

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 427 CS Surgical First Assistance
SPONSOR(S): Homan and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1044

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee	6 Y, 5 N, w/CS	Hamrick	Mitchell
2) Insurance Committee	10 Y, 6 N, w/CS	Cooper	Cooper
3) Health Care Appropriations Committee			
4) Health & Families Council			
5) _____			

SUMMARY ANALYSIS

This bill creates new procedures regarding the use and performance of certified surgical first assistants. It defines certified surgical first assistants (CSFA's) . A CSFA works under the direct supervision of a surgeon and provides technical functions that help a surgeon perform an operation. The bill clarifies that each supervising physician may be liable for any acts or omissions of the CSFA acting under the physician's supervision and control.

The bill limits the duties a CSFA may perform to be:

- only those functions that are in the scope of certification in surgical assisting functions and tasks delegated by the supervising physician, and
- only in a hospital or ambulatory surgical center licensed pursuant to chapter 395.

The bill would provide statutory authority for the inclusion of payment to CSFA's for assisting at surgery when a health insurance policy or health maintenance contract provides for payment for such services.

Fiscal Impact: The bill does not have any fiscal impact on state or local governments. There appears to be no private fiscal impact because the bill is not mandating new coverage (payments) for additional services under a health insurance policy or health maintenance contract; only policies and contracts that already provide for first assisting services and already pay for first assisting services must include CSFA's as a possible payee.

The bill will take effect on July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government – This bill places new requirements on health insurers and health maintenance organizations regarding reimbursement of certified surgical first assistant services.

B. EFFECT OF PROPOSED CHANGES:

A surgical assistant works under the direct supervision of a surgeon and provides aid in operative technical functions that help a surgeon perform a safe operation. A wide range of health professionals function as surgical assistants, such as physician assistants, nurses, and surgical technologists.

HB 427 defines certified surgical first assistants (CSFA's) . A CSFA works under the direct supervision of a surgeon and provides technical functions that help a surgeon perform an operation. The bill clarifies that each supervising physician may be liable for any acts or omissions of the CSFA acting under the physician's supervision and control.

The bill provides scope of practice and employment guidelines. The bill limits the duties a CSFA may perform to be:

- only those functions that are in the scope of certification in surgical assisting functions and tasks delegated by the supervising physician, and
- only in a hospital or ambulatory surgical center licensed pursuant to chapter 395.

The bill provides statutory authority for the inclusion of payment to CSFA's for assisting at surgery when a health insurance policy or health maintenance contract provides for payment for such services. This inclusion of CSFA's as a possible payee for first-assisting services, would give CSFA's the same third-party reimbursement granted the registered nurse first assistants and the physician assistants under current law. Currently, s. 627.419 (6) states that "when any health insurance policy, health care services plan, or other contract provides for payment for surgical first assisting benefits or services, the policy, plan, or contract is to be construed as providing for payment to a registered nurse first assistant or employers of a physician assistant or nurse first assistant who performs such services that are within the scope of a physician assistant's or a registered nurse first assistant's professional licensure." This bill would essentially parallel this language for CSFA's.

If enacted, the provisions of the bill would take effect July 1, 2006.

BACKGROUND INFORMATION

Who is a Certified Surgical First Assistant?

A wide range of health professionals function as surgical assistants. Surgical assistants may be referred to as first assistants or assistants-at-surgery. Examples of such health professionals that function as surgical assistants are:

- Physicians (post-residency)
- Physicians in residency
- Registered nurses, including those in surgical specialties, such as orthopedics
- Licensed practical nurses
- Nurse practitioners
- Clinical nurse specialists
- Certified registered nurse assistants
- Surgical technologists

- Physician Assistants
- Ophthalmic assistant/technicians
- Surgical assistants
- Orthopedic technologists
- Orthopedic physician assistants
- International medical graduates

Profile of the Profession

According to information provided in a questionnaire in response to possible licensure of CSFAs, the American College of Surgeons defines “*surgical assistants*” as those who provide aid in exposure, hemostasis, closure and other operative technical functions that help the surgeon carry out a safe operation with optimal results. Some of the specific tasks include: making initial incisions (opening), exposing the surgical site (retracting), stemming blood flow (hemostasis), reconnecting tissue (suturing) and completing the operation by reconnecting external tissue (closing). Additionally, surgical assistants should possess knowledge of sterility requirements, aseptic techniques, draping procedures, operating room equipment, drain placement and cauterization, and dressing techniques.

Scope of Practice as Defined in the Bill

The bill provides a scope of practice for a certified surgical first assistant which is limited to surgical assisting and tasks that are delegated by the supervising physician. A definition of “surgical assisting” is provided that means providing aid under the direct supervision in exposure, hemostasis, closures, and other intraoperative technical functions that assist a physician in performing a safe operation with optimal results for the patient. The bill also provides that the duties of a certified surgical first assistant are limited to the scope of the certification in surgical assisting functions while under the direct supervision of a physician. However, the bill does not provide a definition or explanation for the “scope of certification.” The bill stipulates that a certified surgical first assistant may only work in a medical clinic, hospital, ambulatory surgical center, or similar medical institution.

