

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 Committee on Health Policy

BILL: CS/SB 744

INTRODUCER: Health Policy Committee and Senators Hooper and Gruters

SUBJECT: Podiatric Medicine

DATE: February 5, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Fav/CS
2.	_____	_____	AHS	_____
3.	_____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 744 provides that a supervising allopathic or osteopathic physician of a physician assistant (PA) may authorize a licensed PA to perform services under the direction of a podiatric physician who is a partner, a shareholder, or an employee of the same group practice as the supervising physician and the PA. The supervising physician is liable for the performance, the acts, and omissions of the PA. The bill authorizes:

- A PA to perform services under the direction of a licensed podiatric physician;
- A podiatric physician to supervise a medical assistant;
- The Board of Podiatric Medicine (BPM) to make rules regarding a podiatric physician's continuing education for license renewal and to approve course and program criteria, including two hours related to safe and effective prescribing of controlled substances; and
- Authorizes individuals to directly contract with podiatric physicians through direct health care agreements, for the provision of health care services.

The bill has an effective date of July 1, 2020.

II. Present Situation:

The Department of Health

The Legislature created the Department of Health (DOH) to protect and promote the health of all residents and visitors in the state.¹ The DOH is charged with the regulation of health practitioners

¹ Section 20.43, F.S.

for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA) is responsible for the boards² and professions within the DOH.³

Podiatric Medicine

Podiatric medicine is the diagnosis or medical, surgical, palliative, and mechanical treatment of ailments of the human foot or leg.⁴ It also includes the amputation of toes or other parts of the foot but does not include the amputation of the entire foot or leg. A podiatric physician is authorized to prescribe drugs specifically related to his or her scope of practice.⁵

The BPM was established to ensure that every podiatric physician practicing in this state meets minimum requirements for safe practice. The BPM, through efficient and dedicated organization, licenses, monitors, disciplines, educates, and when appropriate, rehabilitates practitioners to assure their competence in the service of the people of Florida.

Licensure Requirements

Florida law requires a podiatric physician to meet the following requirements for licensure:⁶

- Be at least 18 years of age;
- Hold a degree from a school or college of podiatric medicine or chiropody recognized and approved by the Council on Podiatry Education of the American Podiatric Medical Association;
- Have successfully completed one of the following clinical experience requirements:
 - One year of residency in a program approved by the BPM;⁷ or
 - Ten years of continuous, active licensed practice of podiatric medicine in another state immediately preceding application and completion of at least the same continuing education requirements during those 10 years as are required of podiatric physicians licensed in this state;
- Successfully complete a background screening; and
- Obtain passing scores on the national examinations administered by the National Board of Podiatric Medical Examiners.⁸

A license to practice podiatric medicine must be renewed biennially.

² Under s. 456.001(1), F.S., the term “board” is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the DOH, MQA.

³ Section 20.43, F.S.

⁴ Section 461.003(5), F.S.

⁵ Id.

⁶ Section 461.006, F.S.

⁷ Id. If it has been more than four years since the completion of the residency, an applicant must have two years of active, licensed practice of podiatric medicine in another jurisdiction in the four years immediately preceding application or successfully complete a board-approved postgraduate program or board-approved course within the year preceding application.

⁸ Fla. Adm. Code R. 64B18-11.002,(2019).

Continuing Education

A podiatric physician must complete 40 hours of continuing education as a part of the biennial licensure renewal, which must include:⁹

- One hour on risk management;
- One hour on the laws and rules related to podiatric medicine;
- Two hours on the prevention of medical errors;
- Two hours on HIV/AIDS (due for the first renewal only); and
- One hour on human trafficking (beginning January 1, 2021).¹⁰

Controlled Substance Prescribers

Effective July 1, 2018, every person registered with the U.S. Drug Enforcement Administration and authorized to prescribe controlled substances, must complete a two-hour continuing education course on prescribing controlled substances.¹¹ The course must include:

- Information on the current standards for prescribing controlled substances, particularly opiates;
- Alternatives to these standards;
- Non-pharmacological therapies;
- Prescribing emergency opioid antagonists; and
- The risks of opioid addiction following all stages of treatment in the management of acute pain.

The course can only be offered by a statewide professional association of physicians in this state that is accredited to provide educational activities designated for the American Medical Association Physician's Recognition Award Category 1 Credit or the American Osteopathic Category 1-A medical continuing education on the safe and effective prescribing of controlled substances each biennial license renewal.¹² Currently the course is provided for podiatric physicians by:¹³

- The Florida Medical Association;
- The Florida Osteopathic Medical Association;
- InforMed;
- Emergency Medicine Learning and Resource Center; and
- Florida Academy of Family Physicians.

