CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5778**

Chapter 146, Laws of 2016

(partial veto)

64th Legislature

2016 Regular Session

AMBULATORY SURGICAL FACILITIES--LICENSURE AND REGULATION

EFFECTIVE DATE: 6/9/2016

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| Passed by the Senate March 8, 2016  Yeas 49 Nays 0  BRAD OWEN  **President of the Senate**  Passed by the House March 3, 2016  Yeas 97 Nays 0  FRANK CHOPP  **Speaker of the House of Representatives** | CERTIFICATE  I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5778** as passed by Senate and the House of Representatives on the dates hereon set forth.  HUNTER G. GOODMAN  **Chief Clerk** |
| Approved March 31, 2016 4:48 PM Except for section 7, which is vetoed. | April 1, 2016 |
| JAY INSLEE  **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

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**SUBSTITUTE SENATE BILL 5778**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2016 Regular Session

**State of Washington 64th Legislature 2016 Regular Session**

**By** Senate Health Care (originally sponsored by Senators Becker, Frockt, Keiser, Bailey, Dammeier, Liias, Hatfield, Angel, Dansel, King, Baumgartner, Brown, Cleveland, Warnick, Honeyford, Parlette, Hill, Rivers, Fain, Braun, Litzow, Conway, Sheldon, Ericksen, and Hewitt)

AN ACT Relating to ambulatory surgical facilities; amending RCW 43.70.250, 70.230.020, 70.230.050, and 70.230.100; adding a new section to chapter 48.39 RCW; adding a new section to chapter 70.230 RCW; creating a new section; repealing RCW 70.230.180; and providing an expiration date.

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

**Sec.**  RCW 43.70.250 and 2013 c 77 s 2 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. 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.

(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 70.230.020 and 2007 c 273 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 ((~~section 7, chapter 273, Laws of 2007~~)) RCW 43.70.110 and 43.70.250;

(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) Adopt any rules necessary to implement this chapter.

**Sec.**  RCW 70.230.050 and 2007 c 273 s 5 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 ((~~section 7, chapter 273, Laws of 2007~~)) RCW 43.70.110 and 43.70.250; and

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

(2) A license is valid for three 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 ((~~section 7, chapter 273, Laws of 2007~~)) RCW 43.70.110 and 43.70.250. 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 70.230.100 and 2007 c 273 s 11 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 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) 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 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.

((~~(2) An ambulatory surgical facility shall be deemed to have met the survey standards of this section 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 survey standards to those of the department. A survey performed pursuant to medicare certification or by an approved accrediting organization may substitute for a survey by the department if:~~

~~(a) The ambulatory surgical facility has satisfactorily completed a survey by the department in the previous eighteen months; and~~

~~(b) Within thirty days of learning the result of a survey, the ambulatory surgical facility provides the department with documentary evidence that the ambulatory surgical facility has been certified or accredited as a result of a survey and the date of the survey.~~))

(3) 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 48.39 RCW to read as follows:

If a payor that contracts with an ambulatory surgical facility licensed under chapter 70.230 RCW requires successful completion of a survey as part of the contract, the ambulatory surgical facility is deemed to have met survey requirements if it has successfully completed a survey performed pursuant to medicare certification or by an accrediting organization that has been determined by the secretary of the department of health to have substantially equivalent survey standards to those of the centers for medicare and medicaid services. The payor may not impose additional survey requirements on the ambulatory surgical facility.

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

(1) The department shall report to the fiscal committees of the legislature by December 1, 2016, and December 1, 2017, if it anticipates that the amounts raised by ambulatory surgical facility licensing fees will not be sufficient to defray the costs of regulating ambulatory surgical facilities. The report shall identify the amount of state general fund money necessary to compensate for the insufficiency.

(2) The department shall conduct a benchmark survey to compare Washington's system for licensing ambulatory surgical facilities with the ambulatory surgical facility licensing systems of other states with a similar number of licensed ambulatory surgical facilities. The survey must review the licensing standards, staffing levels, training of surveyors and inspectors, and expenditures of the selected states. The survey must examine the total cost of the other states' regulatory structures and analyze the reasons for any differences in cost. The survey must assess the extent to which total program costs in other states are supported through licensing fees compared with state general fund money or other resources. The findings of the survey must be submitted to the committees of the legislature with jurisdiction over health care issues by December 1, 2016. The findings must include recommendations for statutory, regulatory, and administrative changes to reduce ambulatory surgical facility licensing fees.

(3) This section expires July 1, 2018.

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2016, in the omnibus appropriations act, this act is null and void.

NEW SECTION. **Sec.**  RCW 70.230.180 (Ambulatory surgical facility account) and 2007 c 273 s 19 are each repealed.

**--- END ---**

Passed by the Senate March 8, 2016.

Passed by the House March 3, 2016.

Approved by the Governor March 31, 2016, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 1, 2016.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 7, Substitute Senate Bill No. 5778 entitled:

"AN ACT Relating to ambulatory surgical facilities."

Section 7 is a fiscal null and void clause, but this bill does not have a fiscal impact. Therefore the clause is not necessary.

For these reasons I have vetoed Section 7 of Substitute Senate Bill No. 5778.

With the exception of Section 7, Substitute Senate Bill No. 5778 is approved."