

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 413 Chiropractic Medicine

**SPONSOR(S):** Health & Human Services Quality Subcommittee; Mayfield

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 470

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	13 Y, 0 N, As CS	Holt	Calamas
2) Rulemaking & Regulation Subcommittee	13 Y, 0 N	Rubottom	Rubottom
3) Health & Human Services Committee	17 Y, 0 N	Holt	Gormley

### SUMMARY ANALYSIS

The bill makes several changes to chapter 640, F.S., the chiropractic medicine practice act. The bill revises the requirements for obtaining a chiropractic medicine faculty certificate, adds language regarding the denial of continuing education courses, requires the successful passage of parts I-IV and physiology exam of the National Board of Chiropractic Examiners, addresses the retention of patient funds and property, amends the timeframe for training and oversight of a certified chiropractic physician's assistant, and provides exceptions to the types of entities that may hire independent contractors to provide chiropractic services and states who may exercise control over a chiropractor's practice.

The bill has no fiscal impact on the state or local governments.

The bill provides an effective date of July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Medical Quality Assurance

The Florida Department of Health (DOH), Division of Medical Quality Assurance (MQA) regulates health care practitioners to ensure the health, safety and welfare of the public. Currently, MQA supports licensure and disciplinary activities for 43 professions and 37 types of facilities/establishments, and works with 22 boards and 6 councils. Boards are responsible for approving or denying applications for licensure and are involved in disciplinary hearings. The range of disciplinary actions taken by boards includes citations, suspensions, reprimands, probations, and revocations.

##### Boards

A board is a statutorily created entity that is authorized to exercise regulatory or rulemaking functions within the MQA.<sup>1</sup> Boards are responsible for approving or denying applications for licensure and making disciplinary decisions on whether a practitioner practices within the authority of their practice act. Practice acts refer to the legal authority in state statute that grants a profession the authority to provide services to the public. The range of disciplinary actions taken by a board includes citations, suspensions, reprimands, probations, and revocations.

##### Chiropractic Physicians

In Florida, chiropractic physicians (chiropractors) are governed by chapter 460, F.S., the chiropractic medicine act. The practice of chiropractic medicine is defined to mean a non-combative principle and practice consisting of the science of the adjustment, manipulation, and treatment of the human body.<sup>2</sup> A chiropractor is authorized to adjust, manipulate or treat the human body by manual, mechanical, electrical, or natural methods.<sup>3</sup> Chiropractors are prohibited from prescribing or administering any legend drugs with limited exceptions.<sup>4</sup> According to the American Chiropractic Association, there are more than 60,000 active chiropractic licenses in the United States and all 50 states officially recognize chiropractic medicine as a health care profession.<sup>5</sup> Currently, there are 4,667 individuals who hold an active in-state license to practice chiropractic medicine in Florida.<sup>6</sup>

Licensure requirements for chiropractic physicians include: graduation from a chiropractic college that is accredited by the Council on Chiropractic Education; passage of the National Board of Chiropractic Examiners certification examination; and submission of an application and fees to the department.<sup>7</sup> A Chiropractor may be disciplined for misconduct and violating any provision contained within the chiropractic medicine practice act.<sup>8</sup> A chiropractor may be disciplined for failing to preserve the identity of funds held in trust and property of a patient in any amount.<sup>9</sup> Currently, statute does not provide a cap on the amount of funds that a chiropractor may hold in trust as an advance for costs and expenses for rendered services.

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<sup>1</sup> S. 456.001, F.S.

<sup>2</sup> S. 460.403(9)(a), F.S.

<sup>3</sup> S. 460.403(9)(c), F.S.

<sup>4</sup> *Id.* Chiropractors may order, store, and administer, for emergency purposes only, prescription medical oxygen, any solution consisting of 25 percent ethylchloride and 75 percent dichlorodifluoromethane, and any solution consisting of 15 percent dichlorodifluoromethane and 85 percent trichloromonofluoromethane.

