

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 483

Nursing Services

**SPONSOR(S):** Garcia

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1362

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Health Care Regulation Committee</u>	<u>11 Y, 0 N</u>	<u>Hamrick</u>	<u>Mitchell</u>
2) <u>Insurance Committee</u>	<u>16 Y, 0 N</u>	<u>Freire</u>	<u>Cooper</u>
3) <u>Health Care Appropriations Committee</u>	<u>12 Y, 0 N</u>	<u>Speir</u>	<u>Massengale</u>
4) <u>Health &amp; Families Council</u>	<u></u>	<u>Hamrick</u>	<u>Moore</u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

Florida hospitals, ambulatory surgical centers, and mobile surgical centers are licensed by the Agency for Health Care Administration (agency). Pursuant to section 395.1055(1)(a), Florida Statutes, the agency shall adopt rules to ensure that sufficient numbers and qualified types of personnel and occupational disciplines are on duty and available at all time to provide necessary and adequate patient care and safety. Based upon that authority, the agency requires ambulatory surgical centers to have a registered nurse serve as an operating room circulating nurse (59A-5.0085, F.A.C.). The agency has no such requirement for hospitals. In fact, Florida is one of seven states that does not have specific staffing requirements for hospital operating rooms.

For hospitals in Florida to receive either Medicare or Medicaid payments, Centers for Medicare and Medicaid Services (CMS) requires them to comply with CMS's Conditions of Participation. According to these federal requirements, licensed practical nurses and surgical technologists may assist in circulatory duties under the supervision of a qualified registered nurse who is immediately available to respond to emergencies.

HB 483 provides that a registered nurse shall function in a licensed facility's 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.

According to the agency, this bill will not 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:

Florida hospitals, ambulatory surgical centers, and mobile surgical centers are licensed by the Agency for Health Care Administration (agency). Pursuant to section 395.1055(1)(a), Florida Statutes, the agency shall adopt rules to ensure that sufficient numbers and qualified types of personnel and occupational disciplines are on duty and available at all time to provide necessary and adequate patient care and safety. Based upon that authority, the agency requires ambulatory surgical centers to have a registered nurse serve as an operating room circulating nurse.<sup>1</sup> The agency has no such requirement for hospitals.

This bill requires hospitals to have registered nurses perform as circulating nurses in operating rooms. Whereas federal law provides that licensed practical nurses (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, it does not require circulatory duties be performed by a registered nurse.

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.<sup>2</sup> Section 464.027(2)(a), Florida Statutes, 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.

A representative from AORN posited that this bill would raise the level of care in hospitals to match the existing requirement in the outpatient surgery centers.<sup>3</sup> According to a representative from the Florida Hospital Association (FHA), all hospitals in Florida already adhere to the standard of care required by the bill.<sup>4</sup>

#### **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 RNFA duties, conducted under the supervision of the surgeon, can be as basic as tying sutures, knots and performing skin closures to assist in complex surgical procedures.<sup>5</sup> To practice as an RNFA, a nurse must first obtain certification as a perioperative nurse (CNOR) and then attend an RNFA program.

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<sup>1</sup> See 59A-5.0085, F.A.C.

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

<sup>3</sup> Email from a representative of the Association of periOperative Registered Nurses, dated February 2, 2006, on file with the Insurance Committee.

<sup>4</sup> Email from a representative of the Florida Hospital Association, dated February 2, 2006, on file with the Insurance Committee.

<sup>5</sup> 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.*

- A **perioperative nurse** must have a minimum of 2 full years and 2,400 hours of operating room practice as a registered nurse; and have 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 RNFA** 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 RNFA program; and have a bachelors degree in nursing.<sup>6</sup>
- In Florida, an **RNFA** must attend one academic year, or 45 hours of didactic instruction and 120 hours of clinical internship; be licensed as a registered nurse; be certified as a perioperative nurse; and hold a certificate from a recognized registered nurse first assistant program.<sup>7</sup>

### 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.<sup>8</sup> A scrub nurse position may be filled by a RN, an 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.<sup>9</sup> 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)<sup>10</sup>**

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 JCAHO 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."<sup>11</sup>

<sup>6</sup> Nursing Center, *Certification*, available at [http://www.nursingcenter.com/prodev/ce\\_certification.asp](http://www.nursingcenter.com/prodev/ce_certification.asp) (January 17, 2006).

