional, cultural, complementary, or alternative healing arts therapies and services.

The bill provides that a person engaging in traditional, cultural, complementary, or alternative healing arts and health care treatments who makes specified written disclosures to a client and who does not engage in specifically prohibited acts is not violating the practice acts regulating licensed, certified, or registered health care professionals. Failure to make the required disclosures to clients, or performing a prohibited act, constitutes a deceptive trade practice under the "Colorado Consumer Protection Act". Additionally, if a complementary and alternative health care practitioner engages in a prohibited act, he or she is subject to penalties for the unauthorized practice of a regulated profession.

The bill exempts from the definition of "practice of medicine" the rendering of complementary and alternative health care services if performed consistent with the requirements of the bill.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add 6-1-724 as follows:

6-1-724. Unlicensed alternative health care practitioners - deceptive trade practices - short title - legislative declaration - definitions. (1) This section shall be known and may be cited as the "COLORADO NATURAL HEALTH CONSUMER PROTECTION ACT".
THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) ACCORDING TO A JULY 2009 REPORT FROM THE NATIONAL INSTITUTE OF HEALTH'S NATIONAL CENTER FOR COMPLEMENTARY AND ALTERNATIVE MEDICINE, WHICH WAS BASED ON 2007 SURVEY DATA:

(I) THIRTY-EIGHT PERCENT OF AMERICANS USE COMPLEMENTARY AND ALTERNATIVE MEDICINE; AND

(II) AMERICANS SPENT NEARLY THIRTY-FOUR BILLION DOLLARS IN OUT-OF-POCKET COSTS IN A TWELVE-MONTH PERIOD FOR COMPLEMENTARY AND ALTERNATIVE MEDICINE;

(b) IT IS ESTIMATED THAT MORE THAN ONE MILLION FIVE HUNDRED THOUSAND COLORADANS CURRENTLY RECEIVE A SUBSTANTIAL VOLUME OF HEALTH CARE SERVICES FROM COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONERS;

(c) THOSE STUDIES FURTHER INDICATE THAT INDIVIDUALS WHO USE COMPLEMENTARY AND ALTERNATIVE HEALTH CARE SERVICES REPRESENT A WIDE VARIETY OF AGE, ETHNIC, SOCIOECONOMIC, AND OTHER DEMOGRAPHIC CATEGORIES;

(d) ALTHOUGH COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONERS ARE NOT REGULATED BY THE STATE AND ARE NOT REQUIRED TO OBTAIN A STATE-ISSUED LICENSE, CERTIFICATION, OR REGISTRATION, THE PROVISION OF ALTERNATIVE HEALTH CARE SERVICES IN SOME CIRCUMSTANCES MAY BE INTERPRETED AS THE PROVISION OF A HEALTH CARE SERVICE THAT ONLY A PROFESSIONAL WHO IS LICENSED OR OTHERWISE REGULATED BY THE STATE MAY PERFORM, THEREBY SUBJECTING COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONERS TO POTENTIAL FINES, PENALTIES, AND RESTRICTIONS OF THEIR PRACTICES EVEN THOUGH THEIR PRACTICES DO NOT POSE AN
IMMINENT AND DISCERNABLE RISK OF SIGNIFICANT HARM TO PUBLIC HEALTH AND SAFETY;

(e) BECAUSE THE STATE RECOGNIZES AND VALUES THE FREEDOM OF CONSUMERS TO CHOOSE THEIR HEALTH CARE PROVIDERS, INCLUDING THE ABILITY TO CHOOSE A PERSON WHO IS NOT REGULATED BY THE STATE, THE INTENT OF THIS SECTION IS TO PROTECT CONSUMER CHOICE AND, IN CONSIDERATION OF THE PUBLIC’S HEALTH AND SAFETY, TO REMOVE TECHNICAL BARRIERS TO ACCESS TO UNREGULATED HEALTH CARE PRACTITIONERS AND INCLUDE APPROPRIATE CONSUMER PROTECTIONS AND DISCLOSURES AS REQUIRED IN THIS SECTION; AND

(f) NOTHING IN THIS SECTION:

(I) REQUIRES A PERSON ENGAGED IN TRADITIONAL, RELIGIOUS, CULTURAL, COMPLEMENTARY, INTEGRATIVE, OR ALTERNATIVE HEALTH CARE TO OBTAIN A LICENSE, CERTIFICATION, OR REGISTRATION FROM THE STATE AS LONG AS THE PERSON PRACTICES WITHIN THE PARAMETERS OF THIS SECTION;

(II) LIMITS THE PUBLIC’S RIGHT TO ACCESS TRADITIONAL, CULTURAL, COMPLEMENTARY, OR ALTERNATIVE HEALTH CARE PRACTITIONERS OR THE RIGHT OF AN UNREGULATED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER TO PRACTICE.

(3) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER" MEANS A PERSON WHO PROVIDES COMPLEMENTARY AND ALTERNATIVE HEALTH CARE SERVICES IN ACCORDANCE WITH THIS SECTION AND WHO IS NOT LICENSED, CERTIFIED, OR REGISTERED BY THE STATE AS A HEALTH CARE PROFESSIONAL.
(b) (I) "COMPLEMENTARY AND ALTERNATIVE HEALTH CARE SERVICES" MEANS ADVICE AND SERVICES:

(A) WITHIN THE BROAD DOMAIN OF HEALTH CARE AND HEALING ARTS THERAPIES AND METHODS THAT ARE BASED ON COMPLEMENTARY AND ALTERNATIVE THEORIES OF HEALTH AND WELLNESS; AND

(B) THAT ARE NOT PROHIBITED BY SUBSECTION (6) OF THIS SECTION.

(II) "COMPLEMENTARY AND ALTERNATIVE HEALTH CARE SERVICES" INCLUDE:

(A) HEALING PRACTICES USING FOOD; FOOD EXTRACTS; DIETARY SUPPLEMENTS, AS DEFINED IN THE FEDERAL "DIETARY SUPPLEMENT HEALTH AND EDUCATION ACT OF 1994", PUB.L. 103-417; NUTRIENTS; HOMEOPATHIC REMEDIES AND PREPARATIONS; AND THE PHYSICAL FORCES OF HEAT, COLD, WATER, TOUCH, SOUND, AND LIGHT;

(B) STRESS REDUCTION HEALING PRACTICES; AND

(C) MIND-BODY AND ENERGETIC HEALING PRACTICES.

(c) "HEALTH CARE PROFESSIONAL" MEANS A PERSON ENGAGED IN A HEALTH CARE PROFESSION FOR WHICH THE STATE REQUIRES THE PERSON TO OBTAIN A LICENSE, CERTIFICATION, OR REGISTRATION UNDER TITLE 12, C.R.S., IN ORDER TO ENGAGE IN THE HEALTH CARE PROFESSION.

(4) THIS SECTION APPLIES TO ANY PERSON WHO IS NOT LICENSED, CERTIFIED, OR REGISTERED BY THE STATE AS A HEALTH CARE PROFESSIONAL AND WHO IS PRACTICING COMPLEMENTARY AND ALTERNATIVE HEALTH CARE SERVICES.

(5) (a) A PERSON WHO IS NOT LICENSED, CERTIFIED, OR REGISTERED BY THE STATE AS A HEALTH CARE PROFESSIONAL AND WHO IS PRACTICING COMPLEMENTARY AND ALTERNATIVE HEALTH CARE SERVICES
CONSISTENT WITH THIS SECTION DOES NOT VIOLATE ANY STATUTE RELATING TO A HEALTH CARE PROFESSION OR PROFESSIONAL PRACTICE ACT UNLESS THE PERSON:

(I) ENGAGES IN AN ACTIVITY PROHIBITED IN SUBSECTION (6) OF THIS SECTION; OR

(II) FAILS TO FULFILL THE DISCLOSURE DUTIES SPECIFIED IN SUBSECTION (7) OF THIS SECTION.

(b) A PERSON WHO ENGAGES IN AN ACTIVITY PROHIBITED BY SUBSECTION (6) OF THIS SECTION IS SUBJECT TO THE ENFORCEMENT PROVISIONS, CIVIL PENALTIES, AND DAMAGES SPECIFIED IN PART 1 OF THIS ARTICLE, IS NO LONGER EXEMPT FROM LAWS REGULATING THE PRACTICE OF HEALTH CARE PROFESSIONALS UNDER TITLE 12, C.R.S., AND MAY BE SUBJECT TO PENALTIES FOR UNAUTHORIZED PRACTICE OF A STATE-REGULATED HEALTH CARE PROFESSION.

