

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

BILL: CS/SB 946

INTRODUCER: Health Policy Committee and Senator Grimsley

SUBJECT: Authorized Practices of Advanced Registered Nurse Practitioners and Licensed Physician Assistants

DATE: February 16, 2016 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------------|----------------|-----------|-----------------------------|
| 1. | Rossitto-Van Winkle | Stovall | HP | Fav/CS |
| 2. | Brown | Pigott | AHS | Recommend: Favorable |
| 3. | | | AP | |

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 946 authorizes an advanced registered nurse practitioners (ARNP) to order any medication, including controlled substances, for administration to patients in certain facilities under a protocol established with an allopathic or osteopathic physician or dentist. The bill authorizes a physician to delegate to a physician assistant (PA) and the PA to prescribe controlled substances to a patient in a nursing home. The bill also conforms ch. 893, F.S., the Florida Comprehensive Drug Abuse Prevention and Control Act, to reflect the authorization for ARNPs and PAs to order controlled substances for administration to patients in certain facilities under certain circumstances when authorized by a supervising physician or dentist.

The bill is estimated to have no fiscal impact on state government.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Under current Florida law a supervising physician may delegate to a PA the authority to order controlled substances for the practitioner's patients in hospitals, ambulatory surgery centers, and

mobile surgical facilities.¹ However, under current Florida law, there is no equivalent delegation of authority for the supervising physician of an ARNP.

Also, unlike all other states, Florida does not allow ARNPs to prescribe controlled substances and is one of two states that does not allow PAs to prescribe controlled substances.² States have varying authority with respect to the schedules³ from which an ARNP or PA may prescribe, as well as the performance of additional functions by ARNPs and PAs, such as dispensing, administering, or handling samples.

Physician Shortages

According to a recent study commissioned by the Safety Net Hospital Alliance of Florida,⁴ Florida's total current supply of primary care physicians falls short of the national average of physicians per patient by approximately six percent. Under a traditional definition of primary care specialties (i.e., general and family practice, general internal medicine, general pediatrics and geriatric medicine), supply falls short of demand by approximately three percent.

Regulation of Physician Assistants in Florida

Chapter 458, F.S., sets forth the provisions for the regulation of the practice of allopathic medicine by the Board of Medicine (BOM). Chapter 459, F.S., similarly sets forth the provisions for the regulation of the practice of osteopathic medicine by the Board of Osteopathic Medicine (BOOM). PAs are regulated by both boards. Licensure of PAs is overseen jointly by the boards through the Council on Physician Assistants.⁵ During the 2014-2015 state fiscal year, there were 6,744 in-state, actively licensed PAs in Florida.⁶

Physician Assistants are trained and required by statute to work under the supervision and control of allopathic or osteopathic physicians.⁷ The BOM and the BOOM have adopted rules that set out the general principles a supervising physician must use in developing the scope of practice of the PA under both direct⁸ and indirect⁹ supervision. A supervising physician's

¹ See ss. 458.347(4) and 459.022(4), F.S.

² DEA Diversion Control, U.S. Department of Justice, *Mid-Level Practitioners Authorization by State* (last updated November 10, 2015) available at http://www.deadiversion.usdoj.gov/drugreg/practioners/mlp_by_state.pdf (last visited Feb. 1, 2016). Kentucky does not allow PAs to prescribe controlled substances.

³ Controlled substances are assigned to Schedules I - V based on their accepted medical use and potential for abuse.

⁴ IHS Global Inc., *Florida Statewide and Regional Physician Workforce Analysis: Estimating Current and Forecasting Future Supply and Demand*, (January 28, 2016) available at https://ahca.myflorida.com/medicaid/Finance/finance/LIP-DSH/GME/docs/FINAL_Florida_Statewide_and_Regional_Physician_Workforce_Analysis.pdf, (last visited Feb. 1, 2016).

⁵ The council consists of three physicians who are members of the Board of Medicine; one physician who is a member of the Board of Osteopathic Medicine; and a physician assistant appointed by the State Surgeon General. (s. 458.348(9), F.S. and s. 459.022(9), F.S.)

⁶ Florida Dep't of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2014-2015*, p. 11, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-1415.pdf>, (last visited Feb. 1, 2016).

⁷ Sections 458.347(4), and 459.022(4), F.S.

⁸ "Direct supervision" requires the physician to be on the premises and immediately available. (See Rules 64B8-30.001(4) and 64B15-6.001(4), F.A.C.)

⁹ "Indirect supervision" requires the physician to be within reasonable physical proximity. (Rules 64B8-30.001(5) and 64B15-6.001(5), F.A.C.)

decision to permit a PA to perform a task or procedure under direct or indirect supervision must be based on reasonable medical judgment regarding the probability of morbidity and mortality to the patient. The supervising physician must be certain that the PA is knowledgeable and skilled in performing the tasks and procedures assigned.¹⁰ Each physician, or group of physicians supervising a licensed PA, must be qualified in the medical areas in which the PA is to work and is individually or collectively responsible and liable for the performance and the acts and omissions of the PA.¹¹

Current law allows a supervisory physician to delegate authority to prescribe or dispense any medication used in the physician's practice, except controlled substances, general anesthetics, and radiographic contrast materials.¹² However, the law allows a supervisory physician to delegate authority to a PA to order any medication, including controlled substances, general anesthetics, and radiographic contrast materials, for a patient during the patient's stay in a facility licensed under ch. 395, F.S.¹³

Regulation of Advanced Registered Nurse Practitioners in Florida

Chapter 464, F.S., governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health (DOH) and are regulated by the Board of Nursing (BON).¹⁴ During the 2014-2015 fiscal year, there were 18,276 in-state, actively licensed ARNPs in Florida.¹⁵

An ARNP is a licensed nurse who is certified in advanced or specialized nursing.¹⁶ Florida recognizes three types of ARNPs: nurse practitioners (NP), certified registered nurse anesthetists (CRNA), and certified nurse midwives (CNM).¹⁷ To be certified as an ARNP, a nurse must hold a current license as a registered nurse¹⁸ and submit proof to the BON that the ARNP applicant meets one of the following requirements:¹⁹

- Satisfactory completion of a formal, post-basic educational program of specialized or advanced nursing practice;

¹⁰ Rules 64B8-30.012(2) and 64B15-6.010(2), F.A.C.

¹¹ Sections 458.347(3) and (15) and 459.022(3) and (15), F.S.

¹² Sections 458.347(4)(e) and (f)1., and 459.022(4)(e), F.S.

¹³ See s. 395.002(16), F.S. The facilities licensed under chapter 395 are hospitals, ambulatory surgical centers, and mobile surgical facilities.

¹⁴ The BON is comprised of 13 members appointed by the Governor and confirmed by the Senate who serve 4-year terms. Seven of the 13 members must be nurses who reside in Florida and have been engaged in the practice of professional nursing for at least 4 years. Of those seven members, one must be an advanced registered nurse practitioner, one a nurse educator at an approved nursing program, and one a nurse executive. Three members of the BON must be licensed practical nurses who reside in the state and have engaged in the practice of practical nursing for at least 4 years. The remaining three members must be Florida residents who have never been licensed as nurses and are in no way connected to the practice of nursing, any health care facility, agency, or insurer. Additionally, one member must be 60 years of age or older. See s. 464.004(2), F.S.

¹⁵ *Supra*, note 5. Certified Nurse Specialists account for 26 of the in-state actively licensed ARNPs.

¹⁶ "Advanced specialized nursing practice" is defined as the performance of advanced-level nursing acts approved by the BON which, by virtue of postbasic specialized education, training and experience, are appropriately performed by an ARNP. (See s. 464.003(2), F.S.)

¹⁷ Section 464.003(3), F.S. Florida certifies clinical nurse specialists as a category distinct from ARNPs. (See ss. 464.003(7) and 464.0115, F.S.)

¹⁸ Practice of professional nursing. (See s. 464.003(20), F.S.)

¹⁹ Section 464.012(1), F.S.

- Certification by an appropriate specialty board;²⁰ or
- Completion of a master's degree program in the appropriate clinical specialty with preparation in specialty-specific skills.

