

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 483
SPONSOR(S): Garcia
TIED BILLS:

Nursing Services

IDEN./SIM. BILLS: SB 1362

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee	11 Y, 0 N	Hamrick	Mitchell
2) Insurance Committee			
3) Health Care Appropriations Committee			
4) Health & Families Council			
5) _____			

SUMMARY ANALYSIS

HB 483 provides that a registered nurse shall function in an operating room as a circulating nurse during all operative or invasive procedures. The bill provides that a "circulating nurse" is a registered nurse who is responsible for coordinating all nursing care, patient safety needs, and the needs of the surgical team in the operating room.

Currently, Ambulatory Surgical Centers, licensed by the Agency for Health Care Administration, are required to have a registered nurse serve as an operating room (OR) circulating nurse (59A-5.0085, F.A.C.). Florida is one of seven states that do not have specific staffing requirements for hospital operating rooms. This bill requires hospitals to have registered nurses perform as circulating nurses in operating rooms. Currently, federal law provides that LPNs and surgical techs may assist in circulatory duties under the supervision of a qualified registered nurse who is immediately available to respond to emergencies, but does not require circulatory duties be performed by a registered nurse (42 CFR Part 482).

Fiscal Impact: This bill does not appear to have a fiscal impact on state or local governments.

The bill shall take effect on July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government-The bill increases governmental regulation of a licensed profession and hospital.

B. EFFECT OF PROPOSED CHANGES:

Currently, Ambulatory Surgical Centers, licensed by the Agency for Health Care Administration, are required to have a registered nurse serve as an operating room (OR) circulating nurse.¹ Florida is one of seven states that do not have specific staffing requirements for hospital operating rooms. This bill requires hospitals to have registered nurses perform as circulating nurses in operating rooms. Currently, federal law provides that LPNs and surgical techs may assist in circulatory duties under the supervision of a qualified registered nurse who is immediately available to respond to emergencies, but does not require circulatory duties be performed by a registered nurse.

PRESENT SITUATION

According to the Association of periOperative Registered Nurses (AORN), operating room (OR) nurses are now referred to as perioperative registered nurses to more accurately reflect their duties immediately before, during, and after surgery.² Section 464.027(2)(a), F.S., provides a definition of "perioperative nursing" to mean a practice of nursing in which the nurse provides preoperative, intraoperative, and postoperative nursing care to surgical patients.

Operating Room Nursing Staff

There are several roles performed by nurses in the operating room.

Registered nurse (RN) first assistant

The registered nurse first assistant (RNFA) directly assists the surgeon, often directly opposite the operating table during a procedure. The RN first assistant duties, conducted under the supervision of the surgeon, can be as basic as tying sutures, knots and performing skin closures to assisting in complex surgical procedures.³ To practice as a RN first assistant, a nurse must first obtain certification as a perioperative nurse (CNOR) and then attend a RN first assistant program.

- A **perioperative nurse** must have a minimum of 2 full years and 2,400 hours of operating room practice as a registered nurse; been employed within the previous 2 years, either full-time or part-time as a registered nurse in an administrative, teaching, research, or general staff capacity in perioperative nursing.
- A **certified RN first assistant** must be certified as a perioperative nurse; must document 2,000 hours of practice in the RN first assistant role, with at least 500 hours in the past 2 years; must have attended a formal RN first assistant program; and have a bachelors degree in nursing.⁴
- In Florida, a **registered nurse assistant** must attend one academic year, or 45 hours of didactic instruction and 120 hours of clinical internship; licensed as a registered nurse; certified

¹ See 59A-5.0085, F.A.C.

² Association of periOperative Registered Nurses, *It's important for you to know...*, available at <http://www.aorn.org/About/important.htm> (January 11, 2006).

