

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.)

Prepared By: Banking and Insurance Committee

BILL: CS/SB 594

SPONSOR: Banking and Insurance Committee and Senator Fasano

SUBJECT: Surgical First Assistants

DATE: April 19, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Favorable/CS
2.	_____	_____	HC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

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, F.S., would be covered and a physician assistant or registered nurse first assistant who performs such services is used as a substitute for the physician.

The committee substitute requires health insurers who pay for surgical first assisting benefits or services, to pay for services rendered by certified surgical first assistants or their employer provided certain conditions be met, including:

- A certified surgical first assistant, defined to mean an unlicensed health care provider, must be directly accountable to a physician licensed under chapter 458 or 459, F.S., or a registered nurse licensed under chapter 464, F.S.
- A certified surgical first assistant must be certified by 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.
- This direct payment requirement applies only if reimbursement for an assisting physician, licensed under chapter 458 or 459, F.S., would be covered and the certified surgical first assistant is performing such services as a substitute.

The bill also provides that none of the provisions in s. 627.419(6)(b), F.S., would require an insurer to provide payment to the certified surgical first assistant directly if the insurer's payment to the physician included the payment of the certified surgical first assistant. The intent of this provision is to prevent duplicative payments to the certified surgical first assistant. The bill also requires that the physician to whom the certified surgical assistant is accountable be solely responsible for the acts and omissions of the certified surgical first assistant.

The bill expands the lists of entities that may receive direct reimbursement from an insurer to include a physician assistant. Currently only registered nurse first assistants and employers of registered nurse first assistants and physician assistants may direct bill.

This bill substantially amends the following section of the Florida Statutes: 627.419.

II. Present Situation:

Professions Assisting in Surgeries

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 assist a physician performing surgery.

According to a recent U.S. Government Accounting Office (GAO) report regarding Medicare reimbursement for these services¹, 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. There is no widely accepted set of uniform requirements for experience and education that the health professionals who serve as surgical assistants are required to meet.²

The level of training and licensure differs for the non-physician practitioners who can currently bill Medicare separately. These non-physician health professionals primarily include physician assistants, nurse practitioners, and clinical nurse specialists. Clinical nurse specialists and nurse practitioners have master's degrees in nursing and are licensed in all states either as registered nurses or as advanced practice nurses. They require 500 hours of clinical experience before certification. In contrast, physician assistants generally have several years of health care experience before entering training and the training can be at the certificate, associate, bachelor's, or master's level. The National Commission on Certification of Physician Assistants certifies physician assistants. Physician assistants are licensed by all 50 states.

Some types of non-physician practitioners are not licensed in all states. According to the Medicare Payment Advisory Commission (commission), the commission has not recommended changing policy by extending separate Medicare billing status to either orthopedic physician assistants or certified surgical technologists or assistants because they were not licensed in most

¹ United States General Accounting Office, January 2004. *Medicare Payment Changes Are Needed for Assistants-at-Surgery*, GAO 04-97.

² Ibid.

states and their payment was considered covered as part of the prospective payment to the facility.³

Currently there is a wide range of non-physician health professionals trained as surgical assistants or technologists in a variety of programs. 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.

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.

Certified Surgical First Assistants

Certified surgical first assistants are health professionals who are specially trained and certified to assist in surgeries. They are not subject to licensure by the State of Florida. Only Texas has established a license category for licensed surgical assistants. In Texas, licensure requirements include 2,000 hours of experience, completion of a surgical training program with courses in specified areas, an associate's degree, and certification by a national organization recognized by the Texas State Board of Medical Examiners.⁴ Effective July 1, 2004, Illinois implemented a registration requirement for surgical assistants and surgical technologists.

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 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, and general patient safety.
- The National Surgical Assistant Association established practice standards and developed a certification examination with the assistance of the Department of Surgery at Norfolk General Hospital.

³ Hackbarth, Glenn, Chairman, Medicare Payment Advisory Commission. Letter to Richard B. Cheney, President of the U.S. Senate, December 30, 2004.

⁴ United States General Accounting Office, January 2004. Medicare Payment Changes Are Needed for Assistants-at-Surgery." GAO 04-97.

- The Liaison Council on Certification for the Surgical Technologist, established in 1974 as the certifying agency for surgical technologists, 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,⁵ 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. 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.

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.

Certified registered nurse first assistants (CRNFAs), orthopedic physician assistants, and certified surgical technologists are not eligible for separate payment from Medicare. The hospital or surgeon typically pays these practitioners. A change in the federal law would be necessary to authorize direct or separate payment by Medicare.

