

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 Health Regulation Committee

BILL: SB 1594

INTRODUCER: Senators Garcia and Flores

SUBJECT: Surgical First Assistants

DATE: February 8, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HR	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill provides for licensure, renewal of licensure, practice standards, and grounds for disciplinary action for certified surgical first assistants. Certified surgical first assistants may only practice under the direct supervision of an appropriately trained physician, who maintains liability for all supervised acts; within their scope of certification; and in certain medical facilities. It is not required that physicians or health care facilities contract with certified surgical first assistants. Licensure as a certified surgical first assistant is not required as a condition of employment for registered nurses, advanced registered nurse practitioners, registered nurse first assistants, or physician assistants. The Department of Health (the department) is given rulemaking authority to administer provisions relating to certified surgical first assistants.

The bill also requires that if a health insurance policy, health care services plan, or other contract provides for payment for surgical first assisting benefits or services, the policy, plan, or contract shall be construed as providing for payment to a physician assistant, a certified surgical first assistant, or their employers if reimbursement for an assisting physician would be covered and a physician assistant or certified surgical first assistant who performs such services is used as a substitute. Insurers are not required to directly reimburse certified surgical first assistants if the assistants will be paid for a surgical procedure by the health care facility at which the procedure is performed.

This bill creates one designated section of law and amends s. 627.419, F.S.

II. Present Situation:

Role of Surgical First Assistants

Surgical assistants provide aid in exposure, hemostasis, closure, and other intraoperative technical functions under the direct supervision of surgeons to help carry out safe operations with optimal results for patients. In addition to intraoperative duties, surgical assistants also perform preoperative and postoperative duties to better facilitate proper patient care.¹ Surgical first assistants provide primary assistance to the primary surgeon, must be listed on the operative record as first assistants, and cannot be involved in any other role during the procedure.²

The primary professional organizations for surgical assistants are the Association of Surgical Technology (AST) and the National Surgical Assistant Association (NSAA). The AST was established in 1969 by members of the American College of Surgeons, the American Hospital Association, and the Association of Perioperative Registered Nurses to ensure that surgical technologists and surgical assistants have the knowledge and skills to administer patient care of the highest quality.³ The NSAA was formed by surgical assistants in 1983 and was the nation's first organization to provide standards for competency, professionalism, and scope of practice in the field.⁴

Duties within the scope of practice of a surgical assistant include positioning the patient; providing visualization of the operative site, including appropriate placement of retractors, suctioning and sponging, and manipulation of suture materials; assisting with hemostasis; participating in volume replacement or autotransfusion techniques, as appropriate; assisting with wound closure, including administration of sutures and subcutaneous injection of local anesthetics; selecting and applying wound dressings; and providing assistance in securing drainage systems to tissue.⁵ Surgical assistants must be familiar with operating room procedures and able to anticipate the needs of the surgeon.⁶

Surgical First Assistants in Statute

Registered nurses licensed under ch. 464, F.S., may serve as surgical first assistants if they are certified in perioperative nursing through a year-long training program fulfilling certain conditions. Such nurses may be reimbursed by insurance companies for their first assistant services at a rate not less than 80 percent of what a physician would be paid for the same services.⁷

¹ Association of Surgical Technologists, *Job Description: Surgical Assistant*, available at: http://www.ast.org/professionals/documents/2011_%20Surgical%20Assistant_Job_Description_4.5.pdf (last visited on January 26, 2012).

² American Board of Surgical Assistants, *Definitions*, available at: <http://www.absa.net/definitions.php> (last visited on February 7, 2012).

³ AST, *About Us*, available at: http://www.ast.org/aboutus/about_ast.aspx (last visited on January 25, 2012).

⁴ NSAA, *Welcome*, available at: <http://www.nsaa.net/index.php> (last visited on January 25, 2012).

⁵ *Supra* fn. 1.

⁶ NSAA, *Scope of Practice*, available at: http://www.nsaa.net/scope_of_practice.php (last visited on January 26, 2012).

⁷ Sections 464.027 and 409.906(21), F.S.

Physician assistants may also be reimbursed by insurance companies for surgical first assistant services if they act as substitutes for physicians who would have performed the same services.⁸

National Certification of Surgical First Assistants

AST: Certified Surgical First Assistant

An applicant for the Certified Surgical First Assistant (CSFA) designation must fulfill one of the following:

- Be a graduate of a surgical assistant program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP);
- Hold current certification as a Certified Surgical Technologist from the AST, have participated in at least 350 cases within the last 4 years, and have completed at least 2 full years of surgical first assistant experience; or
- Hold current surgical assistant certification from the NSAA or the American Board of Surgical Assistants (ABSA), have completed 50 hours of AST-approved continuing education within the last 2 years, show proof of operative case experience, and have at least an associate's degree.

Eligible applicants may register to take the CSFA exam offered by the National Board of Surgical Technology and Surgical Assisting (NBSTSA).⁹ The NBSTSA was previously known as the Liaison Council on Certification for the Surgical Technologist (LCCST). After passage of the exam and payment of \$290 in fees, an applicant may be certified.¹⁰

CSFA certification must be renewed every 4 years either by retaking and passing the initial certification examination or completing 75 hours of continuing education approved by the AST. Recertification by examination costs \$499.¹¹ Recertification by continuing education costs \$6 per credit hour for AST members and \$400 for non-members.¹²

More than 2,100 people currently hold CSFA certification.¹³

NSAA: Certified Surgical Assistant

Applicants for the Certified Surgical Assistant (CSA) designation must be graduates of approved surgical assistant training programs (there is one in Florida) or provide documentation of 2,250 hours of assisting experience along with several letters of reference from supervising surgeons. Applicants must also pass a multiple-choice examination offered by the NSAA which covers subjects such as anatomy, medical terminology, technical surgical skills, sterile technique, and anesthesia, and pay \$400 in fees. Discounts apply for recent graduates and military personnel, and certification by endorsement is available to nurses, physician assistants, and other practitioners under certain conditions.

⁸ Section 627.419(6), F.S.

⁹ Edu-Search, *Surgical Technology Certification*, available at: <http://www.surgicaltechnologists.net/education/certification> (last visited on February 6, 2012).

¹⁰ NBSTSA, *CSFA Examination*, available at: <http://nbstsa.org/examinations-csfa.html> (last visited on February 6, 2012).

¹¹ NBSTSA, *Renewal Options*, available at: <http://nbstsa.org/renewal/index.html> (last visited on February 6, 2012).

¹² AST, *Certification*, available at: <http://www.ast.org/membership/certification.aspx> (last visited on February 6, 2012).

¹³ Telephone conversation with NBSTSA staff.

CSAs must be recertified every 2 years by completing 50 hours of approved continuing education or retaking and passing the initial certification exam. Recertification fees for NSAA non-members are \$700 if via continuing education and \$900 if via reexamination. Fees for NSAA members are \$100 if via continuing education. Member fee for recertification via reexamination is not specified.^{14,15}

NSAA membership dues are \$300 annually and may be discounted for dual members of the NSAA and the American College of Surgeons.¹⁶ 1,374 people currently hold CSA certification nationally.¹⁷

ABSA: Surgical Assistant-Certified

To be eligible to for ABSA certification, an applicant must hold at least an associate’s degree with a “C” grade or higher in specified college-level courses, have completed an ABSA- or CAAHEP-approved surgical assistant training program, and have passed the ABSA Surgical Assistant-Certified (SA-C) examination. The examination consists of both multiple-choice and practical components and is offered four times per year in Miami, Chicago, New Jersey, and Houston. Payment of a \$710 fee is also required.

SA-C certification must be renewed biennially by retaking and passing the initial certification exam or by completing certain professional development activities. Such activities include reading professional journals, presenting at a hospital seminar, publishing clinical research, and attending medical conferences. Each person must also document participation as a surgical first assistant in either 400 surgical cases or 1,500 procedure hours and hold current certification in cardiopulmonary resuscitation (CPR), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS). Recertification via examination costs \$180, while recertification via professional development costs \$100.¹⁸

1,473 people currently hold active SA-C certification.¹⁹

III. Effect of Proposed Changes:

Section 1 creates an undesignated section of law. It provides various definitions, provides qualifications for supervising physicians of certified surgical first assistants, and states that supervising physicians may be liable for any acts or omission of certified surgical first assistants acting under the physician’s supervision and control. A certified surgical first assistant may only perform duties within his or her scope of certification, delegated by a physician under direct supervision, and in certain medical facilities. Physicians or health care facilities are not required to contract with certified surgical first assistants, and the Board of Medicine (the board) may not limit the employment arrangement of a certified surgical first assistant.

¹⁴ NSAA, *FAQs*, available at: <http://nsaa.net/faq.php> (last visited on January 26, 2012).

¹⁵ NSAA, *Certification*, available at: <http://www.nsaa.net/certification.php> (last visited on January 26, 2012).

¹⁶ NSAA, *Membership*, available at: <http://www.nsaa.net/membership.php> (last visited on January 26, 2012).

¹⁷ Telephone conversation with NSAA staff.

¹⁸ ABSA, *Candidate Information Booklet and Certification Examination Review Guide 2011-2012*, available at: http://www.absa.net/pdf/ABSA_Guide_2011-2012.pdf (last visited on February 7, 2012).

¹⁹ ABSA, *History and Statistics*, available at: <http://www.absa.net/statistics.php> (last visited on February 7, 2012).

To be licensed as a certified surgical first assistant in Florida, an applicant must:

- Be at least 18 years old;
- Hold and maintain certification from the LCCST, the NSAA, or the ABSA;
- Complete an application form which includes a sworn statement of any prior felony convictions and any previous revocation or denial of licensure or certification; and
- Remit an application fee not to exceed \$750 as set by the board.

Licensure by reciprocity may also be granted to surgical first assistants who are licensed in good standing by other states and by their certifying agency, who have paid the appropriate fees, and who have complied with all other licensure requirements of the board.

Licenses must be renewed biennially. Each renewal application must include a renewal fee not to exceed \$1000 as set by the board, a sworn statement of no felony convictions in the previous 2 years, and proof of either completion of 40 hours of continuing education approved by certain national organizations or current certification from the LCCST, NSAA, or ABSA. Licenses in inactive or delinquent status may only be reactivated as provided in s. 456.036, F.S.

Certified surgical first assistant licensure does not authorize the licensee to engage in the practice of medicine or nursing and is not required for registered nurses, advanced registered nurse practitioners, registered nurse first assistants, or physician assistants as a condition of employment.

The bill provides certain penalties for certified surgical first assistants who violate or whose supervising physician violates provisions of ch. 456 or 458, F.S. Discipline may also be imposed on certified surgical first assistants if they or their supervising physicians are being investigated for a violation of these acts. Persons who are not licensed as certified surgical first assistants by the department but hold themselves to be so commit third-degree felonies. The board may deny, suspend, or revoke a certified surgical first assistant license if it determines that the licensee has violated provisions of ch. 456 or 458, F.S.

The bill also gives the department rulemaking authority to administer the provisions of this section and provides for the appropriation of fees collected under this section.

Section 2 amends s. 627.419, F.S., to require that if a health insurance policy, health care services plan, or other contract provides for payment for surgical first assisting benefits or services, the policy, plan, or contract shall be construed as providing for payment to a physician assistant or a certified surgical first assistant or their employers in addition to a registered nurse first assistant or his or her employer (only nurses are currently mentioned in this section). This provision applies only if reimbursement for an assisting physician, licensed under ch. 458 or 459, F.S., would be covered and a physician assistant, registered nurse first assistant, or certified surgical first assistant who performs such services is used as a substitute. Insurers are not required to directly reimburse certified surgical first assistants if the assistants will be paid for a surgical procedure by the health care facility at which the procedure is performed. The term “certified surgical first assistant” is also defined.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

People wishing to practice as surgical first assistants in Florida would be required to pay to the department up to \$750 in application fees, up to \$1,000 in license renewal fees, and several hundred dollars in other fees required to maintain national certification.

B. Private Sector Impact:

Anyone other than nurses, advanced registered nurse practitioners, or physician assistants who wishes to practice as a surgical first assistant in Florida must be licensed by the department.

C. Government Sector Impact:

The department will experience a recurring increase in workload relating to processing of applications for licensure and renewal of licensure for surgical first assistants. This will be offset by a corresponding increase in application and renewal fees. The department will also experience a non-recurring increase in workload related to rulemaking and updating the practitioner licensure database, both of which may be absorbed with current resources.

VI. Technical Deficiencies:

The bill creates an undesignated section of law and refers frequently to “the department” without specifying to which department it refers. Presumably this means the Department of Health.

The bill frequently refers to physicians and healthcare facilities in general terms. To be most clear, the bill should refer to practitioners and facilities according to the chapter of the Florida Statutes under which they are licensed.

Lines 71-73 and 74-76 are redundant. One of these sections could be eliminated to increase clarity. These lines also provide conflicting definitions for the scope of practice of certified surgical first assistants.

It is unclear why surgical first assistants must be referred to as both licensed and certified. It might be simpler to refer to them as “licensed surgical first assistants” and include national certification as part of the licensure process. Furthermore, calling such surgical first assistants “licensed” rather than “certified” in statute would help differentiate the state designation of certification from the CSFA designation offered by the AST.

VII. Related Issues:

It is unclear if the bill is requiring that all surgical first assistants other than a registered nurse, advanced registered nurse practitioner, a registered nurse first assistant or a physician assistant, practicing in the state be licensed as such. If the bill does require all surgical first assistants to be licensed, this would have major ramifications on surgical practice and the education of health care professionals. Currently, a wide variety of practitioners, both licensed and unlicensed, may serve in this role, including physicians, medical students, medical residents, physician assistant students, nursing students, and dental hygienists, dental hygienist students, podiatrists, podiatrist students, and surgical technologists. Requiring all these practitioners to be certified as surgical first assistants before letting them participate in surgery would be redundant as training programs for such practitioners already incorporate appropriate surgery skills, and surgical assisting is already in the scope of practice for the licensees.

This bill does not provide exemptions from licensure as certified surgical first assistants for people who are currently practicing as surgical first assistants. First assistants who have been practicing for decades may be forced to retake certification examinations, re-enroll in training programs, pay hundreds of dollars in fees, and fulfill other requirements necessary for national certification. Furthermore, a currently practicing first assistant who has been convicted of or entered a plea of guilty or nolo contendere to certain federal and state felonies would be denied licensure under ch. 456.0635, F.S., barring such a person from employment in what was formerly his or her career.

The definition of “direct supervision” in the bill requires certified surgical first assistants to be supervised by a physician under certain conditions. However, other practitioners, such as dentists and podiatrists, also perform surgery, and the bill currently does not permit them to supervise certified surgical first assistants. If all certified surgical first assistants are required to be licensed, as is provided in this bill, and such licensed practitioners may only practice under physicians, dentists and podiatrists may experience difficulty in finding employees to assist with their surgical procedures.

Language concerning liability of supervising physicians could be worded more strongly. Lines 63-69 and lines 158-161 state that such physicians *may* be liable for the acts and omissions of certified surgical first assistants they supervise, but this language does not *require* that physicians hold such liability. This lack of clear liability could lead to possible litigation.

Lines 77-79 state that a certified surgical first assistant may only perform his or her duties in a medical clinic, hospital, ambulatory surgical center, or similar medical institution. It is unclear if office surgery facilities are included in this definition; surgeries performed in physician offices constitute a large proportion of procedures performed in this state.

The language in lines 80-89 is vague and confusing, and the intention of this language is unclear.

Lines 96-97 require that licensed certified surgical first assistants hold and maintain certification from one of three recognized certifying agencies. However, some of these agencies offer a variety of certifications, and it might be helpful to designate exactly which certifications are required for licensure in Florida.

The bill makes no provision that applicants for licensure as certified surgical first assistants meet general licensure requirements for health care practitioners in ch. 456, F.S.

Lines 120-125 state that the board can impose certain penalties on CSFAs if they violate certain laws OR if their supervising physicians violate certain laws. It is unclear why certified surgical first assistants are held responsible for the actions of their supervisors.

Lines 133-140 specify conditions for the licensure by reciprocity for surgical first assistants licensed in other states. It is unclear if such applicants for licensure by reciprocity have to be licensed in good standing both by their state and by one of the three national certifying organizations. Furthermore, one of the provisions for licensure by reciprocity is “compliance with all other requirements of the board” (line 140). It is unclear why there is no similar provision concerning general licensure of certified surgical first assistants. Also, no entity is given the authority to designate the amount for “appropriate licensure fees” in line 139.

The bill provides in lines 141-143 that licenses on inactive or delinquent status may only be reactivated as provided in s. 456.036, F.S.; however, the bill makes no provisions as to how licenses become inactive or delinquent in the first place.

The bill provides a maximum application fee of \$750 for surgical first assistant certification and a maximum renewal fee of \$1000. These fees are significantly higher than the maximum fees set for licensure of other healthcare professionals. For example, the maximum fee for initial licensure or renewal of a physician is \$500, and physicians have a much higher earning potential than surgical first assistants.²⁰ Furthermore, surgical first assistants must maintain certification from one of three national organizations mentioned in the bill to be eligible for licensure in Florida; initial certification fees from these organizations \$290-700, and renewals range from \$100-900. The substantial fees required to become a certified surgical first assistant in Florida may discourage many current and future practitioners from working in the state.

The bill makes no reference to osteopathic physicians or ch. 459, F.S., the Osteopathic Medical Practice Act, in provisions concerning disciplinary action taken against certified surgical first assistants. It is unclear if osteopathic physicians are not permitted to supervise certified surgical first assistants under this bill or if no disciplinary action is associated with their misconduct or

²⁰ Sections 458.311 and 458.319, F.S.

the misconduct of certified surgical first assistants they supervise. Furthermore, the bill makes no provision to involve the Board of Osteopathic Medicine in any administrative procedures relating to certified surgical first assistants.

The bill identifies the LCCST as a certifying entity for certified surgical first assistants. However, this organization no longer exists; it has been replaced by the NBSTSA.

The bill mentions the LCCST, the NSAA, the ABSA, the American Medical Association (AMA), the AmeriScan Osteopathic Association (AOA), and the Accreditation Council on Continuing Medical Education (ACCME) as authorized providers of continuing education for surgical first assistant licensure renewal. The LCCST no longer exists and has been replaced by the NBSTSA, which does not provide continuing education; rather, the AST provides and approves continuing education credits to be used towards maintenance of CSFA certification. The AMA, AOA, and ACCME are physician organizations.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.