

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 470

INTRODUCER: Health Regulation Committee and Senator Jones

SUBJECT: Chiropractic Medicine

DATE: December 7, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlanter	Stovall	HR	Fav/CS
2.			BC	
3.				
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;

- Establishes processes and procedures for the mandatory registration of a person employed as a registered chiropractic assistant (RCA);
- Requires a fee of no more than \$25 for RCA registration and registration renewal; 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, 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 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.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 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.³

National Examination Requirements for Licensure

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.

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.

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.^{4,5} 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.⁶

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.⁷

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.⁸

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

Education and Training of Certified Chiropractic Physician's Assistants

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

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

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

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

⁸ See s. 64B2-18.001(8)-(9), F.A.C.

⁹ See s. 460.4165(2)(b), F.S.

¹⁰ See s. 460.4165(14), F.S.

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.¹¹

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.

RCAs may be registered by the Board for a biennial fee not to exceed \$25, but Board registration is not mandatory.¹² In state fiscal year 2010-2011, the DOH received 956 applications for voluntary RCA registration.¹³

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.¹⁴

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.¹⁵

¹¹ See s. 460.4165(5), F.S.

¹² See s. 460.4166, F.S.

¹³ Email correspondence with Bruce Deterding, Executive Director of the Board of Chiropractic Medicine. A copy of this correspondence is on file with the Senate Health Regulation Committee.

¹⁴ See s. 460.4167(1), F.S.

¹⁵ See s. 460.4167(4), F.S.

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.

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. 460.4166, 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, 2013, for any person who performs any duties of an RCA, unless the person is otherwise certified or licensed to perform those functions. The registration fee is not to exceed \$25. A person employed as an RCA must apply for an initial registration with the Board by March 31, 2013, 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, 2013, 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 who is 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 new chiropractic physicians under whose supervision the RCA will practice. 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 there.

The bill renders an employee who performs none of the duties of an RCA as described under s. 460.4166(2), F.S., as ineligible to register as an RCA.

The bill creates a biennial registration renewal process for RCAs and provides for a renewal fee of less than \$25. The renewal application must specify the RCA's place of employment and all supervising chiropractors. 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 also allows the Board to accept or require electronically submitted registration applications, notifications, renewals, attestations, or signatures in lieu of paper applications or actual signatures.

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 by the licensed chiropractor who supervises the RCA.

Section 7 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 8 provides that the bill takes effect July 1, 2012.

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 and renewal not to exceed \$25.

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.

RCAs in Florida will have to register with the DOH, undergo a biennial renewal process, and submit notices to the DOH upon changing employers. This will cause a negative fiscal impact on RCAs. Former employers of RCAs will also have to notify the DOH when an RCA leaves employment, increasing the employers' administrative burden.

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 of record.

Currently, the DOH contracts services for processing of initial and renewal applications and fees at a per-application rate. With the addition of RCAs to this registration and renewal pool, processing costs will increase under the contract.

The DOH estimates that it will require additional resources and budget authority, including one full-time equivalent position (FTE), to implement the provisions of this bill. Total cost of the bill, including the hire of 1 FTE and the increase in application processing fees under the DOH's current contract, is estimated to be \$67,753 for the first year of the bill's implementation and \$46,903 for the second year. Total revenue generated from the bill, encompassing registration fees, unlicensed activity fees, and the general revenue surcharge, is estimated to be \$69,966 for the first year of implementation and \$8,225 for the second year.¹⁶

VI. Technical Deficiencies:

Lines 351-357 state that if an RCA is not employed by an entity owned by a licensed chiropractic physician, his or her registration, notification, or renewal documents should instead be signed by someone who owns the entity which employs the RCA as well as *the* licensed chiropractic physician who supervises the RCA. However, other parts of the bill state that an RCA may be supervised by any licensed chiropractic physician or CCPA who is employed by the RCA's employer or who is listed on the registration, notification, or renewal paperwork. It is unclear which or how many supervising chiropractors are required to sign the RCA's registration, notification, or renewal documents in the case that the RCA's employing entity is not owned by a chiropractor.

Lines 357-360 concerning electronic signatures is confusing as written. "In which instance all other requirements in this section apply" implies that there is an instance in which all other requirements do not apply, although it is unclear what that instance might be or which requirements do not apply in that case.

VII. Related Issues:

Section 6 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

¹⁶ Department of Health, 2012 Bill Analysis, Economic Statement, and Fiscal Note for SB 470. A copy is on file with the Senate Health Regulation Committee.

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 December 7, 2011:

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

- B. **Amendments:**

None.