

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 649 Podiatric Medicine
SPONSOR(S): Cretul and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1016

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Health Quality</u>	<u>7 Y, 2 N</u>	<u>Owen</u>	<u>Lowell</u>
2) <u>Healthcare Council</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 649 changes the scope of a practice of podiatric physician by amending the definition of "practice of podiatric medicine" to limit the area that a podiatrist may diagnose or treat to the areas of the human foot and leg located below the knee.

The bill also limits a podiatrist from performing ankle surgery unless the podiatrist meets one of two requirements. The first requirement is for the podiatrist to be credentialed by a hospital or ambulatory surgery center on or before October 1, 1995; complete at least ten hours of board-approved continuing education related to ankle surgery annually; and comply with any other requirements established by the Board of Podiatry. The second requirement is for the podiatrist to complete a surgical residency program of at least three years and be eligible for certification to perform reconstructive rearfoot or ankle surgery and complete that certification by July 1, 2014 or within six years of first becoming eligible, whichever date is later.

The bill also directs a podiatrist to perform ankle surgery only in a hospital or ambulatory surgery center that is accredited by the Joint Commission on Accreditation of Healthcare Organizations at which the podiatrist has surgical privileges to perform ankle surgery. It requires a podiatrist who performs ankle surgery in an ambulatory surgery center to have surgical privileges to perform ankle surgery at a local hospital and specifies that a podiatrist who performs ankle surgery must meet the same standard of care applicable to an orthopedic surgeon who performs ankle surgery.

The bill restricts a podiatrist from performing Achilles tendon repair, unless he or she meets the specified ankle surgery requirements, and prohibits a podiatrist from performing surgery on Pilon fractures or tibial fractures that do not enter the ankle joint.

The fiscal impact is indeterminate at this time. The bill appears to have a negative fiscal impact to the Medical Quality Assurance Trust Fund and a potential negative fiscal impact to General Revenue (see fiscal comments).

The bill is effective July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

History of Podiatry

In 1932, United States podiatrists used the term “chiroprody”, or “surgeon of the foot” to define their profession. Later, the term “chiroprapist” was coined.¹ In the late 1950s, U.S. chiroprapists changed their name to “podiatrists”.

The practice of chiroprody became regulated in Florida in 1933. The definition of chiroprody was “the diagnosis, medical, surgical, palliative, and mechanical treatment of ailments of the human foot or leg, except the amputation thereof; and will include the use and prescription of local anesthetics.”² In 1979, the Legislature added to the definition, specifying that surgical treatment of the foot and leg must be limited to the part below the knee.³

Current Scope of Practice for Podiatric Physicians

Section 461.003(5), F.S., provides the definition for the “practice of podiatric medicine” as the “diagnosis or medical, surgical, palliative, and mechanical treatment of ailments of the human foot and leg. The surgical treatment of ailments of the human foot and leg shall be limited anatomically to that part below the anterior tibial tubercle.” The anterior tibial tubercle is located beneath the knee on the very upper part of the shin. The practice of podiatric medicine includes the amputation of the toes or other parts of the foot, but does not include amputation of the foot or leg in its entirety. A podiatric physician is permitted to prescribe drugs that relate specifically to their scope of practice.

According to an administrative rule adopted by the Board of Podiatry, the term “human leg,” as used in s. 461.003(5), F.S., means the entire lower extremity, extending from the head of the femur⁴ to the foot, but does not include the hip joint.⁵

The board also adopted a definition for the term “surgical treatment,” that means a distinctly operative kind of treatment, such as a cutting operation. As such, injections, x-rays, and other medical, palliative, and mechanical diagnostic techniques and treatments are not surgery.⁶

According to the American Podiatric Medical Association (APMA), “Doctors of Podiatric Medicine (DPMs) are physicians and surgeons who practice on the lower extremities, primarily on feet and ankles . . . DPMs are licensed in all 50 states, the District of Columbia, and Puerto Rico to diagnose and treat the foot and its related or governing structures by medical, surgical, or other means. The vast majority of states also include ankle care as part of the podiatric physician’s scope of practice.”⁷

¹ “Chiro” is a Greek word that means “hand and foot” and “Pod” is a Latin word that means “foot”.

² Chapter 1933-15911, L.O.F.

³ Chapter 1979- 228, L.O.F.

⁴ The “femur” is the bone in the leg that extends from the hip to the knee.

⁵ Rule 64B18-23.001, F.A.C.

⁶ *Id.*

⁷ American Podiatric Medical Association, Inc., “What is Podiatric Medicine?”

http://www.apma.org/s_apma/sec.asp?CID=8&DID=2819 (last visited March 6, 2008).

In 2007, the APMA found that 95% of their members who responded to a survey had privileges at a local hospital. In 2006, the APMA found that, in addition to hospital privileges, 75% of the members who responded had privileges at an accredited outpatient surgery center.⁸

According to the Department of Health's Medical Quality Assurance 2006-2007 Annual Report, there are 1,634 active podiatrists licensed in Florida.

