SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 626

SPONSOR: Health, Aging, and Long-Term Care Committee, Senator Fasano, and others

SUBJECT: Anesthesiologist Assistance

DATE: February 2, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Favorable/CS
2.	Knudson	Deffenbaugh	BI	Favorable
3.			CJ	
4.			AHS	
5.			AP	
6.				

I. Summary:

Committee Substitute for Senate Bill 626 provides for the licensure of anesthesiologist assistants under the regulatory jurisdiction of the Board of Medicine or the Board of Osteopathic Medicine, and for joint rulemaking by these boards for aspects of the practice of this profession. The regulation would allow an anesthesiologist assistant to practice within the framework of a protocol under the direct supervision of a supervising anesthesiologist or group of anesthesiologists. The bill provides definitions and standards of practice and performance for anesthesiologist assistants and anesthesiologists. The Board of Medicine and the Board of Osteopathic Medicine are given rulemaking authority to implement the provisions of the bill regulating anesthesiology providers, including anesthesiologists and the anesthesiologist assistants that such physician specialists may supervise.

The bill specifies requirements for education and training of anesthesiologist assistants and other licensure requirements, including the expanded duties of the Board of Medicine and the Board of Osteopathic Medicine over this profession. The bill creates a criminal offense punishable as a third-degree felony for any person who falsely holds himself or herself out as an anesthesiologist assistant. A supervising anesthesiologist is liable for any act or omission of an anesthesiologist assistant acting under the anesthesiologist's supervision and control. The bill requires the Board of Medicine and the Board of Osteopathic Medicine by rule, to require all anesthesiologist assistants licensed under ss. 458.3475 or 459.023, F.S., to maintain medical malpractice insurance or provide proof of financial responsibility. The grounds for which an allopathic or osteopathic physician may be subject to discipline for failure to adequately supervise certain health care practitioners is revised to include anesthesiologist assistants.

This bill creates sections 458.3475 and 549.023 of the Florida Statutes.

This bill amends sections 456.048, 458.331, and 459.015 of the Florida Statutes.

II. Present Situation:

Anesthesiologist Assistants, Certified Registered Nurse Anesthetists and Physician Assistants

Anesthesiologist assistants are allied health professionals who assist anesthesiologists in implementing an anesthesia care plan.[1] Anesthesiologist assistants are not regulated in Florida and thus are not permitted to assist anesthesiologists in this state. There are two accredited programs for educating and training anesthesiologist assistants, located at Emory University and Case Western Reserve University. These programs grant a Masters of Science degree and require applicants to have a bachelor's degree as a prerequisite to admission. Both anesthesiologist assistant training programs are accredited by the Commission on Accreditation of Allied Health Education Programs. Outside of Florida, 17 states nationwide regulate anesthesiologist assistants, and the Department of Health and Human Services has determined that anesthesiologist assistants are substantially equivalent to nurse anesthetists for Medicare reimbursement purposes.

In Florida, the only professions currently allowed to assist anesthesiologists in providing care are Certified Registered Nurse Anesthetists and Physician Assistants. Certified Registered Nurse Anesthetists (CRNAs) are regulated under part I, ch. 464, F.S., and provide anesthesia services, including determining patient health status, determining the type of anesthesia with the consent of the physician, ordering preanesthetic medication, ordering and administering anesthesia, taking corrective action for abnormal patient responses to anesthesia, and other procedures to the extent authorized by established protocols. There are four educational programs for CRNAs located in Florida which grant a Master of Science degree. Physician Assistants licensed under chs. 458 and 459, F.S., are authorized to provide anesthesia services under the guidelines and requirements of rules adopted by the Board of Medicine and the Board of Osteopathic Medicine, which require Physician Assistants to have graduated from an approved training program for anesthesiologist assistants.