Recently, the Medicare Payment Advisory Commission reported on the feasibility of paying certified registered nurse first assistants separately under Medicare for first assistant at surgery services. The commission noted that there were a relatively small population of CRNFAs and any change in the Medicare program cost would be relatively small in the short term. However, if the CRNFA certification became more valuable, as it would if they could directly bill Medicare, the number seeking certification might increase. The commission expressed concerns regarding the potential fiscal impact of this suggested change and noted, "To the extent that the facility payment already covers the cost of a first assistant at surgery, any additional payment for directly billable first assistants can be thought of as duplicative."⁶ This issue was previously addressed in the original Medicare legislation authorizing physician assistants to direct bill for first assistant services by including a provision in the law that offset any additional payments by decreasing payments to the hospitals.⁷

⁵ United States General Accounting Office, January 2004, "Medicare Payment Changes Are Needed for Assistants-at-Surgery." GAO 04-97.

⁶ Hackbarth, Glenn, Chairman, Medicare Payment Advisory Commission. Letter to Richard B. Cheney, President of the U.S. Senate, December 30, 2004.

⁷ Ibid.

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.

Presently, s. 627.419(6), F.S., requires 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.

III. Effect of Proposed Changes:

Section 1 amends s. 627.419, F.S., to require that, if a health insurance policy provides payment for surgical first assisting benefits or services, then the policy is to be construed as providing for payment to a certified surgical fist assistant or to the employer of a certified surgical first assistant who performs such services that are assigned by the supervising physician or osteopathic physician.

The bill requires payment to a certified surgical first assistant or their employer, when that assistant performs services under a supervising physician as a substitute for an assisting physician (licensed under chapter 458 or chapter 459, F.S.,) who would be reimbursed by the policy or contract.

The bill defines the term, “certified surgical first assistant,” to mean a person who is an unlicensed health care provider this is directly accountable to a physician licensed under chapter 458 or 459, F.S., or in the absence of a physician, a registered nurse licensed under ch. 464, F.S. The bill requires a certified surgical first assistant to obtain such certification from 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 bill also provides that none of the provisions in s. 627.419(6)(b), F.S. would require an insurer to provide payment to the certified surgical first assistant directly if the insurer’s payment to the physician included the payment of the certified surgical first assistant. The intent of this provision is to prevent duplicative payments to the certified surgical first assistant. The bill also requires that the physician to whom the certified surgical assistant is accountable be solely responsible for the acts and omissions of the certified surgical first assistant.

The bill expands the lists of entities that may receive direct reimbursement from an insurer to include a physician assistant. Currently only registered nurse first assistants and employers of registered nurse first assistants and physician assistants may direct bill.

Section 2 provides that the bill is effective on July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The estimated 500 certified surgical first assistants in Florida would benefit by the implementation of this bill requiring direct payment from insurers. If this certification becomes more valuable because the certified surgical first assistant would receive payments directly from an insurer, the number of persons seeking certification as surgical first assistants might increase. Proponents of this bill contend that surgical first assistants are highly qualified and should be entitled to the same insurer reimbursement currently granted physician assistants and registered nurse first assistants.

The ultimate fiscal impact of the bill is indeterminate at this time. The Medicare Payment Advisory Commission noted, "To the extent that the facility payment already covers the cost of a first assistant at surgery, any additional payment for directly billable first assistants can be thought of as duplicative."⁸ According to the Agency for Healthcare Administration, there could be a fiscal impact on insurers or their insured as presently the certified surgical assistants are generally employed by the hospital or by the surgeon and are not paid separately. The Association of Operating Room Nurses (AORN) requires a certified surgical assistant present at all procedures, although not all procedures require a first assistant. The bill could increase the cost of the procedure by charging separately for the certified surgical assistant by designating him or her as a first assistant.

The Office of Insurance Regulation stated that 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.

⁸ Hackbarth, Glenn, Chairman, Medicare Payment Advisory Commission. Letter to Richard B. Cheney, President of the U.S. Senate, December 30, 2004.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill provides that the mandated coverage requirement shall become effective on July 1, 2005. It may be an unconstitutional impairment of contract to apply the bill's requirements to policies in effect on that date. The bill should be amended to apply to policies issued or renewed on or after July 1, 2005.

VII. Related Issues:

Pursuant to s. 624.215, F.S., every person seeking consideration of a legislative proposal, which would mandate health coverage by an insurer, health care service contractor, or health maintenance organization, shall submit to the legislative committees having jurisdiction a report, which assesses the social and financial impacts of the proposed coverage. It is unclear whether this bill, which requires any health insurance policy, health care services plan, or other contract that provides for surgical first assisting benefits or services, to provide payments to certified surgical assistants, would be construed to be a coverage mandate on insurers. The Banking and Insurance Committee and the Agency for Health Care Administration have not received such a report.

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

VIII. Summary of Amendments:

None.

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