

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 573

Physician Assistants

**SPONSOR(S):** Kreegel

**TIED BILLS:**

**IDEN./SIM. BILLS:**

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	<u>Health Care Regulation Policy Committee</u>	<u></u>	<u>Guy</u>	<u>Calamas</u>
2)	<u>Health Care Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
3)	<u>Health &amp; Family Services Policy Council</u>	<u></u>	<u></u>	<u></u>
4)	<u></u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

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**SUMMARY ANALYSIS**

House Bill 573 requires physician assistants to undergo state and federal criminal background checks prior to licensure by the Florida Department of Health (DOH).

The bill deletes the requirement that a physician assistant have at least three months of clinical experience in the specialty of the supervising physician. A licensed physician assistant will be allowed to practice and prescribe medication immediately upon the establishment of a supervisory relationship with a physician.

The bill authorizes DOH to accept physician assistant licensure applications and supporting documentation electronically.

The bill appears to have no fiscal impact to state or local government.

House Bill 573 provides an effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Sections 458.347(7), and 459.022(7), F.S., govern the licensure of physician assistants (PAs) in Florida. Physician assistants are licensed by the Department of Health (DOH) and are regulated by the Florida Council on Physician Assistants (Council) and either the Florida Board of Medicine (Board) for PAs licensed under Chapter 458, F.S., or the Florida Board of Osteopathic Medicine (Board) for PAs, licensed under Chapter 459, F.S. Currently there are a total of 4,966 licensed physician assistants in Florida: 3,656 with prescribing authority and 1,310 non-prescribing physician assistants.<sup>1</sup>

Physician assistants may only practice under the direct or indirect supervision of a medical doctor or doctor of osteopathic medicine with whom they have a clinical relationship. A supervising physician may only delegate tasks and procedures to the physician assistant that are within the supervising physician's scope of practice.<sup>2</sup> The supervising physician is responsible and liable for any and all acts of the PA and may only supervise up to four PAs at any time.<sup>3</sup>

PAs are regulated through the physician practice acts.<sup>4</sup> Each of the medical practice acts has a corresponding board (i.e., the Board of Medicine and the Board of Osteopathic Medicine). The duty of the Boards and its members is to participate in probable cause panels and make disciplinary decisions concerning whether a doctor or PA was practicing medicine within the confines of their practice act.

The Florida Council on Physician Assistants (Council) was created in 1995 to recommend the licensure requirements (including educational and training requirements) for PAs, establish a list of formulary drugs that a PA may not prescribe, and develop rules for the use of PAs by doctors to ensure that the continuity of supervision is maintained in each practice setting throughout the state.<sup>5</sup> The Council is composed of five members: three physicians who are members of the Board of Medicine; one physician who is a member of the Board of Osteopathic Medicine; and one licensed PA.<sup>6</sup> Two physician members of the Council must supervise physician assistants.<sup>7</sup> The Council and the medical

<sup>1</sup> Teleconference with Department of Health staff, February 24, 2010 (notes on file with the Committee).

<sup>2</sup> Rule 64B8-30.012(1), F.A.C., and Rule 64B15-6.010(1), F.A.C.

<sup>3</sup> S. 458.347(3), F.S., and s. 459.022(3), F.S.

<sup>4</sup> S. 458.347, F.S., and s. 459.002, F.S.

<sup>5</sup> S. 458.347(9), F.S., and s. 459.002(9), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

boards both have regulatory functions related to PAs: The Council is responsible for licensing PAs; and the boards are responsible for disciplining PAs licensees.

## Licensure

To become licensed as a PA in Florida, an applicant must demonstrate to the Council:<sup>8</sup>

- Passage of the National Commission on Certification of Physician Assistant exam;
- Completion of the application, the format of which is approved by the Council, which includes:
  - certificate of completion of a PA training program;
  - sworn, notarized statement of felony convictions; and
  - sworn statement of denial or revocation of licensure in any state.
- Two letters of recommendation from physicians;<sup>9</sup>
- Payment of a licensure fee; and
- Completion of a two hour course on the prevention of medical errors, error reduction and prevention, and patient safety.<sup>10</sup>

The Council does not currently accept initial licensure and renewal applications electronically. However, DOH is implementing the infrastructure to do so and the Council is scheduled to have this capability by the end of 2010.<sup>11</sup>

Licensure renewal occurs biennially.<sup>12</sup> At the time of renewal, a PA must submit a sworn statement that he or she has had no felony convictions in the previous two years.<sup>13</sup> All PAs are required to complete 100 hours of continuing medical education (CME) biennially.<sup>14</sup> Renewal is subject to specific CME subject matter requirements prescribed in Rules 64B8-30.005, and 64B15-6.0035, F.A.C.

Section 458.347, F.S., provides for two alternative methods of licensure of a physician assistant for:

- An unlicensed medical doctor and foreign medical school graduate who has been certified by the Board of Medicine as having met the requirements for licensure as a medical doctor with certain exceptions; and
- A graduate of the now-closed Florida College of Physician Assistants.

