

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 Judiciary

BILL: CS/CS/SB 398

INTRODUCER: Banking and Insurance Committee; Health Policy Committee; and Senator Bean

SUBJECT: Physician Assistants

DATE: April 5, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McElhenny	Stovall	HP	Fav/CS
2.	Matiyow	Burgess	BI	Fav/CS
3.	Munroe	Cibula	JU	Favorable
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
 B. AMENDMENTS..... Technical amendments were recommended
 Amendments were recommended
 Significant amendments were recommended

I. Summary:

CS/CS/SB 398 clarifies that a supervising physician may delegate to a physician assistant authority to order medications, including controlled substances, for patients in hospitals, ambulatory surgical centers and mobile surgical facilities.

This bill substantially amends the following sections of the Florida Statutes: 458.347 and 459.022.

II. Present Situation:

Background

A physician assistant (PA) is a medical professional who works as part of a team with a doctor. A PA may perform physical examinations, diagnose and treat illnesses, order and interpret lab tests, perform procedures, assist in surgery, provide patient education and counseling and make rounds in hospitals and nursing homes. A PA is a graduate of an accredited PA educational program who is nationally certified and state-licensed to practice medicine with the supervision

of a physician.¹ In Florida, PAs are licensed and regulated under the Medical Practice Act at s. 458.347, F.S., and the Osteopathic Medical Practice Act at s. 459.022, F.S.

A supervising physician may delegate only tasks and procedures to the physician assistant which are within the supervising physician's scope of practice.² The physician assistant may work in any setting that is within the scope of practice of the supervising physician's practice. The Board of Medicine and the Board of Osteopathic Medicine (the boards) are required to adopt rules pertaining to the general principles that supervising physicians must use in developing the scope of practice of a physician assistant under direct supervision and under indirect supervision.³ The supervising physician's scope of practice includes "those tasks and procedures which the supervising physician is qualified by training or experience to perform."⁴

Under current law, a supervisory physician may delegate to a fully licensed PA the authority to prescribe or dispense any medication used in the supervisory physician's practice unless such medication is listed on the formulary of drugs that a physician assistant may not prescribe (generally referred to as the negative formulary).⁵ The Legislature specified that the negative formulary must include controlled substances, general anesthetics, and radiographic contrast materials.⁶ This same section of law that dictates at least part of the contents of the negative formulary, also provides:

This paragraph does not prohibit a supervisory physician from delegating to a physician assistant the authority to order medication for a hospitalized patient of the supervisory physician.⁷

The boards adopted the following negative formulary:⁸

(1) PHYSICIAN ASSISTANTS APPROVED TO PRESCRIBE MEDICINAL DRUGS UNDER THE PROVISIONS OF SECTION 458.347(4)(e) OR 459.022(4)(e), F.S., ARE NOT AUTHORIZED TO PRESCRIBE THE FOLLOWING MEDICINAL DRUGS, IN PURE FORM OR COMBINATION:

- (a) Controlled substances, as defined in Chapter 893, F.S.;
- (b) General, spinal or epidural anesthetics;
- (c) Radiographic contrast materials.

(2) A supervising physician may delegate to a prescribing physician assistant only such authorized medicinal drugs as are used in the supervising physician's practice, not listed in subsection (1).

(3) Subject to the requirements of this subsection, Sections 458.347 and 459.022, F.S., and the rules enacted thereunder, drugs not appearing on this formulary may

¹ See American Academy of Physician Assistants available at: http://www.aapa.org/the_pa_profession/what_is_a_pa.aspx (last visited on Apr. 3, 2013).

² Sections 458.347(4)(a) and 459.022(4)(e), F.S.

³ Sections 458.347(4) and 459.022(4), F.S.

⁴ Rules 64B8-30.012 and 64B15-6.010, F.A.C.

⁵ Sections 458.347(4)(e) and 459.022(4)(e), F.S.

⁶ Section 458.347(4)(f), F.S.

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

⁸ Rules 64B8-30.008 and 64B15-6.0038, F.A.C.

be delegated by a supervising physician to a prescribing physician assistant to prescribe.

(4) Nothing herein prohibits a supervising physician from delegating to a physician assistant the authority to order medicinal drugs for a hospitalized patient of the supervising physician, nor does anything herein prohibit a supervising physician from delegating to a physician assistant the administration of a medicinal drug under the direction and supervision of the physician (emphasis added).

The Florida Academy of Physician Assistants indicates that certain hospitals have questioned the authority of PAs to order medications, specifically controlled substances, in the hospital setting given the uncertainty in the differing terminology between “prescribing” authority and “ordering” authority contained in the law and rules.

The terms “prescribe” and “order” are not defined in the Medical Practice Act or the Osteopathic Medical Practice Act.

An “order” is a term of art generally used in a hospital or institutional setting where an authorized practitioner orders a medication for an inpatient rather than prescribes a medication.⁹ The order is recorded in the medical record and the medication is administered to the patient by licensed nurses or other appropriately licensed health care personnel.

Under the Florida Pharmacy Act, a “prescription” includes any order for drugs or medicinal supplies written or transmitted by any means of communication by a duly licensed practitioner authorized by the laws of the state to prescribe such drugs or medicinal supplies and intended to be dispensed by a pharmacist.¹⁰ The Florida Comprehensive Drug Abuse Prevention and Control Act, ch. 893, F.S., provides a similar definition for that term.¹¹

DEA Registration

An individual practitioner who is an agent or employee of another practitioner (other than a mid-level practitioner¹²) registered to dispense controlled substances, may, when acting in the normal course of business or employment, administer or dispense (other than by issuance of a prescription) controlled substances if and to the extent authorized by state law, under the registration of the employer or principal practitioner in lieu of being registered himself or herself.¹³

Practitioners (e.g., interns, residents, staff physicians, mid-level practitioners) who are agents or employees of a hospital or other institution, may, when acting in the usual course of business or

⁹ See for example: 42 C.F.R. 482.23(c) relating to Conditions of Participation for Hospitals under Medicare, Standard: Preparation and administration of drugs and Rule 64B16-28.602, F.A.C., relating to rules of the Board of Pharmacy for Institutional Class II Dispensing.

¹⁰ Section 465.003(14), F.S.

¹¹ Section 893.02(22), F.S.

¹² Examples of mid-level practitioners include, but are not limited to: nurse practitioners, nurse midwives, nurse anesthetists, clinical nurse specialists, physician assistants.

¹³ 21 C.F.R. 1301.22

employment, administer, dispense, or prescribe controlled substances under the registration of the hospital or other institution in which he or she is employed, in lieu of individual registration, provided that:

- The dispensing, administering, or prescribing is in the usual course of professional practice; The practitioner is authorized to do so by the state in which he or she practices;
- The hospital or other institution has verified that the practitioner is permitted to administer, dispense, or prescribe controlled substances within the state;
- The practitioner acts only within the scope of employment in the hospital or other institution;
- The hospital or other institution authorizes the practitioner to administer, dispense, or prescribe under its registration and assigns a specific internal code number for each practitioner; and
- The hospital or other institution maintains a current list of internal codes and the corresponding practitioner.¹⁴

III. Effect of Proposed Changes:

Sections 1 and 2 amend s. 458.347, F.S., relating to PAs under the medical practice act and s. 459.022, F.S., relating to PAs under the osteopathic medical practice act, respectively, to authorize a supervisory physician to delegate to his or her PA the authority to order medications for the supervisory physician's patient in any hospital, ambulatory surgical center, or mobile surgical facility notwithstanding any provision under the Pharmacy Practice Act or the Florida Comprehensive Drug Abuse Prevention and Control Act. Likewise, the PA is authorized to order any medication under these conditions. Accordingly, a PA could order a controlled substance for his or her supervising physician's patient in a hospital, ambulatory surgical center, or mobile surgical facility if the supervising physician delegated that authority to the PA. Because no specific authorization for prescribing controlled substances is included within ch. 893, F.S., the PA would need to operate under the supervising physician's DEA registration.

The effective date of the bill is July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁴ *Id.*; also see Drug Enforcement Manual, Practitioner's Manual (2006 ed.) available at: http://www.deadiversion.usdoj.gov/pubs/manuals/pract/pract_manual012508.pdf (last visited Apr. 3, 2013).

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:

None.

VIII. Additional Information:

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

CS/CS by Banking and Insurance on March 14, 2013:

The CS clarifies the patient must be under the care of the supervising physician in order for the physician assistant to be able to order medication for that patient.

CS by Health Policy on February 21, 2013:

The CS provides that an order is not a prescription and authorizes the PA to order medications under the direction of the supervisory physician. The CS does not include new authority that may have expanded the scope of practice of a PA.

B. Amendments:

None.