(c) A PERSON WHO FAILS TO COMPLY WITH SUBSECTION (7) OF THIS SECTION IS SUBJECT TO THE ENFORCEMENT PROVISIONS, CIVIL PENALTIES, AND DAMAGES SPECIFIED IN PART 1 OF THIS ARTICLE.

(6) A COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER PROVIDING COMPLEMENTARY AND ALTERNATIVE HEALTH CARE SERVICES UNDER THIS SECTION WHO IS NOT LICENSED, CERTIFIED, OR REGISTERED BY THE STATE SHALL NOT:

(a) PERFORM SURGERY OR ANY INVASIVE PROCEDURE, INCLUDING A PROCEDURE THAT REQUIRES ENTRY INTO THE BODY THROUGH SKIN, PUNCTURE, MUCOSA, INCISION, OR OTHER INTRUSIVE METHOD, EXCEPT AS PERMITTED UNDER PARAGRAPH (g) OF THIS SUBSECTION (6);

(b) ADMINISTER OR PRESCRIBE X RAY RADIATION TO ANOTHER PERSON;
(c) PRESHIRE, ADMINISTER, INJECT, DISPENSE, SUGGEST, OR RECOMMEND A PRESCRIPTION OR LEGEND DRUG OR A CONTROLLED SUBSTANCE OR DEVICE IDENTIFIED IN THE FEDERAL "CONTROLLED SUBSTANCES ACT", 21 U.S.C. SEC. 801 ET SEQ., AS AMENDED;
(d) USE GENERAL OR SPINAL ANESTHETICS, OTHER THAN TOPICAL ANESTHETICS;
(e) ADMINISTER IONIZING RADIOACTIVE SUBSTANCES FOR THERAPEUTIC PURPOSES;
(f) USE A LASER DEVICE THAT PUNCTURES THE SKIN, INCISES THE BODY, OR IS OTHERWISE USED AS AN INVASIVE INSTRUMENT. IF A COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER USES A LASER DEVICE AS A NONINVASIVE INSTRUMENT, THE LASER DEVICE MUST BE CLEARED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION FOR OVER-THE-COUNTER USE.
(g) PERFORM ENEMAS OR COLONIC IRRIGATION UNLESS THE COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER:
   (I) MAINTAINS BOARD CERTIFICATION THROUGH THE INTERNATIONAL ASSOCIATION OF COLON HYDROTHERAPY OR THE NATIONAL BOARD FOR COLON HYDROTHERAPY OR THEIR SUCCESSOR ENTITIES;
   (II) DISCLOSES THAT HE OR SHE IS NOT A PHYSICIAN LICENSED PURSUANT TO ARTICLE 36 OF TITLE 12, C.R.S.; AND
   (III) RECOMMENDS THAT THE CLIENT HAVE A RELATIONSHIP WITH A LICENSED PHYSICIAN;
(h) PRACTICE MIDWIFERY;
(i) PRACTICE PSYCHOTHERAPY, AS DEFINED IN SECTION 12-43-201 (9), C.R.S.;
(j) Perform spinal adjustment, manipulation, or mobilization;

(k) Provide optometric procedures or interventions that constitute the practice of optometry, as defined in Article 40 of Title 12, C.R.S.;

(l) Directly administer medical protocols to a pregnant woman or to a client who has cancer;

(m) Treat a child under two years of age unless the complementary and alternative health care practitioner:
   
   (I) Obtains the informed consent of the child's parent or legal guardian;

   (II) Discloses that he or she is not a physician licensed pursuant to Article 36 of Title 12, C.R.S.; and

   (III) Recommends that the child have a relationship with a licensed physician who is a board-certified pediatrician;

(n) Provide dental procedures or interventions that constitute the practice of dentistry, as defined in Article 35 of Title 12, C.R.S.;

(o) Set fractures;

(p) Practice or represent that he or she is practicing massage therapy, which, for purposes of this section:
   
   (I) Includes practices where the primary purpose is to provide deep stroking muscle tissue massage of the human body;

   (II) Excludes:

   (A) Stroking of the hands, feet, or ears; or
(B) The use of touch, words, and directed movement of a healing art within the bodywork community, including healing touch, mind-body centering, orthobionomy, reflexology, rolfing, reiki, qigong, and practices with the primary purpose of affecting energy systems of the human body;

(q) Provide a conventional medical disease diagnosis to a client;

(r) Recommend the discontinuation of a course of care, including a prescription drug, that was recommended or prescribed by another health care professional; or

(s) Hold oneself out as, state, indicate, advertise, or imply to a client or prospective client that he or she is a physician, surgeon, or both, or that he or she is a health care professional who is licensed, certified, or registered by the state.

(7) (a) Any person providing complementary and alternative health care services in this state who is not licensed, certified, or registered by the state as a health care professional, is not regulated by a professional board or the division of professions and occupations in the department of regulatory agencies pursuant to title 12, C.R.S., and is advertising or charging a fee for health care services shall provide to each client during the initial client contact the following information in a plainly worded written statement:

(I) The complementary and alternative health care practitioner's name, business address, telephone number, and any other contact information for the practitioner;

(II) The fact that the complementary and alternative
HEALTH CARE PRACTITIONER IS NOT LICENSED, CERTIFIED, OR REGISTERED
BY THE STATE AS A HEALTH CARE PROFESSIONAL;

(III) THE NATURE OF THE COMPLEMENTARY AND ALTERNATIVE
HEALTH CARE SERVICES TO BE PROVIDED;

(IV) A LISTING OF ANY DEGREES, TRAINING, EXPERIENCE,
CREDENTIALS, OR OTHER QUALIFICATIONS THE PERSON HOLDS REGARDING
THE COMPLEMENTARY AND ALTERNATIVE HEALTH CARE SERVICES HE OR
SHE PROVIDES; __

(V) A STATEMENT THAT THE CLIENT SHOULD DISCUSS ANY
RECOMMENDATIONS MADE BY THE COMPLEMENTARY AND ALTERNATIVE
HEALTH CARE PRACTITIONER WITH THE CLIENT’S PRIMARY CARE
PHYSICIAN, OBSTETRICIAN, GYNECOLOGIST, ONCOLOGIST, CARDIOLOGIST,
PEDIATRICIAN, OR OTHER BOARD-CERTIFIED PHYSICIAN; AND

(VI) A STATEMENT INDICATING WHETHER OR NOT THE
COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER IS
COVERED BY LIABILITY INSURANCE APPLICABLE TO ANY INJURY CAUSED
BY AN ACT OR OMISSION OF THE COMPLEMENTARY AND ALTERNATIVE
HEALTH CARE PRACTITIONER IN PROVIDING COMPLEMENTARY AND
ALTERNATIVE HEALTH CARE SERVICES PURSUANT TO THIS SECTION.

(b) BEFORE A COMPLEMENTARY AND ALTERNATIVE HEALTH CARE
PRACTITIONER PROVIDES COMPLEMENTARY AND ALTERNATIVE HEALTH
CARE SERVICES FOR THE FIRST TIME TO A CLIENT, THE COMPLEMENTARY
AND ALTERNATIVE HEALTH CARE PRACTITIONER SHALL OBTAIN A
WRITTEN, SIGNED ACKNOWLEDGMENT FROM THE CLIENT STATING THAT
THE CLIENT HAS RECEIVED THE INFORMATION DESCRIBED IN PARAGRAPH
(a) OF THIS SUBSECTION (7). THE COMPLEMENTARY AND ALTERNATIVE
HEALTH CARE PRACTITIONER SHALL GIVE A COPY OF THE
ACKNOWLEDGMENT TO THE CLIENT AND SHALL RETAIN THE ORIGINAL OR
A COPY OF THE ACKNOWLEDGMENT FOR AT LEAST TWO YEARS AFTER THE
LAST DATE OF SERVICE.

(c) A COMPLEMENTARY AND ALTERNATIVE HEALTH CARE
PRACTITIONER SHALL NOT REPRESENT IN ANY ADVERTISEMENT FOR
COMPLEMENTARY AND ALTERNATIVE HEALTH CARE SERVICES THAT THE
COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER IS
LICENSED, CERTIFIED, OR REGISTERED BY THE STATE AS A HEALTH CARE
PROFESSIONAL.

(8) THE FOLLOWING PERSONS SHALL NOT PROVIDE
COMPLEMENTARY AND ALTERNATIVE HEALTH CARE SERVICES PURSUANT
TO THIS SECTION:

(a) A HEALTH CARE PROFESSIONAL WHOSE STATE-ISSUED LICENSE,
CERTIFICATION, OR REGISTRATION HAS BEEN REVOKED OR SUSPENDED BY
THE STATE AND HAS NOT BEEN REINSTATED;

(b) A PERSON WHO HAS BEEN CONVICTED OF A FELONY FOR A
CRIME AGAINST A PERSON OR A FELONY RELATED TO HEALTH CARE AND
WHO HAS NOT SATISFIED THE TERMS OF THE SENTENCE IMPOSED FOR THE
CRIME. AS USED IN THIS PARAGRAPH (b), "CONVICTED" INCLUDES
ENTERING A PLEA OF GUILTY OR NOLO CONTENDERE OR THE IMPOSITION OF
A DEFERRED SENTENCE.