The bill specifies that the physician supervising a certified surgical first assistant shall be qualified in the medical areas in which the certified assistant is to perform and may be responsible and liable for the performance and acts and omissions of the assistant.

Certification Bodies and the Requirements for Certification

Currently, there is a wide range of non-physician allied health professionals trained as surgical assistants or technologists in a variety of programs. According to the Department of Labor, most employers prefer to hire surgical assistants or technologists who are certified. Surgical assistants or technologists may obtain voluntary professional certification by graduating from an accredited program and passing a national certification examination. To qualify to take the exam, candidates follow one of three paths: complete an accredited training program, undergo a 2-year hospital on-the-job training program, or acquire seven years of experience working in the field.

The bill requires certified surgical first assistants to be certified by one of the following three professional organizations:

- The National Surgical Assistant Association (NSAA), which began in Virginia in 1979. This body provides for certified surgical assistant (CSA) certification title. The National Surgical Assistant Association established practice standards and develop a certification examination with the help of the Department of Surgery at Norfolk General Hospital.
- The Liaison Council on Certification for the Surgical Technologist (LCC-ST), was established in 1974 as the certifying agency for surgical technologists. This body provides for certified first assistant (CFA) certification title. The Council determines the eligibility for the granting and revocation of certification of surgical technologists and first assistants.

- The American Board of Surgical Assistants, which was established in 1987 by Paul F. Weeks, M.D., as a national credentialing organization for surgical assistants. This body administers a national certification examination that covers all areas of perioperative medicine and provides a certified surgical first assistant certification title. It also can provide recertification every two years with certain requirements, including assisting on a minimum of 400 clinical procedures or 1500 clinical hours in the role of “first assistant” every two years.

Current Statutory Prohibition for Unlicensed Activity in Surgery unless Authorized and Pass a Competency Assessment

Section 395.0197(1)(b) 3., F.S., prohibits unlicensed persons from assisting or participating in any surgical procedure unless the facility has authorized the person to do so following a competency assessment. Assistance or participation must be done under the direct and immediate supervision of a licensed physician and must not be an activity that may only be performed by a licensed health care practitioner.

Education and Regulation in Other States

According to a study conducted by the U.S. General Accounting Office (GAO),¹ there is no widely accepted set of uniform requirements for experience and education that the health professionals who serve as assistance-at-surgery or surgical first assistants are required to meet. The health professionals whose members provide assistants-at-surgery services have varying educational requirements. No state licenses all the health professionals who serve as assistants-at-surgery, and the health professional licenses that states do issue typically attest to the completion of broad-based health care education, rather than education or experience as an assistant. Furthermore, the certification programs developed by the various non-physician health professional groups whose members assist at surgery differ. The GAO found that there was insufficient information about the quality of care provided by assistants-at-surgery generally, or by a specific type of health professional, to assess the adequacy of the requirements for members of a particular profession to perform the role.

Based on the findings in the GAO study, in January 2004 only one state, Texas, had a specific assistant-at-surgery license. Even though Texas licenses assistants-at-surgery, a license is not required to serve as an assistant-at-surgery. According to the proponents of the bill two additional states now regulate surgical first assistants: Kentucky and Illinois.

Surgical Education, Experience Requirements, and Licensure Requirements for Surgical First Assistants

Health Profession	General Education Requirements	Licensure Requirements in All States	Example of Surgical Experience Requirements
Physician			
Physicians (post-residency)	Doctor of medicine or osteopathy	Yes	
Physician in residency	Doctor of medicine or osteopathy	Yes	

¹ United States General Accounting Office, Report to Congressional Committees. January 2004. Medicare: Payment Changes are Needed for Assistants-at-Surgery. GAO 04-97.

Nurse			
Registered nurse, including surgical specialties * (*A variety of surgery-related certifications are available for nurses. Some of these are for surgical specialties. Orthopedic nurse certified requires 1,000 hours of experience as an orthopedic nurse. Certified plastic surgical nursing requires 2 years experience in plastic surgery. Both certifications include operating room experience, but neither requires OR experience.)	Associate's or bachelor's degree in nursing or non-degree hospital diploma	Yes	Requirements vary by certification program, but surgical experience is not required for certain surgical-related certifications
Nurse practitioner	Master's of science in nursing or non-degree certificate	Yes	
Clinical nurse specialist	Master's of science in nursing	Yes	
Certified registered nurse first assistant	Bachelor's degree and certification program with 2-3 surgical classes	Yes	2,400 hours of operating room experience in the scrub or circulating role and 2,000 hours as assistant-at-surgery
Licensed practical nurse	1-year program	Yes	

Other health professions			
Surgical technologist	Associate's degree, military or non-degree certificate	No	2 years of surgical experience
Physician assistant	Associate's or bachelor's degree or non-degree certificate	Yes	
Ophthalmic assistant/technician	Certificate programs or work experience	No	18 months of surgical experience
Surgical assistant	Bachelor's degree or non-degree certificate	No	2-3 years of surgical assistant experience, depending upon certification program
Orthopedic physician assistant	Associate's degree, military or non-degree certificate, or 5 years of experience	No	1 year surgical experience
International medical graduate	Non-U.S. degree in medicine	No	

Source: 2004 GAO Report Medicare Payments for Assistants-at-Surgery

Medicare Reimbursement of Surgical Assistants

According to the GAO report on Medicare costs,² surgical assistants have a wide range of educational training and expertise, and different levels of professional requirements that do not justify the same level of reimbursement by Medicare. According to representatives from the insurance industry, the industry looks to Medicare and as a basis for their reimbursement and payment structure.

