

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR McSorley ORIGINAL DATE 02/04/15  
 LAST UPDATED 03/03/15 HB \_\_\_\_\_

SHORT TITLE Chiropractic Medicine & Advance Practice SB 376/aSPAC

ANALYST Cerny

### REVENUE (dollars in thousands)

| Estimated Revenue |                                    |                                    | Recurring<br>or<br>Nonrecurring | Fund<br>Affected |
|-------------------|------------------------------------|------------------------------------|---------------------------------|------------------|
| FY16              | FY17                               | FY18                               |                                 |                  |
|                   | Indeterminate but<br>Insignificant | Indeterminate but<br>Insignificant | Recurring                       | General<br>Fund  |

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

|              | FY16 | FY17 | FY18 | 3 Year<br>Total Cost | Recurring or<br>Nonrecurring | Fund<br>Affected |
|--------------|------|------|------|----------------------|------------------------------|------------------|
| <b>Total</b> |      | NFI  | NFI  |                      |                              |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation and Licensing Division (RLD)

Medical Board (MB)

### SUMMARY

#### Synopsis of SPAC Amendment

Senate Public Affairs Committee amendment to Senate Bill 376 changes the definition of chiropractic medicine to exclude the prescription of any controlled substance enumerated in Schedule I or Schedule II of the Controlled Substances Act.

The amendment would require a level two certified advanced practice chiropractic physician to enter into a collaborative agreement with a licensed physician or certified nurse practitioner to prescribe, administer, inject or dispense dangerous drugs (with the exception of Schedule I or Schedule II). The collaborative agreement would last five years and allow the chiropractic physician to practice outside of the collaborative practice agreement upon receipt of a written

attestation of successful completion.

SB 376 as amended also would require that the Medical Board approve the curriculum of the 650 hours of instruction fulfilled by a chiropractic physician seeking level-two advancement.

The MB continues to have concerns with SB 376 as amended, stating that significant problems still remain. They are:

- The NMMB (NM Medical Board) analysis and concerns remain in the area of Level-one advanced chiropractic: training of 90 hours for “diagnosis and treatment of a condition for which a chiropractic physician has been educated and trained” (page 2, lines 21-23) does not include the hours needed to accomplish the needed training.
- The reinstatement of the NMMB (page 25, line 4) in the approval of the curriculum for the 650 hours for the Level two chiropractors is appropriate, but no such requirement is made for the 90 hours of training prior to allowing Level one advanced practice chiropractors to prescribe a formulary of drugs. In addition, the Board is skeptical that 650 hours of instruction would provide adequate training for the level-two chiropractors, despite the Board’s role in approving the curriculum.
- In Section 14, page 26, between lines 7-8, the SPAC has amended SB-376 by adding a new Section D, which specifies the addition of a “written collaborative (collaboration is partly defined) arrangement” for the ability to prescribe dangerous drugs, and specifies that controlled substances are included, except for Schedules 1 & 2. (It is illegal for anyone to prescribe Schedule 1 drugs). After five years of “collaboration” the Level two chiropractor must have had an attestation of competence and safety submitted by the collaborating MD, DO, or CNP to the board of chiropractic examiners before being allowed to practice independently. While this represents an improvement in the required training and collaboration necessary to assure that dangerous drugs are used safely, the concern remains that this will not ensure safe practice. Additionally, it may be difficult for chiropractors to find physicians or CNP’s willing to donate the time and effort necessary to perform chart reviews and other responsibilities outlined in the agreement in addition to their own busy practices.
- Other MB concerns in the original FIR on SB-376 still remain (see Significant Issues below).

Issues raised by RLD analysis of the amended bill are:

- This amendment will require collaboration with the Medical Board for approval of the clinical and hands-on instruction of the medically supervised clinical rotation education requirements.
- The amendment requires the collaborating physician or nurse practitioner to review fifteen percent of charts and prescriptions on a quarterly basis. It is unclear whether the collaborating physician or nurse practitioner would be required to report the findings to the Medical Board as well. The Medical Board may be better equipped to investigate violations of prescriptive authority under the Medical Practice Act.
- This amendment does not address telemedicine.
- The Board of Chiropractic Examiners does not currently have a licensed medical doctor serving on the Board or the Complaint Committee.

Synopsis of Original Bill

Senate Bill 376 amends the Chiropractic Physicians Practice Act (Section 61-4 to 61-4-17 NMSA 1978) in several ways:

First, it adds the word “medicine” to the titling of the practice thereby calling this practice “chiropractic medicine” as opposed to the current “chiropractic.”

SB 376 would also expand the scope of practice outside the realm of traditional chiropractic, now permitting chiropractors to diagnose and treat any condition “for which the chiropractic physician has been educated and trained.” The current statute limits such practice “primarily by, but not limited to, adjustment and manipulation of the human structure.” SB 376 also adds “light” and “oxygen” to the list of natural agents that may be used for healing.

Excluded from oversight and approval by the MB and New Mexico Board of Pharmacy (NMBOP) are: surgery acupuncture and prescription or administrations, injection or dispensing of dangerous drugs unless by a level-one or level two certified advanced practice chiropractic physician.

SB 376 creates “level-one” and more advanced “level-two” certified advanced practice chiropractic physicians. It allows the new level-one and level-two advanced practitioners to prescribe, administer, inject and dispense dangerous drugs in accordance with board rules. For level-two practitioners this would include any dangerous drugs except Schedule I and II.

