

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1124

SPONSOR: Health, Aging, and Long-Term Care Committee and Senators Peaden and Fasano

SUBJECT: Dermatological Services

DATE: January 22, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill creates a provision within the medical practice act and the osteopathic medical practice act to require a dermatologist to directly supervise a person with whom the dermatologist has a supervisory relationship and who is not licensed to practice medicine or osteopathic medicine or certified as an advanced registered nurse practitioner, as applicable, when that person evaluates a new, nonemergency patient for dermatological care or treatment or encounters any new dermatological problem on any of the dermatologist’s patients. “Dermatological” refers to a medical condition involving the skin or subcutaneous tissue. “Dermatologist” means any physician who has successfully completed an approved 3-year residency in dermatology and is practicing within the scope of that specialty within Florida. “Directly supervise” is defined to mean the dermatologist is present in the same office suite as the person being supervised. Dermatological procedures performed in licensed hospitals, ambulatory surgical centers, and nursing homes are exempt from the supervision requirement.

This bill creates sections 458.3245 and 459.0126, Florida Statutes.

II. Present Situation:

Practice of Medicine

Chapter 458, F.S., provides for the regulation of medical physicians by the Board of Medicine within the Department of Health. Section 458.305, F.S., defines the “practice of medicine” to mean the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition. Section 458.303, F.S., provides exceptions to the “practice of medicine” for: other duly licensed health care practitioners acting within their scope of practice authorized by statute; licensed out-of-state physicians when meeting in

consultation with Florida licensed physicians; medical officers of the United States Armed Forces and of the United States Public Health Service; medical residents; persons furnishing emergency medical assistance; the domestic administration of recognized family remedies; the practice of the religious tenets of any church in Florida; and any person or manufacturer who, without the use of drugs or medicine, mechanically fits or sells lenses, artificial eyes or limbs, or other apparatus or appliances, or is engaged in the mechanical examination of the eyes for the purpose of constructing or adjusting spectacles, eyeglasses, or lenses.

Three basic levels of regulation are used to regulate professions. The least restrictive level of occupational regulation is registration. Under registration, practitioners are only required to file certain information as it relates to services that they offer the public. An intermediate level of occupational regulation is regulation by a title act. Under a title act, the use of certain titles or descriptions is limited to a group of practitioners who have met certain minimum qualifications. A title act, however, does not prohibit anyone from offering comparable services to those offered by the practitioners licensed under the title act. A practice act limits the performance of certain activities to those licensed to practice.

Chapter 458, F.S., the medical practice act, requires any person who performs acts which are comparable to those within the definition of the “practice of medicine” to be licensed or otherwise exempt. The medical practice act provides criminal penalties for any person who performs acts comparable to the definition of the “practice of medicine” who is not licensed or otherwise exempt from the medical licensure requirements. Under s. 458.327(1), F.S., any person who practices medicine or attempts to do so, without being licensed or otherwise exempt from the licensure requirements, is subject to a third degree felony punishable by imprisonment of up to 5 years and a fine up to \$5,000. Subsection (2) of s. 458.327, F.S., subjects any person who leads the public to believe that person is licensed as a medical doctor, or is engaged in the licensed practice of medicine, without holding a valid active license to practice medicine, to a first degree misdemeanor punishable by imprisonment of up to 1 year and a fine up to \$1,000.

Section 458.331, F.S., specifies grounds for which a medical physician may be subject to discipline by the Board of Medicine. A medical physician is subject to discipline for any act in violation of applicable standards of practice, which include gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment that is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.¹ A medical physician is also subject to discipline for delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them.² Pursuant to subsection 458.331(3), F.S., in any administrative action against a physician which does not involve revocation or suspension of his or her license, the division (Department of Health) shall have the burden, by the greater weight of the evidence, to establish the existence of grounds for disciplinary action. The division shall establish grounds for revocation or suspension of a license by clear and convincing evidence. A medical physician may be subject to discipline for aiding, assisting, procuring, or advising any unlicensed person to practice medicine

¹ Section 458.331(1)(t), F.S.

² Section 458.331(1)(w), F.S.

contrary to the medical practice act or to any administrative rule adopted by the Department of Health or the Board of Medicine.

The Practice of Osteopathic Medicine

Chapter 459, F.S., the osteopathic medical practice act, similarly provides for the regulation of osteopathic physicians by the Board of Osteopathic Medicine in the Department of Health. Section 459.003, F.S., defines the “practice of osteopathic medicine” to mean the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition, which practice is based in part upon educational standards and requirements which emphasize the importance of the musculoskeletal structure and manipulative therapy in the maintenance and restoration of health. Chapter 459, F.S., contains provisions relating to the definition of practice, exceptions to the licensure requirements, discipline of licensed osteopathic physicians, and criminal violations for unlicensed persons, which are comparable to those in the medical practice act.

