

Safe Harbor Practitioner Exemption Laws are the Appropriate Regulation for Noninvasive Complementary and Alternative Health Care Practitioners: a practitioner and consumer point of view

I. Need for Safe Harbor Practitioner Exemption Laws

Unlicensed complementary and alternative health care (hereinafter CAHC) practitioners, such as aromatherapists, energy healers, herbalists, health coaches, homeopaths and traditional naturopaths, can be prosecuted, fined, and barred from practicing based on charges of unlicensed practice of a licensed health care profession.

Note: This article will focus on charges arising from state medical practice acts however the legal landscape and practitioner and consumer concerns discussed herein similarly apply to dietetic, massage, naturopathic, counseling, and other health care practice acts. For more information on the various types and levels of regulation seen in practice acts and the constitutional threshold to regulate using the least restrictive possible, see NHFA's full article [here](#), entitled Opposition to State Requirements for Licensure, Registration, and Certification of Unlicensed Health Care Practitioners.

In general, a medical practice act is a state law that prohibits anyone without a state medical license from "practicing medicine". The practice act provides a broad definition of what it means to "practice medicine" which typically includes doing anything to treat or prevent illness or disease. If someone without a medical license does something within that definition the state can charge that person with the "unlicensed practice of medicine" and subject them to civil and criminal penalties. The charges can be levied against someone regardless of intent, fraud or misrepresentation, and even – and most often - in the absence of harm or a consumer complaint.

These laws put CAHC practitioners at great risk if they practice because their services fit within the broad definition of the practice of medicine. If practitioners are aware of this legal risk, they are discouraged from offering and/or advertising their services. The result? Many consumers cannot access the services they need for healing and/or may not even know services exist that could help them.

II. Overview Of "Safe Harbor" Practitioner Exemption Laws

Practitioner exemption laws provide a way to eliminate the risks associated with the delivery of CAHC services by unlicensed health practitioners. Exemption laws ensure consumer access to a broad domain of healing services that are safe and noninvasive. They do this by giving practitioners an exemption from charges of "unlicensed practice of medicine" as long as they avoid a list of prohibited acts and provide consumers with specific disclosures. If the practitioner violates a condition listed in the exemption law for claiming the exemption, the practitioner is no longer safe from charges of unlicensed practice.

Exemption laws do not amend or narrow a state's definition of the practice of medicine but they do ask the state to acknowledge the impact that the broad definition has on CAHC practitioners

by providing them with an exemption under certain situations – adherence with the disclosure requirements and avoidance of the prohibited acts listed in the exemption legislation.

Any medical practice act will already include a long list of exemptions within its licensing law. Typically, these exemptions are for other licensed health care professionals such as nurses, chiropractors or acupuncturists. But there are also limited exemptions in many states for non-licensed people such as: The historic exemption in Minnesota, “*A Christian Scientist or other person who endeavors to prevent or cure disease or suffering exclusively by mental or spiritual means or by prayer*”; or the exemption in Iowa for “*Persons who advertise, sell, or prescribe natural mineral waters flowing from wells or springs*”; or the exemption in Massachusetts for “*... clairvoyants or persons practicing hypnotism, magnetic healing...*”.

Safe harbor practitioner exemption laws seek to add another exemption for unlicensed CAHC practitioners; an exemption for gentle, common-sense, non-invasive activities, that do fit within the broad definition of the practice of medicine but it’s limited to activities that should be allowed in the public domain because they don’t rise to the level of potential for harm that requires state regulation.¹ If a practitioner fails to adhere to the requirements of the safe harbor practitioner exemption law, then they are no longer protected by the “safe harbor” and could be shut down.

Out of the eleven states that provide CAHC practitioner exemption laws, some of the laws exempt practitioners out of all the practice acts while other laws exempt out of just one or two of the practice acts. But all safe harbor CAHC exemption legislation exempts out of some practice acts because that is the meaning of giving practitioners a “safe harbor” in which they can freely practice. Examples of two states that exempt out of all of the practice acts are Maine and New Mexico.

MAINE, the most recent CAHC exemption bill that passed into law reads:

Title 31: Chapter 113-B: Subchapter 5: Complementary and Alternative Health Care

Section 12602. License Not Required.

A person who provides complementary or alternative health care services in accordance with this subchapter but who is not licensed, certified or registered in this State as a health care professional or practitioner under this Title does not violate any law relating to the licensing of health care professionals under this Title as long as the person complies with the requirements of this subchapter.

NEW MEXICO’s law is another example that reads:

Article 35, Chapter 61-35-3. Licensing exemption.

¹ For more on the limits to a state’s power to regulate professions, see NHFA’s article, Opposition to State Requirements for Licensure, Registration, and Certification of Unlicensed Health Care Practitioners; available at: https://nationalhealthfreedomaction.org/wp-content/uploads/2021/11/Registration-memo-on-letterhead-updated-Nov-2-2021_AGedits-acc.pdf.

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 pursuant to Chapter 61 NMSA 1978 unless that individual:

- A. engages in any activity prohibited in Section 4 [61-35-4 NMSA 1978] of the Unlicensed Health Care Practice Act; or
- B. fails to fulfill the duties set forth in Section 5 [61-35-5 NMSA 1978] of the Unlicensed Health Care Practice Act.

CAHC exemption laws do not define CAHC services. CAHC includes such a large domain of modalities and services, each of which have their own definition, that it would be virtually impossible and, frankly inaccurate, to attempt to define that broad term using a single definition. Therefore, in exemption laws, a CAHC service is essentially defined as any health care service that is not prohibited by the prohibited act list. Some CAHC exemption laws include a sample list of CAHC services or modalities to give context to the definition that is provided in the bill but a list is not necessary to protect CAHC practitioners who comply with the parameters of the safe harbor practitioner exemption law. CAHC exemption laws are for all unlicensed healers who abide by the parameters of the law (rather than for just one type of healer, say, people providing home remedies to family members).

Additionally, a definition of CAHC is not appropriate because safe harbor laws are exemption laws, not practice acts defining a group and giving out a privilege. They are exemption laws to the criminal charges for unlicensed practice based on an existing definition of medicine, a definition which there is no intention of changing. An exemption law defines the conditions that need to be met for the exemption to apply, rather than defining a single particular profession and its related scope of practice.

Similarly, the prohibited acts list in an exemption law is simply a list of behaviors that you may not do if you do not have a license. Prohibited acts lists in CAHC exemption laws are designed to prohibit harmful behaviors. So, a practitioner providing CAHC services in a safe harbor state could say to the state's medical board (or to the AG Office or to DSPPS): "even if what I am doing could technically fall under broad definition of the medicine, I can practice my vocation and cannot be charged criminally for unlicensed practice unless I am doing one of the prohibited acts listed in the safe harbor exemption law or failing to provide the required disclosures."

Safe harbor practitioner exemption laws now exist in eleven states, including Minnesota, Rhode Island, California, Louisiana, Oklahoma, Idaho, Arizona (partial, only for homeopaths), Colorado, New Mexico, Nevada, and Maine.² These laws are working very well, and the movement to pass them in other states is growing.

² For links to passed laws, see the Safe Harbor Practitioner Exemption Laws page on NHFA's website, available at: <https://nationalhealthfreedomaction.org/resource-center/safe-harbor-practitioner-exemption-laws/>.

III. Exemption laws provide practitioners with the most freedom to deliver their services

Exemption laws for CAHC practitioners allow practitioners to practice legally without losing the presumption of safety of their services and without adding costs and administrative burdens in order to do so. The exemption laws do not require government endorsed education, training, or testing in order to deliver CAHC services. Practitioners practicing within the safe harbor exemption law have to disclose the credentials they have acquired no matter what kind of education they have, but the law does not require a particular type or length of education.

Safe harbor exemption laws acknowledge that there is value in diverse learning pathways and that practitioners come to their vocations from varied backgrounds and that licensing requirements sometimes serve as a barrier to entry for many CAHC practitioners. Exemption laws honor the educational and training journey of the practitioner and the unique wisdom gained from unique educational backgrounds and are a way to increase entry into and the diversity of services provided by the CAHC professions. They encourage exploration and following of a one's calling because practitioners are free to pursue what resonates with them and their clients rather than what is permissible according to the state.

Opposition to exemption laws based on an absence of educational requirements typically takes the form of a concern about a lack of competence to perform a vocation in a particular standardized manner. However, CAHC practitioners perform their vocations in diverse ways according to their individual training and skill set with proper disclosure to their clients and since the services being provided do not involve any prohibited acts and the consumer has full disclosure, clients appear to be quite satisfied with this setting.

Exemption laws are intentionally drafted to include many CAHC services and modalities, and it would be unnecessary and practically impossible to draft education and training standards for the hundreds of modalities covered by the safe harbor practitioner laws. The exemption laws work to avoid the inevitability of a certain modality, school, program, or educational credential to be unintentionally left out and requiring an amendment to the law later. CAHC practitioners gain their knowledge, skills, and experience in such diverse ways - from formal training in 4-year programs at accredited universities to online certifications to decades of apprenticeship under an experienced practitioner with no formal training themselves. Any attempt to put into a legislative bill all of those ways would be a fool's errand and would not be flexible to accommodate all the past, present, and future ways a person can become a healer.

Additionally, because "safe harbor" laws are exemption laws, they are not about establishing a list of approved, government-endorsed education paths. They are about establishing the conditions upon which an exemption to criminal charges should exist (disclosures and prohibited acts). It's based off of a threshold of harm inherent in the services and modalities themselves, not off of a state's stamp of approval of a list of courses and exams.

Because of the gentle, non-harmful nature of the services and modalities that make up CAHC in general, disclosure by the practitioner of his/her education, certifications, or other credential is all that is necessary. Many of the modalities do have their trade organization boards that issue their own certifications and have their own code of ethics which they require their credential-holders

to adhere to. However, because this is not true for all modalities and because of the non-invasive nature of the modalities, the language of exemption laws intentionally does not require membership in one of these organizations or associations in order to gain the protection of the “safe harbor” exemption.

