

Attorney Panel

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CORPORATE PRACTICE OF CHIROPRACTIC

Ajay Gohil,
D.C. Board of Chiropractic Attorney

DEFINITION

The corporate practice of chiropractic doctrine prohibits corporations from practicing chiropractic or employing a chiropractor to provide professional chiropractic services.

WHY DO SOME STATES HAVE CORPORATE PRACTICE ACTS?

(OR WHY DON'T THEY ALLOW CORPORATIONS TO PRACTICE CHIROPRACTIC OR EMPLOY CHIROPRACTORS?)

- 1) Commercialization of the practice of Chiropractic
- 2) Corporation obligation is to shareholders vs. Chiropractor obligation is to patients
- 3) Employment of a Chiropractor by a Corporation may interfere with the Chiropractor's independent judgment

BROAD EXCEPTIONS!

(such as for Professional Corporations and
Employment of Chiropractors by certain health
care entities)

(If there were no exceptions, there would be no
need for attorneys...)

DO YOU NEED A STATE
LICENSE TO OWN A
CHIROPRACTIC
PRACTICE OR EMPLOY
CHIROPRACTORS IN
YOUR STATE?

IN WASHINGTON D.C.

NO FOR CHIROPRACTORS

YES FOR DENTISTS

<https://code.dccouncil.gov/us/dc/council/code/sections/3-1201.02>

In the Scope of Practice Act -

(5) “Practice of dentistry” means:

(J) To be a manager, proprietor, operator, or conductor of a business or place where dental or dental-hygiene services are performed; provided, that this provision shall not apply to:

(There are 9 exceptions!)

- (i) Federal or District of Columbia government agencies providing dental services within affiliated facilities or engaged in providing public health measures to prevent disease;
- (ii) Schools of dentistry, dental hygiene, or dental assisting accredited by the Commission on Dental Accreditation of the American Dental Association and providing dental services solely in an educational setting;
- (iii) Federally Qualified Health Centers, as designated by the United States Department of Health and Human Services, providing dental services;
- (iv) Nonprofit community-based entities or organizations that use a majority of public funds to provide dental and dental-hygiene services for indigent persons;
- (v) Hospitals licensed by the Department of Health;
- (vi) Partnerships, professional corporations, or professional limited liability companies solely consisting of and operated by dentists licensed under this chapter for the purpose of providing dental services;

(vii) Spouses and domestic partners of deceased licensed dentists for a period of one year following the death of the licensee;

(viii) If all of the ownership interest of the deceased, licensed dentist in a dental office or clinic is held by an administrator, executor, personal representative, guardian, conservator, or receiver of the estate (“appointee”), the appointee may retain the ownership interest for a period of one year following the creation of the ownership interest; and

(ix) An individual or entity acting as the manager, proprietor, operator, or conductor of a business or place where dental or dental-hygiene services are performed who does not have a license to practice dentistry and is not excepted pursuant to sub-subparagraphs (i) through (viii) of this subparagraph may continue to act as the manager, proprietor, operator, or conductor of the business or place where dental or dental-hygiene services are performed for a period of one year following July 7, 2009.

FLORIDA Statutes 460.4167 – Proprietorship by persons other than licensed chiropractic physicians

[https://www.lawserver.com/law/state/florida/statutes/florida statutes 460-4167](https://www.lawserver.com/law/state/florida/statutes/florida_statutes_460-4167)

(1) A person may not employ a chiropractic physician licensed under this chapter or engage a chiropractic physician licensed under this chapter as an independent contractor to provide services that chiropractic physicians are authorized to offer under this chapter, unless the person is any of the following:

1. One or more chiropractic physicians licensed under this chapter;
 2. A chiropractic physician licensed under this chapter and the spouse or surviving spouse, parent, child, or sibling of the chiropractic physician; or
 3. A trust whose trustees are chiropractic physicians licensed under this chapter and the spouse, parent, child, or sibling of a chiropractic physician.
- If the chiropractic physician described in subparagraph 2. dies, notwithstanding part X of chapter 400, the surviving spouse or adult children may hold, operate, pledge, sell, mortgage, assign, transfer, own, or control the chiropractic physician's ownership interests for so long as the surviving spouse or adult children remain the sole proprietors of the chiropractic practice.