<sup>5</sup> American Chiropractic Association, General Information about Chiropractic Care, *available at*: [www.acatoday.org/pdf/Gen\\_Chiro\\_Info.pdf](http://www.acatoday.org/pdf/Gen_Chiro_Info.pdf) (last viewed November 30, 2011).

<sup>6</sup> Florida Department of Health, Division of Medical Quality Assurance, 2010-2011 MQA Annual Report, *available at*: <http://doh.state.fl.us/mqa/reports.htm> (last viewed October 27, 2011).

<sup>7</sup> S. 460.406, F.S.

<sup>8</sup> S. 460.412, 460.411, and 460.413, F.S.

<sup>9</sup> S. 460.13(1)(y), F.S.

## National Examination

The Florida chiropractic licensure examination is conducted by the National Board of Chiropractic Examiners. The exam is composed of four parts and two elective examinations and:<sup>10</sup>

- *Part I* tests individuals on subjects in each of six basic science areas: general anatomy, spinal anatomy, physiology, chemistry, pathology, and microbiology.
- *Part II* tests individuals on each of six clinical science areas: general diagnosis, neuromusculoskeletal diagnosis, diagnostic imaging, and principles of chiropractic, chiropractic practice, and associated clinical sciences.
- *Part III* tests individuals on nine clinical areas: case history, physical examination, neuromusculoskeletal examination, diagnostic imaging, clinical laboratory and special studies, diagnosis or clinical impression, chiropractic techniques, supportive interventions, and case management.
- *Part IV* is a practical exam that tests individuals on three major areas: x-ray interpretation and diagnosis; chiropractic technique; and case management.
- *Physiotherapy* (optional) tests individuals on passive<sup>11</sup> and active<sup>12</sup> adjunctive procedures.
- *Acupuncture* (optional) tests individuals on the history and philosophy of acupuncture in a chiropractic setting, organs, Qi (life energy) and fluid, channels and pathways, acupoints, acupuncture techniques, basic treatment tenets and protocols, and safety and hygiene.

## Chiropractic Practice Ownership

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 hire a chiropractic physician as an independent contractor to provide chiropractic services.<sup>13</sup> However, exceptions are provided in statute for medical doctors, doctors of osteopathic medicine, hospitals, and state-licensed insurers.<sup>14</sup> Current law also prohibits certain persons 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. Persons who are not chiropractic physicians and entities not wholly owned by chiropractic physicians or chiropractic physicians and the spouse, parent, child, or sibling of a chiropractic physician, are so prohibited. No exceptions to this prohibition are contained in current law.<sup>15</sup>

## Board of Chiropractic Medicine

Chiropractors are regulated by the Florida Board of Chiropractic Medicine (board). The board is composed of seven members:<sup>16</sup>

- Five are licensed instate chiropractors engaged in the practice for at least 4 years; and
- Two Florida residents who are not licensed as health care practitioners

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<sup>10</sup> National Board of Chiropractic Examiners, Written Examinations: Overview, available at: <http://www.nbce.org/written/overview.html> (last viewed December 2, 2011).

<sup>11</sup> Passive adjunctive procedures include thermotherapy, electrotherapy, mechanotherapy and phototherapy.

<sup>12</sup> Active adjunctive procedures include functional assessment, exercise physiology, endurance training, muscle rehabilitation, neuromuscular rehabilitation, and disorder-specific rehabilitation

<sup>13</sup> S. 460.4167(1), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> S. 460.4167 (4), F.S.

<sup>16</sup> S. 460.404, F.S.

All board members are appointed by the Governor and confirmed by the Senate. Members of the board are provided periodic training in the grounds for disciplinary action, actions the board and the DOH may take, changes in rules and statutes, relevant judicial and administrative decisions. Board members are appointed to probable cause panels and participate in disciplinary decisions.