³ Saunders, Kate. 2006. Advance Online Editions for Nurses. *Growth in the OR: The role of the registered nurse in surgery has grown and changed with technological advances.*

⁴ Nursing Center, *Certification*, available at http://www.nursingcenter.com/prodev/ce_certification.asp (January 17, 2006).

as a perioperative nurse; and hold a certificate from a recognized registered nurse first assistant program.⁵

Scrub nurse

The scrub nurse works directly with the surgeon within the sterile field, passing instruments, sponges, and other items needed during the surgical procedure. The sterile field is the area closely surrounding the OR table and the instrument tray. Surgical team members who work within the sterile field have scrubbed their hands and arms with special disinfecting soap and wear surgical gowns, caps, gloves, shoe covers, and eyewear.⁶ A scrub nurse position may be filled by a RN, a licensed practical nurse (LPN), or a surgical tech.

Circulating nurse

The circulating nurse's duties are performed outside the sterile field. The circulating nurse is responsible for managing the nursing care within the OR and performs such duties as prepping the patient, retrieving instruments, procedure documentation, dispensing medications, implementing an individualized care plan, and evaluating patient outcomes.⁷ The circulating nurse observes the surgical team from a broad perspective and assists the team to create and maintain a safe, comfortable environment. The circulating nurse makes sure each member of the surgical team performs in a united effort. Currently, Florida statute does not specify the professional requirements for circulating nurses.

The Joint Commission on Accreditation of Healthcare Organizations (JCAHO)

Prior to 1994 the Accreditation Manual for Hospitals (AMH), required that "A qualified registered nurse is assigned to circulating nurse duties for the operating room and for the obstetric delivery room." The AMH further stated, "Other qualified operating room personnel assisting in circulating duties in the operating room and in the obstetrical delivery room are under the supervision of a qualified registered nurse who is immediately available."

In 1994, the AMH revised their manual and deleted this requirement (and limitation). At the time, a Joint Commission spokesperson stated that "Determination of actual staffing is hospital specific," adding that, "If a hospital determines...that certified surgical technologists have the necessary qualifications and competencies to perform the anticipated job responsibilities, and applicable licensure, law, and regulation, and/or certification is consistent with or does not preclude such, the intent ...will be met."⁸

Centers for Medicare and Medicaid Services

Centers for Medicare and Medicaid Services (CMS), is the federal agency that administers the Medicare, Medicaid and Child Health Insurance Programs. CMS regulations state that hospitals must be in compliance with the Federal requirements set forth in the Medicare Conditions of Participation(CoPs), in 42 CFR Part 482, in order to receive Medicare/Medicaid payment. The CoPs state that:⁹

- Hospitals must have an organized nursing service that provides 24-hour nursing services. The services must be furnished or supervised by a registered nurse.¹⁰
- The operating room must be supervised by an experienced registered nurse or a doctor of medicine or osteopathy.¹¹

⁵ See s. 464.027, F.S.

⁶ Association of periOperative Registered Nurses, *It's important for you to know...*, available at <http://www.aorn.org/About/important.htm> (January 11, 2006).

⁷ Saunders, Kate. 2006. Advance Online Editions for Nurses. *Growth in the OR: The role of the registered nurse in surgery has grown and changed with technological advances.*

⁸ "Circulating Assignment in Operating Room Clarified," Joint Commission Perspectives. Joint Commission on Accreditation of Healthcare Organizations, 1996, p 20.

⁹ The Health Care Financing Administration, *Survey Protocol*, available at http://new.cms.hhs.gov/manuals/downloads/som107ap_a_hospitals.pdf (January 10, 2006).

¹⁰ 42 CFR Part 482.23

- Licensed practical nurses (LPNs) and surgical technologists (OR techs) may serve as “scrub nurses” under the supervision of a registered nurse.¹²
- Qualified registered nurses may perform circulating duties in the operating room.
- LPNs and surgical techs may assist in circulatory duties under the supervision of a qualified registered nurse who is immediately¹³ available to respond to emergencies.¹⁴

State laws and regulations can be more stringent than CMS regulations, and patient care must be furnished consistent with State law.