SOUTH DAKOTA

<https://sdlegislature.gov/api/Statutes/2068595.html>

47-11A-15. Corporate practice of chiropractic restricted--
Application of canons of ethics.

Except as provided in this chapter, corporations shall not engage in the practice of chiropractic. Professional service corporations organized and operated in accordance with the provisions of this chapter shall not be deemed lay agencies within the meaning of the canons of professional ethics.

Source: SL 1970, ch 258, § 5.

States That Do NOT Allow a Non-Chiropractor
to Own a Chiropractic Practice (according to
The Joint Chiropractic® Franchise Disclosure
Document)

Arkansas, California, Colorado, District of
Columbia, Florida, Hawaii, Illinois, Kansas,
Kentucky, Maryland, Michigan, Minnesota,
New Jersey, New York, North Carolina, Oregon,
Pennsylvania, Rhode Island, South Dakota,
Tennessee, Vermont, Washington, West
Virginia, Wyoming

States That Do Allow a Non-Chiropractor to Own a Chiropractic Practice (according to The Joint Chiropractic® Franchise Disclosure Document)

Alabama*, Alaska, Arizona, Connecticut, Delaware, Georgia, Idaho, Indiana, Iowa, Louisiana, Maine, Massachusetts*, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, South Carolina, Texas, Utah, Virginia, Wisconsin

*Alabama and Massachusetts fall in between and permit a non-Chiropractor to own a practice, but require a special permit or registration.

Can a Non-
Chiropractor own a
Chiropractic
practice in my
State?

It depends.

Check your State Laws
and Rules.

Check with your
Attorney.

Possible Legal Issue:

A State Chiropractic Board receives a complaint and as part of its investigation issues a subpoena to the named chiropractor requesting patient records.

The Chiropractor responds that the practice is owned by a non-Chiropractor and tells the Board that the non-Chiropractor Owner is claiming that they own the patient records and they will not release them to the State Board.

What result? How does the State Board get the patient records?

A close-up photograph of a sunflower with bright yellow petals and a dark brown, textured center. The image is used as a background for the presentation slide.

IMPAIRMENT QUESTIONS ON APPLICATIONS: LEGAL AND POLICY CONSIDERATIONS

Courtney E. Cyzman, JD, BSW – General Counsel, Kansas State Board of Healing Arts

***I'm a lawyer, not
your lawyer.***





Patient safety → healthcare professional physical and mental wellbeing is crucial so they can provide the highest quality of care to patients.

Are the impairment questions having an unintended consequence of healthcare professionals not seeking care for fear of losing their license?

Are we compliant with the Americans with Disability Act ("ADA")?

FRAMING THE ISSUE

GUIDANCE FOR ANALYSIS OF IMPAIRMENT QUESTIONS

1. Questions should inquire only about conditions that *currently* impair the applicant/licensee's capacity to function as a licensee.
2. American Psychological Association ("APA") and other organizations strongly encourage use of present tense in application questions.
-  3. "Have you ever" questions (with no time limitation) are not ADA compliant.
-  4. Hypothetical questions are inconsistent with ADA standards.
5. APA recommends licensing bodies not ask applicants questions about past diagnosis and treatment of mental disorders. Instead focus on current impairment and *not* illness, diagnosis, or previous treatment in order to be ADA compliant.

KANSAS UNIVERSAL IMPAIRMENT QUESTION

Do you currently have any physical or mental health condition (including alcohol or substance use) that impairs your ability to practice your profession in a competent, ethical, and professional manner?