As reported by the GAO, Medicare pays for assistant-at-surgery services through both the hospital inpatient prospective payment system (PPS) and the physician fee schedule, and the hospital payments for surgical care are not adjusted when an assistant receives payment under the physician fee schedule. The majority of assistants-at-surgery are employed by hospitals, where the inpatient hospital PPS pays for their services.³ Generally, the amount Medicare pays under the physician fee schedule is based on the resources needed to perform a service, the physician's time and skill, practice expenses, equipment, supplies, and the cost of liability insurance.⁴

² United States General Accounting Office, Report to Congressional Committees. January 2004. Medicare: Payment Changes are Needed for Assistants-at-Surgery. GAO 04-97.

³ Ibid.

⁴ Ibid.

Depending on the procedure performed, and the qualifications and training of the provider assisting in surgery, the services may be billable to Medicare. Medicare reimburses only assistants-at-surgery who are licensed personnel (such as physicians, clinical nurse specialists, nurse practitioner, and physician assistant) and does not reimburse for surgical assistants included under the physician fee schedule that are non-physicians. Non-physician assistants-at-surgery include certified registered nurse first assistant, orthopedic physician assistants, licensed practical nurses, or certified surgical technologists.⁵ These non-physician assistants-at-surgery are usually paid by the hospital from the inpatient PPS. The surgeon's fee does not cover payment for assistants-at-surgery because the physician fee schedule (also referred to as the surgeons global fee) does include additional payment of an assistants-at-surgery fee.⁶

Impact of the Bill on New Insurance Policies and Current Statutory Provisions for Reimbursement

The bill amends s. 627.419(6), F.S., Part II of the Florida Insurance Code relating to the construction of insurance policies, requiring that, if a policy pays for services provided by surgical first assisting benefits, then the policy is construed to make payments to certified surgical first assistants or their employers. The bill applies to individual and group health insurance policies, small group basic policies, and standard policies. The bill does not require an insurer to directly reimburse a certified first assistant if the assistant is paid or will be paid for their services by a health care facility. Currently, these services may be covered by global payments made by health insurance plans to hospitals, but is not included in payments to surgeons.

Currently, s. 627.419(6), F.S., requires health insurance policies, plans and contracts that pay for surgical first assisting to reimburse registered nurse first assistants or their employers and employers of physician assistants for assistance in surgery. Reimbursement is required only if an assisting physician, licensed under chapters 458 or 459, F.S., would be covered, and the physician assistant or registered nurse first assistant performs such services as a substitute for the physician.

According to the Office of Insurance Regulation, the bill does not address policies renewed after the effective date. Therefore, the bill will apply prospectively to new policies issued after the effective date. It was unclear to the Office of Insurance Regulation, if this new, direct payment requirement will significantly impact claims, payments for services provided by certified surgical assistants which may be currently covered under the general reimbursement for a covered surgical procedure.

C. SECTION DIRECTORY:

Section 1. Creates s. 458.3465, F.S., to provide legislative intent; definitions; performance of supervising physician requirements; performance of certified surgical first assistants, including duties and scope practice, and liability provisions.

Section 2. Amends s. 627.419, F.S., to provide for payment for physician assistants providing surgical first assistant services in cases where the policy provides for payment for surgical first assisting benefits or services under health insurance policies.

Section 3. Amends s. 641.30, F.S., to provide for payment for physician assistants providing surgical first assistant services in cases where the policy provides for payment for surgical first assisting benefits or services under health maintenance contracts.

Section 4. Provides that the bill will take effect on July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

⁵ Ibid.

⁶ Ibid.

A. FISCAL IMPACT ON STATE GOVERNMENT:

The following the fiscal impact was provided by the Department of Health.

1. Revenues:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent this bill has the effect of requiring any additional payments to surgical first assistants not already provided, it may result in increased health care costs. Regulation of health care providers may have a positive impact on patient safety. This bill encourages all surgical assistants to get certified.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not addressed.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Insurance Committee adopted a proposed committee substitute. The Committee Substitute by Insurance differs from the Committee Substitute by the Health Care Regulation Committee in the following ways:

- Eliminates all licensure requirements/provisions for certified surgical first assistants;
- Adds a provision that would include payments to certified surgical first assistants if a health maintenance contract provides for payment for surgical first assisting benefits and services;
- Changes the enactment date from October 1 to July 1; and
- Eliminates any fiscal impact on the state.

The bill, as amended, was reported favorably as a committee substitute. This analysis is drafted to the Committee Substitute by Insurance.