

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: CS/SB 398

INTRODUCER: Committee on Health Regulation and Senator Jones

SUBJECT: Chiropractic Medicine

DATE: March 9, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Stovall	HR	Fav/CS
2.			BC	
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill makes several amendments to Florida Statutes relating to the regulation of chiropractic medicine. The bill expands eligibility for obtaining a chiropractic medicine faculty certificate. The bill specifies that chiropractic continuing education courses that pertain to a specific company brand, product line, or service may not be approved. The bill amends the grounds for denial of a chiropractic physician's license or disciplinary action to specify that chiropractic physicians must preserve the identity of funds and property of a patient if the value of the funds and property is greater than \$501. The bill specifies that money or other property entrusted to a chiropractic physician by a patient may not exceed the value of \$1,500. The bill requires that the indirect supervision of a certified chiropractic physician's assistant (CCPA) must take place only at the supervising physician's address of record. The bill redefines the curriculum for the CCPA program by removing the requirement that the program must cover a period of 24 months. The bill requires that registered chiropractic assistants (RCAs) must register with the Board of Chiropractic Medicine (Board) and that an RCA's registration application and registration renewal application must be signed by a chiropractic physician who is an owner of the RCA's place of employment. The bill requires an RCA to notify the Board within 30 days after changing employment and becoming employed by a new chiropractic practice. The bill requires an RCA's employer of record to notify the Board within 30 days after the RCA is no longer

employed by that employer. The bill requires the Board to develop rules to facilitate the RCA registration process. The bill also expands and revises the exceptions to proprietorship and control of a chiropractic practice by persons other than licensed chiropractic physicians.

This bill substantially amends the following sections of the Florida Statutes: 460.4062, 460.408, 460.413, 460.4165, 460.4166, and 460.4167.

II. Present Situation:

Chiropractic Medicine Faculty Certificates

The Department of Health (DOH) is authorized to issue a chiropractic medicine faculty certificate to individuals who meet certain criteria specified in the Florida Statutes. A chiropractic medicine faculty certificate authorizes the certificate holder to practice chiropractic medicine only in conjunction with his or her faculty position at a university or college and its affiliated clinics that are registered with the Board as sites at which holders of chiropractic medicine faculty certificates will be practicing. The DOH is authorized to issue a chiropractic medicine faculty certificate without examination to an individual who demonstrates to the Board of Chiropractic Medicine (Board) that he or she, among other requirements, has accepted a full-time faculty appointment to teach chiropractic medicine at a publicly-funded state university or college or at a college of chiropractic located in Florida and accredited by the Council on Chiropractic Education, and who provides a certification from the dean of the appointing college acknowledging the appointment.¹ There is no such provision for researchers or part-time faculty in the requirements for obtaining a chiropractic medicine faculty certificate, a medical faculty certificate, or an osteopathic faculty certificate.

Continuing Chiropractic Education

The Board requires licensed chiropractors to periodically demonstrate their professional competence as a condition of license renewal by completing up to 40 hours of continuing education. Florida Statutes indicate that the Board shall approve continuing education courses that build upon the basic courses required for the practice of chiropractic medicine.² To receive Board approval, a continuing education course must meet a number of criteria specified in rule, including the requirement for the course to be offered for the purpose of keeping the licensee apprised of advancements and new developments in areas such as general or spinal anatomy; physiology; general or neuro-muscular diagnosis; X-ray technique or interpretation; chemistry; pathology; microbiology; public health; principles or practice of chiropractic; risk management; laboratory diagnosis; nutrition; physiotherapy; phlebotomy; acupuncture; proprietary drug administration; AIDS; and law relating to the practice of chiropractic, the Board, and the regulatory agency under which the Board operates.³

Grounds for Denial of a Chiropractic Medicine License or Disciplinary Action

Current law and rules of the Board allow chiropractic physicians to accept and hold in trust unearned fees in the form of cash or property other than cash which are received by a chiropractor prior to the rendering of services or the selling of goods and appliances. Chiropractors who utilize such trust funds are required to maintain trust accounting records and

¹ See s. 460.4062(1), F.S.

² See s. 460.408(1)(b), F.S.

³ See s. 64B2-13.004, F.A.C.

observe certain trust accounting procedures. Failure to preserve the identity of funds and property of a patient constitutes grounds for denial of a license or disciplinary action.⁴

Supervision of Certified Chiropractic Physician's Assistants

A CCPA may perform chiropractic services in the specialty area or areas for which he or she is trained or experienced when such services are rendered under the supervision of a licensed chiropractic physician or group of chiropractic physicians certified by the Board, under certain requirements and parameters.