Exemption laws do not create, nor subject practitioners to the jurisdiction of, a CAHC board. Because so many modalities are included in safe harbor laws, any attempt to create one governing board would not be representative of the practitioners it was created to govern. However, although no new board is created by the bill that does not mean that there is no oversight or consumer protection.

Safe Harbor laws provide, explicitly or implicitly, that the state’s Department of Safety and Professional Services or the Attorneys General Office has the authority to investigate and take action against a practitioner practicing under the exemption law for violating a provision of the safe harbor. Under an exemption law, when/if a complaint arises, the question asked by the state would change from: Was the person practicing medicine – or another licensed health care profession - without a license? to, Did the person fail to give out a required disclosure or did he/she perform a prohibited act?

If the answer is yes, the law lays out the avenues of enforcement the Department or AG office can pursue. Additionally, if the answer is yes, then that practitioner loses the protection of the exemption and the practice boards can use their current authority to shut down a practitioner they believe is violating their practice act. This reframing of the question makes it clear to the state and to practitioners what the focus will be regarding the practice of CAHC practitioners; the focus is on transparency and truthful information and/or on avoiding harmful behaviors – not on whether the services provided fit within a statutory definition of a practice act.

Finally, the disclosure requirements are common-sense activities that most CAHC practitioners are already providing their clients regardless of the existence of a safe harbor law in the state in which they practice. The disclosure requirements of exemption laws often include a provision that a practitioner must prominently display in the location where services are provided a written notice containing the specific disclosure statements of information that are required under the law. They are basic and minimally burdensome requirements to educate the consumer and protect the practitioner from allegations of misrepresentation or fraud.

IV. Exemption laws provide consumers with the most freedom to access services

A CAHC practitioner exemption law adds transparency and consumer protections to state laws while acknowledging what is happening in the culture already. Consumers have been increasingly searching for and benefitting from health care options that involve lifestyle and behavior modifications for decades. Consumers want to use gentle healing therapies alongside of, more conventional, pharmaceutical-based options. They want access to practitioners who can help them navigate their holistic health options; herbalists, health coaches, aromatherapists, and others.

But finding a practitioner who can discuss these approaches with a consumer is challenging because the practitioners often work under the radar due to the potential of criminal charges for speaking honestly about what they know or for putting to use the education, training or credentials, or other experience that they invested time and money in pursuing. That's what safe harbor exemption laws are designed to change.

CAHC exemption laws are a way to allow consumers to have the option to receive services from both licensed professionals and from CAHC practitioners. Because these laws are health freedom laws - freedom for practitioners and for consumers – they are drafted to empower the consumer to decide who they want to see for their health care services. If a consumer wants to see only licensed practitioners, the exemption laws do nothing to impact that choice. But if a consumer wants to see a practitioner who comes highly recommended but who has no formal training, that is their right to do so under the law. Or if they want to see a practitioner who has 15 years of schooling, 2 PhDs, and 5 certificates related to natural health, ayurvedic medicine, or herbology, etc., - but no state license - that is also their right in a safe harbor state. In that vein, and again because of the non-invasive nature of the services and modalities, the exemption laws rely on transparency and avoidance of harm to allow the free market to decide who can practice and who a consumer can access.

CAHC practitioners undoubtedly spend more time with the consumers than licensed professionals in a single visit. The increased time allows for more sharing of personal history and more education. This enhances the opportunity for real back-and-forth conversations between the consumer and the practitioner which enhances the client-provider relationship and adds to self-knowledge and self-healing.

In addition to being consumer access laws, safe harbor laws are consumer protection laws. Exemption laws add protections for consumers that do not currently exist in state law as well as maintain current laws that prohibit misrepresentation and encourage transparency. These protections - outlined by the long list of mandatory disclosures as well as a long list of prohibited acts - prevent consumer confusion by, for example, requiring that a CAHC practitioner would not be allowed to represent his/her self as licensed health care professionals. These protections prevent harm by clearly outlining the harmful activities that CAHC practitioners are not allowed to do, for example in some states, they cannot recommend that a consumer stop using treatments recommended to them by a licensed health care professional.

The written notice portion of the disclosure requirements adds a new transparency requirement to current law and a copy of the notice would be available to any law enforcement officer or government agent who enters the location and requests it. Access to this information would facilitate the state's ability to investigate, verify the accuracy of any statements made by, and to communicate with the practitioner should the need for corrective or disciplinary action arise.

In the states that have passed safe harbor exemption laws so far - and in MN for the past 20 years – we are not aware of any increase in consumer harm occurring. Rather, we have observed the CAHC practitioner exemption laws provide a practical way for states to assure continued consumer access to and the availability of complementary and alternative practitioners and

modalities while also retaining the avenues that state governments have to process complaints for unlicensed practice when the need arises.

For more information:

[Registration-memo-on-letterhead-updated-Nov-2-2021_AGedits-acc.pdf](#)
(nationalhealthfreedomaction.org)