Physician Assistants and Advanced Registered Nurse Practitioners

Sections 458.347 and 459.022, F.S., provide requirements for the regulation of physician assistants by the Council on Physician Assistants, the Board of Medicine and the Board of Osteopathic Medicine under the Department of Health. Physician assistants perform medical services delegated by the supervising medical or osteopathic physician under indirect supervision. A physician may not supervise more than four currently licensed physicians at any one time.

Section 464.012, F.S., provides certification requirements for advanced registered nurse practitioners by the Board of Nursing. Advanced registered nurse practitioners perform medical acts of medical diagnosis and treatment, prescription, and operation under the general supervision of a medical or osteopathic physician as outlined in a protocol filed with the appropriate boards of the supervising physician and the supervised advanced registered nurse practitioner. Advanced registered nurse practitioners are independent practitioners who may perform all duties of a registered nurse and advanced level nursing in accordance with established protocols, including managing selected medical problems, monitoring and altering drug therapies, initiating appropriate therapies for certain conditions, performing physical examinations, ordering and evaluating diagnostic tests, ordering physical and occupational therapy, and initiating and monitoring therapies for certain uncomplicated acute illnesses. There are no statutory limitations on the number of advanced registered nurse practitioners with whom a physician may establish protocols.

Indirect supervision and general supervision do not require that the supervising physician be physically within the same office suite as the person being supervised.

Medical Assistants

Section 458.3485, F.S., authorizes medical assistants to assist in all aspects of medical practice under the direct supervision and responsibility of a medical physician. Medical assistants are unlicensed persons who may perform specified tasks under the direct supervision and

responsibility of a licensed physician, including the performance of clinical procedures. Section 458.303(2), F.S., provides that nothing in the medical practice act or any other law may be construed to prohibit any service rendered by a medical assistant in accordance with s. 458.3485, F.S.

Dermatology

In Florida, the Board of Medicine regulates the practice of medicine and does not regulate specialty practice. Dermatology is a specialty practice of medicine that deals with the skin, its structure, functions, and diseases. A dermatologist is a physician who is trained to evaluate and manage pediatric and adult patients with benign and malignant disorders of the skin, hair, nails and adjacent mucous membranes.

III. Effect of Proposed Changes:

The bill creates s. 458.3245, F.S., within the medical practice act and s. 459.0126, F.S., within the osteopathic medical practice act to require a dermatologist to directly supervise a person with whom the dermatologist has a supervisory relationship and who is not licensed to practice medicine or osteopathic medicine or certified as an advanced registered nurse practitioner, as applicable, when that person evaluates a new, nonemergency patient for dermatological care or treatment or encounters any new dermatological problem on any of the dermatologist's patients. "Dermatological" refers to a medical condition involving the skin or subcutaneous tissue. "Dermatologist" means any physician who has successfully completed an approved 3-year residency in dermatology and is practicing within the scope of that specialty within Florida. "Directly supervise" is defined to mean the dermatologist is present in the same office suite as the person being supervised. Dermatological procedures performed in licensed hospitals, ambulatory surgical centers, and nursing homes are exempt from the supervision requirement.

The bill would take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The Department of Health reports that the bill would have the effect of requiring medical and osteopathic physicians who are dermatologists to directly supervise physician assistants when a new, nonemergency patient is initially evaluated and when a new dermatological problem is initially encountered. The department reports that the bill will limit access to dermatological services to the same location where the supervising physician is located. Rural and underserved areas within Florida will have reduced access to dermatological services. Direct supervision may also have the effect of increasing the waiting times for patients to be treated for dermatological conditions. By reducing the cost effectiveness of physician assistants who practice in conjunction with dermatologists, the costs of dermatological services will increase.

Dermatology practices serving remote areas within Florida will either curtail services or be required to hire additional medical or osteopathic physicians to meet the direct supervision requirement of the bill. Patients, upon initial evaluation, may have a greater benefit to the extent the bill requires the direct supervision of any person not licensed as a medical or osteopathic physician or advanced registered nurse practitioner who is supervised by a dermatologist when that person evaluates a new, no emergency patient or encounters any new dermatological problem.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires a dermatologist to directly supervise any person with whom the dermatologist has a supervisory relationship and who is not licensed to practice medicine, osteopathic medicine, or advanced level nursing in Florida when that person evaluates a new, nonemergency patient, or encounters any new dermatological problems.

It is unclear whether physician assistants are exempt from the supervision requirements of the bill because physician assistants may practice medicine or osteopathic medicine but may only do so under the supervision of a physician.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