This requirement does not apply to a licensee who is required by his or her applicable practice act to complete a minimum of two hours of continuing education on the safe and effective prescribing of controlled substances.¹⁴ The requirement applies to podiatric physicians because

⁹ Section 461.007(3), F.S., and Fla. Adm. Code R. 64B18-17, (2019).

¹⁰ Section 456.0341, F.S.

¹¹Section 456.0301, F.S.

¹² Id.

¹³ Department of Health, *Take Control of Controlled Substances*, available at <http://www.flhealthsource.gov/FloridaTakeControl/> (last visited Jan. 30, 2020). To access the podiatric list of providers, select Podiatric Medicine.

¹⁴ See note 11.

their practice act does not specifically require a two hours of continuing education on the safe and effective prescribing of controlled substances.

Physician Assistants (PAs)

Physician assistants (PAs) are regulated by the Board of Medicine (BOM) in conjunction with the Florida Council on Physician Assistants (PA Council) for PAs licensed under ch. 458, F.S., or the Board of Osteopathic Medicine (BOOM) for PAs licensed under ch. 459, F.S. The boards and PA Council are responsible for adopting the principles that a supervising physician must use for developing a PA's scope of practice, developing a formulary of drugs that may not be prescribed by a PA, and approving educational programs.¹⁵

Council on Physician Assistants

The PA Council consists of five members, including three physicians who are members of the BOM, one physician who is a member of the BOOM, and one licensed PA appointed by the Surgeon General.¹⁶ Two of the physicians must be physicians who supervise physician assistants in their practice. The PA Council is responsible for:¹⁷

- Making recommendations to DOH regarding the licensure of PAs;
- Developing rules for the regulation of PAs for consideration for adoption by the boards;
- Making recommendations to the boards regarding all matters relating to PAs;
- Addressing concerns and problems of practicing PAs to ensure patient safety; and
- Denying, restricting, or placing conditions on the license of a PA who fails to meet the licensing requirements.

Licensure and Regulation of PAs

An applicant for a PA license must apply to the DOH. The DOH must issue a license to a person certified by the PA Council as having met all of the following requirements:¹⁸

- Completed an approved PA training program;
- Obtained a passing score on the National Commission on Certification of Physician Assistants examination;
- Acknowledged any prior felony convictions;
- Submitted to a background screening and have no disqualifying offenses;¹⁹
- Acknowledged any previous revocation or denial of licensure in any state; and
- Provided a copy of course transcripts and a copy of the course description from a PA training program describing the course content in pharmacotherapy if the applicant is seeking prescribing authority.

PAs must renew their licenses biennially. During each biennial renewal cycle, a PA must complete 100 hours of continuing medical education or must demonstrate current certification

¹⁵ Sections 458.347(4) and (6), F.S., and 459.022(4) and (6), F.S.

¹⁶ Sections 458.347(9), F.S., and 459.022(9), F.S. Members of the Board of Medicine and the Board of Osteopathic Medicine are appointed by the Governor and confirmed by the Senate. *See* ss. 458.307, F.S., and 459.004, F.S., respectively.

¹⁷ *Id.*

¹⁸ Sections 458.347(7), F.S., and 459.022(7), F.S.

¹⁹ Section 456.0135, F.S.

issued by the National Commission on Certification of Physician Assistants.²⁰ To maintain certification, a PA must earn at least 100 hours of continuing medical education biennially and must take a re-certification examination every 10 years.²¹

PA Scope of Practice

PAs may practice only under the direct or indirect supervision of an allopathic or osteopathic physician with whom they have a clinical relationship.²² A supervising physician may only delegate tasks and procedures to the PA that are within the supervising physician's scope of practice.²³ The supervising physician is responsible and liable for any acts or omissions of the PA and may not supervise more than four PAs at any time.²⁴

The BOM and the BOOM have established by rule that “responsible supervision” of a PA means the ability of the supervising physician to exercise control and provide direction over the services or tasks performed by the PA. Whether the supervision of a PA is adequate is dependent upon the:²⁵

- Complexity of the task;
- Risk to the patient;
- Background, training, and skill of the PA;
- Adequacy of the direction in terms of its form;
- Setting in which the tasks are performed;
- Availability of the supervising physician;
- Necessity for immediate attention; and
- Number of other persons that the supervising physician must supervise.

A supervising physician decides whether to permit a PA to perform a task or procedure under direct or indirect supervision based on reasonable medical judgment regarding the probability of morbidity and mortality to the patient.²⁶ A supervising physician may delegate the authority for a PA to:

- Prescribe or dispense any medicinal drug used in the supervising physician's practice unless such medication is listed in the formulary established by the PA Council;²⁷

²⁰ Sections 458.347(7)(c) and 459.022(7)(c), F.S.

²¹ National Commission on Certification of Physician Assistants, *Maintaining Certification*, available at <https://www.nccpa.net/CertificationProcess> (last visited Jan. 31, 2020).

²² Sections 458.347(2)(f), and 459.022(2)(f), F.S., define supervision as responsible supervision and control which requires the easy availability or physical presence of the licensed physician for consultation and direction of the PA.

²³ Fla. Adm. Code R. 64B8-30.012 and 64B15-6.010 (2019).

²⁴ Sections 458.347(15), F.S. and 459.022(15), F.S.

²⁵ Fla. Adm. Code R. 64B8-30.001 and 64B15-6.001 (2019).

²⁶ Id. “Direct supervision” refers to the physical presence of the supervising physician so that the physician is immediately available to the PA when needed. “Indirect supervision” refers to the reasonable physical proximity of the supervising physician to the PA or availability by telecommunication.

²⁷ Sections 458.347(4)(f) and 459.022(e), F.S., directs the Council to establish a formulary listing the medical drugs that a PA may not prescribe. The formulary in Rules 64B8-30.008 and 64B15-6.0038, F.A.C., prohibits PAs from prescribing; general, spinal or epidural anesthetics; radiographic contrast materials; and psychiatric mental health controlled substances for children younger than 18 years of age. It also restricts the prescribing of Schedule II controlled substances to a seven-day supply. However, the rules authorize physicians to delegate to PAs the authority to order controlled substances in hospitals and other facilities licensed under ch. 395, F.S.

- Order any medication for administration to the supervising physician's patient in a hospital or other facility licensed under chapter 395, F.S., or at a health care clinic or nursing homes licensed under ch. 400, F.S.;²⁸ and
- Any other service that is not expressly prohibited in chs. 458 and 459, F.S., or the rules adopted under each.²⁹

Currently, podiatric physicians are not authorized to supervise or delegate tasks or procedures to PAs.

Medical Assistants

Section 458.3485, F.S., define a "medical assistant" as a professional, multi-skilled person dedicated to assisting in all aspects of medical practice under the direct supervision and responsibility of a physician. This practitioner:

- Assists with patient care management;
- Executes administrative and clinical procedures; and
- Often performs managerial and supervisory functions.

Competence in the field also requires that a medical assistant adhere to ethical and legal standards of professional practice, recognize and respond to emergencies, and demonstrate professional characteristics.

A medical assistant performs his or her duties under the direct supervision and responsibility of a licensed physician. A medical assistant may undertake the following duties:

- Performing clinical procedures, including:
 - Performing aseptic procedures;
 - Taking vital signs;
 - Preparing patients for the physician's care and treatment;
 - Performing venipunctures and non-intravenous injections; and
 - Observing and reporting patients' signs or symptoms;
- Administering basic first aid;
- Assisting with patient examinations or treatments;
- Operating office medical equipment;
- Collecting routine laboratory specimens as directed by the physician;
- Administer medication as directed by the physician;
- Performing basic laboratory procedures;
- Performing office procedures, including all general administrative duties required by the physician;
- Performing dialysis procedures, including home dialysis.

Medical assistants are not required to be licensed, certified, or registered to practice in Florida but may obtain the designation of a certified medical assistant. However, a medical assistant may obtain the designation of certified medical assistant if he or she receives a certification from a

²⁸ Chapter 395, F.S., provides for the regulation and the licensure of hospitals and trauma centers, part II of ch. 400, F.S., provides for the regulation and licensure of nursing home facilities.

²⁹ Sections 458.347(4) and 459.022(e), F.S.

program accredited by the National Commission for Certifying Agencies, a national or state medical association, or an entity approved by the BOM.

Currently, podiatric physicians are not authorized to supervise or delegate tasks or procedures to medical assistants.

Direct Health Care Agreements

Section 624.27, F.S., authorizes the use of a direct health care agreements between a health care provider and his or patients. A direct health care agreement is a contract between a health care provider and a patient, a patient's legal representative, or a patient's employer, which must:

- Be in writing;
- Be signed by the health care provider, or his or her agent, and the patient, the patient's legal representative, or the patient's employer;
- Allow either party to terminate the agreement by giving the other party 30 days' advance written notice;
- Allow immediate termination of the agreement for a violation of physician-patient relationship or a breach of the terms of the agreement;
- Describe the scope of health care services that are covered by the monthly fee;
- Specify the monthly fee and any fees for health care services not covered under the agreement;
- Specify the duration of the agreement and any automatic renewal provisions;
- Offer a refund to the patient of monthly fees paid in advance if the health care provider stops offering health care services for any reason;
- State that the agreement is not health insurance and that the health care provider will not bill the patient's health insurance policy or plan for services covered under the agreement;
- State that the agreement does not qualify as minimum essential coverage to satisfy the individual responsibility provision of the federal Patient Protection and Affordable Care Act; and
- State that the agreement is not workers' compensation insurance and may not replace the employer's workers' compensation obligations.

A direct health care agreement is not considered health insurance and is exempt from the Florida Insurance Code, and the Office of Insurance Regulation does not have authority to regulate such agreements.³⁰

Currently, s. 624.27, F.S., pertains to direct health care agreement contracts with allopathic physicians, osteopathic physicians, chiropractic physicians, nurses, or dentists, or a health care group practice, for health care services that are within the competency and training of the health care provider. Direct health care agreement contracts with a podiatric physician for the provision of health care services are not contemplated under the statute.

³⁰ Section 624.27(2), F.S.

III. Effect of Proposed Changes:

Podiatric Physician Direction of Physician Assistants and Medical Assistants

CS/SB 744 amends the practice acts for allopathic and osteopathic physicians in ss. 458.347 and 459.022, F.S., respectively, to provide that a supervising allopathic or osteopathic physician may authorize a licensed PA to perform services under the direction of a licensed podiatric physician who is a partner, a shareholder, or an employee of the same group practice, as defined in s. 456.053(3), F.S., as the supervising physician and the PA. Under the bill, the supervising physician is liable for the performance, the acts, and omissions of the PA.

The bill amends s. 458.3485, F.S., to authorize podiatric physicians to supervise medical assistants.

The bill creates ss. 461.0145 and 461.0155, F.S., within the podiatric medicine practice act, to provide that:

- A licensed PA may perform services under the direction of a podiatric physician; and
- A medical assistant may be supervised by a podiatric physician.

Direct Health Care Agreements

The bill authorizes individuals to directly contract with podiatric physicians through direct health care agreements for the provision of health care services without such contracts being considered insurance. The bill retains the contract requirements under current law for other health care practitioners offering direct health care agreements and applies them to such contracts with podiatric physicians.

Continuing Education

The bill amends s. 461.007, F.S., to provide that the continuing education hours the BPM is authorized to require of podiatrists for licensure renewal must include a minimum of two hours of continuing education related to the safe and effective prescribing of controlled substances. The criteria for such continuing education courses must be approved by the BPM.

The bill has an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill defines “physician” in s. 458.4385, F.S., relating to medical assistants, as a person who is licensed as a physician under ch. 458 or as a podiatric physician under ch. 461, F.S. This definition excludes physicians licensed under ch. 459, F.S., and could be interpreted to specifically exclude osteopathic physicians from supervising medical assistants.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 458.347, 458.3485, 459.022, 461.007, and 624.27.

This bill creates the following sections of the Florida Statutes: 461.0145 and 461.0155.

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 4, 2020:

The CS:

- Deletes the authority in the underlying bill of a podiatric physician, or group of podiatric physicians, to supervise up to four PAs and delegate tasks to PAs in the same manner as supervising allopathic and osteopathic physicians;

- Deletes the underlying bill's provision for podiatric physicians' independent and collective liability for any errors or omissions by the PA;
- Permits a podiatric physician, who is a partner, a shareholder, or an employee of the same group practice as the PA and the supervising allopathic or osteopathic physician, to "direct," not "supervise," a PA in the group practice;
- Imposes liability for the performance, errors, or omissions of the PA, while being directed by the podiatric physician, on the supervising allopathic or osteopathic physician;
- Eliminates any expansion of the number of members on the Council of PAs; and
- Deletes the underlying bill's authority for the BPM to develop the following for PAs working in a podiatric practice:
 - The scope of practice;
 - The formulary of drugs that PAs may not prescribe; and
 - PA educational programs.

B. Amendments:

None.