Advanced or specialized nursing acts may only be performed under the protocol of a supervising physician or dentist. Within the established framework of the protocol, an ARNP may:²¹

- Monitor and alter drug therapies;
- Initiate appropriate therapies for certain conditions; and
- Order diagnostic tests and physical and occupational therapy.

The statute further describes additional acts that may be performed within an ARNP's specialty certification (CRNA, CNM, and NP).²²

An ARNP must meet financial responsibility requirements, as determined by rule of the BON, and the practitioner profiling requirements.²³ The BON requires professional liability coverage of at least \$100,000 per claim with a minimum annual aggregate of at least \$300,000 or an unexpired irrevocable letter of credit in the same amounts payable to the ARNP.²⁴

Florida does not allow ARNPs to prescribe controlled substances.²⁵ However, s. 464.012(4)(a), F.S., provides express authority for a CRNA to order certain controlled substances "to the extent authorized by the established protocol approved by the medical staff of the facility in which the anesthetic service is performed."

Educational Preparation

Physician Assistants²⁶

Physician assistant education is modeled on physician education. PA programs are accredited by the Accreditation Review Commission on Education for the Physician Assistant. All PA programs must meet the same set of national standards for accreditation. PA program applicants must complete at least two years of college courses in basic science and behavioral science as a prerequisite to PA training. The average length of PA education programs is about 26 months. A student begins his or her course of study with a year of basic medical science classes (anatomy, pathophysiology, pharmacology, physical diagnosis, etc.) Then the student enters the clinical phase of training, which includes classroom instruction and clinical rotations in medical and

²⁰ Specialty boards expressly recognized by the BON: Council on Certification of Nurse Anesthetists, or Council on Recertification of Nurse Anesthetists; American College of Nurse Midwives; American Nurses Association (American Nurses Credentialing Center); National Certification Corporation for OB/GYN, Neonatal Nursing Specialties; National Board of Pediatric Nurse Practitioners and Associates; National Board for Certification of Hospice and Palliative Nurses; American Academy of Nurse Practitioners; Oncology Nursing Certification Corporation; American Association of Critical-Care Nurses Adult Acute Care Nurse Practitioner Certification. (Rule 64B9-4.002(2), F.A.C.)

²¹ Section 464.012(3), F.S.

²² Section 464.012(4), F.S.

²³ Sections 456.0391 and 456.041, F.S.

²⁴ Rule 64B9-4.002(5), F.A.C.

²⁵ Sections 893.02(21) and 893.05(1), F.S.

²⁶ See American Academy of Physician Assistants, *PAs as Prescribers of Controlled Medications – Issue Brief* (June 2014) available at <https://www.aapa.org/WorkArea/DownloadAsset.aspx?id=2549> (last viewed Feb. 1, 2016).

surgical specialties. PA students, on average, complete 48.5 weeks of supervised clinical practice by the time they graduate.

All PA educational programs include pharmacology courses, and, nationally, the average amount of required formal classroom instruction in pharmacology is 75 hours. This does not include instruction in pharmacology that students receive during clinical medicine coursework and clinical clerkships. Based on national data, the mean amount of total instruction in clinical medicine is 358.9 hours, and the average length of required clinical clerkships is 48.5 weeks. A significant percentage of time is focused on patient management. Coursework in pharmacology addresses, but is not limited to, pharmacokinetics, drug interactions, adverse effects, contraindications, indications, and dosage.

Advanced Registered Nurse Practitioners²⁷

Applicants for Florida licensure as ARNPs who graduated on or after October 1, 1998, must have completed requirements for a master's degree or post-master's degree.²⁸ Applicants who graduated before that date may be or may have been eligible through a certificate program.²⁹

The curriculum of a program leading to an advanced degree must include, among other things:

- Theory and directed clinical experience in physical and biopsychosocial assessment;
- Interviewing and communication skills relevant to obtaining and maintaining a health history;
- Pharmacotherapeutics, including selecting, prescribing, initiating, and modifying medications in the management of health and illness;
- Selecting, initiating, and modifying diets and therapies in the management of health and illness;
- Performance of specialized diagnostic tests that are essential to the area of advanced practice;
- Differential diagnosis pertinent to the specialty area;
- Interpretation of laboratory findings;
- Management of selected diseases and illnesses;
- Professional socialization and role realignment;
- Legal implications of the advanced nursing practice and nurse practitioner role;
- Health delivery systems, including assessment of community resources and referrals to appropriate professionals or agencies; and
- Providing emergency treatments.

