

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

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

Approved March 31, 2016 4:48 PM Except
for section 7, which is vetoed.

JAY INSLEE

Governor of the State of Washington

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

Secretary

FILED

April 1, 2016

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5778

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)

READ FIRST TIME 02/05/16.

1 AN ACT Relating to ambulatory surgical facilities; amending RCW
2 43.70.250, 70.230.020, 70.230.050, and 70.230.100; adding a new
3 section to chapter 48.39 RCW; adding a new section to chapter 70.230
4 RCW; creating a new section; repealing RCW 70.230.180; and providing
5 an expiration date.

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

7 **Sec. 1.** RCW 43.70.250 and 2013 c 77 s 2 are each amended to read
8 as follows:

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

13 (2) The secretary shall from time to time establish the amount of
14 all application fees, license fees, registration fees, examination
15 fees, permit fees, renewal fees, and any other fee associated with
16 licensing or regulation of professions, occupations, or businesses
17 administered by the department. In fixing said fees, the secretary
18 shall set the fees for each program at a sufficient level to defray
19 the costs of administering that program and the cost of regulating
20 licensed volunteer medical workers in accordance with RCW 18.130.360,
21 except as provided in RCW 18.79.202. In no case may the secretary

1 increase a licensing fee for an ambulatory surgical facility licensed
2 under chapter 70.230 RCW prior to July 1, 2018, nor may he or she
3 commence the adoption of rules to increase a licensing fee prior to
4 July 1, 2018.

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

8 **Sec. 2.** RCW 70.230.020 and 2007 c 273 s 2 are each amended to
9 read as follows:

10 The secretary shall:

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

12 (a) Submits payment of the fee established in (~~section 7,~~
13 ~~chapter 273, Laws of 2007~~) RCW 43.70.110 and 43.70.250;

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

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

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

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

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

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

36 (6) Adopt any rules necessary to implement this chapter.

37 **Sec. 3.** RCW 70.230.050 and 2007 c 273 s 5 are each amended to
38 read as follows:

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

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

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

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

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

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

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

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

26 (h) Paying any fees established by the secretary under (~~section~~
27 ~~7, chapter 273, Laws of 2007~~) RCW 43.70.110 and 43.70.250; and

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

30 (2) A license is valid for three years, after which an ambulatory
31 surgical facility must submit an application for renewal of license
32 upon forms provided by the department and the renewal fee as
33 established in (~~section 7, chapter 273, Laws of 2007~~) RCW 43.70.110
34 and 43.70.250. The applicant must demonstrate the ability to comply
35 with the standards established for operating and maintaining an
36 ambulatory surgical facility in statutes, standards, and rules. The
37 applicant must submit the license renewal document no later than
38 thirty days prior to the date of expiration of the license.

39 (3) The applicant may demonstrate compliance with any of the
40 requirements of subsection (1) of this section by providing

1 satisfactory documentation to the secretary that it has met the
2 standards of an accreditation organization or federal agency that the
3 secretary has determined to have substantially equivalent standards
4 as the statutes and rules of this state.

5 **Sec. 4.** RCW 70.230.100 and 2007 c 273 s 11 are each amended to
6 read as follows:

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

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

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

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

19 (ii) Has maintained certification by the centers for medicare and
20 medicaid services or accreditation by an accreditation organization
21 approved by the department under RCW 70.230.020(5) since the survey
22 in connection with its certification or accreditation pursuant to
23 (b)(i) of this subsection; and

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

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

1 ~~((2) An ambulatory surgical facility shall be deemed to have met~~
2 ~~the survey standards of this section if it submits proof of~~
3 ~~certification as a medicare ambulatory surgical facility or~~
4 ~~accreditation by an organization that the secretary has determined to~~
5 ~~have substantially equivalent survey standards to those of the~~
6 ~~department. A survey performed pursuant to medicare certification or~~
7 ~~by an approved accrediting organization may substitute for a survey~~
8 ~~by the department if:~~

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

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

15 (3) Ambulatory surgical facilities shall make the written reports
16 of surveys conducted pursuant to medicare certification procedures or
17 by an approved accrediting organization available to department
18 surveyors during any department surveys~~((7))~~ or upon request.

19 NEW SECTION. **Sec. 5.** A new section is added to chapter 48.39
20 RCW to read as follows:

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

31 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.230
32 RCW to read as follows:

33 (1) The department shall report to the fiscal committees of the
34 legislature by December 1, 2016, and December 1, 2017, if it
35 anticipates that the amounts raised by ambulatory surgical facility
36 licensing fees will not be sufficient to defray the costs of
37 regulating ambulatory surgical facilities. The report shall identify

1 the amount of state general fund money necessary to compensate for
2 the insufficiency.

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

19 (3) This section expires July 1, 2018.

20 ***NEW SECTION. Sec. 7. If specific funding for the purposes of**
21 **this act, referencing this act by bill or chapter number, is not**
22 **provided by June 30, 2016, in the omnibus appropriations act, this**
23 **act is null and void.**

**Sec. 7 was vetoed. See message at end of chapter.*

24 **NEW SECTION. Sec. 8.** RCW 70.230.180 (Ambulatory surgical
25 facility account) and 2007 c 273 s 19 are each repealed.

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."