“Direct supervision” is defined as responsible supervision and requires, except in case of an emergency, the physical presence of the licensed chiropractic physician on the premises for consultation and direction. “Indirect supervision” means responsible supervision and control by the supervising chiropractic physician and requires the “easy availability” or physical presence of the licensed chiropractic physician for consultation and direction of the actions of the CCPA. “Easy availability” means the supervising chiropractic physician must be in a location to enable him or her to be physically present with the CCPA within at least 30 minutes and must be available to the CCPA when needed for consultation and advice either in person or by communication devices such as telephone, two-way radio, medical beeper, or other electronic means.⁵

Under current law, indirect supervision of a CCPA is authorized if the indirect supervision occurs at the address of record or any place of practice of a chiropractic physician to whom he or she is assigned.⁶ Indirect supervision is not authorized for CCPAs performing services at a health care clinic licensed under part X of ch. 400, F.S.⁷

Education and Training of Certified Chiropractic Physician's Assistants

The DOH is directed under current law to issue certificates of approval for education and training programs for CCPAs which meet Board standards. Any basic program curriculum certified by the Board must cover a period of 24 months and consist of at least 200 didactic classroom hours during the 24 months.⁸

Registered Chiropractic Assistants

An RCA assists in all aspects of chiropractic medical practice under the direct supervision and responsibility of a chiropractic physician or CCPA. An RCA assists with patient care management, executes administrative and clinical procedures, and often performs managerial and supervisory functions, all of which may include performing clinical procedures such as preparing patients for the chiropractic physician's care, taking vital signs, and observing and reporting patients' signs or symptoms; administering basic first aid; assisting with patient examinations or treatments other than manipulations or adjustments; operating office equipment; collecting routine laboratory specimens, administering nutritional supplements, and performing office procedures required by the chiropractic physician or the CCPA.

⁴ See s. 460.413(1)(y), F.S., and s. 64B2-14.001, F.A.C.

⁵ See s. 64B2-18.001(8)-(9), F.A.C.

⁶ Department of Health, *Bill Analysis, Economic Statement and Fiscal Note, SB 398*, January 27, 2011, p. 3, on file with the Committee on Health Regulation.

⁷ See s. 460.4165(14), F.S.

⁸ See s. 460.4165(5), F.S.

RCAs may be registered by the Board for a biennial fee not to exceed \$25, but Board registration is not mandatory.⁹ In state fiscal year 2009-2010, the DOH received 907 applications for voluntary RCA registration.¹⁰

Proprietorship and Control by Persons Other Than Licensed Chiropractic Physicians

Generally only a sole proprietorship, group practice, partnership, or corporation that is wholly owned by one or more chiropractic physicians, or by a chiropractic physician and the spouse, parent, child, or sibling of that chiropractic physician, may employ a chiropractic physician or engage a chiropractic physician as an independent contractor to provide chiropractic services. However, s. 460.4167, F.S., provides for a number of exceptions, which include medical doctors, osteopaths, hospitals, and state-licensed insurers, among others. No exception exists for the surviving spouse, parent, child, or sibling of a deceased chiropractic physician or for a health maintenance organization or prepaid health clinic regulated under ch. 641, F.S., to employ or engage a chiropractic physician.¹¹

Current law also prohibits persons who are not chiropractic physicians, entities not wholly owned by one or more chiropractic physicians, and entities not wholly owned by chiropractic physicians and the spouse, parent, child, or sibling of a chiropractic physician, from employing or entering into a contract with a chiropractic physician and thereby exercising control over patient records, decisions relating to office personnel and hours of practice, and policies relating to pricing, credit, refunds, warranties, and advertising. No exceptions to this prohibition are contained in current law.¹²

III. Effect of Proposed Changes:

Section 1 amends s. 460.4062, F.S., relating to chiropractic medicine faculty certificates, to authorize the DOH to issue a faculty certificate to a person who performs research or has accepted a part-time faculty appointment to teach in a program of chiropractic medicine at a publicly funded state university, college, or a chiropractic college in Florida, assuming the person meets other statutory requirements for faculty certification.

Section 2 amends s. 460.408, F.S., relating to continuing chiropractic education, to prohibit the Board from approving continuing education courses consisting of instruction in the use, application, prescription, recommendation, or administration of a specific company's brand of products or services as contact classroom hours of continuing education. The bill also *allows* the Board to approve courses sponsored by chiropractic colleges if all other requirements of Board criteria for course approval are met, as opposed to the *required* approval of such courses in current law.

Section 3 amends s. 460.413, F.S., relating to grounds for denial of a license or disciplinary action, to specify that failing to preserve the identity of funds and property of a patient is grounds for license denial or disciplinary action only when the value of the funds and property is greater

⁹ See s. 460.4166, F.S.

