

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: SB 170

INTRODUCER: Senator Hooper and Gruters

SUBJECT: Podiatric Medicine

DATE: January 26, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto Van-Winkle	Brown	HP	Pre-meeting
2.	_____	_____	ED	_____
3.	_____	_____	AP	_____
4.	_____	_____	RC	_____

I. Summary:

SB 170 makes changes to three issues related to the practice of podiatric medicine. The bill:

- Amends s. 458.3485, F.S., relating to medical assistants, to create a definition of the term “physician” that includes podiatrists and amends the podiatric medicine practice act by creating s. 461.0155, F.S., to specify that podiatrists, when supervising medical assistants, are governed by s. 458.3485, F.S.;
- Requires that a minimum of two continuing education (CE) hours related to the safe and effective prescribing of controlled substances must be added to the CE hours that the Board of Podiatric Medicine (BPM) may require as a condition of podiatrist licensure renewal; and
- Adds podiatrists to the list of health care providers who are authorized to enter into direct health care agreements with patients for the provision of health care services, without such agreements being considered insurance.

The bill has an effective date of July 1, 2021.

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 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 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 Rule 64B18-11.002, F.A.C., (2019).

Continuing Education (CE)

A podiatric physician must complete 40 hours of CE 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 Approved providers for the course are available through the BPM's website¹³ and CE Broker.¹⁴

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. The requirement applies to podiatric physicians because their practice act (ch. 461, F.S.) does not specifically do so.

⁹ Section 461.007(3), F.S., and Rule 64B18-17, F.A.C., (2019).

¹⁰ Section 456.0341, F.S.

¹¹ Section 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. 18, 2021). To access the podiatric list of providers, select Podiatric Medicine.

¹⁴ See CE Broker, *Podiatric Physician*, available at <https://courses.cebroke.com/search/fl/podiatric-physician?subjectArea=3313> (last visited Jan. 19, 2021).

Physicians

The term “physician” was first used in the 13th century to define a person who is skilled in the art of healing.¹⁵ Florida law uses the term “physician” in reference to four health care professions:¹⁶

- Allopathic medicine;
- Osteopathic medicine;
- Chiropractic medicine; and
- Podiatric medicine.

Medical Assistants

Section 458.3485, F.S., defines 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. A medical assistant:

- 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.

A medical assistant is not required to be licensed, certified, or registered to practice in Florida but may obtain the designation of a certified medical assistant if he or she receives a certification

¹⁵ Merriam-Webster Dictionary, *Physician*, available at <https://www.merriam-webster.com/dictionary/physician> (last visited Jan. 18, 2021).

¹⁶ See ss. 458.305(4), 459.003(4), 460.403(5), and 461.003(4), F.S.

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

Current law neither authorizes nor prohibits podiatric physicians regarding the supervision of, or the delegation of tasks or procedures to, medical assistants.

Direct Health Care Agreements

Section 624.27, F.S., authorizes the use of a direct health care agreement, which is a contract between a health care provider and a patient, a patient's legal representative, or a patient's employer. A direct health care agreement 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, which precludes any authority of the Office of Insurance Regulation to regulate such agreements.¹⁷

Currently, s. 624.27, F.S., pertains to a direct health care agreement contract with an allopathic physician, an osteopathic physician, a chiropractic physician, a nurse, a dentist, 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.

¹⁷ Section 624.27(2), F.S.

III. Effect of Proposed Changes:

Medical Assistants

The bill amends s. 458.3485, F.S., to create a definition for the term “physician” for the purpose of specifying which practitioners are authorized to supervise medical assistants. The bill defines a “physician” as a person who is licensed as a physician under ch. 458, F.S., or as a podiatric physician under ch. 461, F.S.

The bill creates s. 461.0155, F.S., within the podiatrist practice act to provide that a podiatric physician’s supervision of a medical assistant is governed by s. 458.3485, F.S.

Direct Health Care Agreements

The bill amends s. 624.27, F.S., to authorize 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 CE hours that the BPM may require of podiatrists for licensure renewal must include a minimum of two hours of CE related to the safe and effective prescribing of controlled substances. With this change, podiatrists will no longer be required to complete CE under s. 456.0301, F.S.

The bill has an effective date of July 1, 2021.

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:

None.

VII. Related Issues:

Section 458.305(4), F.S., currently provides a definition of the term “physician” that applies to the entire ch. 458, F.S. Under that section, “physician” is defined as “a person who is licensed to practice medicine in this state.”

However, the bill creates a separate definition of “physician” in s. 458.3485, F.S., that differs from the chapter’s overarching definition of the term. With regard to medical assistants and their supervision, the bill defines “physician” as a person who is licensed as a physician under ch. 458 or as a podiatric physician under ch. 461, F.S. This definition narrows the scope of the term “physician” when compared to the current language in s. 458.3485, F.S., and could be interpreted to conflict with the chapter’s overarching definition of the term.

The bill could further be interpreted to exclude osteopathic physicians licensed under ch. 459, F.S., and chiropractic physicians licensed under ch. 460, F.S., under the principle of statutory construction described by the Latin phrase *Expressio Unius Est Exclusio Alterius* – when one or more things in a class are expressly included, others of the same class are excluded.¹⁸

VIII. Statutes Affected:

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

This bill creates section 461.0155, Florida Statutes.

¹⁸ Merriam-Webster Dictionary, *Expressio Unius Est Exclusio Alterius*, available at <https://www.merriam-webster.com/legal/expressio%20unius%20est%20exclusio%20alterius> (last visited Jan. 18, 2021).

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