Educational Background of a Podiatric Physician

According to the United States Department of Labor Bureau of Labor Statistics, a podiatrist must have a state license that requires the completion of: at least 90 semester hours of undergraduate study; a four-year post-graduate program at a college of podiatric medicine; and, in most states, a postdoctoral residency program lasting at least two years.

In 2007, there were seven colleges of podiatric medicine fully accredited by the Council on Podiatric Medical Education in the United States. At this time, Barry University in Miami Shores, has the only accredited college of podiatric medicine in Florida. During the first two years of a four-year post-graduate education, students normally receive classroom instruction in basic sciences, including anatomy, chemistry, pathology, and pharmacology. Third and fourth-year students typically have clinical rotations in private practices, hospitals, and clinics, where they learn how to take general and podiatric histories, perform routine physical examinations, interpret tests and findings, make diagnoses, and perform therapeutic procedures.⁹ Graduates receive the degree of Doctor of Podiatric Medicine (DPM).

To receive a license in Florida, an applicant must meet the following criteria:¹⁰

- Be at least 18 years of age;
- Possess a degree from a school or college of podiatric medicine or chiropody recognized and approved by the Council on Podiatry Education of the American Podiatric Medical Association;
- Complete one year of residency or ten years in the active practice of podiatry in another state immediately preceding the submission of application for licensure in Florida;
- Submit fingerprints for a criminal background check; and
- Pass an examination.

Court Decision and Debate over the Administrative Ruling Defining "Human Leg"

Since 1997, the definitions of "human leg" and "surgical treatment" adopted by the Board of Podiatry have been a source of controversy.

During a rule challenge hearing, evidence submitted indicated that references to the human leg may have multiple meanings within the anatomical, medical, and podiatric fields. A limited meaning refers to the lower limb between the knee and the ankle. A broader meaning refers to the entire limb, which encompasses the lower leg below the knee and the upper leg above the knee. In 1997, an administrative law judge ruled that the meaning of the definition of "human leg" was limited, not broad.¹¹

The Board of Podiatric Medicine appealed the ruling by the administrative law judge and prevailed in the First District Court of Appeal where the Court reversed the ruling. The Court ruled that the Board's rule defining "human leg" is valid. The term was meant to be broad and includes the entire limb from the waist down; excluding the hip socket.¹²

⁸ American Podiatric Medical Association, "2007 Podiatric Practice Survey,"

http://www.apma.org/s_apma/bin.asp?CID=11&DID=22586&DOC=FILE.PDF (last visited March 6, 2008).

⁹ United States Department of Labor Bureau of Labor Statistics, <http://www.bls.gov/oco/pdf/ocos075.pdf> (last visited March 6, 2008).

¹⁰ See s. 461.006, F.S.

¹¹ *Board of Podiatric Medicine v. Florida Medical Association*, 779 So. 2d 658 (Fla. 1st DCA 2001).

¹² *Id.*

Effect of Proposed Changes

Practice of Podiatric Medicine

The bill will reverse in part the First District Court of Appeals' decision and the Board of Podiatry's administrative rule by modifying the definition of "practice of podiatric medicine" to mean the diagnosis or treatment of the human foot and leg limited to the part below the knee.

Surgery

The bill limits a podiatrist from performing ankle surgery unless the podiatrist meets one the following requirements:

- On or before October 2, 1995, the podiatrist was credentialed by a hospital or ambulatory surgery center that was accredited by the Joint Commission on Accreditation of Healthcare Organizations, in which case the podiatrist must:
 - Notify the Board of Podiatry as to the hospital or ambulatory surgical center at which he or she is credentialed to perform ankle surgery;
 - Complete at least ten hours of board-approved continuing education related to ankle surgery annually; and
 - Comply with any other requirements established by the Board of Podiatry to ensure continued proficiency in performing ankle surgery; or
- The podiatrist must complete a surgical residency program of at least three years which is approved by the Council on Podiatric Medical Education and is eligible for certification by the American Board of Podiatric Surgery to perform reconstructive rearfoot or ankle surgery and complete that certification by July 1, 2014 or within six years of first becoming eligible, whichever date is later. A podiatrist may not continue to perform ankle surgery if he or she has not obtained the certification by the end of the six-year period.

The bill also directs a podiatrist to perform ankle surgery only in a hospital or ambulatory surgery center that is accredited by the Joint Commission on Accreditation of Healthcare Organizations at which the podiatrist has surgical privileges to perform ankle surgery. It requires a podiatrist who performs ankle surgery in an ambulatory surgery center to have surgical privileges to perform ankle surgery at a local hospital and specifies that a podiatrist who performs ankle surgery must meet the same standard of care applicable to an orthopedic surgeon who performs ankle surgery.

The bill allows a podiatrist to perform nonsurgical care without meeting the specified requirements listed above. However, it restricts a podiatrist from performing Achilles tendon repair, unless he or she meets the specified requirements listed above, and prohibits a podiatrist from performing any surgery on Pilon fractures or tibial fractures that do not enter the ankle joint.

C. SECTION DIRECTORY:

Section 1: Amends s. 461.003, F.S., redefining the term "practice of podiatric medicine".

Section 2: Creates s. 461.0145, F.S., providing requirements for a podiatrist performing certain surgeries.

Section 3: Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Patients would be required to go to a hospital or ambulatory surgical center in lieu of having ankle surgery in a physician's office, which may increase the cost of the surgical procedure.

D. FISCAL COMMENTS:

The fiscal impact is indeterminate at this time for the following reasons:

- The provisions in the bill require 10 hours of continuing education related to ankle surgery for the podiatric physicians who are credentialed to perform reconstructive rearfoot or ankle surgery. It is not clear whether these hours are part of the existing 40 hours of continuing education required for biannual licensure renewal or whether they are additional requirements. Clarification of this is needed to determine whether there would be a fiscal impact on the department to monitor compliance.
- The provisions in the bill will require the board to track podiatric physicians who have completed a surgical residency program of at least 36 months in length that is approved by the Council on Podiatric Medical Education, or the name of the hospital or ambulatory surgical where they received their credentials on or before October 2, 1995; this facility must be accredited by JCAHO. Depending upon how the department decides to track this information they may have to amend the COMPASS database.
- The consumer services unit within Medical Quality Assurance will most likely receive an increase in complaints which will need to be investigated for legal sufficiency. However, the increase is indeterminate.
- The fiscal impact to the Medicaid program is indeterminate at this time. However, there may be an increased cost for a Medicaid patient who receives podiatric care that requires surgery, which under the provisions of the bill, requires ankle surgeries to be performed in a hospital or ambulatory surgical center in lieu of a physician's office.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The department does not appear to have sufficient rulemaking authority to implement the provisions of paragraph (1)(a) of section 2 of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On lines 35, 38, 52, "licensed podiatric physician" should be changed to "podiatric physician."

On lines 46-48, the bill does not state whether the 10 hours of continuing education is in addition to the continuing education required of all podiatrists in s. 461.007.

On lines 49-51, the bill does not clearly provide rule authority to the department to implement the additional requirements.

On lines 55 and 61, the bill does not state when or under what circumstances a podiatric physician would be "currently eligible" for certification.

On lines 67 and 68, "Joint Commission on Accreditation of Healthcare Organizations" should be changed to "Joint Commission" to reflect the commission's recently changed name.

On line 74, the bill refers to an "orthopedic surgeon"; Florida law licenses physicians and osteopathic physicians under chapters 458 and 459, not specialties.

D. STATEMENT OF THE SPONSOR

HB 649 will enact critically important patient safety protections for Floridians. The bond of trust that patients place in their caregivers is unequalled. The basic foundation of that trust is that the professional is adequately trained and competent to render the necessary services. My legislation ensures that we protect Floridians by adopting reasonable and widely accepted standards for the practice of podiatric medicine in our state.

There has been a great deal of controversy surrounding the recent adoption of new definitions of the terms "leg" and "surgical procedures" through the regulatory process by the Board of Podiatric Medicine. As a member of the Health Quality committee I have heard many groups come before us to expand their scope of practice. Podiatrists decided to circumvent this process and as a result many members of the medical community are extremely concerned. The broad definitions adopted by the Board have subjected patients to treatment and procedures performed by untrained professionals. Another concern is that licensees are performing complex surgery on the ankle and Achilles tendon without meeting the educational training standards adopted by their own profession.

The strike- all amendment I will be offering adopts a true grandfather clause that holds harmless all current licensees in our state. This reflects a significant amount of hard work and compromise from staff and the interested parties. We look forward to continued discussions as we move through the process. Thank you very much for your support of this important legislation.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 18, 2008, the Health Quality Committee adopted one amendment to the bill. The substitute strike-all amendment replaces the bill's requirement that a podiatrist meet one of two requirements to perform ankle surgery with a requirement that a podiatrist licensed after July 1, 2010 complete a 36 month surgical residency program to perform ankle surgery or Achilles tendon repair. The amendment requires the podiatrist to also obtain certification in reconstructive rearfoot or ankle surgery within five

years of completion of surgical residency and biennially complete ten hours of continuing education relating to ankle surgery and Achilles tendon repair. The amendment includes the American Osteopathic Association as an acceptable body to accredit a facility where the procedures are performed; removes the bill's requirement that a podiatrist performing ankle surgery meet the same standard of care applicable to an orthopedic surgeon; and replaces the bill's limitations on a podiatrist's surgical and nonsurgical care with a prohibition against a podiatrist performing surgery on tibial fractures that do not enter the ankle joint.

The bill was reported favorably with one amendment.