¹⁰ Supra, note 5, p. 7.

¹¹ See s. 460.4167(1), F.S.

¹² See s. 460.4167(4), F.S.

than \$501. The requirement in current law that money or other property entrusted to a chiropractor for a specific purpose, including advances for costs and expenses of examination or treatment, must be held in trust and must be applied only to that purpose, is amended under the bill to prevent such advances from exceeding the value of \$1,500.

Section 4 amends s. 460.4165, F.S., relating to certified chiropractic physician's assistants, to limit the venues at which CCPAs are allowed to perform chiropractic services under the indirect supervision of a chiropractic physician by removing the chiropractor's place of practice as an authorized venue. A CCPA may continue to perform chiropractic service under indirect supervision at the supervising chiropractor's address of record unless the address or record is a health clinic licensed under part X of ch. 400, F.S.

The bill removes the requirement that education and training programs for CCPAs must cover a period of 24 months.

Section 5 amends s. 460.4166, F.S., relating to registered chiropractic assistants, to specify that clinical procedures performed by an RCA include the operation of therapeutic office equipment.

The bill creates a mandatory RCA registration process, effective April 1, 2012, for any person who performs any duties of an RCA for a biennial fee not to exceed \$25, unless the person is otherwise certified or licensed to perform those functions. A person employed as an RCA must apply for an initial registration with the Board by March 31, 2012, or within 30 days after becoming employed as an RCA, whichever is later. The applicant must list his or her place of employment and all chiropractors under whose supervision the applicant performs the duties of an RCA. The application must be signed by a chiropractor who is an owner of the RCA's place of employment. The initial registration becomes effective on April 1, 2012, or applies retroactively to the RCA's date of employment, whichever is later. The bill allows the RCA to be supervised by any chiropractor or CCPA employed by the RCA's employer or listed on the application.

The bill requires an RCA, within 30 days after a change of employment, to notify the Board of the new place of employment and the names of the chiropractic physicians under whose supervision the RCA performs the duties of an RCA at the new place of employment, and the notification must be signed by a chiropractor who is an owner of the RCA's new place of employment. The bill allows the RCA to be supervised by any chiropractor or CCPA employed by the RCA's new employer or listed on the notification.

The bill requires an RCA's employer as registered with the Board, within 30 days after an RCA leaves employment, to notify the Board that the RCA is no longer employed by that employer.

The bill renders an employee who performs none of the duties of an RCA as ineligible to register as an RCA.

The bill creates a registration renewal process for an RCA and requires registrations to be renewed biennially for a renewal fee not to exceed \$25. The renewal application must specify the RCA's place of employment and all chiropractors under whose supervision the RCA performs the duties on an RCA. The renewal must be signed by a chiropractor who is an owner of the

RCA's place of employment, and the bill allows the RCA to be supervised by any chiropractor or CCPA employed by the RCA's employer or listed on the registration renewal.

The bill requires the Board to prescribe, by rule, application forms for the initial registration of an RCA, the RCA's notice of change of employment, the employer's notice of an RCA's termination of employment, and the registration renewal for an RCA.

The bill specifies that if an RCA is employed by an entity not owned in whole or in part by a chiropractor, the RCA registration, notification, and renewal documents requiring signatures must be signed by a person having an ownership interest in the entity that employs the RCA and a licensed chiropractor who supervises the RCA.

The bill eliminates the voluntary RCA registration process under current law, effective July 1, 2011, in favor of the new mandatory RCA registration process which becomes effective April 1, 2012.

Section 6 amends s. 460.4167, F.S., relating to proprietorship by persons other than licensed chiropractic physicians, to recognize other entities such as limited liability companies, limited partnerships, professional associations, and trusts, as authorized proprietorships that may employ a chiropractic physician or engage a chiropractic physician as an independent contractor to provide chiropractic services.

More specifically, the bill creates or revises the following exceptions to the requirement that no person other than a sole proprietorship, group practice, partnership, or corporation that is wholly owned by one or more licensed chiropractic physicians, or by a licensed chiropractic physician and the spouse, parent, child, or sibling of that chiropractic physician, may employ a chiropractic physician or engage a chiropractic physician as an independent contractor to provide chiropractic services:

- A limited liability company, limited partnership, any person, professional association, or any other entity that is wholly owned by:
 - A licensed chiropractic physician and the spouse or surviving spouse, parent, child, or sibling of the chiropractic physician; or
 - A trust whose trustees are licensed chiropractic physicians and the spouse, parent, child, or sibling of a chiropractic physician;
- A limited liability company, limited partnership, professional association, or any other entity wholly owned by a licensed chiropractor or chiropractors, a licensed medical doctor or medical doctors, a licensed osteopath or osteopaths, or a licensed podiatrist or podiatrists;
- An entity that is wholly owned, directly or indirectly, by a licensed or registered hospital or other entity licensed or registered under ch. 395, F.S.;
- An entity that is wholly owned and operated by an organization that is exempt from federal taxation under s. 501(c)(3) or (4) of the Internal Revenue Code;
- A health care clinic licensed under part X of ch. 400, F.S. that provides chiropractic services by a licensed chiropractic physician; and
- A health maintenance organization or prepaid health clinic regulated under ch. 641, F.S.

