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The primary guiding principle for legislators should be whether or not an unregulated profession presents a clear and present danger to the public's health, safety, and welfare. If the answer is no, regulation is unnecessary and wastes taxpayers' money.

— Council on Licensure, Enforcement and Regulation

Sunrise Analysis: Regulation of Herbal Therapists

Report No. 14-14, December 2014

Regulation of herbal therapists is not warranted

Proposed measure contradicts existing law and is problematic

Senate Bill No. 2439 of the 2014 regular session proposes to establish new regulatory requirements for individuals engaging in the practice of herbal therapy. The bill defines an herbal therapist as “a person with knowledge, skills, and experience in the direct personal health care of individuals based on herbal practices, including the utilization of herbal formulas to improve health and wellness, and who has met the standards and requirements pursuant to a license issued under this chapter.”

The purpose of the bill is to establish licensing requirements for contemporary herbal healers from all ancestries and for the benefit of the public as a whole. Licensing requirements would apply to any person who practices, offers to practice, or advertises the practice of herbal therapy, except those covered under Act 162, Session Laws of Hawai'i 1998, *Relating to the Practice of Medicine*. The bill also proposes a five-member board of herbal therapy to establish exam qualification requirements, issue licenses, establish fees and fines, and carry out disciplinary actions, among other powers and duties.

Under current law, traditional Native Hawaiian healers who have been recognized by a kūpuna council convened by Papa Ola Lokahi, a Native Hawaiian health board, are exempt from all provisions under Chapter 453, HRS, *Medicine and Surgery*. The intent of this law was to allow traditional Native Hawaiian healers to provide medical care for patients and place the traditional Hawaiian healing community (rather than the state) in charge of certifying healers. SB No. 2439 (2014) seeks to reverse this law by making the government, through a board of herbal therapy, responsible for determining who is qualified to engage in traditional Native Hawaiian healing. Furthermore, in addition to minor technical flaws in the bill, SB No. 2439 places the burden of establishing standards for qualification on the board, which may prove an extremely difficult task.

Regulation of herbal therapists does not meet sunrise criteria

The *Hawai'i Regulatory Licensing Reform Act*, Chapter 26H, HRS, limits regulation of certain professions and vocations to situations in which it is reasonably necessary to protect the health, safety, and welfare of consumers. Proponents of regulation could not provide evidence that herbal therapy presents a clear and present danger to consumers. Moreover, the reason behind the proposed regulation is proponents' attempt to seek licensing in order to practice traditional Native Hawaiian medicine without going through the kūpuna council recognition process provided in existing law. If SB No. 2439 were enacted, Hawai'i would become the first state in the nation to regulate herbal therapists. The cost of regulation would likely be prohibitive since it would be spread among a small number of herbal therapist licensees; and existing alternatives to regulation—specifically, state and federal agencies—provide an adequate degree of protection for consumers.

Agency response

The Department of Commerce and Consumer Affairs shared our concern that regulation of herbal therapists could artificially increase the costs of herbal therapy to consumers. The department also concurred with our conclusion that Section 453-2(c), HRS, already provides an appropriate process for review and approval of Native Hawaiian healers.