House
Legislative
Analysis
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House Bill 4463 (Substitute H-6)
First Analysis (11-4-87)

Sponsor: Rep. Lloyd F. Weeks
Committee: Public Health

THE APPARENT PROBLEM:

Many chiropractors believe that when the Public Health Code was revised in 1978 their scope of practice became more restricted than that which had been allowed before the 1978 revision. Several chiropractic groups have requested legislation which would return their scope of practice to pre-1978 levels.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to revise the definition of "practice of chiropractic" and to state that chiropractors are "portal of entry health care providers" in the practice of chiropractic. In addition, the bill would make a number of other changes in the regulation of chiropractors.

- The bill would expand the definition of "practice of chiropractic" as follows:

(1) Diagnosis. Presently, chiropractors may use "spinal analysis" to diagnose only the existence of spinal "subluxations" or misalignments that produce "nerve interference."

The bill would expand the statutory definition of diagnosis to allow chiropractors to use, in addition to spinal analysis, "evaluation" and physical examination in order to diagnose not only the existence of spinal subluxations and misalignments but also (1) "malpositioned osseous (bony) articulations of the spine," (2) the existence of abnormal interrelationships between the nervous system and the spinal column, and (3) the need for chiropractic care and, if chiropractic care is needed, the course of that care.

(2) Treatment methods. Chiropractors are allowed to adjust spinal subluxations or misalignments and "related bones and tissues" in order to establish "neural integrity" by using the "inherent recuperative powers of the body."

The bill would allow chiropractors, in addition, to manipulate spinal subluxations or misalignments and to adjust and manipulate malpositioned osseous articulations of the spine. In addition, chiropractors would be allowed to use a number of additional ("ancillary") physical measures in order either to prepare the patient for chiropractic manipulation or adjustment or to complement chiropractic manipulation or adjustment. The allowable physical measures listed in the bill include massage, mobilization, traction, heat, cold, air, light, water, electricity, and therapeutic ultrasound.

(3) Allowable instruments, X-rays, apparatus and other procedures. Chiropractors are allowed to use certain "analytic instruments," nutritional advice, rehabilitative exercises, and adjustment apparatus, all of which must be regulated by rules promulgated by the Board of Chiropractic Examiners. (Note: "Analytic instruments" are defined in administrative rule as "instruments which monitor the body's physiology for the purpose of determining subluxated or misaligned vertebrae or related bones and tissues." The board's approved list of such devices currently includes such devices as weight scales, plumblines, levels, protractors, rulers, electronic infrared thermography, X-rays, and muscle strength evaluation devices.) Chiropractors also may use X-rays to locate spinal subluxations or misaligned vertebrae.

In addition, the bill would allow chiropractors to use diagnostic instruments, to take patients' blood pressure and pulse and to use oral thermometers, tongue depressors, and otoscopes (an instrument for examining the inner ear).

(4) Restrictions on chiropractic scope of practice. The health code specifically prohibits chiropractors from using "incisive surgical procedures," performing "invasive procedures requiring instrumentation," or dispensing or prescribing drugs or medicine.

The bill would omit reference to performance of invasive procedures requiring instrumentation and instead state that "the practice of chiropractic does not include the performance of incisive or invasive surgical procedures, or the dispensing or prescribing of drugs or medicine."

- The bill would expressly prohibit a licensed chiropractor from delegating the application of the ancillary measures allowed under the bill to someone not licensed as a chiropractor.

- The bill also would prohibit chiropractors from claiming to be physical therapists or from identifying the ancillary measures allowed in the bill as physical therapy procedures.

- Finally, the bill would state that nothing in the bill would require chiropractors to perform any act, task, function, or procedure.

MCL 333.16401 et al.

FISCAL IMPLICATIONS:

Fiscal information is not yet available. (11-4-87)

ARGUMENTS:

For:

Prior to the 1978 revision of the Public Health Code, chiropractors had considerably more leeway in diagnosis and treatment than they do today, even though the earlier statutory definition of scope of practice in some ways was more limited than the current definition. This is so because court interpretations of the present definition have severely limited other areas of practice that had been permitted under, though not explicitly stated in, the earlier statute governing chiropractic.

Under Public Act 145 of 1933, as amended by Public Act 73 of 1968, chiropractic was defined as "the locating of misaligned or displaced vertebrae of the human spine, the procedure preparatory to and the adjustment by hand of such misaligned or displaced vertebrae and surrounding bones and tissues, for the restoration and maintenance of health." Although this definition did not explicitly list which procedures were allowable under the law, legal and

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administrative interpretations of the definition suggested or allowed a more liberal scope of practice than is now in existence.

For example, in 1968 the attorney general's office sent a letter to the Insurance Bureau that suggested that the decision as to which "preparatory procedures" were allowable was to be based on the professional judgment of the chiropractor. The letter says, "The procedures included within the definition (of chiropractic) . . . include such preparatory procedures as are necessary and appropriate in the professional judgment of the chiropractic physician to assist him in diagnosis or treatment."

In addition, the Board of Chiropractic Examiners over the years filed administrative rules with the secretary of state and adopted resolutions which stated the board's opinion of what properly fell under the scope of chiropractic. A 1968 board resolution, for example, held that the definition of chiropractic included (1) "clinical examination to detect the presence of disease or injury, irrespective of whether such condition is amenable to chiropractic treatment, and the employment of all necessary laboratory, X-ray and other diagnostic aids and techniques to that end," (2) not only spinal manipulation but "manipulation of all bones and tissues attached to or articulating with the spine or attached to or articulating with bones and tissues which themselves attach to or articulate with the spine" (the board further held that it was "irrelevant that the . . . complaint may be remote from the spine and its surrounding bones and tissues if the pathological condition responsible originates in or is affected by disease of or injury to these structures"), (3) "supportive or adjunctive care to remote areas of the body which may render the spine and its surrounding bones and tissues more amenable to successful manipulative treatment," (4) "all mechanical modalities of treatment of the body directed at rendering the spine and its surrounding bones and tissues more amenable to successful manipulative treatment," and (5) "emergency first aid without restriction wherein the life or health of the patient might reasonably be endangered by delay." And in a 1970 resolution, the board declared that since the Physical Therapy Act denies the use of any title or abbreviation of physical therapy by anyone other than a registered physical therapist, chiropractors and medical and osteopathic doctors "may use physical therapy if it is a procedure preparatory to or pertinent to their practice, but are prohibited from advertising as such.' In addition, in administrative rules filed with the secretary of state in 1970, the board defined "procedure preparatory to" (chiropractic adjustment) as "scientific procedures employed prior to administering a chiropractic adjustment as, and to the extent, taught in the chiropractic colleges of the United States."

The Public Health Code revision of 1978 provided a limited expansion of chiropractic scope of practice insofar as the new definition specifically included procedures and areas not mentioned in the repealed definition. For example, the new definition recognized chiropractic as a "discipline within the healing arts which deals with the nervous system and its relationship to the spinal column and its interrelationship with other body systems" and included under the definition of chiropractic scope of practice the use of analytical instruments, nutritional advice, rehabilitative exercise, and adjustment apparatus. However, despite these additions, the new scope of practice was severely restricted by the courts through strict definitions of what is and is not included in the definition. For example, in the August, 1985, Michigan Supreme Court ruling on Attorney General v Beno, the court ruled that the diagnosis, x-ray, and treatment of a patient's elbow; the giving of a physical examination, including the taking of hair and urine samples; and the use of diathermy, galvanic current and ultrasound devices for therapeutic purposes were outside the scope of chiropractic practice.

The responsible practice of chiropractic requires that the scope of practice it once enjoyed be restored. Adequate diagnosis is necessary to each of the health care provider professions, for it is only through determining whether or not the professional is trained to deal with a presenting problem that the patient can either be given the appropriate treatment or referred to the proper care provider. Chiropractors must be able to decide whether a patient's presenting problem can be treated through chiropractic or whether referral to some other care provider is needed, and this can be done only if the chiropractor is allowed to perform an adequate diagnosis, using the relevant and necessary diagnostic tools. Allowing chiropractors to use evaluation, physical examinations and diagnostic instruments, in addition to spinal analysis, will insure that chiropractors can best serve their patients. Allowing chiropractors to use ancillary physical measures, as many did before the 1978 health code revision, would further improve a chiropractor's ability to provide his or her patient with optimal chiropractic care.

For:

Michigan has one of the most restrictive chiropractic scope of practice statutes in the nation. Testimony before the House Public Health Committee indicated that some of the changes in scope of practice proposed by the bill are actually required in other states. Ohio, for example, requires that chiropractors use physical therapy, while other states allow chiropractors to use physical measures if they have been trained in their use. Many states have no restrictions on chiropractic diagnosis, requiring instead what is necessary for the protection of the patient, while more than half the states have specific state regulatory references to the diagnostic obligations of chiropractors. It is time for Michigan to join the majority of states in the nation in allowing chiropractors to practice to the full extent of their training and ability.

Against:

Expanding the scope of practice for chiropractors would increase the cost of health care at a time when health care cost containment is one of the major problems affecting both the public and private sectors. There already are too many health care providers in competition for a guaranteed income stream from health insurers. Expanding any providers' scope of practice increases health care costs by increasing the number of billable services, and chiropractors are no exception.

Response: In the first place, health insurance carriers can limit their coverage by contract, so even if the bill expanded allowable chiropractic services there is no guarantee that these services would be reimbursed by health insurance and thereby raise health care costs in general. Secondly, however, by replacing more expensive medical services (including surgery and hospitalization), chiropractic can in fact provide a cost-effective alternative to traditional medical care (which is reimbursed at much higher rates than chiropractic traditionally is).

Reply: Not all insurers can limit their coverage by contract. The bill would indirectly expand the provisions in various other statutes to mandate payments to chiropractors under prepaid health plans. These other laws (including the Insurance Code and laws governing health maintenance organizations and other prepaid health plans) require chiropractors to be included under prepaid health plans whenever they can legally provide the covered

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services—even if that is not desired by the person or group paying the cost.

Further, there is ample evidence that chiropractors have engaged in insurance abuse and fraud. More specifically, under Michigan's no-fault law, automobile insurance carriers have only two ways of limiting their coverage costs: charges by providers must be "reasonable" and must not exceed those customarily charged to patients without insurance. What is more, some chiropractors apparently view auto insurance claims as windfalls, not only increasing their charges and the frequency and type of treatment for auto accident victims (compared to non-insured patients), but also actively soliciting through advertising victims of auto accidents, thereby engaging in possible insurance abuse and fraud. These issues need to be addressed before contemplating increasing chiropractors' scope of practice.

Against:

Rather than expand the scope of chiropractic, steps should be taken instead to enforce the law as it presently exists. This should include not only regulating misleading chiropractic advertising but also insuring that the Board of Chiropractic Examiners fulfills its legal obligation to regulate the profession in accordance with existing law.

Chiropractic advertising continues to go unregulated, either by the board or by the profession as a whole. There are many examples of outrageous advertising that not only misrepresent what chiropractors legally may do in Michigan (for example, showing chiropractors performing physical therapy or giving advice on medications) but also implying that chiropractic is necessary for health maintenance and can cure or help such conditions as diabetes, cancer, and even AIDS. Increasing chiropractic scope of practice without correcting these existing chiropractic business abuses will simply lead to greater abuses.

Increasing the scope of practice, moreover, would seem to validate the Board of Chiropractic Examiners' failure to enforce the existing scope of practice. Despite the fact that the board is supposed to regulate the profession in accordance with present law, the major mechanism for enforcing existing scope of practice has been through court decisions such as Attorney General v Beno. Not only has the board failed to fulfill its legal obligation to provide criteria for the evaluation and approval of analytical instruments and adjustment apparatus, it appears simply to grant its approval upon request from chiropractors quite apart from scope of practice limitations. Thus, for example, in the past the board has approved such devices as otoscopes (for examining the inner ear), opthalmameters (for examining the eyes), and sphygmomanometers (for measuring blood pressure), despite the fact that chiropractors are not legally allowed to perform any of these examinations. (However, by approving such devices the board has made them billable.) In addition to these problems, board members also have belonged to a group which actively seeks to expand the scope of practice, which would seem to conflict with the board's obligation to enforce the existing scope of practice.

Response: While advertising abuses and complaints about the board do exist, neither is a good reason for holding the present bill hostage. Rather, such problems should be dealt with directly and not by attacking the scope of practice issue.

Against:

Expansion of the chiropractic scope of practice not only would change the very nature of chiropractic, which is based on the natural recuperative powers of the human body and the efficacy of manual adjustment of misaligned vertebrae; it also would result in shutting out of practice those chiropractors who do not believe in or choose to use the bill's ancillary physical measures. At the very least, permission to use these measures should be placed in a section of law separate from the definition of chiropractic scope of practice.

Response: Rather than shutting out chiropractors, the bill would permit each licensed chiropractor to practice according to his or her philosophical beliefs, training, and experience. Chiropractors who chose not to use the ancillary physical measures allowed in the bill are protected by the bill's provisions that explicitly state that no chiropractor would be required to perform any act, task, function, or procedure.

Reply: Despite the bill's disclaimer, education—and accreditation—follow legal scope of practice. Once scope of practice is increased, chiropractic schools will teach to that scope and state accreditation will adopt that as the standard.

Against:

If chiropractors are allowed to perform certain procedures which they then choose not to do, they will be liable to an increase in malpractice suits.

Response: No one expects a medical family practitioner, for example, to do brain surgery, so why should anyone expect every chiropractor to do every allowable chiropractic procedure?

Against:

The bill allows any licensed chiropractor to use the allowable ancillary physical procedures—without even specifying that the chiropractor be trained and experienced in these procedures. This not only could reflect poorly on the profession, it could be dangerous to patients' health and welfare.

Against:

Despite the bill's disclaimer to the contrary, it would allow chiropractors to practice physical therapy, thereby infringing on the scope of practice of an already legally recognized profession. If a chiropractor wants to use physical therapy methods, he or she should train and become licensed as a physical therapist. At the very least, chiropractors who want to use these "ancillary" physical measures should be required to obtain specialty certification in them.

Response: The ancillary physical measures allowed in the bill would not be used as physical therapy measures in and of themselves, but rather specifically in conjunction with chiropractic. Many of these measures already are taught in many chiropractic colleges, and were used by many chiropractors prior to the restriction of their scope of practice under the 1978 revision of the Public Health Code.

Against:

The bill is just the first step in an ongoing attempt by the chiropractic profession to expand its scope of practice until it allows many or most of the practices now restricted to medical and osteopathic physicians. The bill is a bad idea, and could result in placing the health and possibly lives of patients in danger because it would grant chiropractors powers beyond their training and expertise. Differential diagnosis is just one example. What if a chiropractor fails to refer a patient for proper medical care under the mistaken impression that chiropractic can handle the

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problem? Chiropractors often appear to want to become medical doctors without going to medical school.

Response: In the first place, chiropractors do not want to become medical or osteopathic physicians. Chiropractic is a health profession in and of itself, and is at once alternative and complementary to medical practice. Secondly, however, even though objections from the medical profession to any expansion of chiropractic scope of practice often are couched in terms of concern for patient safety, in reality the objection is more to the possibility of competition for patients, and the attendant possibility of economic loss to the medical profession (as the recent anti-trust court decision in Wilk et al. v AMA et al. demonstrates). Finally, the issue of the possibility of misdiagnosis is a red herring. Limited practice health care practitioners are, if anything, better trained in recognizing what they can and cannot do than are practitioners with broader kinds of practice. What is more, just because someone is trained as a medical or osteopathic physician does not mean that he or she necessarily will never make mistakes in diagnosis, some of which can affect the health or even threaten the lives of patients.

POSITIONS:

The Department of Public Health is not taking a position on the bill. (11-3-87)

The Department of Licensing and Regulation does not yet have a position on the bill. (11-2-87)

The Chiropractic Legislative Coalition (a coalition of four groups: the Michigan State Chiropractic Association, the Michigan Chiropractic Council, the Michigan Fellowship of Chiropractors, and the Michigan Alliance of Chiropractors) supported substitute H-5 but has not had the opportunity to examine substitute H-6. (11-2-87)

The Michigan Union of Chiropractic Physicians opposes the bill. (11-2-87)

The Michigan State Medical Society totally opposes the bill. (11-2-87)

The Michigan State Chamber of Commerce opposes the bill. (11-3-87)

The Michigan Manufacturers Association opposes the bill. (11-3-87)

The Michigan AFL-CIO opposes the bill. (11-4-87)

The Michigan UAW opposes the bill. (11-4-87)

The Economic Alliance for Michigan opposes the bill. (11-4-87)