## Supervision

A supervising doctor may only delegate tasks and procedures to PA that are within the supervising doctor's scope of practice.<sup>15</sup> The physician may provide direct or indirect supervision. All tasks and procedures performed by the PA must be documented in the appropriate medical record. It is the responsibility of the supervising doctor to ensure that the PA is knowledgeable and skilled in performing the tasks and procedures assigned. The supervising physician is responsible and liable for any and all acts of the PA.

## Prescribing and Non-prescribing Physician Assistants

The Council licenses two types of PAs: non-prescribing and prescribing. Prescribing PAs have the authority to prescribe and dispense medications used in the supervising physician's practice, subject to exclusion by the PA formulary.<sup>16</sup> A prescribing PA is not allowed to prescribe controlled substances.<sup>17</sup>

<sup>8</sup> S. 458.347(7), F.S., and s. 459.022(7), F.S.

<sup>9</sup> Rule 64B8-30.003(1), F.A.C., and Rule 64B15-6.003(1), F.A.C.

<sup>10</sup> Rule 64B8-30.003(3), F.A.C., and Rule 64B-15-6.003(4), F.A.C.

<sup>11</sup> Teleconference with Department of Health staff, February 24, 2010 (notes on file with the Committee).

<sup>12</sup> S. 458.347(7)(c), F.S. Rule 64B8-30.019, F.A.C., establishes the initial licensure and renewal fee schedule. s. 459.022(7)(b), F.S. Rule 64B15-6.013, F.A.C., establishes the initial licensure and renewal fee schedule.

<sup>13</sup> S. 458.347(7)(c)2, F.S., and s. 459.022(7)(b)2, F.S.

<sup>14</sup> S. 458.347(7)(d), F.S., and s. 459.022(7)(c), F.S.

<sup>15</sup> Rule 64B8-30.012(1), F.A.C., and Rule 64B15-6.010(1), F.A.C.

<sup>16</sup> S. 458.347(4)(e), F.S., and s. 459.022(4)(e), F.S.

<sup>17</sup> S. 458.347(4)(f)1, F.S.

Prescribing PAs are required to demonstrate three months of clinical experience in the specialty area of their supervising physician prior to being authorized to prescribe or dispense medication.<sup>18</sup> Prior to licensure, prescribing PAs must complete a Board-approved three hour prescriptive practice course<sup>19</sup> and they must file for licensure jointly with their supervising physician.<sup>20</sup> For licensure renewal, prescribing PAs must complete an additional 10 hours in the specialty area in which the PA practices.<sup>21</sup>

Each supervising doctor and prescribing PA must keep a written agreement (or protocol) that outlines the intent to delegate prescribing authority and which non-controlled substances the PA is authorized to prescribe. The agreement must be signed and dated by all parties and maintained on file for at least five years and a copy must be provided to the respective board or council upon request. The PA is restricted to prescribing drugs that are used in the supervising doctor's practice.<sup>22</sup>

## **Criminal Background Checks**

Four of the 40 health care professions regulated by DOH are required under their respective practice acts to undergo state and federal criminal background checks prior to licensure and renewal.<sup>23 24</sup> The process by which DOH conducts criminal background checks for these professions differs from criminal background checks conducted for non-health care professions. By way of example, medical doctors licensed pursuant to Chapter 458, F.S., are statutorily-required to undergo a criminal background check,<sup>25</sup> and the Board of Medicine has the authority to make licensure determinations based on the results.<sup>26</sup> DOH is unable to accept fingerprints submitted in an electronic format.<sup>27</sup>

According to the Board, the criminal background check for physicians consists of a fingerprint-based search of the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigations (FBI) databases for state and national criminal arrest records, respectively. The Board determines criminal history criteria for which the applicant would be required to submit additional information to the Board for consideration.<sup>28</sup> The Board may, based on the criminal background check results and any application addendums, approve the application, reject the application, or approve the application with restrictions on practice.<sup>29</sup>

Currently, an applicant to be licensed as a physician assistant submits a sworn statement with his or her application attesting to any criminal history to DOH and is required to update his or her criminal history upon biennial licensure renewal. However, no formal criminal background check is required for licensure as a physician assistant.

## **Effect of Proposed Changes**

House Bill 573 deletes the requirement that a physician assistant have at least three months of clinical experience in the specialty of the supervising physician. The practical effect of this provision is to allow

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<sup>18</sup> S. 458.347(4)(e)4, F.S., and s. 459.022(4)(e)4, F.S. Generally, Rule 64B8-30.003(5), F.A.C., and Rule 64B15-6.003(5), F.A.C., direct the licensure of prescribing physician assistants.

<sup>19</sup> Rule 64B8-30.003(5)(b), F.A.C., and Rule 64B15-6.033(5)(b), F.A.C.

<sup>20</sup> Rule 64B8-30.003(5)(a), F.A.C., and Rule 64B15-6.003(5)(a), F.A.C.

<sup>21</sup> S. 458.347(4)(e)5, F.S., and s. 459.022, (4)(e)5, F.S.

<sup>22</sup> S. 458.347(4)(e), F.S., and s. 459.022(4)(e), F.S.

