



Senate

General Assembly

File No. 545

January Session, 2003

Substitute Senate Bill No. 1148

Senate, April 24, 2003

The Committee on Public Health reported through SEN. MURPHY of the 16th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING OUTPATIENT SURGICAL FACILITIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2003*) (a) As used in this section,
2 subsection (a) of section 19a-490 of the general statutes, as amended by
3 this act, and section 19a-495 of the general statutes, as amended by this
4 act, "outpatient surgical facility" means any entity, individual, firm,
5 partnership, corporation, limited liability company or association,
6 other than a hospital, engaged in providing surgical services for
7 human health conditions that include the use of moderate or deep
8 sedation or analgesia or general anesthesia, as such levels of anesthesia
9 are defined from time to time by the American Society of
10 Anesthesiologists, or by such other professional or accrediting entity as
11 recognized by the Department of Public Health.

12 (b) No entity, individual, firm, partnership, corporation, limited
13 liability company or association, other than a hospital, shall
14 individually or jointly establish, conduct, operate or maintain an

15 outpatient surgical facility in this state without obtaining a license
16 from the Department of Public Health for such facility pursuant to the
17 provisions of chapter 368v of the general statutes, and complying with
18 such sections of chapter 368z of the general statutes as the
19 Commissioner of Health Care Access shall require by regulations
20 adopted pursuant to subsection (e) of this section, except that a
21 certificate of need application shall not be required for (1) facilities in
22 operation on or before July 1, 2003, or (2) an entity, individual, firm,
23 partnership, corporation, limited liability company or association,
24 other than a hospital, which has, on or before July 1, 2003, (A) obtained
25 a determination from the Commissioner of Health Care Access that a
26 certificate of need is not required, and (B) commenced development of
27 the outpatient surgical facility. Any entity, individual, firm,
28 partnership, corporation, limited liability company or association that
29 can provide evidence satisfactory to the Commissioner of Public
30 Health of operating an outpatient surgical facility on or before July 1,
31 2003, shall have until April 1, 2006, to obtain a license from the
32 Department of Public Health pursuant to chapter 368v of the general
33 statutes, and shall be permitted to operate through April 1, 2006,
34 without such license. On or before April 1, 2004, the Department of
35 Public Health shall adopt regulations, in accordance with the
36 provisions of chapter 54 of the general statutes, to implement the
37 licensing requirements of this subsection.

38 (c) The provisions of this section shall not apply to persons licensed
39 to practice dentistry or dental medicine pursuant to chapter 379 of the
40 general statutes.

41 (d) Any outpatient surgical facility that is accredited as provided in
42 section 19a-691 of the general statutes, shall continue to be subject to
43 the requirements of said section 19a-691.

44 (e) The Commissioner of Health Care Access shall adopt
45 regulations, in accordance with the provisions of chapter 54 of the
46 general statutes, to implement the provisions of this section, including
47 the standards that will be used to determine approval of certificate of

48 need applications.

49 Sec. 2. Subsection (a) of section 19a-490 of the general statutes is
50 repealed and the following is substituted in lieu thereof (*Effective July*
51 *1, 2003*):

52 (a) "Institution" means a hospital, residential care home, health care
53 facility for the handicapped, nursing home, rest home, home health
54 care agency, homemaker-home health aide agency, mental health
55 facility, substance abuse treatment facility, outpatient surgical facility,
56 an infirmary operated by an educational institution for the care of
57 students enrolled in, and faculty and employees of, such institution; a
58 facility engaged in providing services for the prevention, diagnosis,
59 treatment or care of human health conditions, including facilities
60 operated and maintained by any state agency, except facilities for the
61 care or treatment of mentally ill persons or persons with substance
62 abuse problems; and a residential facility for the mentally retarded
63 licensed pursuant to section 17a-227 and certified to participate in the
64 Title XIX Medicaid program as an intermediate care facility for the
65 mentally retarded.

66 Sec. 3. Section 19a-495 of the general statutes is repealed and the
67 following is substituted in lieu thereof (*Effective July 1, 2003*):

68 (a) The Department of Public Health shall, after consultation with
69 the appropriate public and voluntary hospital planning agencies,
70 establish classifications of institutions. The department shall, in the
71 Public Health Code, adopt, amend, promulgate and enforce such
72 regulations based upon reasonable standards of health, safety and
73 comfort of patients and demonstrable need for such institutions, with
74 respect to each classification of institutions to be licensed under
75 sections 19a-490 to 19a-503, inclusive, including their special facilities,
76 as will further the accomplishment of the purposes of said sections in
77 promoting safe, humane and adequate care and treatment of
78 individuals in institutions. The department shall adopt such
79 regulations, in accordance with chapter 54, concerning home health
80 care agencies and homemaker-home health aide agencies.

81 (b) The Department of Public Health, with the advice of the
 82 Department of Mental Health and Addiction Services, shall include in
 83 the regulations adopted pursuant to subsection (a) of this section,
 84 additional standards for community residences, as defined in section
 85 19a-507a, which shall include, but not be limited to, standards for: (1)
 86 Safety, maintenance and administration; (2) protection of human
 87 rights; (3) staffing requirements; (4) administration of medication; (5)
 88 program goals and objectives; (6) services to be offered; and (7)
 89 population to be served.

90 (c) The commissioner may waive any provisions of the regulations
 91 affecting the physical plant requirements of residential care homes if
 92 the commissioner determines that such waiver would not endanger
 93 the health, safety or welfare of any resident. The commissioner may
 94 impose conditions, upon granting the waiver, that assure the health,
 95 safety and welfare of residents, and may revoke the waiver upon a
 96 finding that the health, safety or welfare of any resident has been
 97 jeopardized. The commissioner shall not grant a waiver that would
 98 result in a violation of the State Fire Safety Code or State Building
 99 Code. The commissioner may adopt regulations, in accordance with
 100 chapter 54, establishing procedures for an application for a waiver
 101 pursuant to this subsection.

102 (d) The commissioner may include in the regulations adopted
 103 pursuant to subsection (a) of this section, additional standards for
 104 outpatient surgical facilities, as defined in section 1 of this act.

This act shall take effect as follows:	
Section 1	July 1, 2003
Sec. 2	July 1, 2003
Sec. 3	July 1, 2003

PH Joint Favorable Subst.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Public Health, Dept.	GF - Cost	\$43,350	\$138,380
Public Health, Dept.	GF - Revenue Gain	\$15,000	\$57,500
Health Care Access, Off.	GF - Revenue Gain	Potential Minimal	Potential Minimal
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	\$6,325	\$54,075

Note: GF=General Fund

Municipal Impact: None

Explanation

This bill establishes a licensure program for outpatient surgical facilities. Providers operating outpatient surgical facilities on or before July 1, 2003, would be able to continue to operate but would be required to obtain a license by no later than April 1, 2006. The Department of Public Health would be required to adopt implementing regulations no later than April 1, 2004.

The Department of Public Health (DPH) currently licenses 19 of 28 Medicare-certified outpatient surgical facilities in Connecticut. Licensure of such facilities that are operated by a corporation other than a hospital is required under regulation (§19-13-D56). The licenses are renewed biennially, and a \$500 licensure fee is collected. Under the bill, the 9 other Medicare-certified outpatient surgical centers would have to become licensed, as well as an estimated 221 outpatient surgical facilities based in other settings, such as physician offices.

The bill does not provide guidance regarding the frequency with which DPH would be required to inspect these facilities. The

following cost estimate assumes that the inspections would occur biennially, to maintain consistency with the current licensure program.

An FY 04 cost to the state of approximately \$49,675 would result. Included in this sum is \$43,350 to support the three-month salaries of one Nurse Consultant, one Office Assistant, a one-quarter full-time equivalent (FTE) Supervising Nurse Consultant and a one-quarter FTE Administrative Hearings Attorney under the Department of Public Health, as well as costs of associated equipment and other expenses. Also included are \$6,325 in fringe benefit costs, which are budgeted centrally in miscellaneous accounts administered by the Comptroller¹. \$15,000 in licensure fees would be collected, based upon an estimated 30 facilities that would seek licensure.

