

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 187 CS

Health Insurance--Certified Surgical First Assistants

**SPONSOR(S):** Homan

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 594

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee	10 Y, 1 N	Mitchell	Mitchell
2) Insurance Committee	10 Y, 8 N, w/CS	Cooper	Cooper
3) Health & Families Council			
4)			
5)			

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### SUMMARY ANALYSIS

Currently, s. 627.419(6), F.S., requires health insurance policies, health care services plans or other contracts that provide payment for surgical first assisting benefits or services to reimburse registered nurse first assistants or employers of physician assistants or nurse first assistants for such services performed within the scope of the physician assistant or registered nurse first assistant's license. This requirement only applies if reimbursement for an assisting physician, licensed under chapters 458 or 459, would be covered and a physician assistant or registered nurse first assistant who performs such services is used as a substitute for the physician.

This bill requires any health insurance policy, health care services plan or other contract that provides payment for surgical first assisting benefits or services to reimburse a certified surgical first assistant or his or her employer for services assigned by a supervising physician. This requirement applies only if reimbursement for an assisting physician, licensed under chapter 458 or 459, would be covered and the certified surgical first assistant is substituting for that physician.

According to the National Surgical Assistant Association, surgical teams typically consist of anesthesia personnel; the surgeon; a surgical assistant (another physician or an allied health professional non physician surgical assistant); the peri-operative nurse; and the instrument specialist. Certified surgical assistants are specially trained and tested to directly assist a physician performing surgery.

The bill requires a certified surgical first assistant to be directly accountable to a physician licensed under chapter 458 or 459, or a registered nurse licensed under chapter 464, and to be certified by either the:

- National Surgical Assistant Association on the Certification of Surgical Assistants,
- Liaison Council on Certification of Surgical Technologists, or
- American Board of Surgical Assistants.

According to the Office of Insurance Regulation, it is unclear if the direct payment requirement of the bill will significantly affect claims loss, as payments for services provided by certified surgical assistants may be currently covered under the general reimbursement for a covered surgical procedure.

The effective date of the bill is July 1, 2005.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0187c.IN.doc

**DATE:** 3/17/2005

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government--The bill broadens government authority by requiring insurers to pay a specific provider (certified surgical first assistant) for services, thus limiting the insurance companies' freedom in contractual negotiations. However, in order for the provider to be reimbursed, the service must already be a covered service and the certified surgical assistant must provide the service in place of the physician.

#### B. EFFECT OF PROPOSED CHANGES:

HB 187 expands current requirements for any health insurance policy, health care services plan, or other contract to pay for surgical assistance in an operation performed by specified professionals in the place of an assisting physician. The bill requires payment to a certified surgical first assistant or their employer, when the assistant performs services under a supervising physician as a substitute for an assisting physician (licensed under chapter 458 or chapter 459) who would be reimbursed by the plan or contract.

The bill requires a certified surgical first assistant to be certified by one of three national certification associations (the National Surgical Assistant Association on the Certification of Surgical Assistants, the Liaison Council on Certification of Surgical Technologists, or the American Board of Surgical Assistants). The certified surgical first assistant must be directly accountable to a physician (licensed under chapter 458 or 459) or, in the absence of a physician, a registered nurse licensed under chapter 464. They are not required to be licensed in Florida because they serve under the direct supervision of a physician.

#### **Existing Statutes**

Current statute (s. 627.419(6), F.S.) specifies that any health insurance policy, health care services plan, or other contract is to provide payment to a registered nurse first assistant or employers of a physician assistant or nurse first assistant who provides surgical assistance within the scope of their license. The provision applies only if reimbursement for an assisting physician, licensed under chapter 458 or chapter 459, would be covered, and the physician assistant or registered nurse first assistant is used as a substitute.

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.

#### **Wide Range of Professions Assist in Surgeries**

According to a recent U.S. Government Accounting Office (GAO) report regarding Medicare reimbursement for these services<sup>1</sup>, there is a wide range of health professionals who serve as surgical assistants including, physicians, residents in training for licensure or board certification, international medical graduates, nurses, and several unlicensed health professionals.

According to the National Surgical Assistant Association, surgical teams typically consist of anesthesia personnel: the surgeon; a surgical assistant (another physician or an allied health professional non

<sup>1</sup> United States General Accounting Office, January 2004. "Medicare Payment Changes Are Needed for Assistants-at-Surgery." GAO 04-97.

physician surgical assistant): the peri-operative nurse; and the instrument specialist. Certified surgical assistants are specially trained and tested to directly assist a physician performing surgery.

