S-1594.1

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**SENATE BILL 5906**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senator Becker

AN ACT Relating to the regulation of ambulatory surgical facilities; amending RCW 70.230.020, 70.230.050, 70.230.090, 70.230.100, 43.70.250, and 43.70.110; adding new sections to chapter 70.230 RCW; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 70.230.020 and 2016 c 146 s 2 are each amended to read as follows:

The secretary shall:

(1) Issue a license to any ambulatory surgical facility that:

(a) Submits payment of the fee established ((~~in RCW 43.70.110 and 43.70.250~~)) pursuant to section 5 of this act;

(b) Submits a completed application that demonstrates the ability to comply with the standards established for operating and maintaining an ambulatory surgical facility in statute and rule. An ambulatory surgical facility shall be deemed to have met the standards if it submits proof of certification as a medicare ambulatory surgical facility or accreditation by an organization that the secretary has determined to have substantially equivalent standards to those of the department; and

(c) Successfully completes the survey requirements established in RCW 70.230.100;

(2) Develop an application form for applicants for a license to operate an ambulatory surgical facility;

(3) Initiate investigations and enforcement actions for complaints or other information regarding failure to comply with this chapter or the standards and rules adopted under this chapter;

(4) Conduct surveys of facilities, including reviews of medical records and documents required to be maintained under this chapter or rules adopted under this chapter;

(5) By March 1, 2008, determine which accreditation organizations have substantially equivalent standards for purposes of deeming specific licensing requirements required in statute and rule as having met the state's standards; ((~~and~~))

(6) Provide written outreach, including information about the survey process, to ambulatory surgical facilities before conducting a survey;

(7) Provide written survey results to facilities, including quantified deficiencies, a corrective action plan, and a timeline for correction; and

(8) Adopt any rules necessary to implement this chapter.

**Sec.**  RCW 70.230.050 and 2016 c 146 s 3 are each amended to read as follows:

(1) An applicant for a license to operate an ambulatory surgical facility must demonstrate the ability to comply with the standards established for operating and maintaining an ambulatory surgical facility in statute and rule, including:

(a) Submitting a written application to the department providing all necessary information on a form provided by the department, including a list of surgical specialties offered;

(b) Submitting building plans for review and approval by the department for new construction, alterations other than minor alterations, and additions to existing facilities, prior to obtaining a license and occupying the building;

(c) Demonstrating the ability to comply with this chapter and any rules adopted under this chapter;

(d) Cooperating with the department during on-site surveys prior to obtaining an initial license or renewing an existing license;

(e) Providing such proof as the department may require concerning the ownership and management of the ambulatory surgical facility, including information about the organization and governance of the facility and the identity of the applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets;

(f) Submitting proof of operation of a coordinated quality improvement program in accordance with RCW 70.230.080;

(g) Submitting a copy of the facility safety and emergency training program established under RCW 70.230.060;

(h) Paying any fees established ((~~by the secretary under RCW 43.70.110 and 43.70.250~~)) pursuant to section 5 of this act; and

(i) Providing any other information that the department may reasonably require.

(2) A license is valid for ((~~three~~)) four years, after which an ambulatory surgical facility must submit an application for renewal of license upon forms provided by the department and the renewal fee as established ((~~in RCW 43.70.110 and 43.70.250~~)) pursuant to section 5 of this act. The applicant must demonstrate the ability to comply with the standards established for operating and maintaining an ambulatory surgical facility in statutes, standards, and rules. The applicant must submit the license renewal document no later than thirty days prior to the date of expiration of the license.

(3) The applicant may demonstrate compliance with any of the requirements of subsection (1) of this section by providing satisfactory documentation to the secretary that it has met the standards of an accreditation organization or federal agency that the secretary has determined to have substantially equivalent standards as the statutes and rules of this state.

**Sec.**  RCW 70.230.090 and 2007 c 273 s 10 are each amended to read as follows:

The department shall establish and adopt such minimum standards and rules pertaining to the construction, maintenance, and operation of ambulatory surgical facilities and rescind, amend, or modify such rules as necessary, ((~~as are necessary in the public interest,~~)) and particularly for the establishment and maintenance of standards of patient care required for the safe and adequate care and treatment of patients. In establishing and amending the format and content of these standards and rules, the department ((~~shall give consideration to maintaining~~)) must maintain consistency with such minimum standards and rules applicable to ambulatory surgical facilities in the survey standards of ((~~accrediting organizations or federal agencies that the secretary has determined to have substantially equivalent standards as the statutes and rules of this state~~)) the centers for medicare and medicaid services.