(Yes/No)

PLAN OF ACTION

Review

Change

Communicate

SOURCES

- *APA, Position Statement on Inquiries about Diagnosis and Treatment of Mental Disorders in Connection with Professional Credentialing and Licensing, Position Statement 2 (2018).*
- *Medical Society of New Jersey v. Jacobs, 1993 WL 413016 (D. N.J. 1993).*
- *Jones, J.D., et al., Medical Licensure Questions About Mental Illness and Compliance with the Americans with Disabilities Act, 46 J. Am. Acad. Psychiatry Law, 458 (2018).*
- *APA, Position Statement on Inquiries About Diagnosis and Treatment of Mental Disorders in Connection with Professional Credentialing and Licensing (2015).*
- *FSMB, Physician Wellness and Burnout: Report and Recommendations of the Workgroup on Physician Wellness and Burnout, Adopted as Policy (2018).*
- *Dr. Lorna Breen Foundation, available at <https://drlornabreen.org>.*

Licensure Portability


JOHN M. SETTLE.
OKLAHOMA ATTORNEY GENERAL'S
OFFICE

Why is licensure portability important to your state's chiropractic board???

- ▶ Many state Chiropractic Boards are experiencing a growing trend of chiropractors seeking to relocate their practices to other states for various reasons

What is Licensure Portability about???

- ▶ ...relates to the concept of transferring a professional license from one state or U.S. jurisdiction or international jurisdiction to another so that a professional has the opportunity to continue their occupation after relocation.
- ▶ It applies to medical providers as well as business professionals....
- ▶ Chiropractors - Nurses – Dentists – CPAs – MDs – DOs



Recently the Oklahoma Board of Chiropractic Examiners has seen a significant increase in the number of out of state Chiropractors seeking to move their practice to Oklahoma.

This is a trend that many other states are experiencing.

How many of those in the audience have also seen this trend in your state?

Licensure Portability terminology...

- ▶ Reciprocity... agreement between specific states.
- ▶ Relocation of Practice... by statute and/or rule.
- ▶ Endorsement – States that have enacted endorsement statutes will allow a professional licensed in another state to be recognized to practice in the endorsement statute state... if each state's licensure requirements are comparable.
- ▶ License Compacts – Agreements between multiple states to recognize and allow professional licensees to efficiently move practices to member states...



- ▶ Most states' Practice Acts include language to allow some avenue for a practitioner licensed in another state to move his/her practice to the new state.
- ▶ Those states' statutes and rules language will include some combination of either reciprocity, license endorsement or relocation of practice.
- ▶ Oklahoma's statutes and rules refers to "reciprocity" as well as the "relocation of practice".
- ▶ See the APPENDIX for the text of the Oklahoma Statute and Rules.

FCLB Resources for state Chiropractic Boards faced with this issue.

The June 30, 2022, License Portability Committee Report

Found that the subject should be introduced at future District meetings and other venues to help educate the FCLB member boards.

FCLB License Portability Committee 2022 Members

Carol Winkler, D.C., FCLB President

Jon Schwartzbauer, D.C., FCLB Executive Director

Wayne Bennett, D.C., DABCO

Beth Kidd, Executive Director, Oklahoma Board of Chiropractic Examiners
FCLB Administrative Fellow.

You've Got To - MOVE IT MOVE IT

Excellent article on License Portability published in the
Spring 2023 Regulatory Insights from FCLB newsletter
by Mr. Dale Atkinson, J.D., FCLB Legal Counsel.

*Ticket to Ride: Standardizing Licensure Portability for
Military Spouses* 218 Mil. Rev. 115

by Major Adam W. Kersey

APPENDIX

59 Okl.St.Ann. § 161.9

Application for original license by relocation of practice

A. Applications for an original license by relocation of practice to practice chiropractic in this state shall be made to the Board of Chiropractic Examiners in writing on a form and in a manner prescribed by the Board. The application shall be accompanied by a fee of Three Hundred Dollars (\$300.00), which shall not be refundable under any circumstances. If the application is disapproved by the Board, it shall be returned to the applicant with the reason for its disapproval fully stated in writing.