## **Surgical Assistants**

HB 187 pertains to health professionals who are specially trained and certified to assist in surgeries. They are not licensed by the State of Florida. According to the U.S. Department of Labor, they practice under the supervision of surgeons, registered nurses, or other surgical personnel. During surgery, these assistants may pass instruments and other sterile supplies to surgeons and surgeon assistants. They may hold retractors, cut sutures, and help count sponges, needles, supplies, and instruments. Assistants help prepare, care for, and dispose of specimens taken for laboratory analysis and help apply dressings. Some operate sterilizers, lights, or suction machines, and help operate diagnostic equipment.

## **Certified Surgical Assistants**

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 three professional organizations that certify surgical assistants are:

- **The American Board of Surgical Assistants**, founded in 1987, administers a national certification examination for surgical assistants. The examination covers all surgical disciplines and areas of preoperative medicine. It evaluates knowledge of surgical anatomy, procedures and techniques, diagnostic studies, emergencies, OSHA regulations and general patient safety.
- **The National Surgical Assistant Association**, which began in Virginia in 1979. It 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** was established in 1974 as the certifying agency for surgical technologists. It determines the eligibility for the granting and revocation of certification of surgical technologists and first assistants.

## **Medicare Reimbursement of Surgical Assistants**

According to the GAO report on Medicare costs,<sup>2</sup> 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. Surgical assistants include:

- Licensed Professional Assistants—including physicians, physician assistants, and registered nurses.
- Unlicensed Allied Health Professionals—including surgical technologists, surgical assistants, and surgical or operating room technicians.

Depending on the procedure performed, and the qualifications and training of the provider assisting in surgery, the services may be separately billable to Medicare. Medicare will reimburse only licensed personnel as assistants at surgery and does not reimburse for certified surgical assistants or technologists.

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<sup>2</sup> United States General Accounting Office, January 2004, "Medicare Payment Changes Are Needed for Assistants-at-Surgery." GAO 04-97.

The personnel that qualify for Medicare reimbursement when performing as an assistant at surgery are a licensed physician, clinical nurse specialist, physician assistant and nurse practitioner, when the primary surgeon requires an assistant, and the surgical procedure meets Medicare's requirements. Under these circumstances when Medicare does reimburse for an assistant-at-surgery, the reimbursement is not at the full level of that of a physician. The reimbursement rate depends on the level of education and training. Physicians are paid 16 percent of the physician fee for surgery; physician assistants, clinical nurse specialists and nurse practitioners are paid 85 percent of 16 percent (or 13.6 percent) of the physician fee.

Medicare will not reimburse for surgical assistants such as registered nurse first assistants (RNFAs), orthopedic physician assistants, licensed practical nurses (LPNs), certified surgical technologists (CSTs), or other licensed or non-licensed personnel. These practitioners are typically paid by the hospital or surgeon.

### **Private Insurance Reimbursement of Surgical Assistants**

Generally, insurance plans state that they cover medically necessary services provided by doctors of medicine and osteopathy. Some plans are not specific in terms of listing each type of health care practitioner that may provide services under the plan.

#### **C. SECTION DIRECTORY:**

**Section 1.** Amends s. 627.419(6), F.S., to include requirements for certified surgical first assistants to be reimbursed by health insurance policies, plans or contracts. This section also clarifies that a physician assistant is to be provided payment if a contract provides for payment for surgical first assisting benefits or services.

**Section 2.** Provides an effective date of July 1, 2005.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None

2. Expenditures:

None

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

2. Expenditures:

None

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

According to the Office of Insurance Regulation, the bill clarifies that if a policy pays for services of surgical first assistants, then the policy will also cover payments for certified surgical first assistants – persons to whom the policy may not have made direct payment under current contracts. It is unclear if

the direct payment requirement will significantly affect claims loss, as payments for services provided by certified surgical assistants may be currently covered under the general reimbursement for a covered surgical procedure.

D. FISCAL COMMENTS:

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Office of Insurance Regulation:

- Bill as written would apply to individual and group health insurance policies, except for small group basic and standard policies.
- The bill's provisions do not apply to health maintenance organization contracts.
- The bill does not address policies renewed after the effective date. Therefore, the bill would be prospective to apply only to new policies issued after the effective date.

Even though the Office of Insurance Regulation states that the bill's provisions do not apply to health maintenance organization (HMO) contracts, the language of the bill states that "when any health insurance policy, health services plan, or other contract provides for payment for surgical first assisting benefits or services..." If HMOs' contracts provide those services then arguably they would have to comply with the provisions of this bill.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 17, 2005, the Insurance Committee adopted an amendment to the bill, and reported the bill favorably with a CS. The amendment clarified that a physician assistant is to be provided payment if a contract provides for payment for surgical first assisting benefits or services.

This staff analysis reflect the bill with the amendment incorporated.