In FY 05 the annualized cost for the 2.5 FTE positions would be \$192,455 (\$138,380 DPH; \$54,075 fringe benefits). Fee revenue would be expected to rise to \$57,500 in FY 05 and remain at this level as half of the 230 entities would be subject to licensure/renewal each year, based on a biennial license.

It is anticipated that the Office of Health Care Access will be able to adopt the required regulations within its anticipated budgetary resources. The Office will experience a future workload increase to review certificate of need (CON) applications from entities seeking to establish a new outpatient surgical center, as well as those seeking a change of ownership. If the regulations establish a CON application fee, a corresponding revenue increase to the state will result.

¹ The total fringe benefit reimbursement rate as a percentage of payroll is 40.21 percent, effective July 1, 2002. However, first year fringe benefit costs for new positions do not include pension costs, lowering the rate to 18.81 percent in FY 04.

OLR Bill Analysis

sSB 1148

AN ACT CONCERNING OUTPATIENT SURGICAL FACILITIES**SUMMARY:**

This bill requires certain outpatient surgical facilities using specified levels of sedation or anesthesia to obtain a license from the Department of Public Health (DPH) and a certificate of need (CON) from the Office of Health Care Access (OHCA). The licensure requirement applies to outpatient surgical facilities (1) established, operated or maintained by an entity, individual, firm, partnership, corporation, limited liability company, or association, but not one operated by a hospital, (Hospital-based outpatient surgical facilities are already subject to DPH and OHCA requirements) and (2) providing surgical services for human health conditions that include use of moderate or deep sedation or analgesia or general anesthesia, as these levels are defined by the American Society of Anesthesiologists or other entity recognized by DPH.

The bill requires OHCA to adopt regulations to implement the bill, including standards for determining the approval of CON applications. It specifies that outpatient surgical facilities that have received anesthesia accreditation continue to be subject to such accreditation requirements (see BACKGROUND).

The bill's provisions do not apply to licensed dentists.

EFFECTIVE DATE: July 1, 2003

DPH LICENSURE

The bill gives an outpatient surgical facility already operating by July 1, 2003 until April 1, 2006 to obtain licensure from DPH and can operate until that time without a license. The entity operating the facility must provide DPH with satisfactory evidence that it was operating the facility as of July 1, 2003. The bill requires DPH to adopt licensure regulations by April 1, 2004 and allows the department to adopt additional standards for outpatient surgical facilities.

CERTIFICATE OF NEED (CON) REVIEW

CON is a regulatory process, administered by OHCA, for review of certain proposed capital expenditures by health care facilities, acquisition of major medical equipment, institution of new services or functions, termination of services, transfer of ownership, and decreases in bed capacity. Generally, a CON is a formal OHCA statement that a health care facility, medical equipment purchase, or service change is needed.

The bill specifies that a CON is not required for (1) facilities already operating as of July 1, 2003 or (2) an entity, individual, firm, partnership, corporation, limited liability company, or association that by July 1, 2003 has (a) received a determination from OHCA that a CON is not required and (b) has already begun developing the facility.

BACKGROUND***Anesthesia Accreditation***

PA 01-50 (CGS § 19a-691) establishes accreditation requirements for certain unlicensed health care facilities (e.g. physicians' offices) where various levels of anesthesia and sedation are administered. Health care practitioners or practitioner groups operating unlicensed facilities must meet at least one of four specified accreditation standards before using moderate or deep sedation/analgesia or general anesthesia. Dentists with DPH-issued permits to use general anesthesia or conscious sedation are exempt from these requirements. Accreditation was required by January 1, 2003 or 18 months after the date on which such anesthesia is first administered at the facility, whichever is later.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 19 Nay 3