The MB is removed as an approval authority for the formulary. The NMBOP remains the only “collaborating” entity.

In addition to other educational requirements already in the law, level-one practitioners are required to complete 90 hours of clinical and didactic course hours in pharmacology and other subjects.

Level-one practitioners may attain level-two certification when the individual has completed a medically supervised clinical rotation of 650 hours in these areas: clinical pharmacology, evidence-based clinical assessment, clinical pharmacotherapeutics, primary care case management and patient safety and standards of primary care.

A level-two practitioner must also have insurance, a declaration from a health care provider (doctor, nurse practitioner, etc.), that the applicant has completed the prescribed clinical experience and several other criteria.

**FISCAL IMPLICATIONS**

SB 376 carries no appropriation.

The bill does not specify application fees for the advanced certifications. It is unknown how many of the currently 660 licensees will pursue the advanced certifications therefore the impact on revenue is indeterminate but likely to be insignificant.

## SIGNIFICANT ISSUES

Chiropractic Physicians at both levels of advanced certification will be allowed to prescribe dangerous drugs. RLD analysis notes that if SB 376 is passed:

New Mexico will be the only State in the U.S. that allows Chiropractors to prescribe dangerous medications. The current formulary does not allow for the prescription of drugs other than allowed by NMSA 1978, Sections 61-4-9.2(A) and (B).

This bill would also require the promulgation of rules relating to the prescription, administration, injection and dispensing of substances to take place in collaboration with the NMBOP and no longer with the MB.

MB analysis states:

The Medical Board has again reviewed the submission of the Board of Chiropractic Examiners of their proposal to grant Advanced Practice Chiropractors the privilege of prescribing everything in the Pharmacopoeia except Controlled drugs in Schedules 1 and 2 of the Controlled substances Act. Very little significant change has been introduced since 2008, except that this year, SB 376 proposes two new categories of Advanced Practice Chiropractors: Level-One (pages 12 to 15; and Level-Two Pages 24 to 27).

Level-One Advanced Practice Chiropractors are still only required to have a “minimum of ninety clinical and didactic-contact hours in pharmacology, pharmacognosy, medication administration and toxicology certificated by and examination from an institute of higher education” (page 13 lines 15-19). The Board will then be allowed to “promulgate with the board of pharmacy ... rules relating to the prescription, administration, injection, and dispensing of substances in accordance with the provisions of this subsection” (page 15, lines 3 to 11). The Medical Board still does not feel that this training is adequate.

Level-two Advanced Practice Chiropractors (a step up from level-one) will be allowed to “...prescribe, administer, inject, and dispense dangerous drugs that are used in a standard primary care practice, with the exception of controlled substances enumerated under Schedule I [note: it is illegal to prescribe these drugs, heroin for example] and schedule II of the Controlled Substances Act” (page 24, lines 4 to 9).” What is new with Level-two is the requirement for successful completion “...of medically supervised clinical rotation from an institution of higher education or professional school ... accredited ... that consists of clinical and hands-on instruction of at least six-hundred fifty hours in at least the following core areas of instruction: clinical pharmacology; evidence-based clinical assessment; clinical pharmacotherapeutics; primary case management; and, patient safety and standards of primary care” (page 24, lines 24-25, and page 25, lines 4 to 11). There must also be a medical declaration of successful completion of the prescribed clinical experience (Page 25, lines 15-19).

Depending on how the Level-two 650 hours are distributed among the listed courses, this could be adequate training for Level-two practice, provided that such training is approved by the New Mexico Medical Board.

This is a major change from previous proposals for dangerous drug prescription by Advanced Practice Chiropractors.

As noted, the current statute requires the board to work in conjunction with the NMBOP as well as the MB. Specifically, the Board of Chiropractic Examiners (BOCE) is statutorily required to submit its formularies to the NMBOP and the MB for prior approval to the extent the formularies include dangerous drugs, as defined in the New Mexico Drug, Device and Cosmetic Act (Section 26-1 NMSA 1978), which include drugs for administration by injection.

This requirement was the subject of recent litigation. See *Int'l Chiropractors Ass'n v. N.M. Bd. of Chiropractic Exam'rs, 2014-NMCA-046*. The court found that where the BOCE approved an advanced practice chiropractic formulary (in 2011) that included minerals and additional drugs to be administered by injection without obtaining the prior approval of the board of pharmacy and the medical board, the formulary violated the requirement of 61-4-9.2(B) NMSA 1978 that the formulary receive prior approval from the NMBOP and the MB.

RLD analysis also states: “There does not appear to be a clear distinction between the scope of practice of the level one advanced certification and the level two advanced certification.”

#### **ADMINISTRATIVE IMPLICATIONS**

The BOCE is currently licensing chiropractors and issuing advanced practice chiropractic physician certifications. This bill would create the new type of advanced certification of chiropractic physicians. RLD staff would need to process the new license type.

#### **OTHER SUBSTANTIVE ISSUES**

The American Chiropractic Association (ACA), based in Arlington, Va., is the largest professional association in the United States representing doctors of chiropractic, also referred to as Chiropractic Physicians.

This fact sheet [http://www.acatoday.org/IssueBriefs/2015/Key\\_Facts\\_Jan2015.pdf](http://www.acatoday.org/IssueBriefs/2015/Key_Facts_Jan2015.pdf) prepared by the American Chiropractic Association does not make use of the term “Chiropractic Medicine.” That term is also not used on the organization’s website.

CAC/bb/je