The Sunrise Act: Requirements for Regulating a Profession

The Sunrise Act, codified in s. 11.62, F.S., requires the Legislature to consider specific factors in determining whether to regulate a new profession or occupation. The act requires that all legislation proposing regulation of a previously unregulated profession or occupation be reviewed by the Legislature based on a showing of the following: (1) that substantial risk of harm to the public is a risk of no regulation which is recognizable and not remote; (2) that the skills the profession requires are specialized and readily measurable; (3) that other forms of regulation do not or cannot adequately protect the public; and (4) that the overall cost-

[1] According to the American Academy of Anesthesiologist Assistants, the responsibilities of anesthesiologist assistants may include: pretesting and calibration of anesthesia delivery systems and monitors; collecting preoperative data and performing physical examinations; inserting venous, arterial and other indwelling catheters; administering drugs for inductions and maintenance of anesthesia; administering and monitoring regional anesthesia; airway management; administering cardio vascular drugs as supportive therapy; making anesthetic adjustments using intraoperative monitoring modalities; and providing safe transition from operating room to recovery area.

effectiveness and economic impact of the proposed regulation is favorable. The act requires proponents of regulation of a previously unregulated profession to provide information concerning the effect of the proposed legislation on the agency's resources to implement and enforce the regulation. Such information is to be provided to the agency that has jurisdiction over the regulation and the legislative committees of reference.

In response to a Sunrise questionnaire, the Florida Society of Anesthesiologists and the American Association of Anesthesiologist Assistants estimate that there are 600 to 700 anesthesiologist assistants practicing nationwide. Proponents of the regulation also note that the Florida Board of Medicine has expressed an opinion that anesthesiologist assistants may not practice in Florida without some change in existing regulation. Opponents of the legislation assert that there are a sufficient number of anesthesia providers in Florida and that any future demand will be sufficiently met by CRNAs and physician assistants. The opponents also argue that AAs lack the level of medical training and experience obtained by CRNAs and physician assistants, while the bill's proponents argue that the medical school affiliation of AA educational programs ensures that AA's will provide a high quality of medical care.

Proponents of the regulation argue that licensure of anesthesiologist assistants is needed to facilitate their practice in Florida and educational programs to be developed for training in Florida. The proponents argue that the licensing of anesthesiologist assistants would increase competition with CRNAs in providing anesthesia services to consumers in Florida. The provision of anesthesia services is dangerous and the basis of the argument for regulation is that in the absence of regulation, the public would not be adequately protected. However, to the extent that anesthesiologist assistants may not practice independently and must do so only under the supervision of a licensed allopathic or osteopathic physician, it is unlikely that there are no regulatory safeguards to protect the public. According to the website of the Case Western Reserve University's anesthesia program, "practicing independently or in a primary care setting is NOT included in the AAs (anesthesiologist assistant) scope of practice. AAs usually practice in a hospital setting which uses the Anesthesia Care Team approach and are always supervised by anesthesiologists." Proponents argue that if no regulatory standards exist for anesthesiologist assistants it would be difficult for the Board of Medicine or the Board of Osteopathic Medicine to hold physicians responsible for inadequate supervision.

Proponents indicated that anesthesiologist assistants are licensed and regulated by the state Board of Medicine in Alabama, Georgia, Missouri, New Mexico, Ohio, South Carolina, and Vermont. Anesthesiologist assistants work under delegatory authority in Colorado, Kentucky, Louisiana, Michigan, New Hampshire, Texas, Vermont, West Virginia, and Wisconsin. In response to a Sunrise questionnaire, proponents argue that it is impossible to accurately forecast the number of practitioners to be licensed but estimate that about 20 would apply for licensure in Florida to practice as anesthesiologist assistants.

III. Effect of Proposed Changes:

Section 1. Amends s. 456.048, F.S. to require the Board of Medicine and the Board of Osteopathic Medicine by rule, to require all anesthesiologist assistants licensed under ss. 458.3475, or 459.023, F.S., to maintain medical malpractice insurance or provide proof of financial responsibility in an amount and in a manner determined by the boards to be sufficient to

cover claims arising out of the rendering of or failure to render professional care and services in Florida. This section is also amended to include anesthesiologist assistants in existing exemptions to the financial responsibility requirements.

Section 2. Amends s. 458.331, F.S., to revise a ground for which an allopathic physician is subject to discipline for failing to adequately supervise the activities of specified health care practitioners acting under the supervision of that physician, and by adding anesthesiologist assistants to the list of supervised practitioners.

Section 3. Creates s. 458.3475, F.S., to provide for the regulation of anesthesiologist assistants by the Board of Medicine and for joint rulemaking by the Board of Medicine and the Board of Osteopathic Medicine for aspects of the practice of this profession.

The term "anesthesiologist" is defined as an allopathic physician who has successfully completed an accredited anesthesiology training program or its equivalent, and who is certified by the American Board of Anesthesiology, or is eligible to take that board's examination, or is certified by the Board of Certification in Anesthesiology affiliated with the American Association of Physician Specialists. "Anesthesiologist assistant" is defined as a graduate of an approved program who is licensed to perform medical services delegated and directly supervised by a supervising anesthesiologist. "Anesthesiology" is defined as the practice of medicine that specializes in the relief of pain during and after surgical procedures and childbirth, during certain chronic disease processes, and during resuscitation and critical care of patients in the operating room and intensive care environments. "Boards" is defined as the Board of Medicine and the Board of Osteopathic Medicine. Definitions are also provided for the terms "approved program" and "continuing medical education." "Direct supervision" is defined as supervision by an anesthesiologist who is present in the office, surgical or obstetrical suite that an anesthesiologist assistant is in, and is immediately available to provide direction while anesthesia services are being performed. "Proficiency examination" is defined as an entry-level examination approved by the Board of Medicine and the Board of Osteopathic Medicine, including the examination administered by the National Commission on Certification of Anesthesiologist Assistants. "Trainee" means a person who is currently enrolled in an approved program.

The bill establishes standards for anesthesiologist assistants and supervising anesthesiologists. An anesthesiologist who directly supervises an anesthesiologist assistant must be qualified in the medical areas in which the anesthesiologist assistant performs and is liable for the performance of the anesthesiologist assistant. An anesthesiologist may not supervise more than two anesthesiologist assistants at one time. After July 1, 2008, the Board of Medicine may by rule, allow an anesthesiologist to supervise up to four anesthesiologist assistants. Requirements for a protocol are established for the supervisory relationship between an anesthesiologist and an anesthesiologist assistant. An anesthesiologist must file a copy of the protocol with the Board of Medicine upon establishing a supervisory relationship with an anesthesiologist assistant. The information to be included in the protocol is specified. The protocol must be updated biennially and the anesthesiologist assistant may only practice under the direct supervision of an anesthesiologist who has signed the protocol.

The bill specifies functions that may be included in the anesthesiologist assistant's protocol while such practitioner is under the direct supervision of an anesthesiologist. The bill provides

that nothing in the regulatory provisions for anesthesiologists and anesthesiologist assistants or the medical practice act prevents third-party payers from reimbursing employers of anesthesiologist assistants for covered services rendered by such anesthesiologist assistants. An anesthesiologist assistant must clearly convey to the patient that he or she is an anesthesiologist assistant and may perform anesthesia tasks and services within the framework of a written practice protocol. Anesthesiologist assistants are prohibited from prescribing, ordering, or compounding any controlled substance, legend drug or medical device, or dispensing sample drugs to patients. While under the direct supervision of an anesthesiologist, anesthesiologist assistants may administer legend drugs or controlled substances, intravenous drugs, fluids, or blood products, or inhalation or other anesthetic agents to patients that are ordered by the supervising anesthesiologist.

The practice of anesthesiologist assistant trainees is exempt from the requirements of the medical practice act while the trainee is performing assigned tasks as a trainee in conjunction with an approved training or educational program. Before providing anesthesia services, including the administration of anesthesia, in conjunction with the requirements of an approved program, the trainee must clearly convey to the patient that he or she is a trainee. The bill gives the Board of Medicine and the Board of Osteopathic Medicine authority to approve education and training programs for anesthesiologist assistants. The Board of Medicine and the Board of Osteopathic Medicine must approve programs recommended by the boards which meet standards established by rules of the boards. The Board of Medicine and the Board of Osteopathic Medicine may only recommend those anesthesiologist assistant training programs that hold full or provisional accreditation from the Commission on Accreditation of Allied Health Education Programs.

Licensure requirements for anesthesiologist assistants are provided. Any person who desires to be licensed must be certified by the Board of Medicine to be: at least 18 years old; have satisfactorily passed a proficiency examination with a score established by the National Commission on Certification of Anesthesiologist Assistants; certified in advanced cardiac life support; and complete an application form and remit an application fee no greater than $1,000 established by rule of the Board of Medicine and the Board of Osteopathic Medicine.

Items that the applicants must submit are specified, including a certificate of completion of approved training; a sworn statement of any felony convictions, prior licensure discipline or denials in any state; and two letters of recommendation from anesthesiologists. Biennial licensure renewal requirements are specified and include a renewal fee of no greater than $1,000 as set by the Board of Medicine and the Board of Osteopathic Medicine; a sworn statement of no felony convictions in the immediately preceding 2 years; and completion of 40 hours of continuing medical education or a current certificate issued by the National Commission on Certification of Anesthesiologist Assistants or its successor.

Anesthesiologist assistants must notify the Department of Health in writing, within 30 days after obtaining employment that requires a license under this chapter and any subsequent change in his or her supervising anesthesiologist. The notification must include specified information identifying the supervising anesthesiologist. Submission of a copy of the required protocol by the anesthesiologist assistant satisfies the requirement for the anesthesiologist assistant to notify the department within 30 days of employment.

The chairperson of the Board of Medicine may appoint an anesthesiologist and an anesthesiologist assistant to advise the board as to the promulgation of rules for the licensure of anesthesiologist assistants. The Board of Medicine may use a committee structure to receive any recommendations to the board regarding rules and all matters relating to anesthesiologist assistants. The Board of Medicine must recommend the licensure of anesthesiologist assistants and develop all rules regulating the use of anesthesiologist assistants by qualified anesthesiologists who are licensed under ch. 458 or ch. 459, F.S., including rules to ensure the continuity of supervision is maintained in each practice setting, and rules to improve safety in the clinical practices of licensed anesthesiologist assistants. The Board of Medicine and the Board of Osteopathic Medicine must consider adopting a proposed rule at the regularly scheduled meeting immediately following the submission of the proposed rule. A proposed rule may not be adopted by either board unless both boards have accepted and approved the identical language contained in the proposed rule. The language of all proposed rules must be approved by both the Board of Medicine and the Board of Osteopathic Medicine pursuant to each board's guidelines and standards for adopting proposed rules. The Board of Medicine and the Board of Osteopathic Medicine are authorized to adopt rules to implement the provisions of the bill.

A person who falsely holds himself out as an anesthesiologist assistant commits a felony of the third degree. The Board of Medicine may impose discipline on an anesthesiologist assistant or the supervising anesthesiologist for violation of applicable grounds for discipline in ch. 456, F.S., or the Medical Practice Act. A supervising anesthesiologist is liable for any act or omission of an anesthesiologist assistant acting under the anesthesiologist's supervision and control. The Department of Health is required to allocate the fees collected from the anesthesiologist assistants to the board.

Section 4. Amends s. 459.015, F.S., to revise a ground for which an osteopathic physician is subject to discipline for failing to adequately supervise the activities of specified health care practitioners acting under the supervision of that physician, by adding anesthesiologist assistants to the list of supervised practitioners.

Section 5. Creates s. 459.023, F.S., to provide for the regulation of anesthesiologist assistants by the Board of Osteopathic Medicine and for joint rulemaking by the Board of Medicine and the Board of Osteopathic Medicine for aspects of the practice of this profession.

The term "anesthesiologist" is defined as an osteopathic physician who has successfully completed an accredited anesthesiology training program or its equivalent, and who is certified by the American Osteopathic Board of Anesthesiology or is eligible to take that board's examination, is certified by the American Board of Anesthesiology or is eligible to take that board's examination, or is certified by the Board of Certification in anesthesiology affiliated with the American Association of Physician Specialists. "Anesthesiologist Assistant" is defined as a graduate of an approved program who is licensed to perform medical services delegated and directly supervised by a supervising anesthesiologist. "Anesthesiology" is defined as the practice of medicine that specializes in the relief of pain during and after surgical procedures and childbirth, during certain chronic disease processes and during resuscitation and critical care of patients in the operating room and intensive care environments. "Boards" is defined as the Board of Medicine and the Board of Osteopathic Medicine. Definitions are also provided for the terms "approved program" and "continuing medical education." "Direct supervision" is defined as

supervision by an anesthesiologist who is present in the office, surgical or obstetrical suite that an anesthesiologist assistant is in, and is immediately available to provide direction while anesthesia services are being performed. “Proficiency examination” is defined as an entry-level examination approved by the Board of Medicine and the Board of Osteopathic Medicine, including the examination administered by the National Commission on Certification of Anesthesiologist Assistants. “Trainee” means a person who is currently enrolled in an approved program.

The bill establishes standards for anesthesiologist assistants and supervising anesthesiologists. An anesthesiologist who directly supervises an anesthesiologist assistant must be qualified in the medical areas in which the anesthesiologist assistant performs and is liable for the performance of the anesthesiologist assistant. An anesthesiologist may not supervise more than two anesthesiologist assistants at one time. The Board of Osteopathic Medicine may by rule, allow an anesthesiologist to supervise up to four anesthesiologist assistants after July 1, 2008. Requirements for a protocol are established for the supervisory relationship between an anesthesiologist and an anesthesiologist assistant. An anesthesiologist must file a copy of the protocol with the Board of Osteopathic Medicine upon establishing a supervisory relationship with an anesthesiologist assistant. The information to be included in the protocol is specified. The protocol must be updated biennially and the anesthesiologist assistant may only practice under the direct supervision of an anesthesiologist who has signed the protocol.

The bill specifies functions that may be included in the anesthesiologist assistant’s protocol while such practitioner is under the direct supervision of an anesthesiologist. The bill provides that nothing in the regulatory provisions for anesthesiologists and anesthesiologist assistants or the osteopathic medical practice act prevents third-party payers from reimbursing employers of anesthesiologist assistants for covered services rendered by such anesthesiologist assistants. An anesthesiologist assistant must clearly convey to the patient that he or she is an anesthesiologist assistant and may perform anesthesia tasks and services within the framework of a written practice protocol. Anesthesiologist assistants are prohibited from prescribing, ordering, or compounding any controlled substance, legend drug, or medical device, or dispensing sample drugs to patients. While under the direct supervision of an anesthesiologist, anesthesiologist assistants may administer legend drugs or controlled substances, intravenous drugs, fluids or blood products, or inhalation or other anesthetic agents to patients that are ordered by the supervising anesthesiologist.

The practice of anesthesiologist assistant trainees is exempt from the requirements of the osteopathic medical practice act while the trainee is performing assigned tasks as a trainee in conjunction with an approved training or educational program. Before providing anesthesia services, including the administration of anesthesia, in conjunction with the requirements of an approved program, the trainee must clearly convey to the patient that he or she is a trainee. The bill gives the Board of Medicine and the Board of Osteopathic Medicine authority to approve education and training programs for anesthesiologist assistants. The Board of Medicine and the Board of Osteopathic Medicine must approve programs recommended by the boards which meet standards established by rules of the boards. The Board of Medicine and the Board of Osteopathic Medicine may only recommend those anesthesiologist assistant training programs that hold full or provisional accreditation from the Commission on Accreditation of Allied Health Education Programs.

Licensure requirements for anesthesiologist assistants are provided any that person who desires to be licensed must be certified by the Board of Osteopathic Medicine to be: at least 18 years old; have satisfactorily passed a proficiency examination with a score established by the National Commission on Certification of Anesthesiologist Assistants; certified in advanced cardiac life support; and complete an application form and remit an application fee no greater than $1,000 as set by the Board of Medicine and the Board of Osteopathic Medicine; a sworn statement of no felony convictions in the immediate preceding 2 years; and completion of 40 hours of continuing medical education or a current certificate issued by the National Commission on Certification of Anesthesiologist Assistants or its successor.

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The chairperson of the board of Osteopathic Medicine may appoint an anesthesiologist and an anesthesiologist assistant to advise the board as to the promulgation of rules for the licensure of anesthesiologist assistants. The Board of Osteopathic Medicine may use a committee structure to receive any recommendations to the board regarding rules and all matters relating to anesthesiologist assistants. The Board of Osteopathic Medicine must recommend the licensure of anesthesiologist assistants and develop all rules regulating the use of anesthesiologist assistants by qualified anesthesiologists who are licensed under chs. 458 or 459, F.S. including rules to ensure the continuity of supervision is maintained in each practice setting, and rules to improve safety in the clinical practices of licensed anesthesiologist assistants. The Board of Medicine and the Board of Osteopathic Medicine must consider adopting a proposed rule at the regularly scheduled meeting immediately following the submission of the proposed rule. A proposed rule may not be adopted by either board unless both boards have accepted and approved the identical language contained in the proposed rule. The language of all proposed rules must be approved by both the Board of Medicine and the Board of Osteopathic Medicine pursuant to each board's guidelines and standards for adopting proposed rules. The Board of Medicine and the Board of Osteopathic Medicine are authorized to adopt rules to implement the provisions of this bill.

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Section 6. Provides that the act shall take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill requires anesthesiologist assistant licensure applicants to pay an application fee of no greater than $1,000 as set by the Board of Medicine and the Board of Osteopathic Medicine. License renewal applicants will also be subject to a fee of no greater than $1,000 as set by the boards.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Health has made estimates of the bill's cost.[2] The department will incur costs to implement the proposed regulation and estimates it will need 1 full time equivalent position (a Regulation Specialist I, to be split between the Board of Medicine and the Board of Osteopathic Medicine). For fiscal year 2004-05, the departments will need approximately $61,472 to cover expenses that will be offset by an estimated $15,520 in revenue.[3] In fiscal year 2005-06 the department will need $52,266 that will be offset by an estimated $10,250.[4] Also, in fiscal year 2005-06 license renewals will begin and it is assumed that the initial renewal will result in 100 licensees renewing at $200 plus the $5 unlicensed activity fee for a total of $20,500.

The Department of Health expects the regulation of this profession to operate in a deficit. The department notes that the amount of "allocated expenditures" assessed on the profession could range from $25,000 to $50,000 annually in addition to the "direct expenditures" reported above.

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[2] The Department of Health estimates are based on the assumption that at least 50 applicants will make application during fiscal year 2004-05.

[3] Estimated revenues for fiscal year 2004-05 are based on a $100 initial applicant fee, a $200 initial licensure fee, and a $5 unlicensed activity fee for 50 applicants.

[4] Fiscal year 2005-06 revenues pro-rate the initial licensure fees to $100 for estimated revenue of $10,250.

The bill creates a felony offense applicable to any person who falsely holds himself or herself out as an anesthesiologist assistant. Section 921.01, F.S., requires any legislation that creates a felony offense, enhances a misdemeanor offense to a felony or reclassifies an existing felony offense to a greater felony result in a net zero sum impact in the overall prison population as estimated by the Criminal Justice Estimating Conference. Exceptions to the zero sum requirement are if the legislation contains a sufficient funding source to accommodate the change, or the Legislature abrogates the application of s. 921.001, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.