State Regulations

State governments regulate all occupations and professions, and it is within the power of state governments to ensure patient safety through the regulation of occupations.¹⁵ According to a report by the Association of periOperative Registered Nurses (AORN):

- 20 states require RNs to circulate,
- 37 states require RNs to supervise in the OR but do not specifically mention the role of circulating nurse,
- 8 states explicitly follow Health Care Financing Administration’s conditions of participation for surgical services, and
- 7 states have no specific staffing requirements.

Currently, Florida is one of seven states that have no nurse staffing requirements for hospital operating rooms (ORs). The other states are Georgia, Louisiana, Maryland, Ohio, Washington, and West Virginia. Of the 20 states that require an RN to circulate, California, Idaho, Maine, and Nevada require adequate staffing so that each RN does not circulate for more than one operating room. Hawaii, Oklahoma, Utah, and Wyoming mandate that licensed practical nurses (LPNs) and surgical technologists cannot function as the circulating nurse in the operating room. In Indiana, Nebraska, New Mexico, and Wisconsin, LPNs and surgical technologists may function as assistants under the direct supervision of a qualified RN.¹⁶

The eight states (i.e., Alabama, Indiana, Iowa, Massachusetts, Montana, North Dakota, New York, and Texas) that explicitly follow Health Care Financing Administration rule governing surgical services also mandate that LPNs and surgical technologists may assist in circulatory duties under the direct supervision of a qualified RN, who is immediately available to respond to emergencies.¹⁷

Health Care Regulation Policy Concerns

Section 11.62(3), F.S., requires the Legislature to consider the following factors in determining whether to regulate a new profession or occupation:

- That a profession or occupation is not subjected to regulation by the state unless the regulation is necessary to protect the public’s health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose; and

¹¹ 42 CFR Part 482.51(a)(1)

¹² 42 CFR Part 482.51(a)(2)

¹³ According to CMS, the supervising RN would not be considered immediately available if the RN was located outside the operating suite or engaged in other activities/duties which prevent the RN from immediately intervening and assuming whatever circulating activities/duties that were being provided by the LPN or surgical tech.

¹⁴ 42 CFR Part 482.51 (a)(3)

¹⁵ AORN Journal: May 2001 Health Policy Issues, *The critical "nurse" in the circulating nurse role*, available at <http://www.aorn.org/journal/2001/mayhpi.htm> (January 10, 2005).

¹⁶ Ibid.

¹⁷ Ibid.

- That a profession or occupation is not regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.

Economists argue that the regulation of health care usually involves striking a balance between patient safety and quality of care, and the cost and availability of services. Regulating quality is not without cost and it is not without an effect on the market for healthcare services. Regulations that increase the cost of providing health care may lead to increased prices, a decrease in quantity, and hurt the bottom line of the supplier of services, thus, limiting access to health care.¹⁸

Patient Safety and Scope of Practice

According to the Association of periOperative Registered Nurses (AORN), although unlicensed professionals may possess the technical skills to circulate, they do not have the ability to apply the nursing process to perioperative patient care. AORN further claims that to ensure patient safety, an RN must fill the role of the circulator.

C. SECTION DIRECTORY:

Section 1. Amends s. 395.0191, F.S., provides that certain nurses must be present in operating rooms and function as circulating nurses and defines the term “circulating nurse.”

Section 2. Provides that the bill will take effect on July 1, 2006.

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:

Hospitals may experience a fiscal impact in implementing the provisions of this bill. Hospitals that currently allow LPNs or surgical techs perform as “circulating nurses” will have to hire registered nurses to perform the duties of a circulating nurse. According to a 2004 National survey, registered nurses average \$19.33 per hour, while licensed practical nurses average \$13.58 per hour.¹⁹

¹⁸ Health Care Issues Associated with Regulation, Presentation to House Committee on Health Care Regulation, March 2005, Steve Ullmann, Ph.D., University of Miami.

¹⁹ Nursing2004, *Nursing 2004 salary survey*, available at http://www.findarticles.com/p/articles/mi_qa3689/is_200410/ai_n9431354

D. FISCAL COMMENTS:

None.

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:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES