

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 999 Ambulatory Surgical Centers

**SPONSOR(S):** Fitzenhagen

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1394

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee		Guzzo	Poche
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Pursuant to s. 395.002, F.S., an ambulatory surgical center (ASC) is a facility, that is not a part of a hospital, the primary purpose of which is to provide elective surgical care, in which the patient is admitted and discharged within the same working day and is not permitted to stay overnight. Federal law prohibits a patient from staying longer than 24 hours after admission.

The bill changes the allowable length of stay in an ASC from less than one working day to no more than 24 hours, which is the Federal length of stay standard.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2015.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Ambulatory Surgical Centers (ASCs)

An ASC is a facility, that is not a part of a hospital, the primary purpose of which is to provide elective surgical care, in which the patient is admitted and discharged within the same working day and is not permitted to stay overnight.<sup>1</sup>

In Florida, ambulatory procedures are performed in two settings, hospital-based outpatient facilities and freestanding ASCs. Currently, there are 607 ASCs in Florida, including 402 freestanding ASCs and 205 hospital-based facilities.<sup>2</sup>

In 2013, there were 2,899,326 visits to ASCs in Florida.<sup>3</sup> Hospital outpatient facilities accounted for 46 percent and free standing ASCs accounted for 54 percent of the total number of visits. However, the breakdown of the \$31.3 billion in total charges shows that hospital-based facilities accounted for 76 percent of the charges, while ASCs accounted for 24 percent.<sup>4</sup> The average charge at the hospital-based facilities (\$17,721) was larger than the average charge at the freestanding ASCs (\$4,844).<sup>5</sup> These visits and charges were paid mainly by commercial insurance and Medicare. Commercial insurance paid for 39 percent of all charges (a total of \$12.3 billion), while Medicare paid for 30 percent (\$9.5 billion).<sup>6</sup> The next three top payer groups (Medicare Managed Care, Medicaid, and Medicaid Managed Care) accounted for a total of 19 percent (\$6.3 billion) of the charge total.<sup>7</sup>

In 2013, the top three procedures accounting for the highest percentage of visits to ASCs were upper gastrointestinal endoscopy, cataract removal, and colonoscopy.<sup>8</sup>

##### ASC Licensure

ASCs are licensed and regulated by the Agency for Health Care Administration (AHCA) under the same regulatory framework as hospitals.<sup>9</sup>

Applicants for ASC licensure must submit certain information to AHCA prior to accepting patients for care or treatment, including the:

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<sup>1</sup> Section 395.002(3), F.S. "Ambulatory surgical center" or "mobile surgical facility" means a facility the primary purpose of which is to provide elective surgical care, in which the patient is admitted to and discharged from such facility within the same working day and is not permitted to stay overnight, and which is not part of a hospital. However, a facility existing for the primary purpose of performing terminations of pregnancy, an office maintained by a physician for the practice of medicine, or an office maintained for the practice of dentistry shall not be construed to be an ambulatory surgical center, provided that any facility or office which is certified or seeks certification as a Medicare ambulatory surgical center shall be licensed as an ambulatory surgical center pursuant to s. 395.003. Any structure or vehicle in which a physician maintains an office and practices surgery, and which can appear to the public to be a mobile office because the structure or vehicle operates at more than one address, shall be construed to be a mobile surgical facility.

<sup>2</sup> Agency for Health Care Administration, *Facilities: All Florida Outpatient Ambulatory Surgical Centers*, available at <http://www.floridahealthfinder.gov/CompareCare/ListFacilities.aspx> (report generated March 6, 2015).

<sup>3</sup> Agency for Health Care Administration, *Ambulatory Facility Type Visits, 1992-2013*, available at <http://floridahealthfinderstore.blob.core.windows.net/documents/researchers/QuickStat/documents/AMBULATORY%20FACILITY%20TYPE%20VISITS%201992-2013.xls> (last viewed on March 7, 2015).

<sup>4</sup> Agency for Health Care Administration, *Ambulatory (Outpatient) Surgery Query Results, By Facility Type and Average Charges*, available at <http://www.floridahealthfinder.gov/QueryTool/QTResults.aspx> (last viewed on March 7, 2015).

<sup>5</sup> Id.

<sup>6</sup> Id., *By Patient, Primary Payer, and Average Charges* (last viewed on March 7, 2015).

<sup>7</sup> Id.

<sup>8</sup> Agency for Health Care Administration, *Ambulatory Surgery and Outpatient Procedures, Visits by Top CPT Codes, 2013*, page 6, available at

<http://floridahealthfinderstore.blob.core.windows.net/documents/researchers/QuickStat/documents/2013%20Ambulatory%20Quick%20Summary.net>.

<sup>9</sup> Sections 395.001-395.1065, F.S., and Part II, Chapter 408, F.S.

- Affidavit of compliance with fictitious name;
- Registration of articles of incorporation; and
- ASC's zoning certificate or proof of compliance with zoning requirements.<sup>10</sup>

Upon receipt of an initial application, AHCA is required to conduct a survey to determine compliance with all laws and rules. ASCs are required to provide certain information during the initial inspection, including the:

- Governing body bylaws, rules and regulations;
- Roster of registered nurses and licensed practical nurses with current license numbers;
- Fire plan; and
- Comprehensive Emergency Management Plan.<sup>11</sup>

### Rules for ASCs

Pursuant to s. 395.1055, F.S., AHCA is authorized to adopt rules for hospitals and ASCs. Separate standards may be provided for general and specialty hospitals, ASCs, mobile surgical facilities, and statutory rural hospitals, but the rules for all hospitals and ASCs must include minimum standards for ensuring that:

- A sufficient number of qualified types of personnel and occupational disciplines are on duty and available at all times to provide necessary and adequate patient care;
- Infection control, housekeeping, sanitary conditions, and medical record procedures are established and implemented to adequately protect patients;
- A comprehensive emergency management plan is prepared and updated annually;
- Licensed facilities are established, organized, and operated consistent with established standards and rules; and
- Licensed facility beds conform to minimum space, equipment, and furnishing standards

AHCA adopted rule 59A-5, F.A.C., to implement the minimum standards for ASCs.

### *Staff and Personnel Rules*

ASCs are required to have written policies and procedures for surgical services, anesthesia services, nursing services, pharmaceutical services, and laboratory and radiologic services. In providing these services, ASCs are required to have certain professional staff available, including:

- A Registered nurse to serve as operating room circulating nurse;
- An Anesthesiologist or other physician, or a certified registered nurse anesthetist under the on-site medical direction of a licensed physician in the ASC during the anesthesia and post-anesthesia recovery period until all patients are alert or discharged; and
- A Registered professional nurse in the recovery area during the patient's recovery period.<sup>12</sup>

### *Infection Control Rules*

ASCs are required to establish an infection control program, which must include written policies and procedures reflecting the scope of the infection control program. The written policies and procedures must be reviewed at least every two years by the infection control program members. The infection control program must include:

- Surveillance, prevention, and control of infection among patients and personnel;
- A system for identifying, reporting, evaluating and maintaining records of infections;

<sup>10</sup> Rule 59A-5.003(4), F.A.C.

<sup>11</sup> Rule 59A-5.003(5), F.A.C.

<sup>12</sup> Rule 59A-5.0085, F.A.C.

- Ongoing review and evaluation of aseptic, isolation and sanitation techniques employed by the ASC; and
- Development and coordination of training programs in infection control for all personnel.<sup>13</sup>

### *Emergency Management Plan Rules*

ASCs are required to develop and adopt a written comprehensive emergency management plan for emergency care during an internal or external disaster or emergency. The ASC must review the plan and update it annually.

### *Accreditation*

ASCs may seek voluntary accreditation by the Joint Commission for Health Care Organizations or the Accreditation Association for Ambulatory Health Care. AHCA is required to conduct an annual licensure inspection survey for non-accredited ASCs. AHCA is authorized to accept survey reports of accredited ASCs from accrediting organizations if the standards included in the survey report are determined to document that the ASC is in substantial compliance with state licensure requirements. AHCA is required to conduct annual validation inspections on a minimum of 5 percent of the ASCs which were inspected by an accreditation organization.<sup>14</sup>

AHCA is required to conduct annual life safety inspections of all ASCs to ensure compliance with life safety codes and disaster preparedness requirements. However, the life-safety inspection may be waived if an accreditation inspection was conducted on an ASC by a certified life safety inspector and the ASC was found to be in compliance with the life safety requirements.<sup>15</sup>

In 2014, 373 licensed ASCs in Florida were accredited by a national accrediting organization.<sup>16</sup>

## Federal Requirements

### *Medicare*

ASCs are required to have an agreement with the Centers for Medicare and Medicaid Services (CMS) to participate in Medicare. ASCs are also required to comply with specific conditions for coverage. CMS defines “ASC” as any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization and in which the expected duration of services would not exceed 24 hours<sup>17</sup> following an admission.<sup>18</sup>

CMS may deem an ASC to be in compliance with all of the conditions for coverage if the ASC is accredited by a national accrediting body, or licensed by a state agency, that CMS determines provides reasonable assurance that the conditions are met.<sup>19</sup> All of the CMS conditions for coverage requirements are specifically required in AHCA rule 59A-5, F.A.C., and apply to all ASCs in Florida. The conditions for coverage require ASCs to have a:

- Governing body that assumes full legal responsibility for determining, implementing, and monitoring policies governing the ASC’s total operation;
- Quality assessment and performance improvement program;

<sup>13</sup> Rule 59A-5.011, F.A.C.

<sup>14</sup> Rule 59A-5.004, F.A.C.

<sup>15</sup> Id.

<sup>16</sup> Agency for Health Care Administration, *Ambulatory Surgical Center Regulatory Overview*, March 2014 (on file with subcommittee staff).

<sup>17</sup> State Operations Manual Appendix L, *Guidance for Surveyors: Ambulatory Surgical Centers* (Rev. 99, 01-31-14) exceeding the 24-hour time frame is expected to be a rare occurrence, and each rare occurrence is expected to be demonstrated to have been something which ordinarily could not have been foreseen. Not meeting this requirement constitutes condition-level noncompliance with §416.25. In addition, review of the cases that exceed the time frame may also reveal noncompliance with CfCs related to surgical services, patient admission and assessment, and quality assurance/performance improvement.

<sup>18</sup> 42 C.F.R. §416.2

<sup>19</sup> 42 C.F.R. §416.26(1)

- Transfer agreement with one or more acute care general hospitals, which will admit any patient referred who requires continuing care;
- Disaster preparedness plan;
- Organized medical staff;
- Fire control plan;
- Sanitary environment;
- Infection control program; and
- Procedure for patient admission, assessment and discharge.

### **Effect of Proposed Changes**

Pursuant to s. 395.002(3), F.S., patients receiving services in an ASC must be discharged on the same working day that they were admitted and they are not permitted to stay overnight. Federal regulations limit the length of stay in an ASC to 24 hours following admission. The bill amends s. 395.002(3), F.S., to reference the federal definition of an ambulatory surgical center in 42 C.F.R. 416.2, which includes a provision that permits a patient to stay at an ASC for no longer than 24 hours. The change conforms to the Medicare length of stay requirement.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 395.002, F.S., related to definitions.

**Section 2:** Provides an effective date of July 1, 2015.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Individuals needing surgery may save money by being able to stay longer in an ASC.

An ASC may realize a positive fiscal impact by being able to perform more complex procedures and keep patients longer.

Hospitals may experience a negative fiscal impact if patients receive care in an ASC.

#### **D. FISCAL COMMENTS:**

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. The bill does not appear to affect county or municipal governments.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

Not applicable.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**