The board is tasked with approving continuing education courses.<sup>17</sup> The board is required to approve continuing education courses that are sponsored by chiropractic colleges whose graduates are eligible to take the national examination and the courses must build upon the basic courses required for the practice of chiropractic medicine.<sup>18</sup> The board is permitted to approve courses in adjunctive modalities. Furthermore, the board is directed to require licensees to periodically demonstrate their professional competence as a condition of license renewal by completing at least 40 classroom hours of continuing education every biennium.<sup>19</sup>

### Chiropractic Faculty Certificates

Section 460.4062, F.S., provides for the certification of chiropractic medical faculty at publicly funded state universities or colleges. A chiropractic medicine faculty certificate authorizes the certificate holder to practice chiropractic medicine only in conjunction with his or her full-time 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.<sup>20</sup>

DOH is authorized to issue a chiropractic medicine faculty certificate to an individual without requiring them to pass the state examination if they demonstrate to the board:<sup>21</sup>

- Possession of a valid license to practice in another state;
- Graduation from an accredited school or college of chiropractic medicine accredited by the Council on Chiropractic Education; and
- Acceptance of a full-time faculty appointment to teach chiropractic medicine at a publicly-funded state university or college that is accredited by the Council on Chiropractic Education, which includes a certificate from the dean of the appointing college acknowledging the appointment.

In addition, the individual must be at least 21 years of age, be of good moral character and not be the subject of any disciplinary action. As of November 2011, there are 19 schools accredited by the Council on Chiropractic Education Commission on Accreditation in the United States; two are located in Florida: Palmer College of Chiropractic (Port Orange) and National University of Health Sciences (Pinellas Park).<sup>22</sup> Currently, there are 8 individuals who possess a chiropractic faculty certificate.<sup>23</sup>

### Chiropractic Assistants

Chapter 460, F.S., provides for two types of chiropractic assistants: certified and registered.<sup>24</sup> Both are required to work under a licensed chiropractor who has been certified by the board as a supervising chiropractor.<sup>25</sup> The supervising chiropractor is liable for any act or omission of any certified chiropractic assistant under their supervision or control.<sup>26</sup>

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<sup>17</sup> S. 460.408, F.S.

<sup>18</sup> S. 460.408(1), F.S.

<sup>19</sup> S.460.408(1), F.S. and 64B2-13.004, F.A.C.

<sup>20</sup> S. 460.4062(2), F.S.

<sup>21</sup> S. 460.4062(1), F.S.

<sup>22</sup>The Council on Chiropractic Education, Accredited Doctor of Chiropractic Programs/Institutions, available at: [http://www.cce-usa.org/Accredited\\_Doctor\\_Chiro.html](http://www.cce-usa.org/Accredited_Doctor_Chiro.html) (last viewed December 1, 2011).

<sup>23</sup> *Supra*, note 6, page 2.

<sup>24</sup> Ss. 460.4165 and 460.4166, F.S.

<sup>25</sup> 64B2-18.005, F.A.C. Certifications are valid for 2 years and must be renewed biennially.

<sup>26</sup> S. 460.4165(11), F.S. and 64B2-18.006, F.A.C.

A “certified chiropractic physician’s assistant” is a person who is a graduate of an approved program to perform chiropractic services under the indirect or direct supervision<sup>27</sup> of an approved supervising chiropractic physician or a group of physicians.<sup>28</sup> Training programs for certified chiropractic physician’s assistants are approved and issued certificates by the board. The curriculum must consist of at least 200 didactic hours and cover a period of 24 months.<sup>29</sup> A person who desires to be licensed as a certified chiropractic physician’s assistant is required to submit an application for licensure, remit a fee and meet eligibility criteria. A person who is not certified as a chiropractic physician’s assistant and represents themselves as such, is guilty of a third degree felony.<sup>30</sup> Currently, there are 174 individuals who hold active in-state certificates as a chiropractic physician’s assistant.<sup>31</sup>

A “registered chiropractic assistant” is a person who voluntarily registers<sup>32</sup> with the board to perform chiropractic services under the direct supervision<sup>33</sup> of either a chiropractic physician or certified chiropractic assistant.<sup>34</sup> There are no training, educational requirements, or eligibility criteria that must be met to become a registered chiropractic assistant. Section 460.4166, F.S., states that if a person wishes to register as a chiropractic assistant they must adhere to ethical and legal standards of the professional practice, recognize and respond to emergencies, and demonstrate professional characteristics. Currently, there are 2,430 individuals who hold active registrations as chiropractic assistants.<sup>35</sup>

## **Effect of Proposed Changes**

### Chiropractic Medicine Faculty Certificate

The bill amends the eligibility requirements for the chiropractic medicine faculty certificate, such that DOH may issue a certificate to a individual who has accepted a part-time faculty appointment or conducts research at a publicly funded state university, college, or a chiropractic college that is accredited by the Council on Chiropractic Education. This will enable individuals who have not passed the chiropractic examination required for licensure to treat patients in conjunction with their duties as faculty members or researchers. Currently, only individuals accepting full-time faculty appointment are eligible.

### Patient Funds and Property

A chiropractor may be disciplined for failing to preserve the identity of any funds or property of a patient and failing to hold any money or property in entrusted in trust.<sup>36</sup> Currently, statute does not provide a cap on the amount of funds, value of money or property. The bill caps the value of funds and property of a patient must be over \$501 and provides that the maximum amount that may be held in trust is \$1,500.

### National Examination

The bill adds to statute that individuals seeking licensure as a chiropractor must successfully pass parts IV and the physiotherapy optional exam conducted by the National Board of Chiropractic Examiners.

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<sup>27</sup> Indirect supervision requires easy availability or physical presence where the supervising chiropractor can be in a location within 30 minutes and must be available when needed for consultation and advice either in person or by electronic means. A chiropractic physician assistant working in a facility that holds a health care clinic license may only render services under direct supervision. See Ss. 460.403(8) and 460.4165(14), F.S. and 64B18.001, F.A.C.

<sup>28</sup> S. 460.403(3), F.S.

<sup>29</sup> S. 460.414(5), F.S.

<sup>30</sup> Felony of the third degree are punishable by a term of imprisonment not to exceed 5 years or a fine not to exceed \$5,000 (ss. 775.082 and 775.083, F.S.).

<sup>31</sup> *Supra*, note 6, page 2.

<sup>32</sup> S. 460.4166(5), F.S. The fee to voluntarily register is \$25.

<sup>33</sup> Direct supervision means responsible supervision and control, with the licensed chiropractic physician assuming legal liability for the services rendered by a registered chiropractic assistant and requires the Chiropractor to be physically located on the premises at all times while patients are receiving patient care management or treatment. See 64B2-18.0075, F.A.C.

<sup>34</sup> S. 460.403(10), F.S.

<sup>35</sup> *Supra*, note 6, page 2.

<sup>36</sup> S. 460.13(1)(y), F.S.

The National Board of Chiropractic Examiners describes the physiotherapy examination as an elective examination.<sup>37</sup> However, state law requires individuals to only successfully complete parts I-III of the national examination.

### Chiropractor Practice Ownership

The bill provides exceptions to the limitation on employment of chiropractors. First, the bill provides that a trust whose trustees are licensed chiropractors and the spouse, parent, child, or sibling of a chiropractic physician may employ a chiropractor as an independent contractor to provide chiropractic services. Secondly, the bill provides that a limited liability company, limited partnership, professional association or entity, health maintenance organization, and prepaid health clinic are entities that may also employ a chiropractor as an independent contractor. Third, the bill provides that a surviving spouse of a chiropractor may also employ a chiropractor as an independent contractor.

The bill specifies that the surviving spouse or surviving spouse, parent, child, or sibling of the chiropractic physician may hold, operate, pledge, sell, mortgage, assign, transfer, own, or control the deceased chiropractor's ownership interests as long as the survivors remain the sole proprietors of the practice. The bill states that any entities that are able to hire a chiropractor as an independent contractor may exercise control over the patient records of the employed chiropractor, the policies and decisions relating to pricing, credit, refunds, warranties, and advertising, and the decisions relating to office personnel and hour of operation. The bill corrects cross references to statutory provisions that provide the punishment for a third degree felony.

