

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) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2/11/19

SPONSOR Figueroa LAST UPDATED _____ HB 448

SHORT TITLE Chiropractic Physician Practice Act Changes SB _____

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to 2017 Senate Bill 150 and previous versions of the bill, which did not pass.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)
New Mexico Medical Board (MB)

SUMMARY

Synopsis of Bill

House Bill 448 would make changes to the Chiropractic Physician Practice Act (Section 61-4 NMSA 1978), primarily to give an expanded scope of practice to “advanced chiropractic physicians.” Sections 61-9-2, 61-4-9.1 and 61-4-9.2, 61-4-13 and 61-4-14 are all altered, as noted below:

Section of SB 448	Section of Statute	Provisions and Effects of Changes
1	61-4-2: Definitions	In a list of elements of the scope of chiropractic practice, strikes out the words “by injection” and substitutes “in any of its forms,” allowing for administration of drugs and natural substances by and route, including injection.
2	61-4-9.1: Advanced Practice Chiropractic Certification...	Removes the requirement of advanced practice certification for completion of a graduate degree in a chiropractic specialty, retaining the requirement for 90

		hours of courses on pharmacology and allied subjects.
3	61-4-9.2: Certified Chiropractic Physician Authority Defined	Makes a change in wording regarding the formulary permitted to be used by advanced chiropractic practitioners. Section 3A includes a long list of types of therapy, but does not include medications requiring a prescription (by an MD or DO) or dangerous drugs or controlled substances. Substances not included in Section 3 would need to be submitted to the Board of Pharmacy and the Medical Board for approval (See comment below by MB.) New language replaces the language regarding which substances would need to be submitted, which would appear to broaden the requirements to affect more substances previously listed.
4	61-4-13: Annual Renewal of License	Includes “advance practice certification” alongside chiropractic licensure as requiring certification.
5	61-4-14: Failure to Renew, Cancellation, Reinstatement	Adds a subsection stating that advanced chiropractic practitioners who fail to comply with board requirements would lose their right to practice as an advanced chiropractic physician.

FISCAL IMPLICATIONS

No appropriation is made, and no fiscal impact is noted by affected agencies.

SIGNIFICANT ISSUES

It appears as if New Mexico is the only state that licenses “advanced chiropractic physicians.” According to the National Conference on State Legislatures (www.ncsl.org), South Carolina’s legislature introduced a bill in 2011 to license advanced chiropractic physicians, but it did not pass; no other attempts to establish the category can be found on the NCSL database.

According to an article in Chirobase (Chiropractic in the United States: Training, Practice, and Research, Chapter V: Licensure and Legal Scope of Practice, <https://www.chirobase.org/05RB/AHCPR/05.html>), “All States currently exclude prescribing drugs and performing major surgery from chiropractic practice. Otherwise, differences in scope of practice vary considerably from State to State. These variations are categorized here as: (1) restrictive, (2) expansive, or (3) intermediate. States are considered restrictive in scope if they explicitly prohibit chiropractors from performing two or more of the following: venipuncture for diagnostic purposes, use of physiotherapy modalities, dispensing of vitamin supplements, or provision of nutritional advice to patients. Michigan is an example of a State with a restricted scope of practice (FCLB, 1996)... Five other States share similar restrictions with Michigan and can also be considered restrictive: Mississippi, New Jersey, South Carolina, Tennessee, and Washington.”

RLD notes that “By reducing the educational requirements for APC doctors, public health and safety may be affected.”

Both RLD and the Medical Board state that the Board of Pharmacy and MB state that they have

not received requests for approval of previous changes to their formularies as appear to have been required both by the current Chiropractic Practice Act or as would be revised under this bill: “Approval by the Pharmacy and Medical Boards has not been previously obtained, or has been over-riden by actions of the Board of Chiropractic Examiners in recent years.” In a consolidated lawsuit filed in the State Court of Appeals in 2013, the International Chiropractors Association, the New Mexico Medical Board and the New Mexico Board of Pharmacy prevailed over the New Mexico Board of Chiropractic Examiners to void the 2011 chiropractic formulary. The conclusion reached by the Court of Appeals reads “We hold that the 2011 formulary that includes minerals and additional drugs to be administered by injection violates Section 61-4-9.2 (B)’s requirement that the formula receive approval from the Pharmacy Board and the Medical Board. We find no fault with the training rule. Accordingly, we set aside the 2011 formulary.”

TECHNICAL ISSUES

The Medical Board makes the following recommendations as to needed changes:

Page 2 line 16, “in any of its forms” opens up the door to unlimited medical procedures, so, change to “unless approved by the board and medical board”;

Page 2 line 19 [~~and regulation~~] the deletion of “and regulation” could be interpreted as giving the chiropractic board sole authority to define acceptable invasive procedures;

Page 4 line 5 “certification by a nationally recognized credentialing agency”... add “approved by the board”. The board should create procedural policy for determining how to define and approve a “nationally recognized” agency; and,

Page 4 line 11 “didactic contact hours” add “approved by the board and medical board”;

Page 7 line 13 to 21 If advanced practice certification is included in this section (61-4-14 D), new rules will need to be added to address in 16.4.13.8 B what will be required for reinstatement of the APC certification if an applicant applies for reinstatement after 2 years.

The Medical Board also notes its belief that use of the term “chiropractic physician” is inappropriate, inasmuch as throughout history, it states, “physician” has only been used for osteopathic and allopathic graduates (DOs and MDs).