**Sec.**  RCW 70.230.100 and 2016 c 146 s 4 are each amended to read as follows:

(1) The department shall make or cause to be made a survey of all ambulatory surgical facilities ((~~according to the following frequency:~~

~~(a) Except as provided in (b) of this subsection, an ambulatory surgical facility must be surveyed by the department no more than once every eighteen months.~~

~~(b) An ambulatory surgical facility must be surveyed by the department no more than once every thirty-six months if the ambulatory surgical facility:~~

~~(i) Has had, within eighteen months of a department survey, a survey in connection with its certification by the centers for medicare and medicaid services or accreditation by an accreditation organization approved by the department under RCW 70.230.020(5);~~

~~(ii) Has maintained~~)) no more than once every forty-eight months and, when possible, on the same schedule as a survey related to certification by the centers for medicare and medicaid services or accreditation by an accreditation organization approved by the department under RCW 70.230.020(5).

(2) If an ambulatory surgical facility has undergone a survey and received certification by the centers for medicare and medicaid services or accreditation by an accreditation organization approved by the department under RCW 70.230.020(5) ((~~since the survey in connection with its certification or accreditation pursuant to (b)(i) of this subsection; and~~

~~(iii) As soon as practicable after a survey in connection with its certification or accreditation pursuant to (b)(i) of this subsection, provides the department with documentary evidence that the ambulatory surgical facility is certified or accredited and that the survey has occurred, including the date that the survey occurred.~~

~~(2)~~)) within forty-eight months of the last survey made or caused to be made by the department, and the ambulatory surgical facility provides the department with documentary evidence that the facility is certified or accredited and that the survey has occurred, including the date that the survey occurred, the department must not make or cause to be made an additional survey until forty-eight months from that date.

(3) Every survey of an ambulatory surgical facility may include an inspection of every part of the surgical facility. The department may make an examination of all phases of the ambulatory surgical facility operation necessary to determine compliance with all applicable statutes, rules, and regulations. In the event that the department is unable to make a survey or cause a survey to be made during the ((~~three~~)) four years of the term of the license, the license of the ambulatory surgical facility shall remain in effect until the state conducts a survey or a substitute survey is performed if the ambulatory surgical facility is in compliance with all other licensing requirements.

((~~(3)~~)) (4) Ambulatory surgical facilities shall make the written reports of surveys conducted pursuant to medicare certification procedures or by an approved accrediting organization available to department surveyors during any department surveys or upon request.

NEW SECTION. **Sec.**  A new section is added to chapter 70.230 RCW to read as follows:

Beginning with the omnibus appropriations act for fiscal year 2019, the licensing and renewal fees for ambulatory surgical facilities must be established in the omnibus appropriations act and any amendment or additions made to that act. The licensing and renewal fees established by the omnibus appropriations act or any amendment or additions to that act may not exceed the department's costs of regulating ambulatory surgical facilities.

NEW SECTION. **Sec.**  A new section is added to chapter 70.230 RCW to read as follows:

(1) The joint legislative audit and review committee must conduct a performance audit of the department's ambulatory surgical facility regulatory program. The study must explore:

(a) A comparison of state survey requirements and process and the centers for medicare and medicaid services survey requirements and process;

(b) The licensing fees required of ambulatory surgical facilities as they relate to actual department costs for regulating the facilities;

(c) Payments received by the department from the centers for medicare and medicaid services for surveys conducted on behalf of the centers for medicare and medicaid services; and

(d) Staffing for the survey program, including any need for an increase or reduction of staff.

(2) The audit must be completed and provided to the legislature by January 1, 2020.

(3) Beginning January 1, 2021, and annually thereafter, if the department reports a backlog of required state licensing surveys of more than twenty-five percent of all licensed facilities, the joint legislative audit and review committee must conduct a new audit.