According to DOH, the board office has been unable to determine if there have ever been any incidences of surviving family members who have been prosecuted by the state for retaining ownership after the death of a practitioners, but there have been inquires concerning the need for disposing of the practice of a deceased chiropractor by his or her estate or close surviving relatives.<sup>38</sup> The advice has always been for the surviving relatives to seek legal guidance in this matter.<sup>39</sup> In practice, these situations are typically resolved by the quick sale of the practice by the estate of the deceased to another appropriately licensed practitioner.

### Continuing Education

The bill prohibits the board from approving continuing education courses that include instruction on in the use, application, prescription, recommendation, or administration of a specific company's brand of products or services. Consequently, more continuing education courses may be denied by the board. The bill gives the board more discretion in approving continuing education courses sponsored by chiropractic colleges whose graduates are eligible to take the national examination by removing the mandate to approve all courses that meet the qualifications.

According to DOH, most if not all of the continuing education course offered by chiropractic colleges meet current statutory requirements, thus are automatically approved.<sup>40</sup> Additionally, DOH states that it does not maintain any information on courses and does not review the content of the continuing education courses, this is a board function.<sup>41</sup> Currently, DOH has a contract with a vendor called "CE Broker" that deals with the continuing education providers. Thus, the individuals taking the course and continuing education providers are the only entities that actually view the materials.

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<sup>37</sup> National Board of Chiropractor Examiners, Written Examinations: Applicant Eligibility, *available at*: <http://www.nbce.org/written/eligibility.html#pht> (last viewed December 1, 2011)

<sup>38</sup> Department of Health, Bill Analysis, Economic Statement and Fiscal Note for HB 413, dated November 29, 2011.

<sup>39</sup> *Id.*

<sup>40</sup> Department of Health, Bill Analysis, Economic Statement and Fiscal Note for HB 413, dated November 29, 2011.

<sup>41</sup> *Id.*

## Certified Chiropractic Physician's Assistant

The bill amends the education requirements for certified chiropractic physician's assistant such that the curriculum of 200 hours does not have to occur in a 24-month period. According to DOH, currently there are two approved certified chiropractic physician's assistant education programs which are modeled to meet statutory requirements. However, there have been proposals submitted to the board for approval that propose offering the same course material over a shorter timeframe.<sup>42</sup>

In addition, the bill changes the location in which a certified chiropractic physician's assistant may provide services under indirect supervision. Currently, they may provide services at the address of record or place of practice. The bill limits the practice setting to the supervising chiropractor's address of record. According to DOH, this limitation will stop the practice of using certified chiropractic physician's assistant to run chiropractic branch offices without the physical presence or direct supervision of a chiropractor.<sup>43</sup>

### B. SECTION DIRECTORY:

**Section 1.** Amends s. 460.4062, F.S., relating to chiropractic medicine faculty certificate.

**Section 2.** Amends s. 460.408, F.S., relating to continuing chiropractic education.

**Section 3.** Amends s. 460.406, F.S., relating to licensure by examination.

**Section 4.** Amends s. 460.413, F.S., relating to grounds for disciplinary action by the board or department.

**Section 5.** Amends s. 460.4165, F.S., relating to certified chiropractic physician's assistants.

**Section 6.** Amends s. 460.4167, F.S., relating to proprietorship by persons other than licensed chiropractic physicians.

**Section 7.** Provides an effective date of July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None identified.

#### 2. Expenditures:

None identified.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None identified.

#### 2. Expenditures:

None identified.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to affect county or municipal governments.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

The bill provides DOH sufficient rule making authority to implement the provisions of the bill.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On December 6, 2011, the Health & Human Services Quality Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Require individuals seeking licensure to pass the optional physiotherapy examination of the National Board of Chiropractic Examiners; and
- Delete section 7 of the bill to remove the mandatory registration of chiropractic assistants and the fiscal impact of the bill.

This analysis is drafted to the committee substitute.