HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 629 Health Care Practitioners
SPONSOR(S): Negron
TIED BILLS: **IDEN./SIM. BILLS:** SB 1452

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee		Bell	Mitchell
2) Health & Families Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill addresses issues raised by a recent district court ruling, Ortiz v. Department of Health, Board of Medicine, which threw out a Board of Medicine rule regarding supervision of nurses.

HB 629 amends Chapter 458, F.S., the Medical Practice Act, to limit the delegation of health care services by medical doctors to registered nurses or licensed practical nurses. Additionally, the bill requires that the physician be competent to provide supervision of the services being performed.

The bill removes s. 458.331, F.S., relating to grounds for disciplinary action, from a list of provisions in the Medical Practice Act that shall not, "be construed to prohibit any service rendered by a registered nurse (RN) or a licensed practical nurse (LPN), if such service is rendered under the direct supervision and control of a licensed physician who provides specific direction for any such service to be performed; and gives final approval to all such services performed." The bill clarifies Board of Medicine rule making authority, which may allow the Board to restrict physician supervision of nurses.

HB 629 amends s. 458.303, F.S., to add language that makes clear a physician may not practice or offer to practice beyond the scope permitted by law; accept or perform duties which the physician knows that he or she is not competent to perform (including supervision duties); or delegate professional responsibilities to a RN or LPN when the physician knows that the RN or LPN is not qualified by training, experience, or licensure to perform them. This addition clarifies that a physician must be confident of his or her clinical skills when supervising a nurse, and that a physician cannot perform supervision of an RN or LPN in areas where the nurse is not competent.

The bill takes effect July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government/Promote Personal Responsibility – The bill provides that the Board of Medicine may establish by rule standards of practice and standards of care for particular practice settings including delegation to other personnel.

B. EFFECT OF PROPOSED CHANGES:

HB 629 removes s. 458.331, F.S., relating to grounds for disciplinary action, from a list of provisions in the Medical Practice Act that shall not, "be construed to prohibit any service rendered by a registered nurse (RN) or a licensed practical nurse (LPN), if such service is rendered under the direct supervision and control of a licensed physician who provides specific direction for any such service to be performed; and gives final approval to all such services performed." The bill clarifies Board of Medicine rule making authority which may allow the Board to restrict physician supervision of nurses.

Section 458.331, F.S. provides grounds for disciplinary action by the Board of Medicine and/or Department of Health (DOH). Specifically, s. 458.331(1)(v), F.S., provides that physician is subject to discipline for practicing beyond the scope permitted by law or performing services that the physician knows he or she is not competent to perform. This section provides that the Board of Medicine may establish by rule standards of practice and standards of care for particular practice settings including the delegation to other personnel.

Additionally, s. 458.331(1)(w), F.S., is the basis for discipline for an MD who delegates professional responsibilities to another health care provider when the physician delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them.

HB 629 amends s. 458.303, F.S., to add language that makes clear a physician may not practice or offer to practice beyond the scope permitted by law; accept or perform duties which the physician knows that he or she is not competent to perform (including supervision duties); or delegate professional responsibilities to a RN or LPN when the physicians knows that the RN or LPN is not qualified by training, experience, or licensure to perform them. This addition clarifies that a physician must be confident of his or her clinical skills when supervising a nurse, and that a physician cannot perform supervision of an RN or LPN in areas where the nurse is not competent.

According to DOH, this bill clarifies and restates current practice of physicians and nurses with emphasis on what may not be delegated by a physician.

The bill takes effect July 1, 2005.

CURRENT SITUATION

Disciplinary Actions for Nursing

Currently RNs and LPNs may be directly disciplined under s. 464.018, F.S. One of the disciplinary criteria is, "failing to meet minimal standards of acceptable and prevailing nursing practice, including engaging in acts for which the licensee is not qualified by training or experience." Nurses can also be disciplined for violating any of the Nurse Practice Act (chapter 464), the Health Professions and Occupations: General Provisions (chapter 456, F.S.), or rules adopted by the Board of Nursing.

Disciplinary Actions for Doctors

Section 458.331(1)(v), F.S., provides ground for discipline of MDs who practice beyond the scope permitted by law or perform any procedure that he or she is not competent to perform. This section also provides that the Board of Medicine may establish rules for standards of practice and standards of care for particular practice settings including delegating to other professions.

Joint Committee of the Boards of Nursing and Medicine

In s. 464.003, F.S, the legislature created a joint committee of the Boards of Nursing and Medicine to develop rules concerning protocols and supervision of ARNPs and other advanced specialty nurses. According to the Department of Health, HB 629 makes possible rulemaking by the Board of Medicine which may restrict the practice of nursing through threatened discipline of physicians who supervise nurses. DOH asserts that this rulemaking authority may some take control from the Joint Committee of the Board of Nursing the Medicine.

