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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 811
BOARD OF CHIROPRACTIC EXAMINERS

FILED
11/08/2017 4:03 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Accommodates delegation of exam to national testing agency

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/05/2018 12:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Kelly Beringer
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 01/05/2018

TIME: 11:30 AM - 12:00 PM

OFFICER: Board President or Vice-
President

ADDRESS: Morrow Crane Building
3218 Pringle Road SE
Suite 150

Salem, OR 97302

SPECIAL INSTRUCTIONS:

Call in available - Observe info on
agency website

NEED FOR THE RULE(S):

Amending 811-010-0110 to accommodate delegation of the Chiropractic Assistant Exam to a national testing agency.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None

FISCAL AND ECONOMIC IMPACT:

Low impact for the delegation of the exam; CA applicants will pay a slightly higher fee than what is currently paid for the respective exam.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the

expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

Approximately 200 new chiropractic assistant applicants could be affected by the exam delegation.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

They were not.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

Administrative change

AMEND: 811-010-0110

RULE SUMMARY: Amending 811-010-0110 accommodates delegation of State Chiropractic Assistant Exam to a national testing agency

CHANGES TO RULE:

811-010-0110

Chiropractic Assistants ¶

Note: The majority of the added/deleted language seen here was adopted in April 2017 but is not effective until January 2018; language regarding the delegation of the CA exam was incorporated into this draft; see sections (2) and (3).

811-010-0110¶

Chiropractic Assistants¶

(1) The certification period for Chiropractic Assistants begins on August 1 and ends on July 31. A 30 day grace period will follow in Oregon is a period equal to 12 months, expiring on the last day of the chiropractic assistant's birth month/renewal date. ¶

(a) Exception: during the transition from an annual renewal to a birth month renewal, the certification period will be from August 1 of the year of transition to the last day of the assistant's birth month/renewal date of the following year. ¶

(b) During the 30 days immediately following the reup renewal date the Chiropractic Assistant may continue to practice but must meet the requirements of (14)(a) and (b) below. Any Chiropractic Assistant who has not renewed by September 1 must cease practice within that 30 day grace period must cease practice until the requirements of (15) below are met. ¶

(2c) Continuing education: ¶

(A) During the transition from an annual renewal to a birth month renewal, all chiropractic Assistants may be certified upon compliance with the following standards and procedures: shall attest to completing six hours of continuing education. ¶

(B) Allowable continuing education shall be completed between August 1 of year of transition and the last day of the chiropractic assistant's birth month the following year. This may be more or less than 12 months. ¶

(2) Chiropractic assistants may be certified upon compliance with the following: ¶

(a) The Chiropractic Assistant applicant shall successfully complete a Board approved training course offered by an association, college or otherwise approved person. The initial training course shall be at least twelve hours in length, of which eight hours shall be didactic training and four hours shall be practical training; ¶

(A) The practical training must be in physiotherapy, electrotherapy and hydrotherapy administered by a health care provider licensed to independently provide those therapies. ¶

(B) A chiropractic physician may perform the initial practical training provided this is direct contact time. ¶

(C) The initial training must have been completed within 60 days preceding the application submission date. ¶

(b) Submit to a complete state and federal background check performed by a local law enforcement agency; ¶

(A) Applicant must pay to the Board the current actual cost of conducting the state and federal background check.

¶

~~(B) Criminal background check results must be submitted to the Board prior to certification.~~

~~(e) The applicant shall complete an application form packet, and an open book examination supplied by the Board; administered by a national testing agency.~~

~~(d) If an applicant has a certificate or license from another state and adequate documentation of training, the Board may waive the requirement for the initial training course; and.~~

~~(e3) A person Prior to initially certified between March 1st and May 31st is exempt from the continuing education requirement for renewal.~~

~~(3) Tcation, the training course verification form, completed application form, completed packet, passing examination results, and fees in the following amounts shall be submitted to the Board:~~

~~(a) A non-refundable application fee - \$50;~~

~~(b) A non-refundable examination fee - \$35; and~~

~~(e) An initial certification fee - \$50. A refund of the certification fee will only be allowed when requested within 60 days of the initial application.~~

~~(d) The criminal background check fee is non-refundable.~~

~~(e) In circumstances beyond the applicant's control (e.g. Board review of criminal history) the Board may determine to refund the fees or portion thereof.~~

~~(f) In the event the Board requires the NBCE chiropractic assistant examination in lieu of the Board's examination, the fee in subsection (b) will be waived.~~

~~(4) The Board shall maintain an incomplete application file for six months from the date the application was received; afterward, applicants will need to re-apply.~~

~~(5) The applicant shall be at least 18 years of age.~~

~~(6) The Cchiropractic Aassistant shall not perform electrotherapy, hydrotherapy, or physiotherapy until the or she y receives a certificate from the Board.~~

~~(7) A Cchiropractic Aassistant shall be directly supervised by the Cchiropractor at all times. The supervising Cc hiropractor must be on the premises.~~

~~(8) The Cchiropractic Aassistant scope of practice.~~

~~(a) includes physiotherapy, electrotherapy and hydrotherapy, taking vitals such as height, weight, blood pressure, temperature, pulse, respiration and/or body fat percentages, and other duties as described by the Board, and~~

~~(b) does not otherwise include performing physical examinations, taking initial histories, taking X-rays (unless properly licensed), interpretation of postural screening, doperforming manual muscle testing, or performing osseous adjustments or manipulations, or other tasks as authorizprohibited by the Board.~~

~~(9) Chiropractic Aassistants shall report to the Board, in writing, his/their mailing address and place of employment. Notification of a change of mailing address or place of employment must be made within 10 days of the change.~~

~~(10) On or before each June 1, the Board of Examiners At least 30 days prior to the renewal date, the Board shall send the renewal notice to the Cchiropractic Aassistant at the last known mailing address.~~

~~(11) On or before each July 31 the C, and/or email address.~~

~~(11) For the transition to a birth month renewal, renewal fees shall be prorated as follows:~~

~~(a) Assistants with birthdays January through April - \$25;~~

~~(b) Assistants with birthdays May through August - \$50;~~

~~(c) Assistants with birthdays September through December - \$75;~~

~~(12) During transition to a birth month renewal, all certificates will be valid August 1 of the transition year through last day of birth month the following year.~~

~~(13) After the full transition to a birth month system, and on or before the last day of the birth month, the c hiropractic Aassistant shall mailsubmit to the Board of Examiners the renewal form with a renewal fee of \$75.the following:~~

~~(a) A completed renewal application and renewal fee of \$75;~~

~~(A) The renewal application may include a request for fingerprinting and a criminal background check with fees to be paid by the chiropractic assistant.~~

(B) Frequency of fingerprinting and criminal background checks will be determined by the Board. ¶

(b) An attestation that the six hours of continuing education has been completed; and ¶

(c) A completed OHA Healthcare Workforce Questionnaire.¶

(14) A certificate that is not renewed on time may not be renewed except: ¶

(a) Upon written application and payment to the Board submission of the completed renewal application, proof of continuing education, and payment of the renewal fee plus a delinquent fee of \$25 for renewals submitted between August 1 and August 31 of each year during the 30 day grace period; or ¶

(b) Upon written application submission of the renewal application, proof of continuing education, and payment to the Board of the renewal fee plus a delinquent fee of \$50 for renewals submitted on September 1 or later; and ¶

(c) Upon submission of proof of compliance with or exemption from the requirements of ORS 684.092 after the 30 day grace period. ¶

(125) A Chiropractic Assistant has up to one year following their July 31 renewal date to renew and reinstate their certificate upon meeting the provisions of (14)(a) through and (e) above. After 12 months a person must restart the application process. ¶

(136) Continuing education programs may be comprised of subjects that are pertinent to clinical practices of chiropractic. Continuing education must meet the criteria outlined in OAR 811-015-0025 sections (8), (9) and (10). No continuing education hours may be carried over into the next renewal year. Evidence of successful completion of six hours of continuing education during the 12 months preceding the renewal must be submitted upon request by the Board. ¶

(147) The Chiropractic Assistant's certificate shall be displayed at all times in the Chiropractic Physician's office during the Chiropractic Assistant's employment. ¶

(158) The Board may refuse to grant a certificate to any applicant, may suspend or revoke a certificate, or may impose upon an applicant for certification or Chiropractic Assistant a civil penalty not to exceed \$1,000 upon finding of any of the following: ¶

(a) Cause, which is defined as, but not limited to, failure to follow directions, unprofessional or dishonorable conduct, injuring a patient, or unlawful disclosure of patient information. The supervising Chiropractic Physician is required to notify the Board, in writing, of any dismissal of a Chiropractic Assistant for cause within ten days. The Board shall determine if there is cause for action and shall be governed by the rules of the Board adopted pursuant to ORS Chapter 183; ¶

(b) Conviction of a misdemeanor involving moral turpitude or a felony; or ¶

(c) Non-disclosure of misdemeanor or felony convictions; or ¶

(ed) Failure to notify the Board of a change of location of employment as required by these rules. ¶

(169) Unprofessional or dishonorable conduct is defined as: any unethical, deceptive, or deleterious conduct or practice harmful to the public; any departure from, or failure to conform to, the minimal standards of acceptable Chiropractic Assistant practice; or a willful or careless disregard for the health, welfare or safety of patients, in any of which cases proof of actual injury need not be established. Unprofessional conduct shall include, but not be limited to, the following acts of a Chiropractic Assistant: ¶

(a) Engaging in any conduct or verbal behavior with or towards a current patient that may reasonably be interpreted as sexual, seductive, sexually demeaning or romantic (also see ORS 684.100). ¶

(b) A certificate holder shall not engage in sexual relations or have a romantic relationship with a current patient unless a consensual sexual relationship or a romantic relationship existed between them before the commencement of the Chiropractic Assistant-patient relationship. ¶

(A) "Sexual relations" means: ¶

(i) Sexual intercourse; or ¶

(ii) Any touching of sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the Chiropractic Assistant for the purpose of arousing or gratifying the sexual desire of either Chiropractic Assistant or patient. ¶

(B) A patient's consent to, initiation of or participation in sexual behavior or involvement with a Chiropractic Assistant does not change the nature of the conduct nor lift the prohibition. ¶

- (C) In determining whether a patient is a current patient, the Board may consider the length of time of the Chiropractic Assistant-patient contact, evidence of termination of the Chiropractic Assistant-patient relationship, the nature of the Chiropractic Assistant-patient relationship, and any other relevant information. ¶
- (c) Use of protected or privileged information obtained from the patient to the detriment of the patient. ¶
- (d) Practicing outside the scope of the practice of a Chiropractic Assistant in Oregon; ¶
- (e) Charging a patient for services not rendered; ¶
- (f) Intentionally causing physical or emotional injury to a patient; ¶
- (g) Directly or indirectly engaging in threatening, dishonest, or misleading fee collection techniques; ¶
- (h) Soliciting or borrowing money from patients; ¶
- (i) Possessing, obtaining, attempting to obtain, furnishing, or prescribing controlled drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs; illegally using or dispensing controlled drugs; ¶
- (j) Aiding, abetting, or assisting an individual to violate any law, rule or regulation intended to guide the conduct of Chiropractic Assistants or other health care providers; or ¶
- (k) Violating the rights of privacy or confidentiality of the patient unless required by law to disclose such information; ¶
- (l) Perpetrating fraud upon patients or third party payors, relating to the practice of chiropractic; ¶
- (m) Using any controlled or illegal substance or intoxicating liquor to the extent that such use impacts the ability to safely conduct the practice of a Chiropractic Assistant; ¶
- (n) Practicing as a Chiropractic Assistant without a current Oregon certificate; ¶
- (o) Allowing another person to use one's Chiropractic Assistant certification for any purpose; ¶
- (p) Resorting to fraud, misrepresentation, or deceit in applying for or taking the certificate examination or obtaining a certificate or renewal thereof; ¶
- (q) Impersonating any applicant or acting as a proxy for the applicant in any Chiropractic Assistant certificate examination; ¶
- (r) Disclosing the contents of the certificate examination or soliciting, accepting, or compiling information regarding the contents of the examination before, during, or after its administration; ¶
- (s) Failing to provide the Board with any documents requested by the Board; ¶
- (t) Failing to fully cooperate with the Board during the course of an investigation, including but not limited to, waiver of confidentiality privileges, except attorney-client privilege; ¶
- (u) Claiming any academic degree not actually conferred or awarded; ¶
- (v) Disobeying a final order of the Board; and ¶
- (w) Splitting fees or giving or receiving a commission in the referral of patients for services. ¶
- (x) Receiving a suspension or revocation of a certificate for a Chiropractic Assistant, or other license or certificate by another state based upon acts by the Chiropractic Assistant or applicant that describes acts similar to this section. A certified copy of the record of suspension or revocation of the state making that is conclusive evidence thereof. ¶
- (1720) The service of the Chiropractic Assistant is the direct responsibility of the supervising licensed Chiropractic Physician. Violations may be grounds for disciplinary action against the supervising chiropractic Physician under ORS 684.100(9).

Statutory/Other Authority: ORS 684.155

Statutes/Other Implemented: ORS 684.054, ~~ORS 684.155(c)(A)~~