

# 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.)

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Prepared By: Health Care Committee

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BILL: CS/CS/SB 594

SPONSOR: Health Care Committee, Banking and Insurance Committee, and Senator Fasano

SUBJECT: Surgical First Assistants

DATE: April 27, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	<u>Harkey</u>	<u>Wilson</u>	<u>HE</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## 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 ch. 458 or ch. 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 are met, including:

- A certified surgical first assistant, who is an unlicensed health care provider, must be directly accountable to a physician licensed under ch. 458 or ch. 459, 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.
- Reimbursement for an assisting physician, licensed under ch. 458 or ch. 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 directly accountable is 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 amends s. 627.419, F.S.

## 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 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. The report provides the following description of the role of the surgical assistant in the operating room:

*Assistants-at-surgery, who serve as members of surgical teams, perform tasks under the direction of surgeons and aid them in conducting operations. These tasks may include making initial incisions (“opening”), exposing the surgical site (“retracting”), stemming blood flow (“hemostasis”), surgically removing veins and arteries to be used as bypass grafts (“harvesting”), reconnecting tissue (“suturing”), and completing the operation and reconnecting external tissue (“closing”). Some of these tasks, like retraction, are relatively simple, while others, such as harvesting, are more complex. An assistant-at-surgery may perform one or more simple or complex tasks during an operation.*

*Tasks performed by others on the surgical team differ from those performed by assistants-at-surgery. Scrub staff work within the sterile field—the area within the operating room that is kept free from harmful microorganisms—passing instruments, sponges, and other items directly to the surgeon and assistant-at-surgery who work within the sterile field. Circulators work outside the sterile field, responding to the needs of team members within the sterile field. Anesthesiologists, or anesthetists, who administer and monitor anesthesia, painkillers, and other drugs, are also present during an operation.<sup>2</sup>*

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

<sup>2</sup> *Ibid.* p. 5.

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. Effective July 1, 2004, Illinois implemented a registration requirement for surgical assistants.<sup>3</sup>

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.
- 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.

### **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 ch. 458 or ch. 459, F.S., would be covered, and the physician assistant or registered nurse first assistant is used as a substitute.

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<sup>3</sup> United States General Accounting Office, January 2004. Medicare Payment Changes Are Needed for Assistants-at-Surgery.” GAO 04-97. p. 15.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 627.419, F.S., to permit a physician assistant to be paid directly by the insurer for surgical first assisting services, just as a registered nurse who performs surgical first assisting services may be paid directly under current law. Thus, an insurer could pay for surgical first assisting services either by paying a physician assistant or a registered nurse who provides surgical first assisting services or by paying the employer of the physician assistant or registered nurse.

The bill also requires that, if a health insurance policy, health care services plan, or other contract provides payment for surgical first assisting benefits or services, then the policy is to be construed as providing for payment to a certified surgical first 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.

As is required under current law for payment to a physician assistant or registered nurse, 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 ch. 458 or ch. 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 that is directly accountable to a physician licensed under ch. 458 or ch. 459, 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.

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

### 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, Section 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 Article I, Section 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 estimated 500 certified surgical first assistants in Florida would benefit by the implementation of this bill requiring direct payment from insurers. According to the Agency for Health Care Administration (AHCA), 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 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.

According to AHCA, the Association of Operating Room Nurses (AORN) requires a certified surgical assistant to be 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.

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

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surgical assistants, would be construed to be a coverage mandate on insurers. The Banking and Insurance Committee and AHCA have not received such a report.

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

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## **VIII. Summary of Amendments:**

None.

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