Upon the death of chiropractic physician who wholly owns a sole proprietorship, group practice, partnership, corporation, limited liability company, limited partnership, any person, professional

association, or any other entity, with his or her spouse, parent, child, or sibling, and that wholly-owned entity employs a licensed chiropractic physician or engages a chiropractor as an independent contractor to provide chiropractic services, the bill allows the deceased chiropractic physician's surviving spouse or adult children to hold, operate, pledge, sell, mortgage, assign, transfer, own, or control the deceased chiropractic physician's ownership interests for so long as the surviving spouse or adult children remain the sole proprietor of the chiropractic practice.

The bill also grants authority to an authorized employer of a chiropractic physician to exercise control over:

- The patient records of the employed chiropractor;
- Policies and decisions relating to pricing, credit, refunds, warranties, and advertising; and
- Decisions relating to office personnel and hours of practice.

Section 7 provides that the bill takes effect July 1, 2011.

Other Potential Implications:

The DOH advises that the mandatory regulation of RCAs may enable chiropractic physicians to seek third-party reimbursements for therapeutic services or the administration of therapeutic agents by RCAs.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill requires the Board to assess a biennial fee for RCA registration not to exceed \$25.

B. Private Sector Impact:

The DOH has been asked to provide a fiscal analysis of the committee substitute.

C. Government Sector Impact:

The DOH has been asked to provide a fiscal analysis of the committee substitute.

The DOH advises that after CCPAs are no longer authorized to perform services with indirect supervision anywhere other than the address of record of their supervising chiropractors, Section 4 of the bill would affect the department's enforcement branch if complaints are filed against CCPAs who continue to perform services at a place of practice other than their supervising chiropractor's address of record, the fiscal impact of which is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 5 of the bill requires an RCA to submit an initial application within 30 days after employment, and the registration applies retroactively to the date of employment. The DOH advises that the grace period of 30 days after employment to submit the registration application could conflict with s. 456.065, F.S., which provides for civil and criminal penalties for the unlicensed practice of a profession. Under the bill, unlicensed practice for 30 days of employment is acceptable if the registration is applied for no later than the end of the 30 days. If the Board does not receive an RCA application, then retroactivity will not apply and the unregistered RCA may be prosecuted for unlicensed practice.

Section 456.0635, F.S., requires a board or the DOH to refuse to issue or renew a license, certificate, or registration to any applicant if the applicant has been convicted of, or entered a plea of guilty or nolo contendere to a felony under ch. 409, F.S., relating to social and economic assistance; ch. 817, F.S., relating to fraudulent practices; ch. 893, F.S., relating to controlled substances; or certain federal laws, unless the sentence and any subsequent period of probation ended more than 15 years prior to the date of the application. The bill's mandatory RCA registration might impact the ability of certain persons to remain or become employed in a chiropractor's office.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on March 9, 2011:

The CS made the following changes to the bill:

- The CS *allows* the Board to approve continuing education courses sponsored by chiropractic colleges if all other requirements of Board criteria for course approval are met, as opposed to the *required* approval of such courses in current law.
- The CS specifies that failing to preserve the identity of funds and property of a patient is grounds for license denial or disciplinary action only when the value of the funds

and property is greater than \$501. The requirement in current law that money or other property entrusted to a chiropractor for a specific purpose, including advances for costs and expenses of examination or treatment, must be held in trust and must be applied only to that purpose, is amended under the CS to prevent such advances from exceeding the value of \$1,500.

- The CS eliminates the voluntary registration for RCAs under current law and replaces it with a mandatory registration for all RCAs. The CS also eliminates the requirement in the original bill for chiropractors who supervise RCAs to be approved by the Board and for the Board to assess a fee up to \$75 for that approval. The CS requires an RCA's initial registration, notification of change of employment, and biennial registration renewal to be signed by a chiropractor who is an owner of the RCA's place of employment, or by a non-chiropractor with an ownership interest in the place of employment and a supervising chiropractor in instances where the place of employment is not owned in whole or in part by a licensed chiropractor.

B. Amendments:

None.