<sup>23</sup> Generally, authority for criminal background screening is provided to the Department of Health in s. 456.039(4), F.S. Specific practice act authority is provided for: allopathic physicians (s. 458.311(1)(g), F.S.); osteopathic physicians (s. 459.055(1)(i), F.S.); chiropractors (s. 460.406(1)(g), F.S.); and podiatrists (s. 461.007(1)(e), F.S.).

<sup>24</sup> Unlike other provisions of law which require criminal background checks for employees that work with vulnerable persons, Chapter 456, F.S., does not provide for offenses that would disqualify an applicant from licensure by DOH. Chapter 435, F.S., outlines the process by which Level 1 and Level 2 criminal background checks are conducted for employees who work with vulnerable populations and provides for offenses that would lead to disqualification from employment.

<sup>25</sup> S. 458.311(1)(g), F.S., which states, "Has submitted to the department a set of fingerprints on a form and under procedures specified by the department, along with a payment in an amount equal to the costs incurred by the Department of Health for the criminal background check of the applicant."

<sup>26</sup> Teleconference with Board of Medicine staff, February 25, 2010 (notes on file with the Committee).

<sup>27</sup> Teleconference with Department of Health staff, February 24, 2010 (notes on file with the Committee).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

a prescribing PA to prescribe medication immediately upon the establishment of a supervisory relationship with a physician.

The bill requires the Department of Health to develop the licensure application for physician assistants. Currently, the application is developed by the Council and the Board of Medicine.

The bill requires state and federal criminal background checks for all PA applicants for initial licensure. The bill prescribes the process by which criminal background checks will be conducted for physician assistant applicants for initial licensure. The bill requires an applicant to submit his or her fingerprints electronically to DOH and provides authority to DOH to contract with private vendors for the collection of electronic fingerprints from applicants. The bill requires DOH to submit an applicant's fingerprints to FDLE to conduct a statewide criminal history check. The bill requires FDLE to forward the applicant's fingerprints to the FBI to conduct a national criminal history check. Any cost of the criminal background check shall be borne by the applicant. The background check requirement only applies to initial licensure; not licensure renewal.

The bill requires DOH to review the results of the criminal background check and issue a physician assistant license to any applicant that has no criminal history, provided that all other licensure criteria have been met by the applicant. In the case of an applicant with a criminal history, the bill provides the Boards of Medicine and Osteopathic Medicine the authority to make a determination of whether the applicant should be licensed. The bill provides the Boards the authority to grant conditional licensure to any applicant with a criminal history.

The bill gives DOH the authority to accept physician assistant licensure applications and supporting documentation electronically.

#### B. SECTION DIRECTORY:

Section 1: Amending s. 458.347, F.S., relating to physician assistants.

Section 2: Amending s. 458.348, F.S., relating to formal supervisory relationships, standing orders, and established protocols; notice; standards.

Section 3: Amending s. 459.022, F.S., relating to physician assistants.

Section 4: Amending s. 459.025, F.S., relating to formal supervisory relationships, standing orders, and established protocols; notice; standards.

Section 5: Providing an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

According to the Florida Department of Law Enforcement, there is a cost per applicant of \$24 for the statewide criminal history record check and \$19.25 for the national criminal history record check. FDLE retains the \$24 fee in the FDLE Operating Trust Fund and forwards the \$19.25 fee to the FBI.

According to the Department of Health, there is \$1.25 fee per applicant to scan the fingerprint cards into the system to begin the criminal background check process. There is no estimated cost to DOH to evaluate the criminal background checks that will be generated by requirements of House Bill 573.<sup>30</sup>

For estimation purposes, DOH processed 481 applications for initial licensure as a physician assistant during FY 2008-2009. Assuming the same number of initial licensure applicants in future years, the cost to process criminal background checks will be:

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<sup>30</sup> Teleconference with Department of Health staff, February 24, 2010 (notes on file with the Committee).

\$24.00 (FDLE fee) + \$19.25 (FBI fee) + \$1.25 (DOH fee) = \$44.50/applicant

\$44.50 X 481 initial applicants =

TOTAL: \$21,404.50/year

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 216.0236, F.S., requires the cost of professional regulation to be borne by those subject to the regulation. House Bill 573 provides the department with the authority to pass the cost for physician assistant criminal background checks to the applicant. There will be a cost to the applicant of \$44.50 in addition to the licensure fee for physician assistant licensure.

D. FISCAL COMMENTS:

According to the Department of Health, there may be an unanticipated cost associated with implementation of electronic fingerprint submission.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Health has sufficient rule-making authority to implement provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill appears to confer authority over an aspect of licensing, the discretion to license applicants with a criminal history, to the Board of Medicine and the Board of Osteopathic Medicine. Authority to make licensing determinations is currently exercised by the Florida Council on Physician Assistants.

The bill requires initial licensees to undergo state and federal criminal background checks. Applicants for licensure renewal are not required to undergo background checks. The four DOH practice acts which currently require criminal background checks impose the requirement on renewals as well as initial licensure. Physician assistants would be the only profession regulated by DOH to be subject to background checks only upon initial licensure.

#### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES