

New Mexico Unlicensed Healthcare Practice Act

revisions inclusive: 2008-10-06

WHEREAS, New Mexico has a long history of cultural healers, including the curandera, sobadora, partera, medica and arbolaira, and healing traditions, including plant medicines and foods, prayer, ceremony and song, and these traditions must be shared with the current generation and preserved by future generations; and

WHEREAS, in New Mexico, there are also well-accepted complementary and alternative health care therapies that have historically been practiced by persons who are not licensed or regulated by the state, including naturopathy, homeopathy, meditation, mind-body healing practices, traditional eastern practices such as qi gong and ayurveda, nutrition and lifestyle change, energy therapies, aromatherapy, folk remedies, anthroposophy, herbal therapy and healing practices using heat, cold, water, light and sound; and

WHEREAS, a large number of New Mexicans are using cultural healers, and complementary and alternative health care therapies, food, food supplements, herbs and herbal remedies; and

WHEREAS, New Mexico is home to a large population of indigenous, traditional, alternative and complementary healers and health care practitioners and many internationally recognized educational institutions

The Legislature hereby intends, by enactment of this act, to protect New Mexico residents' access to and a practitioner's practice of indigenous, traditional, complementary or alternative health care and to protect New Mexico residents from harm from such practices.

1. 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 as a health care professional or practitioner, shall not be in violation of any law relating to a health care profession or professional practice act unless the person:
 - a. Performs surgery on a person
 - b. Sets fractures on a person
 - c. Administers X-ray radiation to a person
 - d. Prescribes or dispenses prescription drugs or controlled substances to a person
 - e. Directly manipulates the joints and spine of a person
 - f. Physically invades the body except for: use of non-prescription topical creams, oils, salves, ointments, tinctures or any other preparations which may penetrate the skin, without causing harm.
 - g. Makes any recommendations to discontinue current medical treatment prescribed by a licensed health care provider
 - h. Makes a specific western medical diagnosis. (For the purposes of this subsection, "a specific western medical diagnosis" means a medical term that is commonly used and understood in conventional western medicine).
 - i. Has sexual contact with a current patient or former patient within one year of rendering service
 - j. False advertising or provides false information in documents described in paragraph 2 below.
 - k. Practices under the influence of, is dependant on the use of, or participates in the improper or unauthorized use of, any legend or prescription drugs as defined in xxxx, any chemicals as defined in xxxx, or any controlled substance as defined in xxxx
 - l. Reveals private and confidential information of a patient without the patient's written consent
 - m. Fee splitting or kickbacks for referrals
 - n. Referring to themselves as a doctor or a physician alone or with other words.
 - i. Exception: If the practitioner holds a PhD or other degree commonly referred to as doctor, then the practitioner may use the term doctor if their name is immediately followed by PhD or the degree conferred and the field in which the degree was earned.
2. What the practitioner must do under this act
 - a. Practice and publish fair billing for services rendered
 - b. Provide to the patient prior to rendering services a patient information document in plain language that the patient understands (If the patient cannot read, then the document may be read to the patient in a language the patient understands) containing:
 - i. The practitioners name, indigenous, traditional, complementary or alternative health care title, business address, and telephone number
 - ii. That he or she is not a licensed health care provider in the State of New Mexico.

- iii. That the treatment is indigenous, traditional, alternative or complementary to medical services provided by licensed professionals in the State of New Mexico.
 - iv. The nature of the services to be provided.
 - v. The practitioner's degrees, educational, training, experience, or other qualifications regarding the services to be provided.
 - vi. The practitioner's fees per unit of service, the practitioner's method of billing for such fees and a statement that the patient has a right to reasonable notice of changes in services or charges
 - vii. Notice that the patient has a right to complete and current information concerning the practitioner's assessment and recommended service that is to be provided, including the expected duration of the service to be provided and the patient's right to be allowed access to their records and written information from their records.
 - viii. A statement that patient records and transactions with the practitioner are confidential, unless release of these records is authorized in writing by the patient, or otherwise provided by law.
 - ix. A statement that the patient has a right to coordinated transfer when there will be a change in the provider of services.
 - x. The name, address, and telephone number of the New Mexico Regulation and Licensing Department and notice that a patient may file complaints with the office.
- c. Obtain a written (or verbal if the patient cannot write, acknowledged by a third party) acknowledgement from the patient stating that he or she has been provided with a copy of the information document. The patient shall be provided with a copy of the written acknowledgement, which shall be maintained by the practitioner providing the service for three years.

3. Disciplinary actions

- a. When the New Mexico Regulation and Licensing Department finds that a practitioner practicing under this act may have violated any provision of this act, it may take legal action resulting in one or more of the following actions against the practitioner if the allegations are proven:
- i. Written notice to the practitioner to correct the activity. This method must be the first option if the offense has to do with lack of abiding by disclosure requirements.
 - ii. Place the practitioner on probation with a time designated ending of probation.
 - iii. Impose limitations or conditions on the practitioner's practice of traditional, complementary or alternative health care
 - iv. Impose rehabilitation requirements, or require practice under supervision;
 - v. Suspend the right to practice until specified conditions are met
 - vi. Revoke the right to practice
 - vii. Impose civil penalties up to \$10,000 in fines for each violation.
- b. Hearings
- i. If the New Mexico Regulation and Licensing Department proposes to take action against a practitioner, the Department will proceed under the provisions of the Uniform Licensing Act, Sec. 61-1-1 et. Seq
- c. Re-instatement
- i. The New Mexico Regulation and Licensing Department must reinstate the right to practice whenever reasonably possible if in the best interest of the public and may impose disciplinary and / or specific corrective measures when reasonably necessary to protect the public from direct harm.
- d. The following individuals are considered to pose an unacceptable and imminent risk of significant harm to the public while offering healthcare services and may not provide health care services to the public:
- i. Former healthcare providers whose license has been revoked or currently suspended by any health care board and not reinstated
 - ii. Individuals convicted of a felony for a crime against a person and not rehabilitated according to law
 - iii. Individuals convicted of a felony connected to healthcare and not rehabilitated according to law
 - iv. Individuals who have been deemed mentally incompetent by a court of law
- e. No person or legal entity providing information to RLD, whether as a report, complaint or testimony, shall be subject to civil damages or criminal prosecution because of said testimony.