**Sec.**  RCW 43.70.250 and 2017 c 195 s 26 are each amended to read as follows:

(1) It shall be the policy of the state of Washington that the cost of each professional, occupational, or business licensing program be fully borne by the members of that profession, occupation, or business.

(2) The secretary shall from time to time establish the amount of all application fees, license fees, registration fees, examination fees, permit fees, renewal fees, and any other fee associated with licensing or regulation of professions, occupations, or businesses administered by the department. Any and all fees or assessments, or both, levied on the state to cover the costs of the operations and activities of the interstate health professions licensure compacts with participating authorities listed under chapter 18.130 RCW shall be borne by the persons who hold licenses issued pursuant to the authority and procedures established under the compacts. In fixing said fees, the secretary shall set the fees for each program at a sufficient level to defray the costs of administering that program and the cost of regulating licensed volunteer medical workers in accordance with RCW 18.130.360, except as provided in RCW 18.79.202. ((~~In no case may the secretary increase a licensing fee for an ambulatory surgical facility licensed under chapter 70.230 RCW prior to July 1, 2018, nor may he or she commence the adoption of rules to increase a licensing fee prior to July 1, 2018.~~)) Licensing fees for ambulatory surgical facilities licensed under chapter 70.230 RCW must be set pursuant to section 5 of this act.

(3) All such fees shall be fixed by rule adopted by the secretary in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

**Sec.**  RCW 43.70.110 and 2015 c 77 s 1 are each amended to read as follows:

(1) The secretary shall charge fees to the licensee for obtaining a license. Physicians regulated pursuant to chapter 18.71 RCW who reside and practice in Washington and obtain or renew a retired active license are exempt from such fees. After June 30, 1995, municipal corporations providing emergency medical care and transportation services pursuant to chapter 18.73 RCW shall be exempt from such fees, provided that such other emergency services shall only be charged for their pro rata share of the cost of licensure and inspection, if appropriate. The secretary may waive the fees when, in the discretion of the secretary, the fees would not be in the best interest of public health and safety, or when the fees would be to the financial disadvantage of the state.

(2) Except as provided in subsection (3) of this section, fees charged shall be based on, but shall not exceed, the cost to the department for the licensure of the activity or class of activities and may include costs of necessary inspection.

(3) License fees shall include amounts in addition to the cost of licensure activities in the following circumstances:

(a) For registered nurses and licensed practical nurses licensed under chapter 18.79 RCW, support of a central nursing resource center as provided in RCW 18.79.202;

(b) For all health care providers licensed under RCW 18.130.040, the cost of regulatory activities for retired volunteer medical worker licensees as provided in RCW 18.130.360; and

(c) For physicians licensed under chapter 18.71 RCW, physician assistants licensed under chapter 18.71A RCW, osteopathic physicians licensed under chapter 18.57 RCW, osteopathic physicians' assistants licensed under chapter 18.57A RCW, naturopaths licensed under chapter 18.36A RCW, podiatrists licensed under chapter 18.22 RCW, chiropractors licensed under chapter 18.25 RCW, psychologists licensed under chapter 18.83 RCW, registered nurses and licensed practical nurses licensed under chapter 18.79 RCW, optometrists licensed under chapter 18.53 RCW, mental health counselors licensed under chapter 18.225 RCW, massage therapists licensed under chapter 18.108 RCW, advanced social workers licensed under chapter 18.225 RCW, independent clinical social workers and independent clinical social worker associates licensed under chapter 18.225 RCW, midwives licensed under chapter 18.50 RCW, marriage and family therapists and marriage and family therapist associates licensed under chapter 18.225 RCW, occupational therapists and occupational therapy assistants licensed under chapter 18.59 RCW, dietitians and nutritionists certified under chapter 18.138 RCW, speech-language pathologists licensed under chapter 18.35 RCW, and East Asian medicine practitioners licensed under chapter 18.06 RCW, the license fees shall include up to an additional twenty-five dollars to be transferred by the department to the University of Washington for the purposes of RCW 43.70.112.

(4) Department of health advisory committees may review fees established by the secretary for licenses and comment upon the appropriateness of the level of such fees.

(5) Notwithstanding the requirements in this section, licensing fees for ambulatory surgical facilities licensed under chapter 70.230 RCW must be set pursuant to section 5 of this act.

NEW SECTION. **Sec.**  Section 5 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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