

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 431 Practice of Physician Assistants

**SPONSOR(S):** Health & Human Services Committee, Professions & Public Health Subcommittee, Rommel

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Professions & Public Health Subcommittee	17 Y, 1 N, As CS	Rahming	McElroy
2) Health & Human Services Committee	15 Y, 3 N, As CS	Rahming	Calamas

### SUMMARY ANALYSIS

Physician Assistants (PAs) are regulated by the Florida Council on Physician Assistants in conjunction with either the Board of Medicine for PAs licensed under ch. 458, F.S., or the Board of Osteopathic Medicine for PAs licensed under ch. 459, F.S.

CS/CS/HB 431 revises the practice acts for PAs in chs. 458 and 459. The bill:

- Specifies which PA education and training programs are approved for PA licensure and amends PA licensure and licensure renewal requirements;
- Authorizes PAs to authenticate any document with their signature, certification, stamp, verification, affidavit, or endorsement if the document may also be authenticated by a physician's signature, certification, stamp, verification, affidavit or endorsement;
- Removes the prohibition on PAs prescribing psychiatric medications for those under 18 years of age;
- Removes the restriction on the number of licensed PAs a physician may supervise at any one time;
- Removes the requirement that a PA notify a patient that he or she has the right to see a physician prior to the PA prescribing or dispensing a prescription;
- Authorizes PAs to procure medications and medical devices, with exceptions;
- Authorizes PAs to supervise allopathic and osteopathic medical assistants;
- Authorizes PAs to directly bill and receive payment from third-party payors for the services they deliver;
- The bill repeals authorization for the DOH to issue prescriber numbers;
- Removes the requirement for a licensed PA to notify the DOH in writing within 30 days of employment or after any change in his or her supervising physician; and
- Removes the requirement that PA licensure applicants seeking prescribing authority provide course transcripts.

The bill has an insignificant, negative fiscal impact on the DOH, which can be absorbed within current resources. The bill has no fiscal impact on local governments.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Physician Assistants

Physician Assistants (PAs) are regulated by the Florida Council on Physician Assistants (Council) in conjunction with either the Board of Medicine for PAs licensed under ch. 458, F.S., or the Board of Osteopathic Medicine for PAs licensed under ch. 459, F.S.

##### *Council on Physician Assistants*

The Council consists of five members including one physician who is a member of the Board of Medicine, one physician who is a member of the Board of Osteopathic Medicine, and three licensed PAs appointed by the Surgeon General.<sup>1</sup> The appointed physicians must be physicians who supervise physician assistants in their practice. The Council is responsible for:<sup>2</sup>

- Making recommendations to the 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 safety in the PAs' clinical practices;
- Denying, restricting, or placing conditions on the license of PAs who fail to meet the licensing requirements; and
- Establishing a formulary of medicinal drugs that PAs may not prescribe.<sup>3</sup>

##### *Licensure and Regulation of PAs*

An applicant for a PA license must apply to the DOH, and the DOH must issue a license to a person certified by the Council as having met all of the following requirements:<sup>4</sup>

- Is at least 18 years old;
- Completed the application form and paid the applicable application fee;
- Acknowledged any prior felony convictions;
- Acknowledged any previous revocation or denial of licensure in any state;
- 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; and
- Submitted to a background screening and have no disqualifying offenses.<sup>5</sup>

Current law also requires PA licensure applicants to obtain a passing score on “an entry-level examination approved by the boards, including, but not limited to, those examinations administered by the National Commission on Certification of Physician Assistants.” However, since there are no subsequent PA advancing examinations, “entry-level examination” is a misnomer. Instead, PA licensure applicants must specifically pass the Physician Assistant National Certifying Examination

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<sup>1</sup> Ss. 458.347(9) 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 and 459.004, F.S., respectively.

<sup>2</sup> *Id.*

<sup>3</sup> S. 458.347(4)(f), F.S.

<sup>4</sup> Ss. 458.347(7) and 459.022(7), F.S.

<sup>5</sup> S. 456.0135, F.S.

(PANCE) administered by the National Commission on Certification of Physician Assistants to obtain PA licensure.<sup>6</sup>

The DOH may issue a temporary license to a recent approved program graduate who expects to take the first National Commission on Certification of Physician Assistants administered examination available for registration after the applicant's graduation.<sup>7</sup> If an applicant has completed all licensure requirements and is awaiting the next scheduled meeting of the Council, the DOH may issue up to two temporary licenses to practice.<sup>8</sup> The temporary license expires 30 days after an applicant receives his or her scores of the proficiency examination and authorizes an applicant who has passed the examination to be granted permanent licensure.<sup>9</sup> Applicants who fail the examination can no longer hold a temporary license, unless they reapply for a 1-year extension of the temporary license.<sup>10</sup>

Within 30 days after gaining employment as a PA, licensed PAs must provide written notice with specified information to the DOH or after any subsequent changes in the supervising physician. PAs must renew their licenses biennially. During each biennial renewal cycle PAs must complete 100 hours of continuing medical education (CME) or must demonstrate current certification issued by the National Commission on Certification of Physician Assistants.<sup>11</sup> To maintain certification, PAs must also take a recertification examination every 10 years.<sup>12</sup>

### *PA Education*

PA education programs are typically three years and award master's degrees.<sup>13</sup> Many programs require students to have health care experience as a condition for admission.<sup>14</sup> PA students receive classroom training in:<sup>15</sup>

- Anatomy;
- Physiology;
- Biochemistry;
- Pharmacology;
- Physical diagnosis;
- Pathophysiology;
- Microbiology;
- Clinical laboratory science;
- Behavioral science; and
- Medical Ethics.

A PA student must also complete approximately 2,000 hours of clinical rotations, with an emphasis on primary care in ambulatory clinics, physician offices, and acute or long-term care facilities.<sup>16</sup> A PA student's rotation could also include family medicine, internal medicine, obstetrics and gynecology, pediatrics, general surgery, emergency medicine, or psychiatry.<sup>17</sup>

Currently, PA licensure requires completion of an education and training program accredited by the Commission on Accreditation of Allied Health Programs (CAAHP) or its successor organization.<sup>18</sup> The

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<sup>6</sup> American Academy of PAs, *Become a PA*, [https://www.aapa.org/career-central/become-a-pa/#:~:text=Once%20you've%20graduated%20from,of%20Physician%20Assistants%20\(NCCPA\)](https://www.aapa.org/career-central/become-a-pa/#:~:text=Once%20you've%20graduated%20from,of%20Physician%20Assistants%20(NCCPA)) (last visited Apr. 6, 2021).

<sup>7</sup> Ss. 458.347(7) and 459.022(7), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Ss. 458.347(7)(c) and 459.022(7)(c), F.S.

<sup>12</sup> National Commission on Certification of Physician Assistants, *Maintaining Certification*, <https://www.nccpa.net/CertificationProcess> (last visited Feb. 15, 2021).

<sup>13</sup> American Academy of PAs, *Become a PA*, <https://www.aapa.org/career-central/become-a-pa/> (last visited Feb. 15, 2021).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Ss. 458.347(6) and 469.022(6), F.S.

CAAHP, a 501(c)(3) tax exempt organization formed in 1994, is a programmatic postsecondary accrediting agency recognized by the Council for Higher Education Accreditation and carries out its accrediting activities in cooperation with 25 review Committees on Accreditation.<sup>19</sup> However, the CAAHP no longer accredits PA education and training programs.<sup>20</sup>

Since 2001, the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA), has been the accrediting agency that defines the standards for PA education and evaluates PA educational programs to ensure their compliance with those standards within the territorial United States.<sup>21</sup> Only graduates of PA degree programs certified by the ARC-PA are eligible to take the PANCE.<sup>22</sup>

The current statutory reference to CAAHP is obsolete; however, the statutory reference to CAAHP's successor organization as an alternative prevents any harm from this obsolescence.

### *PA Supervision*

PAs may only practice under the direct or indirect supervision of an allopathic or osteopathic physician with whom they have a clinical relationship.<sup>23</sup> A supervising physician may only delegate tasks and procedures to the PA that are within the supervising physician's scope of practice.<sup>24</sup> The supervising physician may not supervise more than four PAs at any time and may not be required to review and cosign charts or medical records prepared by a PA under their supervision.<sup>25</sup> The supervising physician is also responsible and liable for any acts or omissions of the PA.<sup>26</sup>

The Boards have established by rule that "responsible supervision" of a PA means the ability of the supervising physician to responsibly exercise control and provide direction over the services of the PA. Whether the supervision of a PA is adequate, is dependent upon the:<sup>27</sup>

- 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<sup>28</sup> based on reasonable medical judgment regarding the probability of morbidity and mortality to the patient.<sup>29</sup>

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<sup>19</sup> Commission on Accreditation of Allied Health Education Programs, *Committees on Accreditation*, <https://www.caahep.org/About-CAAHEP/Committees-on-Accreditation.aspx> (last visited Apr. 5, 2021).

<sup>20</sup> *Id.*

<sup>21</sup> Accreditation Review Commission on Education for the Physician Assistant, Inc., *Accreditation Review Commission on Education for the Physician Assistant*, <http://www.arc-pa.org/about/arc-pa-history/> (last visited Apr. 5, 2021).

<sup>22</sup> National Commission on Certification of Physician Assistants, *PANCE Eligibility Requirements*, <https://www.nccpa.net/pance-eligibility> (last visited Apr. 6, 2021).

<sup>23</sup> Ss. 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.

<sup>24</sup> Rr. 64B8-30.012 and 64B15-6.010, F.A.C.

<sup>25</sup> Ss. 458.347(3) and 459.022(3), F.S.

<sup>26</sup> Ss. 458.347(15) and 459.022(15), F.S.

<sup>27</sup> Rr. 64B8-30.001, F.A.C., and 64B15-6.001, F.A.C.

<sup>28</sup> "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 easy availability of the supervising physician to the physician assistant, which includes the ability to communicate by telecommunications. The supervising physician must be within reasonable physical proximity. See Rr. 64B8-30.001, F.A.C., and 64B15-6.001, F.A.C.

<sup>29</sup> Rr. 64B8-30.012(2), F.A.C., and 64B15-6.010(2), F.A.C.

Unlike physicians, PAs are not currently authorized to authenticate any document with their signature, certification, stamp, verification, affidavit, or endorsement.

Current law does not expressly regulate whether PAs may directly bill for and receive direct payment for their delivered services, rather than the supervising physician or employer. Currently, third-party payors may choose to reimburse PA employers for PA-rendered covered services.<sup>30</sup>

### *PA Prescribing*

A supervising physician may delegate the authority for a PA to prescribe or dispense any medication used in the supervising physician's practice, or medication for administration to the supervising physician's patient in a hospital or other facility licensed under ch. 395, F.S., or a nursing homes licensed under part II of ch. 400, F.S.<sup>31</sup>

However, physician may not delegate the authority for a PA to prescribe medication listed in a formulary established by the Council.<sup>32</sup> The formulary 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.<sup>33</sup> It also restricts the prescribing of Schedule II controlled substances to a 7-day supply.<sup>34</sup>

For a PA to prescribe or dispense medication, the supervising physician must notify the DOH of the intention to delegate such authority and the PA must complete a minimum of 10 CME hours in the specialty practice in which the PA has prescriptive privileges with each licensure renewal. Three of the 10 CME hours that allopathic PAs are required to take must consist of a continuing education course on the safe and effective prescribing of specified controlled substances.<sup>35</sup> Under current law, osteopathic PAs are not required to take courses on the safe and effective prescribing of controlled substances. In addition, before prescribing, the PA must notify the patient that he or she has the right to see a physician prior to prescribing or dispensing a prescription.

Prescribing practitioners, including PAs, must register with the federal Drug Enforcement Administration.<sup>36</sup> Current law authorizes the DOH to issue a prescriber number to the PA granting authority to prescribe medicinal drugs, which creates a presumption that the PA is authorized to prescribe the medicinal drug and the prescription is valid.<sup>37</sup> However, the DOH does not issue prescriber numbers; instead, the DOH chooses to place a modifier on the PA's license so that its license verification page indicates the practitioner is an authorized prescribing PA.<sup>38</sup>

### *PA Adverse Incident Reporting*

A PA must report to the DOH any adverse incident occurring in an office practice setting within 15 days after the occurrence of the adverse incident.<sup>39</sup>

An adverse incident in an office setting is defined as an event over which the PA could exercise control and which is associated with a medical intervention and results in one of the following patient injuries:<sup>40</sup>

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<sup>30</sup> Ss. 458.347(4)(b) and 459.022(4)(b), F.S.

<sup>31</sup> Ss. 459.347(4)(f) and 459.022(4)(f), F.S. 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.

<sup>32</sup> Ss. 458.347(4)(f) and 459.022(4)(f), F.S.

<sup>33</sup> Rr. 64B8-30.008 and 64B15-6.0038, F.A.C

<sup>34</sup> *Id.*

<sup>35</sup> Ss. 458.347(4)(e) and 459.022(4)(e), F.S.

<sup>36</sup> 21 U.S.C. 822(a)(2).

<sup>37</sup> Ss. 459.347(4)(e) and 459.022(4)(e), F.S.

<sup>38</sup> Email from Andrew Love, Director of Legislative Affairs, Florida Department of Health, RE: HB 431 Data Request, regarding issuance of prescriber numbers (Mar. 19, 2021).

<sup>39</sup> Ss. 458.351 and 459.026, F.S.

<sup>40</sup> Ss. 458.351(4) and 459.026(4), F.S.

- The death of a patient;
- Brain or spinal damage to a patient;
- The performance of a surgical procedure on the wrong patient;
- If the procedure results in death; brain or spinal damage; permanent disfigurement; the fracture or dislocation of bones or joints; a limitation of neurological, physical, or sensory functions; or any condition that required the transfer of a patient, the performance of:
  - A wrong-site surgical procedure;
  - A wrong surgical procedure; or
  - A surgical repair of damage to a patient resulting from a planned surgical procedure where the damage is not a recognized specific risk as disclosed to the patient and documented through the informed consent process;
- A procedure to remove unplanned foreign objects remaining from a surgical procedure; or
- Any condition that required the transfer of a patient to a hospital from an ambulatory surgical center or any facility or any office maintained by a physician for the practice of medicine which is not licensed under ch. 395, F.S.

The DOH must review each report to determine if discipline against the PA's license is warranted.<sup>41</sup>

### Medical Assistants

Medical assistants may assist a physician in all aspects of a medical practice under the direct supervision and responsibility of a physician.<sup>42</sup> Medical assistants assist with patient care management, execute administrative and clinical procedures, and perform managerial and supervisory functions.<sup>43</sup> Medical assistants are not required to be licensed, certified, or registered to practice in Florida.<sup>44</sup>

Current law authorizes physicians to supervise medical assistants, but it does not authorize PAs to supervise them.

### Effect of Proposed Changes

#### *Licensure and Regulation of PAs*

CS/CS/HB 413 updates the statutory reference to the PA program accreditation organization, removing the Commission on Accreditation of Allied Health Program and replacing it with the Accreditation Review Commission on Education for the Physician Assistant, Inc. It also establishes tiered applicability to reflect the changes to the new organization and preserve licensure for graduates under the old organization. For applicants graduating after December 31, 2020, the bill requires a master's degree in accordance with the Accreditation Review Commission on Education for the Physician Assistant, Inc., or its successor organization. For applicants graduating before December 31, 2020, the bill requires a bachelor's or master's degree in accordance with the Accreditation Review Commission on Education for the Physician Assistant, Inc., or its successor organization.

The bill also makes provisions for pre-2001 graduates, specifying that applicants graduating before July 1, 1994, must have graduated from an approved program in primary health care or surgery. Meanwhile, applicants graduating before July 1, 1983, must have received a certification from the boards as a PA.

The bill removes the requirement for allopathic PAs to complete 10 CME hours in the specialty practice in which the PA has prescriptive privileges and requires three of the 100 CME hours required biennially

<sup>41</sup> Ss. 458.351(5) and 459.026(5), F.S.

<sup>42</sup> Section 458.3485, F.S. There are no formal educational requirements for becoming a medical assistant in most states, including Florida. Most medical assistants have postsecondary education, such as a certificate; however, others enter the occupation with a high school diploma and learn through on-the-job training. See, United States Department of Labor, *Occupational Outlook Handbook: Medical Assistants*, (last rev. Sept. 1, 2020), <https://www.bls.gov/ooh/healthcare/medical-assistants.htm#tab-4> (last visited Jan. 26, 2021).

<sup>43</sup> S. 458.3485(2), F.S.

<sup>44</sup> S. 458.3485, F.S.

for PA licensure renewal to consist of a course on the safe and effective prescribing of specified controlled substances, which would apply to both allopathic and osteopathic PAs.

The bill also removes the requirement for a licensed PA to notify the DOH in writing within 30 days of employment or after any change in his or her supervising physician.

### *PA Education*

The bill maintains the requirement that the Council recommend PA education and training programs to the Board of Medicine or the Board of Osteopathic Medicine for approval, but specifies that the boards may only approve PA programs accredited by the Accreditation Review Commission on Education for the Physician Assistant, Inc. or its successor organization or, if before 2001, its predecessor organization—rather than the Commission on Accreditation of Allied Health Programs.

The bill updates statutory language to specify that PA licensure applicants must pass the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician assistants or its successor agency to obtain PA licensure.

### *PA Supervision*

The bill authorizes a PA to authenticate any document with their signature, certification, stamp, verification, affidavit, or endorsement if it may be so authenticated by a physician's signature, certification, stamp, verification, affidavit, or endorsement, including, but not limited to:

- Baker Act commitments;
- Do-not-resuscitate (DNR) orders or physician orders for the administration of life-sustaining procedures;
- Death certificates;
- School physicals;
- Medical evaluations for workers' compensation claims; and
- Physical, occupational, speech therapy, home health services, or durable medical equipment orders.

The bill removes from current law the restriction on the number of licensed PAs a physician may supervise at any one time and the requirement that a PA notify a patient that he or she has the right to see a physician prior to the PA prescribing or dispensing a prescription.

The bill also authorizes PAs to directly bill and receive payment from third-party payors for the services they deliver and to supervise allopathic and osteopathic medical assistants.

### *PA Prescribing*

The bill removes the current prohibition on PAs prescribing psychiatric medications for those under 18 years of age. The bill authorizes PAs to procure drugs and medical devices, unless the medication is listed in a formulary, which will allow PAs to dispense the drugs and devices they prescribe.

The bill repeals authorization for the DOH to issue prescriber numbers, which reflects current practice as the DOH is not utilizing its authority to issue them.

The bill amends specified statutes to conform cross-references.

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

**B. SECTION DIRECTORY:**

- Section 1:** Amends s. 458.347, F.S., relating to physician assistants.
- Section 2:** Amends s. 459.022, F.S., relating to physician assistants.
- Section 3:** Amends s. 744.3675, F.S., relating to the annual guardianship plan.
- Section 4:** Amends s. 893.05, F.S., relating to practitioners and persons administering controlled substances in their absence.
- Section 5:** Provides an effective date of July 1, 2021.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill has an insignificant, negative fiscal impact on the DOH, which can be absorbed within current resources.

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

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill provides sufficient rule-making authority to implement its provisions.



C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On April 6, 2021, the Health & Human Services Committee adopted an amendment to CS/HB 431. The amendment made technical changes to correct grammatical errors.

This analysis is drafted to the committee substitute as passed by the Health & Human Services Committee.