Ortiz v. Department of Health, Board of Medicine, 2004

Recently, the Board of Medicine promulgated Administrative Rule 64B8-9.009(6)(b)1.a., to require a surgeon in an out-patient facility to have a licensed MD or DO anesthesiologist present to supervise the administration of anesthesia by Certified Registered Nurse Anesthetists (CRNAs). Many CRNAs objected to this rule because they felt it was not fiscally prudent for a surgeon's office to employ a physician anesthesiologist to supervise a CRNA and a CRNA. The Board of Medicine rule prompted a court challenge in Ortiz v. Department of Health, Board of Medicine, 2004.

The court found that the Board of Medicine's rule requiring a surgeon in an outpatient facility to have a licensed anesthesiologist present to supervise the administration of anesthesia for Level III surgery was an invalid exercise of delegated authority.

As part of the ruling, the court specifically cited s. 458.303, F.S., as limiting the reach of s. 458.331, F.S. Pursuant to s. 458.303(2), F.S., the grant of rulemaking under s. 458.309, F.S., and s. 458.331, F.S., cannot be, "construed to prohibit any service rendered by a registered nurse or a licensed practical nurse, if such service is rendered under the direct supervision and control of a licensed nurse, if such service is rendered under the direct supervision and control of a licensed physician who provides specific direction for any service to be performed and gives final approval to all services performed."

Thus, under ss. 458.331 and 458.303(2), F.S., as long as a licensed physician has direct supervision and control over the registered nurse, the fact that services are provided by that nurse cannot be a group for discipline of the physician, and no rules can prohibit such services by a registered nurse.

The Board claimed that its rule did not control the actions of CRNAs, but the court found that the rule indirectly limited the practice of CRNAs. Instead of simply prohibiting CRNAs from administering anesthesia under supervision of the surgeon, the Board provided grounds for disciplining the surgeon if he or she supervises the CRNA. Either way, currently, s. 458.303(2), F.S., prevents the use of rulemaking authority for this purpose.

The Ortiz decision noted that both parties agreed that patient safety was not an issue in the proceedings.

Specialized Nursing Practice

Specialization in nursing dates from the early part of the twentieth century. Many specialty nursing programs require a master's degree and require additional state certification and licensure. Some of the primary nurse specialties are[1]:

- Critical Care;
- Nurse Anesthetists;
- Nurse Midwives;
- Public Health Nursing; and
- Nursing Education.

[1] Nursing Health Care. 1992 May; 13(5):254-9

There have been some concerns raised that HB 629 may limit the practice of specialty nursing if a nurse is working under a physician that does not share their specialty.

Scope of Practice Authority

Each year, the Florida Legislature hears bills and amendments to change the scope of practice and standards of existing professions. The legal authority to provide and be reimbursed for health care services is tied to state statues generally referred to as practice acts, which establish professional "scopes of practice." These practice acts often differ from state to state and are a source of "turf battles" which clog the legislative agendas. Legislators must decide whether new or unregulated disciplines and occupations should be regulated and whether professions should be granted expanded practice authority. Many of the proposed changes brought to the Legislature come from professions that want to gain direct, third-party reimbursement for their services. Such changes often generate heated "turf" battles among professions and other health care interests and have potential effects on patient safety and the cost of health care.

C. SECTION DIRECTORY:

Section 1. Amends s. 458.303, F.S., to remove one statute from a list of statutes that shall not limit the practice of an RN or LPN working under supervision of a physician. It also adds language that clarifies a physician may not practice or offer practice beyond the scope permitted by law; accept or perform duties which the physician knows he or she is not competent to perform; or delegate professional responsibilities to a RN or LPN when the physician knows the RN or LPN is not qualified by training, experience, or licensure to perform them.

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:

Indeterminant. **[See D. Fiscal Comments]**

D. FISCAL COMMENTS:

HB 629 may result in an increase in health care costs in certain markets. The bill allows the Board of Medicine to promulgate stronger physician supervision rules. If promulgated, the rules may decrease

the financial advantage of hiring a nurse to perform certain tasks and result in more direct physician care. Patient care received from a nurse is usually less expensive than care received by a physician.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

No additional rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Proponents of this bill have provided committee staff with information supporting the clarifications in this bill. Proponents assert that s. 458.303 (2), F.S., currently allows a nurse to do anything as long as a physician is directly supervising, and argue that this directly contradicts s. 458.331 F.S., which requires that the duties delegated to a nurse be within their scope, training, and experience.

Proponents have also asserted that the bill prevents potential patient safety issues. Proponents of the bill claim that the bill does not change the law regarding CRNAs or anesthesiologists. They further postulate that the bill does not change the amount of supervision required for nurses.

Opponents of this bill have provided committee staff with information that HB 629 may adversely impact the nursing practice. Opponents assert that the legislation deletes a statutory reference that was the basis of the Ortiz v. Board of Medicine decision that held that the Board of Medicine cannot directly or indirectly restrict the practice of nursing. Opponents have expressed concern that HB 629 will overturn the Ortiz v. Board of Medicine court ruling.

Opponents have also asserted that HB 629 prohibits a doctor from supervising a nurse who performs any function that the doctor is not competent to perform. Opponents argue that this legislation would limit the practice of specialty nurses, who may have training in areas their supervising physician does not.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES