

# HOUSE BILL REPORT

## ESHB 1414

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### As Passed Legislature

**Title:** An act relating to licensing ambulatory surgical facilities.

**Brief Description:** Licensing ambulatory surgical facilities.

**Sponsors:** By House Committee on Health Care & Wellness (originally sponsored by Representatives Cody, Green, Morrell, Moeller, Schual-Berke and Campbell).

#### Brief History:

##### Committee Activity:

Health Care & Wellness: 1/29/07, 2/8/07 [DPS];  
Appropriations: 2/21/07, 2/22/07 [DPS(HCW)].

##### Floor Activity:

Passed House: 3/13/07, 95-1.  
Senate Amended.  
Passed Senate: 4/11/07, 48-1.  
House Concurred.  
Passed House: 4/14/07, 91-2.  
Passed Legislature.

#### Brief Summary of Engrossed Substitute Bill

- Establishes licensing and reporting requirements for ambulatory surgical facilities.
- Authorizes the Department of Health to adopt rules governing the office-based administration of sedation and anesthesia.

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### HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Cody, Chair; Morrell, Vice Chair; Barlow, Campbell, Green, Moeller, Pedersen, Schual-Berke and Seaquist.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Hinkle, Ranking Minority Member; Alexander, Assistant Ranking Minority Member; Condotta and Curtis.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Chris Blake (786-7392).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Health Care & Wellness be substituted therefor and the substitute bill do pass. Signed by 22 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Cody, Conway, Dunn, Ericks, Fromhold, Grant, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Morrell, Pettigrew, Schual-Berke, Seaquist and P. Sullivan.

**Minority Report:** Do not pass. Signed by 12 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Buri, Chandler, Darneille, Hinkle, Kretz, McDonald, Priest and Walsh.

**Staff:** Bernard Dean (786-7130).

### **Background:**

Ambulatory surgical centers are health care facilities that provide surgical services to patients that do not require hospitalization. Washington does not license ambulatory surgical centers, however, certain ambulatory surgical centers are subject to certificate of need reviews.

Since 1982, ambulatory surgical centers have been able to bill Medicare for certain surgical procedures. As of 2004 there were approximately 4,100 ambulatory surgical centers participating in Medicare and about 2,500 surgical procedures that they could bill for under Medicare.

Ambulatory surgical centers that wish to participate in Medicare must meet certain criteria and be approved through a process known as "certification." The certification standards address governance, safety, quality, and facility requirements. In addition, an ambulatory surgical center must obtain a survey which may be performed by a state agency or an accreditation organization. There are three primary accreditation organizations for ambulatory surgical centers that have deemed status from the Centers for Medicare and Medicaid Services (CMS). The CMS will deem an ambulatory surgical center to have met its standards if it is accredited by one of these organizations or licensed by a state licensing agency.

### **Summary of Engrossed Substitute Bill:**

Ambulatory surgical facilities must obtain a license from the Secretary of Health (Secretary) to operate in Washington. Ambulatory surgical facilities are defined as entities that provide specialty or multispecialty outpatient surgical services in which patients are admitted to and discharged by the facility within 24 hours and do not require inpatient hospitalization.

An applicant for a license to operate an ambulatory surgical facility must:

- submit an application that lists all of the surgical specialties that it offers;

- submit any building plans for review and approval for new construction, alterations, and additions to facilities;
- complete an on-site survey;
- provide information about ownership and management;
- submit information about its coordinated quality improvement program;
- submit a facility safety and emergency training program; and
- pay any required fees.

An applicant may demonstrate that it has met any of the standards for obtaining a license if it is Medicare-certified or by providing documentation that it has met the standards of an accrediting organization with substantially equivalent standards. A license is valid for three years.

Ambulatory surgical facilities must be surveyed every 18 months by the Department of Health (Department). An ambulatory surgical facility certified by Medicare or accredited by an approved organization may substitute one of that organization's surveys for every other Department-required survey. Every 18 months an ambulatory surgical facility must submit quality data to the Department. The Department must review the data to determine the quality of care at the facility.

A license is not required for an ambulatory surgical facility that is maintained and operated by a hospital, a dental office, or for outpatient surgical services that do not require general anesthesia and are routinely and customarily performed in the office of a practitioner in an individual or group practice.

Ambulatory surgical facilities must report any adverse actions that they take against a health care provider due to a conviction, determination or finding that the health care provider engaged in an act of unprofessional conduct. Prior to granting privileges to any practitioner, an ambulatory surgical facility must receive information from the practitioner regarding other hospitals or ambulatory surgical facilities where the practitioner had an association and any information about pending misconduct proceedings or malpractice actions. The ambulatory surgical facility must request other hospitals or ambulatory surgical facilities where the practitioner has had an association to disclose any prior or pending misconduct proceedings or malpractice actions.

Ambulatory surgical facilities must maintain policies to assure that information regarding unanticipated outcomes is given to patients or their families or representatives. Such notification is not an admission of liability and no statements or gestures suggesting an apology may be admitted as evidence in a civil trial. Ambulatory surgical facilities must post a notice of the phone number where a complaint may be filed with the Department. Ambulatory surgical facilities must participate in the state's adverse event reporting system.

The Secretary shall initiate investigations and bring enforcement actions for failures to comply with licensing requirements. The Secretary must determine which accreditation organizations have substantially equivalent standards for purposes of deeming ambulatory surgical facilities

to have met certain licensing requirements. In addition, the Secretary must develop standards for the construction, maintenance, and operation of ambulatory surgical facilities.

The Medical Quality Assurance Commission, the Podiatric Medical Board, and the Board of Osteopathic Medicine and Surgery are authorized to adopt rules to govern office-based administration of sedation and anesthesia.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on July 1, 2009, except for section 7, relating to convening a stakeholder group, which takes effect 90 days after adjournment in which bill is passed..

**Staff Summary of Public Testimony:** (Health Care & Wellness)

(In support) Ambulatory surgical facilities offer very safe and affordable surgical procedures. Eighty percent of all surgeries are performed on an outpatient basis. The ambulatory surgical facility industry is already regulated by Medicare and accrediting organizations and the bill should avoid duplication. This bill will promote patient safety and reduce monopolistic and anti-competitive behaviors. Ambulatory surgical facilities are cost-effective and should be regulated, but not in the same way that hospitals are regulated. Ambulatory surgical facilities already provide charity care in their communities. Regulating ambulatory surgical facilities will give the state a database of where these facilities are. Office-based surgery should not have to obtain a license. This bill is an important and necessary step for increasing patient safety. Financial and volume-related information should be gathered from ambulatory surgical facilities.

(With concerns) Podiatric physicians should be included in the legislation.

(Opposed) None.

**Staff Summary of Public Testimony:** (Appropriations)

(In support) None.

(Opposed) Dentists and oral surgeons were not originally included in this bill and were enrolled into the substitute bill. While we appreciate the goals of regulating where surgery is done, they are regulated by the Dental Quality Assurance Commission and their rules are unique to oral surgeons. The bill has a definition of general anesthesia. The fiscal issues surrounding insurance for dentists are complicated. Sometimes insurance won't pay for procedures done in a dental office and sometimes they don't pay if it is done in a hospital. We would encourage the committee to consider an amendment to recognize the rather unique nature of this program.

**Persons Testifying:** (Health Care & Wellness) (In support) Dr. Andrew Deck, Eastside Urology Associates; Dr. Bill Portuese, David Weber and Naya Kehayes, Washington Ambulatory Surgery Center; Rob Quinton, PolyClinic; Jim Jesernig, Healthsouth; Mark

Vollrath, Northwest Orthopedic Surgery; Laurie Jenkins, Department of Health; and Robb Menaul, Washington State Hospital Association.

(With concerns) Melanie Stewart, Washington Podiatric Medical Association; and Len Eddinger, Washington State Medical Association.

**Persons Testifying:** (Appropriations) (Opposed) Susie Tracey, Washington Society of Oral and Maxillofacial Surgeons.

**Persons Signed In To Testify But Not Testifying:** (Health Care & Wellness) None.

**Persons Signed In To Testify But Not Testifying:** (Appropriations) None.