<sup>7</sup> See s. 464.027, F.S.

<sup>8</sup> Association of periOperative Registered Nurses, *It's important for you to know...*, available at <http://www.aorn.org/About/important.htm> (January 11, 2006).

<sup>9</sup> 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.*

<sup>10</sup> Under s. 395.0161(2), F.S., the agency shall accept, in lieu of its own periodic inspections for licensure, the survey or inspection of an accrediting organization, provided the accreditation of the licensed facility is not provisional and provided the licensed facility authorizes release of, and the agency receives the report of, the accrediting organization. The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) qualifies as an acceptable accrediting organization. Established in 1951, JCAHO is the nation's predominant standards-setting and accrediting body in health care. See "Facts About the Joint Commission," available at [http://www.jcaho.org/about+us/jcaho\\_facts.htm](http://www.jcaho.org/about+us/jcaho_facts.htm) (February 6, 2006).

<sup>11</sup> "Circulating Assignment in Operating Room Clarified," Joint Commission Perspectives. Joint Commission on Accreditation of Healthcare Organizations, 1996, p 20.

## 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:<sup>12</sup>

- Hospitals must have an organized nursing service that provides 24-hour nursing services. The services must be furnished or supervised by a registered nurse.<sup>13</sup>
- The operating room must be supervised by an experienced registered nurse or a doctor of medicine or osteopathy.<sup>14</sup>
- Licensed practical nurses (LPNs) and surgical technologists (OR techs) may serve as “scrub nurses” under the supervision of a registered nurse.<sup>15</sup>
- 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 immediately<sup>16</sup> available to respond to emergencies.<sup>17</sup>

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.<sup>18</sup> 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 the Centers for Medicare and Medicaid Services’ 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.<sup>19</sup>

The eight states (i.e., Alabama, Indiana, Iowa, Massachusetts, Montana, North Dakota, New York, and Texas) that explicitly follow the Centers for Medicare and Medicaid Services’ rule governing surgical

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<sup>12</sup> The Centers for Medicare and Medicaid Services, *Survey Protocol*, available at [http://new.cms.hhs.gov/manuals/downloads/som107ap\\_a\\_hospitals.pdf](http://new.cms.hhs.gov/manuals/downloads/som107ap_a_hospitals.pdf) (January 10, 2006).

<sup>13</sup> 42 CFR Part 482.23

<sup>14</sup> 42 CFR Part 482.51(a)(1)

<sup>15</sup> 42 CFR Part 482.51(a)(2)

<sup>16</sup> 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.

<sup>17</sup> 42 CFR Part 482.51 (a)(3)

<sup>18</sup> 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).

<sup>19</sup> Ibid.

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.<sup>20</sup>

### **Health Care Regulation Policy Concerns**

Section 11.62(3), Florida Statute, 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
- 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.<sup>21</sup>

### **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:

According to the Agency for Health Care Administration, this bill will not increase state expenditures.

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

1. Revenues:

None.

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<sup>20</sup> Ibid.

<sup>21</sup> Health Care Issues Associated with Regulation, Presentation to House Committee on Health Care Regulation, March 2005, Steve Ullmann, Ph.D., University of Miami.

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 to 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.<sup>22</sup>

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:

According to a representative from the Florida Hospital Association, this bill would “serve no purpose and would not improve the quality of care delivered in hospitals” because all of Florida’s hospitals already have registered nurses serving as operating room circulating nurses.<sup>23</sup>

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

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<sup>22</sup> Nursing2004, *Nursing 2004 salary survey*, available at [http://www.findarticles.com/p/articles/mi\\_qa3689/is\\_200410/ai\\_n9431354](http://www.findarticles.com/p/articles/mi_qa3689/is_200410/ai_n9431354)

<sup>23</sup> Email from a representative of the Florida Hospital Association, dated February 2, 2006, on file with the Insurance Committee.