

**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 Budget Subcommittee on Health and Human Services Appropriations

**BILL:** CS/CS/SB 470

**INTRODUCER:** Budget Subcommittee on Health and Human Services Appropriations, Health Regulation Committee and Senator Jones

**SUBJECT:** Chiropractic Medicine

**DATE:** January 24, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davlantes</u>	<u>Stovall</u>	<u>HR</u>	<u>Fav/CS</u>
2.	<u>Bradford</u>	<u>Hendon</u>	<u>BHA</u>	<u>Fav/CS</u>
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The bill revises the regulation of chiropractic medicine in several ways. It:

- Expands eligibility for obtaining a chiropractic medicine faculty certificate;
- Authorizes the Board of Chiropractic Medicine (the Board) to review continuing education courses sponsored by chiropractic colleges before approving them;
- Prohibits approval of chiropractic continuing education courses that pertain to a specific company brand, product line, or service;
- Expands statutory licensure requirements for chiropractic physicians to include passage of Part IV of the National Board of Chiropractic Examiners' (NBCE) certification examination and the NBCE physiotherapy examination;
- Specifies 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;
- Specifies that money or other property entrusted to a chiropractic physician by a patient may not exceed the value of \$1,500;
- Limits indirect supervision of a certified chiropractic physician's assistant (CCPA) to the supervising physician's address of record;

- Eliminates the 24-month requirement for the CCPA curriculum; and
- Expands and revises the exceptions to ownership and control of a chiropractic practice by persons other than licensed chiropractic physicians.

This bill substantially amends the following sections of the Florida Statutes: 460.406, 460.4062, 460.408, 460.413, 460.4165, and 460.4167.

The bill will have minimal fiscal impact on the Department of Health.

The effective date of this bill is July 1, 2012.

## 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 law. 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 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 medicine 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.<sup>1</sup> 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.<sup>2</sup> To receive Board approval, a continuing education course must meet a number of criteria specified in rule, including the requirement that the course 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 medicine; risk management; laboratory diagnosis; nutrition; physiotherapy; phlebotomy; acupuncture; proprietary drug administration; AIDS; and law relating to the practice of chiropractic medicine, the Board, and the regulatory agency under which the Board operates.<sup>3</sup>

### *National Examination Requirements for Licensure*

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

<sup>2</sup> See s. 460.408(1)(b), F.S.

<sup>3</sup> See s. 64B2-13.004, F.A.C.

As part of the licensing process for chiropractic medicine, most states require passage of a national examination offered by the NBCE. The NBCE examination consists of four parts. Parts I-III are multiple choice and cover basic and clinical sciences, and Part IV is a practical portion which assesses chiropractic technique, X-ray interpretation and diagnosis, and case management.<sup>4,5</sup> The NBCE also offers a multiple-choice physiotherapy examination. Board rules currently require passage of all four parts of the NBCE examination as well as the physiotherapy examination for licensure of chiropractic physicians, although only Parts I-III of the examination are required in statute.<sup>6</sup>

#### ***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 all 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 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.<sup>7</sup>

#### ***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.<sup>8</sup>

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.<sup>9</sup> Indirect supervision is not authorized for CCPAs performing services at a health care clinic licensed under part X of ch. 400, F.S.<sup>10</sup>

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<sup>4</sup> NBCE, *Written Examinations*, available at <http://www.nbce.org/written/overview.html> (last visited on November 29, 2011).

<sup>5</sup> NBCE, *Practical Examination*, available at <http://www.nbce.org/practical/overview.html> (last visited on November 29, 2011).

<sup>6</sup> Rule 64B2-11.001(2), F.A.C. and s. 460.406(1)(e), F.S.

<sup>7</sup> See s. 460.413(1)(y), F.S., and s. 64B2-14.001, F.A.C.

<sup>8</sup> See s. 64B2-18.001(8)-(9), F.A.C.

<sup>9</sup> See s. 460.4165(2)(b), F.S.

<sup>10</sup> See s. 460.4165(14), F.S.

***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.<sup>11</sup>

***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.<sup>12</sup>

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.<sup>13</sup>

**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. 460.406, F.S., to expand licensure requirements for chiropractic physicians to include passage of Part IV of the NBCE certification examination and the NBCE physiotherapy examination.

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<sup>11</sup> See s. 460.4165(5), F.S.

<sup>12</sup> See s. 460.4167(1), F.S.

<sup>13</sup> See s. 460.4167(4), F.S.

**Section 4** amends s. 460.413, F.S., relating to grounds for disciplinary action against a chiropractic physician, 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 than \$501. The bill limits the amount of money or other property that may be entrusted to a chiropractor for a specific purpose, including advances for costs and expenses of examination or treatment, to the value of \$1,500.

**Section 5** 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 also removes the requirement that education and training programs for CCPAs must cover a period of 24 months.

**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 a chiropractic physician who wholly owns a sole proprietorship, group practice, partnership, corporation, limited liability company, limited partnership, 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.

The bill also corrects obsolete statute citations relating to penalties for certain third-degree felonies.

**Section 7** provides that the bill takes effect July 1, 2012.

#### **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:**

None.

##### **B. Private Sector Impact:**

Additional chiropractic faculty will be eligible for a chiropractic medicine faculty certificate under this bill.

The performance of chiropractic services by CCPAs will be limited to certain venues, possibly causing a negative fiscal impact on this group.

Additional entities will be able to employ and manage chiropractors.

**C. Government Sector Impact:**

There will be an increase in workload for the DOH relating to processing additional applications for chiropractic medicine faculty certificates, reviewing the continuing education courses, rulemaking, updating and modifying the Customer Oriented Medical Practitioner Administration System (COMPAS), and responding to complaints filed against CCPAs who continue to perform services at places other than their supervising chiropractor's address or record.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

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

**CS/CS by Budget Subcommittee on Health and Human Services Appropriations on January 24, 2012:**

The CS removes the amendments to section 460.4166, F.S., that would require the registration of Chiropractic Assistants and fees related to the registration.

**CS by Health Regulation on December 7, 2011:**

The CS requires that applicants for chiropractic licensure in Florida also pass the NBCE physiotherapy examination.

**B. Amendments:**

None.