(c) A PERSON WHO HAS BEEN DEEMED MENTALLY INCOMPETENT
BY A COURT OF LAW.

(9) (a) A COMPLEMENTARY AND ALTERNATIVE HEALTH CARE
PRACTITIONER WHO RENDERS COMPLEMENTARY AND ALTERNATIVE
HEALTH CARE SERVICES CONSISTENT WITH THIS SECTION IS NOT ENGAGING
IN THE PRACTICE OF MEDICINE, AS DEFINED IN ARTICLE 36 OF TITLE 12, C.R.S., AND IS NOT VIOLATING THE "COLORADO MEDICAL PRACTICE ACT", ARTICLE 36 OF TITLE 12, C.R.S., AS LONG AS THE COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER DOES NOT ENGAGE IN AN ACT PROHIBITED IN SUBSECTION (6) OF THIS SECTION.

(b) NOTHING OTHERWISE AUTHORIZES A COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER PRACTICING WITHIN THE SCOPE OF PRACTICE IN THIS SECTION TO ENGAGE IN THE PRACTICE OF MEDICINE.

(10) THIS SECTION DOES NOT APPLY TO OR PROHIBIT:

(a) ANY LICENSED, CERTIFIED, OR REGISTERED HEALTH CARE PROFESSIONAL FROM PRACTICING HIS OR HER REGULATED PROFESSION;

(b) THE PRACTICE OF HEALTH CARE SERVICES THAT ARE EXEMPT FROM STATE REGULATION OR THE PROVISION OF HEALTH CARE SERVICES BY A PERSON WHO IS EXEMPT FROM STATE REGULATION; OR

(c) A PERSON FROM SELLING DIETARY SUPPLEMENTS AS STIPULATED UNDER THE FEDERAL "DIETARY SUPPLEMENT HEALTH AND EDUCATION ACT OF 1994", PUB.L. 103-417, OR OTHER NATURAL HEALTH CARE PRODUCTS OR ADVISING, EDUCATING, OR COUNSELING ABOUT THE STRUCTURE AND FUNCTION OF THE HUMAN BODY AND THE USE OF NATURAL HEALTH CARE PRODUCTS TO SUPPORT HEALTH AND WELLNESS.

(11) THIS SECTION DOES NOT LIMIT THE RIGHT OF ANY PERSON TO SEEK RELIEF UNDER THIS ARTICLE OR ANY OTHER AVAILABLE CIVIL OR COMMON LAW REMEDY FOR DAMAGES RESULTING FROM THE NEGLIGENCE OF A PERSON PROVIDING COMPLEMENTARY AND ALTERNATIVE HEALTH CARE SERVICES.

(12) NOTHING IN THIS SECTION RELIEVES A LICENSED, CERTIFIED, OR REGISTERED HEALTH CARE PROFESSIONAL FROM LIABILITY ARISING
FROM ANY INJURY CAUSED BY THE HEALTH CARE PROFESSIONAL IN THE COURSE OF PROVIDING COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICES.

(13) A VIOLATION OF THIS SECTION CONSTITUTES A DECEPTIVE TRADE PRACTICE UNDER THIS ARTICLE.

SECTION 2. In Colorado Revised Statutes, 6-1-105, amend (1) introductory portion; and add (1) (ddd) as follows:

6-1-105. Deceptive trade practices. (1) A person engages in a deceptive trade practice when, in the course of such the person's business, vocation, or occupation, such the person:

(ddd) VIOLATES SECTION 6-1-724.

SECTION 3. In Colorado Revised Statutes, 12-36-106, add (3) as follows:

12-36-106. Practice of medicine defined - exemptions from licensing requirements - unauthorized practice by physician assistants and anesthesiologist assistants - penalties - rules. (3) A person may engage in, and is not required to obtain a license or a physician training license under this article with respect to, any of the following acts:

(z) RENDERING COMPLEMENTARY AND ALTERNATIVE HEALTH CARE SERVICES CONSISTENT WITH SECTION 6-1-724, C.R.S.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.