The program must provide a minimum of 500 hours (12.5 weeks) of preceptorship/supervised clinical experience³⁰ in the performance of the specialized diagnostic procedures that are essential to practice in that specialty area.

²⁷ Rule 64B9-4.003, F.A.C.

²⁸ Florida Board of Nursing, *ARNP Licensure Requirements* <http://floridasnursing.gov/licensing/advanced-registered-nurse-practitioner/>, (last visited Feb.1, 2016).

²⁹ *Id.*, and s. 464.012(1), F.S.

³⁰ Preceptorship/supervised clinical experience must be under the supervision of a qualified preceptor, who is defined as a practicing certified ARNP, a licensed medical doctor, osteopathic physician, or a dentist. *See* Rule 64B9-4.001(13), F.A.C.

Drug Enforcement Agency Registration

The Drug Enforcement Administration (DEA) within the U.S. Department of Justice grants practitioners federal authority to handle controlled substances. However, a DEA-registered practitioner may only engage in those activities that are authorized under state law for the jurisdiction in which the practice is located.³¹

According to requirements of the DEA, a prescription for a controlled substance may be issued only by a physician, dentist, podiatrist, veterinarian, mid-level practitioner,³² or other registered practitioner who is:

- Authorized to prescribe controlled substances by the jurisdiction in which the practitioner is licensed to practice;
- Registered with the DEA or exempted from registration; or
- An agent or employee of a hospital or other institution acting in the normal course of business or employment under the registration of the hospital or other institution which is registered in lieu of the individual practitioner being registered provided that additional requirements are met, including:³³
 - The dispensing, administering, or prescribing must be in the usual course of professional practice;
 - The practitioner must be authorized to do so by the state in which he or she practices;
 - The hospital or other institution must verify that the practitioner is permitted to administer, dispense, or prescribe controlled substances within the state;
 - The practitioner must act only within the scope of employment in the hospital or other institution;
 - The hospital or other institution must authorize the practitioner to administer, dispense, or prescribe under its registration and must assign a specific internal code number for each practitioner; and
 - The hospital or other institution must maintain a current list of internal codes for the corresponding practitioner.³⁴

III. Effect of Proposed Changes:

The bill amends s. 464.012, F.S., to authorize an ARNP to order controlled substances for administration to patients in hospitals, ambulatory surgery centers, mobile surgical facilities, and nursing homes under an established protocol with a supervising allopathic or osteopathic physician, or dentist, which is filed with the DOH.

The bill amends s. 893.05, F.S., to allow ARNPs and PAs to order controlled substances for administration to patients in hospitals, ambulatory surgery centers, mobile surgical facilities and nursing homes within the framework of an established protocol or as delegated under a supervisory relationship with a physician.

³¹ U.S. Department of Justice, Drug Enforcement Administration, *Practitioner's Manual*, (August 2006), p. 7, available at http://www.dea.gov/divisions/office_of_public_affairs/publications/pract/pract_manual012508.pdf, (last visited Feb. 1, 2016).

³² Examples of mid-level practitioners include, but are not limited to: nurse practitioners, nurse midwives, nurse anesthetists, clinical nurse specialists, and physician assistants.

³³ *Supra*, note 30, at 18.

³⁴ *Supra*, note 30, at 12.

The bill amends ss. 458.347 and 458.022, F.S., to authorize a physician to delegate his or her authority to prescribe medications, including controlled substances, to PAs while treating the physician's patients in a nursing home licensed under part II, of ch. 400, F.S., and for the PA to order these medications.

The bill also makes technical changes to s. 893.05, F.S., and reenacts several statutory sections to conform to changes made by the bill.

The effective date of the bill is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. None. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 458.347, 459.022, 464.012, 893.05, 401.445, 766.103, and 893.0551.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on February 9, 2016:

Authorizes a physician to delegate his or her authority to prescribe medications, including controlled substances, to PAs and for the PA to so order, while treating the physician's patients in a nursing home licensed under part II, of ch. 400, F.S.

- B. **Amendments:**

None.