B. The Board may, in its discretion, issue an original license by relocation to practice to an applicant who is currently licensed to practice chiropractic in another state, country, territory or province, upon the following conditions:

1. That the applicant is of good moral character;
2. That the requirements for licensure in the state, country, territory or province in which the applicant is licensed are deemed by the Board to be equivalent to the requirements for obtaining an original license by examination in force in this state at the date of such license;

3. That the applicant has no disciplinary matters pending against him or her in any state, country, territory or province;

4. That the license of the applicant was obtained by examination in the state, country, territory or province wherein it was issued, or was obtained by examination of the National Board of Chiropractic Examiners;

5. That the applicant passes a jurisprudence examination given by the Board or the National Board of Chiropractic Examiners with a minimum score of seventy-five percent (75%) or better; and

6. That the applicant meets all other requirements of the Oklahoma Chiropractic Practice Act.

C. Any applicant requesting a license by relocation of practice into Oklahoma shall:

1. Submit to the Board documentary evidence that the applicant has been in active practice as a chiropractic physician three (3) years immediately preceding the date of the application;

2. Provide full disclosure to the Board of any disciplinary action taken against the applicant pursuant to licensure as a chiropractic physician in any state pursuant to licensure and/or criminal proceedings;

3. Provide full disclosure to the Board of any criminal proceeding taken against the applicant in any jurisdiction including, but not limited to:

- a. pleading guilty, pleading nolo contendere, receiving a deferred sentence or being convicted of a felony,
- b. pleading guilty, pleading nolo contendere, receiving a deferred sentence or being convicted of a misdemeanor involving moral turpitude, or
- c. pleading guilty, pleading nolo contendere, receiving a deferred sentence or being convicted of a violation of federal or state controlled dangerous substance laws;

4. If requested, appear before the Board for a personal interview; and

5. Pay an application fee to be set by rule of the Board.

D. The Board may authorize the Executive Director to issue a temporary license to an applicant who has submitted a completed application and has passed the required examination with a score acceptable to the Board. A temporary license shall authorize the applicant to practice chiropractic in Oklahoma between the submission of the application and the applicant's approval for licensure by the Board. A temporary license shall expire upon the Board's approval of a permanent license or ten (10) calendar days following the Board's denial of an application for a permanent license.

E. No license fee shall be charged by the Board for the balance of the calendar year in which such a license is issued.

F. In addition to an applicant's failure to meet any other requirements imposed by this section or other applicable law, the Board may deny a license or impose probationary conditions if an applicant has:

1. Pleaded guilty, pleaded nolo contendere, received a deferred sentence or been convicted of a felony;
2. Pleaded guilty, pleaded nolo contendere, received a deferred sentence or been convicted of a misdemeanor involving moral turpitude;
3. Pleaded guilty, pleaded nolo contendere, received a deferred sentence or been convicted of a violation of federal or state controlled dangerous substance laws;
4. Been the subject of disciplinary action by the Board; or
5. Been the subject of disciplinary action in another jurisdiction.

Okla. Admin. Code 140:10-1-1

The purpose of this Chapter is to describe:

(1) the requirements and procedure for obtaining an original license, by examination or **reciprocity**, to practice chiropractic medicine in this state; and...

(A) The requirements for licensure in the state, country, territory or province in which the applicant is licensed are deemed by the Board to be equivalent to the requirements for obtaining an original license by examination in this state, at the date of such license;

(B) The applicant has no disciplinary matters pending against him or her in any state, country, territory or province.

(C) The license held prior to **relocation of practice** was obtained by examination in the state, country, territory or province wherein it was issued, or was obtained by examination of the National Board of Chiropractic Examiners;

(D) The applicant passes any examination offered by the Board according to 140:10-3-1; and (Emphasis added).

