

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #: CS/HB 541

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Health Quality Subcommittee;
Plasencia

115 Y's

0 N's

COMPANION BILLS: CS/SB 1526

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/HB 541 passed the House on April 9, 2015, and subsequently passed the Senate on April 28, 2015.

Athletic trainers are regulated by the Department of Health (DOH), and the Board of Athletic Training (Board), within DOH. Athletic training is the recognition, prevention, and treatment of an injury sustained during an athletic activity which affects the athlete's ability to participate or perform.

The bill changes the licensure requirements and regulatory provisions for athletic trainers. It removes the requirement that an applicant for licensure be at least 21 years of age, and requires an applicant:

- who graduated college prior to 2004, to hold a certification from the Board of Certification;
- to hold a degree from a college or university professional athletic training degree program that has been accredited by the Commission on Accreditation of Athletic Training Education;
- who applies on or after July 1, 2016, to undergo a criminal background check; and
- to be certified in cardiopulmonary resuscitation and the use of automated external defibrillators.

The bill removes the requirement for athletic trainers to practice under the written protocol of a physician, as determined by the Board. Instead, athletic trainers must practice under the direction of a physician. The physician must communicate direction through oral or written prescription or protocols, and the athletic trainer must provide service or care in the manner dictated by the physician. The bill authorizes the Board to adopt rules for mandatory requirements and guidelines for communication between the athletic trainer and a physician. The bill clarifies that when an athletic training student is acting under the direct supervision of a licensed athletic trainer, the athletic trainer must be physically present.

The bill removes the criminal penalty of a first degree misdemeanor for the unlicensed practice of athletic training for compensation. Instead, the bill creates a first degree misdemeanor for an unlicensed individual practicing athletic training, representing oneself as an athletic trainer, or providing athletic training services to a patient. The bill also creates a first degree misdemeanor for using the term "licensed athletic trainer," the abbreviation "AT" or "LAT", or a similar title or abbreviation that suggests licensure as an athletic trainer, without being licensed. The bill removes the Board's disciplinary authority for certain advertising acts.

The bill exempts from licensure individuals authorized to practice athletic training in another state when employed by, or a volunteer for, an out-of-state secondary or post-secondary educational institution, or a recreational, competitive, or professional organization that is temporarily present in this state.

The bill also states that nothing in the athletic training practice act prevents third party payors from reimbursing employers of athletic trainers for covered services rendered by a licensed athletic trainer.

The bill has an insignificant negative fiscal impact on DOH, to the extent rulemaking is required to conform to the provisions of the bill. There is no fiscal impact on local governments.

The bill was approved by the Governor on June 10, 2015, ch. 2015-116, L.O.F., and will become effective on January 1, 2016.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Athletic Trainers

Athletic Trainers are regulated by the Florida Department of Health (DOH), and the Board of Athletic Training (Board), within DOH.¹ Athletic training is the recognition, prevention, and treatment of an injury sustained during an athletic activity which affects the athlete's ability to participate or perform.² An athletic activity includes the participation in an event that is conducted by an educational institution, a professional athletic organization, or an amateur athletic organization, involving exercises, sports, games, or recreation requiring any of the physical attributes of strength, agility, flexibility, range of motion, speed, and stamina.³

In 1994, the Legislature began fully regulating and licensing the practice of athletic training to protect the public and ensure that athletes are assisted by individuals adequately trained to recognize, prevent, and treat physical injuries sustained during athletic activities.⁴

As of June 30, 2014, there were 1,935 active licensed athletic trainers. During FY 2013-14, DOH received 356 applications from individuals seeking initial licensure as an athletic trainer.⁵

Applicants seeking licensure as an athletic trainer must: complete the application form and remit the required fees;⁶ be at least 21 years of age; possess a baccalaureate degree from a college or university accredited by the United States Department of Education or the Commission on Recognition of Postsecondary Accreditation, or a program approved by the Board; complete an approved athletic training curriculum from a college or university accredited by an accrediting agency recognized and approved by the United States Department of Education or the Commission on Recognition of Postsecondary Accreditation, or approved by the Board; be certified in cardiovascular pulmonary resuscitation from the American Red Cross, the American Heart Association, or an equivalent certification entity as determined by the Board; submit proof of taking a two-hour course on the prevention of medical errors; and submit a certified copy of the National Athletic Trainers Association Board of Certification certificate or a notarized copy of examination results.⁷

Section 468.723, F.S., exempts certain individuals from licensure as athletic trainers, including:

- An individual acting within the professional scope of their DOH-issued license;
- An athletic training student acting under the direct supervision of a licensed athletic trainer;
- An individual administering standard first aid to an athlete;
- A person licensed under ch. 548, F.S.,⁸ and acting within the scope of such license; and
- A person providing personal training instructions for exercise, aerobics, or weightlifting, if the person does not represent himself or herself as an "athletic trainer."

¹ Part XIII, ch. 468, F.S. and Rule 64B33, F.A.C.

² S. 468.701(3) and (5), F.S.

³ S. 468.701(2), F.S.

⁴ Ch. 94-119, L.O.F. and s. 468.70, F.S.

⁵ Florida Department of Health, Division of Medical Quality Assurance: *Annual Report July 1, 2009 to June 30, 2010*, at 13 and 17, available at: <http://mgawebteam.com/annualreports/1314/#14> (last viewed March 13, 2015).

⁶ The application fee is \$100 and the initial licensure fee for even years is \$125 and in odd years is \$75. Rule 64B33-3.001, F.A.C. The license for the profession of athletic training is renewed September 30 of each even year. Rule 64B-9.001, F.A.C.

⁷ S. 468.707, F.S., and Rule 64B33-2.001, F.A.C.

⁸ Chapter 548 regulates pugilistic exhibitions, including the attendance of a physician who serves as an agent of the Florida State Boxing Commission for each event.

Licensed athletic trainers are required to complete 24 hours of continuing education courses biennially. The courses must focus on the prevention of athletic injuries; the recognition, evaluation, and immediate care of athletic injuries; rehabilitation and reconditioning of athletic injuries; health care administration; or professional development and responsibility of athletic trainers.⁹

An athletic trainer is required to practice within a written protocol¹⁰ established with a supervising physician.¹¹ The athletic trainer and the supervising physician must review the protocol prior to the athletic trainer renewing his or her license.¹² Licensure renewal for athletic trainers is required biennially.¹³

The Board considers the following principles, methods, and procedures within the scope of a licensed athletic trainer's practice: injury prevention; injury recognition and evaluation; first aid; emergency care; injury management/treatment and disposition; rehabilitation through the use of safe and appropriate physical rehabilitation practices, including those techniques and procedures following injury and recovery that restore and maintain normal function status; conditioning; performance of tests and measurements to prevent, evaluate, and monitor acute and chronic injuries; selection of preventive and supportive devices, temporary splinting and bracing, protective equipment, strapping, and other immobilization devices and techniques to protect an injured structure, facilitate ambulation and restore normal functioning; organization and administration of facilities within the scope of the profession; and education and counseling to the public regarding the care and prevention of athletic injuries.¹⁴

In the course of treatment and rehabilitation of muscle skeletal injuries, a licensed athletic trainer may administer: therapeutic exercise; massage; mechanical devices; cryotherapy (e.g., ice, cold packs, cold water immersion, spray coolants); thermotherapy (e.g., topical analgesics, moist/dry hot packs, heating pads, paraffin bath); and other therapeutic agents with the properties of water (e.g., whirlpool), electricity (e.g., electrical stimulation, diathermy¹⁵), light (e.g., infrared, ultraviolet), or sound (e.g., ultrasound); and topical prescription medications (e.g., steroid preparation for phonophoresis¹⁶) only at the direction of a physician.¹⁷

⁹ Rule 64B33-2.005, F.A.C.

¹⁰ The written protocol must include: the athletic trainer's name, license number, and curriculum vitae; the supervising physician's name, license number, and curriculum vitae; method of contacting the supervising physician, specifically delineating the method to report new injuries as soon as practicable; the patient population to be treated (e.g., specific scholastic athletic programs, patients of a specific clinic, patients with specific physician referral); the method of assessment of a patient's status and treatment; delineation of the items considered within the scope of practice for the athletic trainer to include the use of modalities/equipment that may be initiated by the athletic trainer or require a physician's order; and identification of resources for emergency patient care (e.g., nearest hospital with emergency services, ambulance service). Rule 64B33-4.001(1), F.A.C.

¹¹ S. 468.713, F.S., "...the physician must be licensed under chapter 458 (allopathic physician), 459 (osteopathic physician), or 460 (chiropractic physician)."

¹² Rule 64B33-4.001(2), F.A.C.

¹³ Rule 64B33-3.001(3), F.A.C.

¹⁴ Rule 64B33-3.001(3), F.A.C.

¹⁵ Diathermy is a method of physical therapy that involves using high-frequency electric current, ultrasound, or microwaves to deliver heat to muscles and ligaments.

¹⁶ Phonophoresis has been used in an effort to enhance the absorption of topically applied analgesics and anti-inflammatory agents through the therapeutic application of ultrasound.

¹⁷ Rule 64B33-3.001(4), F.A.C.

An athletic trainer may be subject to criminal penalties for conducting certain unlicensed activity. The following acts constitute a first degree misdemeanor:

- Practicing athletic training for compensation without holding an active license;
- Using or attempting to use an athletic trainer license that has been suspended or revoked;
- Knowingly employing unlicensed individuals in the practice of athletic training;
- Obtaining or attempting to obtain an athletic trainer license by misleading statements; and
- Using the title "athletic trainer" without holding an active license.¹⁸

Current law authorizes the Board to impose penalties¹⁹ on athletic trainers for committing certain violations in the practice of athletic training, including:

- Failing to follow advertising guidelines;
- Committing incompetency or misconduct;
- Committing fraud;
- Committing negligence, gross negligence, or repeated negligence;
- Displaying an inability to safely provide services due to illness or use of alcohol or drugs or as a result of any mental or physical condition; and
- Violating any provision of chapters 456 or 468, F.S., or any rules adopted pursuant thereto.²⁰

The Board, under rule 64B33-5.001, F.A.C., uses detailed disciplinary guidelines to determine the appropriate penalty. The disciplinary guidelines include a range of penalties that a licensee can expect for committing a certain violation, including penalties for first offenses through third offenses. For example, if an athletic trainer is found to have committed incompetency, the guidelines provide a different penalty for a first, second, and third offense.

Effect of the Bill

The bill clarifies and strengthens the practice requirements for athletic trainers by expressly prohibiting athletic trainers from providing, offering to provide, or representing that he or she is qualified to provide any care or services that he or she lacks the education, training, or experience to provide, or that he or she is otherwise prohibited by law from providing. The bill also provides that the service and care provided by an athletic trainer must relate to the prevention, recognition, evaluation, management, disposition, treatment, or rehabilitation of a physically active person who sustained an injury involving exercise, sports, recreation, or a related physical activity. In providing such care and services, the bill authorizes athletic trainers to use physical modalities, such as heat, light, sound, cold, electricity, and mechanical devices.

The bill revises the requirements to become licensed as an athletic trainer by removing the requirement that the applicant must be at least 21 years of age. An applicant who graduated college prior to 2004 must hold a current certification from the Board of Certification. The bill requires the college or university from which the applicant holds a degree to be accredited by the Commission on Accreditation of Athletic Training Education. The degree must be from a professional athletic degree program. The bill requires an applicant, who applies on or after July 1, 2016, to undergo a criminal background check. Applicants must also be certified in both cardiopulmonary resuscitation and the use of an AED.

¹⁸ S. 468.717, F.S.

¹⁹ S. 456.072(2), F.S., authorizes the Board to impose one or more of the following penalties: refusal to certify an application for a license; suspension or permanent revocation of a license; restriction of practice or license; imposition of an administrative fine not to exceed \$10,000 for each count or separate offense, however, if the violation is for fraud or making a false or fraudulent representation, the Board must impose a fine of \$10,000 per count or offense; issuance of a reprimand or letter of concern; placement of the licensee on probation for a period of time and subject to such conditions as determined by the Board; corrective action; imposition of an administrative fine not to exceed \$500 for violations regarding patient's rights; required refund of fees billed and collected from the patient or a third party on behalf of the patient; and required remedial education by the athletic trainer.

²⁰ S. 468.719(1), F.S.

The bill removes the requirement for athletic trainers to practice within the written protocol of a physician, as determined by the Board. Instead, the bill requires athletic trainers to practice under the direction of a physician. The physician must communicate his or her direction through oral or written prescription or protocols as deemed appropriate by the physician, and the athletic trainer must provide service or care in the manner dictated by the physician. The bill authorizes the Board to adopt rules for mandatory requirements and guidelines for communication between the athletic trainer and a physician, including reporting new or recurring injuries or conditions to the physician.

The bill clarifies that when an athletic training student is acting under the direct supervision of a licensed athletic trainer, the athletic trainer must be physically present.

The bill removes a duplicative prohibition against acts of sexual misconduct by athletic trainers and provides a cross reference to the general prohibition against sexual misconduct for all DOH licensees under s. 456.063, F.S.

The bill removes the criminal penalty of a first degree misdemeanor for the unlicensed practice of athletic training for compensation. Instead, the bill creates a first degree misdemeanor for an unlicensed individual practicing athletic training, representing oneself as an athletic trainer, or providing athletic training services to a patient. The bill also creates a first degree misdemeanor for using the term "licensed athletic trainer," the abbreviation "AT" or "LAT", or a similar title or abbreviation that suggests licensure as an athletic trainer, without being licensed. The bill removes the Board's disciplinary authority for certain advertising acts.

The bill removes the DOH's authority to discipline an athletic trainer for failing to include the athletic trainer's name and license number in advertising.

The bill also states that the athletic training practice act does not prevent or restrict third party payors from reimbursing employers of athletic trainers for covered services rendered by a licensed athletic trainer.

The bill exempts from licensure individuals authorized to practice athletic training in another state when employed by, or a volunteer for, an out-of-state secondary or post-secondary educational institution, or a recreational, competitive, or professional organization that is temporarily present in this state. The bill also removes an exemption from licensure as an athletic trainer for a person licensed under ch. 458, F.S., which specifically governs pugilistic exhibitions.

The bill removes an outdated provision which requires initial appointees to the Board to be appointed in a manner to provide for staggered terms.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

To the extent the DOH will have to adopt rules to conform to the new requirements of this bill, the DOH may incur insignificant costs associated with rulemaking, which may be absorbed within existing 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.