(E) The applicant meets all other requirements of the Oklahoma Chiropractic Practice Act.

Okla. Admin. Code 140:10-1-2. Definitions...

“Original license” means a license which grants initial authorization to practice chiropractic in this state issued by the Board to an applicant found by the Board to meet the requirements for licensure of the Act:

(A) by examination pursuant to § 161.7 and 161.8 of the Act and 140:10-3-1 through 140:10-3-4; or

(B) by relocation of practice pursuant to § 161.9 of the Act and 140:10-3-5.

“Relocation of practice” means the ability of an applicant to obtain Oklahoma who meets the following conditions:

(A) The applicant is of good moral character;

(B) The requirements for licensure in the state, country, territory or province in which the applicant is licensed are deemed by the Board to be equivalent to the requirements for obtaining an original license by examination in this state at the date of such license;

(C) The applicant has no disciplinary matters pending against him or her in any state, country, territory or province;

(D) The license held prior to relocation of practice was obtained by examination in the state, country, territory or province wherein it was issued, or was obtained by examination of the National Board of Chiropractic Examiners;

(E) The applicant passes any examination offered by the Board according to 140:10-3-1; and

(F) The applicant meets all other requirements of the Oklahoma Chiropractic Practice Act.

14 U.S.C.A. § 508

§ 508. Coast Guard health-care professionals; licensure portability

Effective: December 4, 2018

(a) In general.--Notwithstanding any other provision of law regarding the licensure of health-care providers, a health-care professional described in subsection (b) may practice the health profession or professions of the health-care professional at any location in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States, regardless of where such health-care professional or the patient is located, if the practice is within the scope of the authorized Federal duties of such health-care professional.

(b) Described individuals.--A health-care professional described in this subsection is an individual--

(1) who is--

(A) a member of the Coast Guard;

(B) a civilian employee of the Coast Guard;

(C) a member of the Public Health Service who is assigned to the Coast Guard; or

(D) any other health-care professional credentialed and privileged at a Federal health-care institution or location specially designated by the Secretary; and

(2) who--

(A) has a current license to practice medicine, osteopathic medicine, dentistry, or another health profession; and

(B) is performing authorized duties for the Coast Guard.

(c) **Definitions.**--In this section, the terms “license” and “health-care professional” have the meanings given those terms in section 1094(e) of title 10.

VETERANS AUTO AND EDUCATION IMPROVEMENT ACT OF 2022, H.R. 7939, 117TH CONGRESS §705A (2003).

An **Act** To make permanent certain **educational** assistance benefits under the laws administered by the Secretary of **Veterans** Affairs in the case of changes to courses of **education** by reason of emergency situations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This **Act** may be cited as the “**Veterans Auto and Education Improvement Act of 2022**”.

SEC. 19. PORTABILITY OF PROFESSIONAL LICENSES OF MEMBERS OF THE UNIFORMED SERVICES AND THEIR SPOUSES.

(a) **IN GENERAL.**—Title VII of the Servicemembers Civil Relief **Act** (50 U.S.C. 4021 et seq.) is amended by inserting after section 705 (50 U.S.C. 4025) the following new section:

“SEC. 705A. PORTABILITY OF PROFESSIONAL LICENSES OF SERVICEMEMBERS AND THEIR SPOUSES.

“(a) IN GENERAL.—In any case in which a servicemember or the spouse of a servicemember has a covered license and such servicemember or spouse relocates his or her residency because of military orders for military service to a location that is not in the jurisdiction of the licensing authority that issued the covered license, such covered license shall be considered valid at a similar scope of practice and in the discipline applied for in the jurisdiction of such new residency for the duration of such military orders if such servicemember or spouse—

“(1) provides a copy of such military orders to the licensing authority in the jurisdiction in which the new residency is located;

“(2) remains in good standing with—

“(A) the licensing authority that issued the covered license; and

“(B) every other licensing authority that has issued to the servicemember or the spouse of a servicemember a license valid at a similar scope of practice and in the discipline applied in the jurisdiction of such licensing authority;

“(3) submits to the authority of the licensing authority in the new jurisdiction for the purposes of standards of practice, discipline, and fulfillment of any continuing **education** requirements.

“(b) INTERSTATE LICENSURE COMPACTS.—If a servicemember or spouse of a servicemember is licensed and able to operate in multiple jurisdictions through an interstate licensure compact, with respect to services provided in the jurisdiction of the interstate licensure compact by a licensee covered by such compact, the servicemember or spouse of a servicemember shall be subject to the requirements of the compact or the applicable provisions of law of the applicable State and not this section.

“(c) COVERED LICENSE DEFINED.—In this section, the term ‘covered license’ means a professional license or certificate—

“(1) that is in good standing with the licensing authority that issued such professional license or certificate;

“(2) that the servicemember or spouse of a servicemember has actively used during the two years immediately preceding the relocation described in subsection (a); and

“(3) that is not a license to practice law.”.

TELEHEALTH

*Christopher Gerard,
Assistant Attorney General*

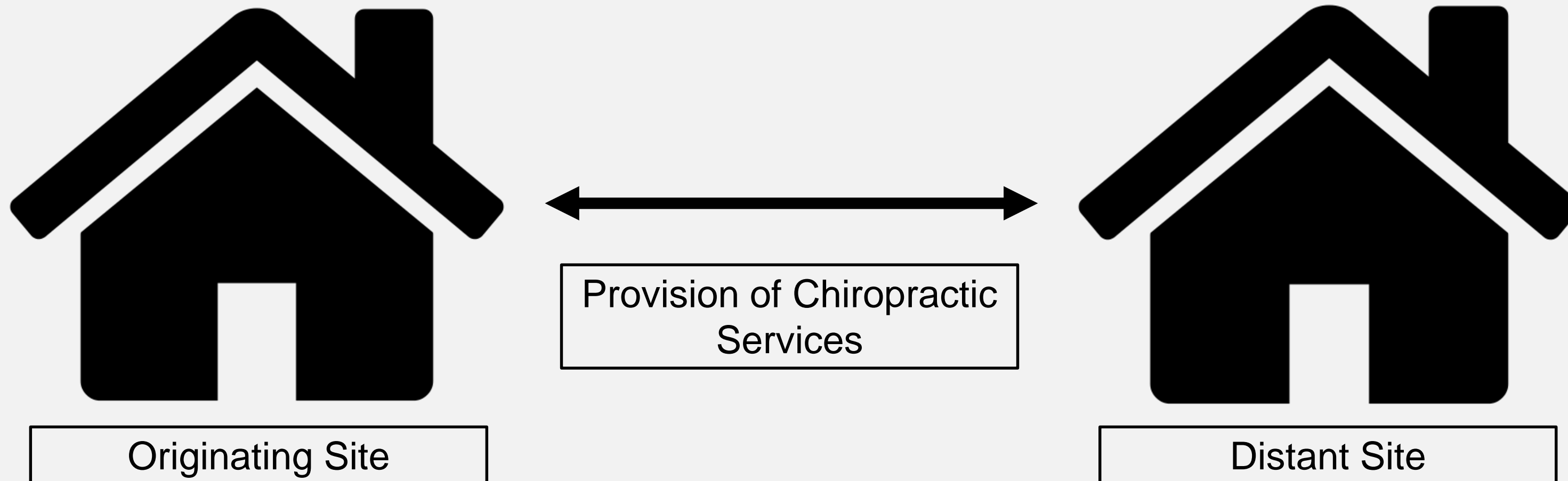


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TELEHEALTH - OVERVIEW



REGULATORY CONCERNS WITH TELEHEALTH

Licensing and
Credentialing

Standard of Care

Patient Safety

Patient -
Chiropractor
Relationship

Records and Data
Security



POLICY STATEMENT

