



House of Representatives

General Assembly

File No. 440

February Session, 2004

House Bill No. 5531

House of Representatives, April 5, 2004

The Committee on Public Health reported through REP. FELTMAN of the 6th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING REGULATION OF OUTPATIENT SURGICAL FACILITIES.

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

1 Section 1. Section 1 of public act 03-274 is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2004*):

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

13 (b) No entity, individual, firm, partnership, corporation, limited
14 liability company or association, other than a hospital, shall
15 individually or jointly establish or operate an outpatient surgical
16 facility in this state without complying with chapter 368z, except as
17 otherwise provided by this section, and obtaining a license within the
18 time specified in this subsection from the Department of Public Health
19 for such facility pursuant to the provisions of this chapter, unless such
20 entity, individual, firm, partnership, corporation, limited liability
21 company or association; [meets any of the following exceptions:] (1)
22 Provides to the Office of Health Care Access satisfactory evidence that
23 it was in operation on or before July 1, 2003, [; (2) obtains] or (2)
24 obtained, on or before July 1, 2003, from the Office of Health Care
25 Access, a determination that a certificate of need is not required. [and
26 provides the office with satisfactory evidence that it has commenced
27 development of an outpatient surgical facility prior to July 1, 2003; or
28 (3) obtains, between July 1, 2003, and June 30, 2004, inclusive, a
29 certificate of need from the office in accordance with the policies and
30 procedures utilized by the office in approving certificates of need as of
31 July 1, 2003. If an] An entity, individual, firm, partnership, corporation,
32 limited liability company or association [satisfies any of the exceptions
33 in this subsection, it] otherwise in compliance with this section may
34 operate an outpatient surgical facility without a license through March
35 30, 2007, and shall have until March 30, 2007, to obtain a license from
36 the Department of Public Health. [No outpatient surgical facility may
37 be established between July 1, 2003, and July 1, 2004, unless it satisfies
38 one of the exceptions in this subsection.]

39 [(c) The factors to be considered by the Commissioner of Health
40 Care Access in making a determination pursuant to subdivision (2) of
41 subsection (b) of this section as to whether development of an
42 outpatient surgical facility has been commenced shall include, but
43 need not be limited to, whether the applicant for such determination
44 has (1) contractually committed to a site for a facility, (2) expended
45 significant funds for predevelopment expenses for the facility, such as
46 consultation and equipment purchases, or (3) entered into contractual
47 arrangements with third-party payors for services related to the

48 operation of the facility. If any application for a determination
49 pursuant to subdivision (2) of subsection (b) of this section is denied,
50 the applicant may request that such denial be reviewed and
51 reconsidered by the commissioner. The commissioner shall give notice
52 of the grounds for such denial and shall conduct a hearing concerning
53 such denial in accordance with the provisions of chapter 54 concerning
54 contested cases.]

55 [(d)] (c) Notwithstanding the provisions of this section, [each] no
56 outpatient surgical facility shall be required to comply with section
57 19a-617a, 19a-631, 19a-632, as amended, 19a-637a, as amended, 19a-
58 644, as amended, 19a-645, 19a-646, 19a-648, 19a-649, as amended, 19a-
59 650, 19a-652, or 19a-654 to 19a-683, inclusive, as amended. Each
60 outpatient surgical facility shall continue to be subject to the
61 obligations and requirements applicable to such facility, including, but
62 not limited to, any applicable provision of chapter 368v [or chapter
63 368z] and those provisions of chapter 368z not specified in this
64 subsection, except that a request for permission to undertake a transfer
65 or change of ownership or control shall not be required pursuant to
66 subsection (a) of section 19a-638, as amended, if the following
67 conditions are satisfied: (1) The outpatient surgical facility is owned
68 and controlled exclusively by persons licensed pursuant to section 20-
69 13; and (2) such transfer or change of ownership or control (A) does
70 not give ownership or control, in whole or in part, to any person not
71 licensed pursuant to section 20-13, and (B) involves forty-nine per cent
72 or less of the outpatient surgical facility's ownership or control.

73 [(e)] (d) The provisions of this section shall not apply to persons
74 licensed to practice dentistry or dental medicine pursuant to chapter
75 379 or to outpatient clinics licensed pursuant to this chapter.

76 [(f)] (e) Any outpatient surgical facility that is accredited as
77 provided in section 19a-691 shall continue to be subject to the
78 requirements of section 19a-691.

79 [(g)] On and after July 1, 2004, any entity, individual, firm,
80 partnership, corporation, limited liability company or association that

81 meets the definition of outpatient surgical facility pursuant to
82 subsection (a) of this section, shall be subject to the rights and
83 obligations that exist under statutes in effect as of June 30, 2003, and
84 nothing in this section shall be used or introduced in any proceeding to
85 suggest or infer or otherwise indicate or imply that such entity,
86 individual, firm, partnership, corporation, limited liability company or
87 association is or is not a free standing outpatient surgical facility under
88 section 19a-630. No implication shall be created by this section, or used
89 in any manner in any proceeding of any kind, as to whether or not a
90 certificate of need is required on or after July 1, 2004.]

91 [(h)] (f) The Commissioner of Public Health may provide a waiver
92 for outpatient surgical facilities from the physical plant and staffing
93 requirements of the licensing regulations adopted pursuant to chapter
94 368v, provided no waiver may be granted unless the health, safety and
95 welfare of patients is ensured.

96 Sec. 2. Subdivision (1) of section 19a-630 of the general statutes, as
97 amended by section 30 of public act 03-3 of the June 30 special session,
98 is repealed and the following is substituted in lieu thereof (*Effective July*
99 *1, 2004*):

100 (1) "Health care facility or institution" means any facility or
101 institution engaged primarily in providing services for the prevention,
102 diagnosis or treatment of human health conditions, including, but not
103 limited to: Outpatient clinics; [free standing] outpatient surgical
104 facilities; imaging centers; home health agencies, as defined in section
105 19a-490, as amended; clinical laboratory or central service facilities
106 serving one or more health care facilities, practitioners or institutions;
107 hospitals; nursing homes; rest homes; nonprofit health centers;
108 diagnostic and treatment facilities; rehabilitation facilities; and mental
109 health facilities. "Health care facility or institution" includes any parent
110 company, subsidiary, affiliate or joint venture, or any combination
111 thereof, of any such facility or institution, but does not include any
112 health care facility operated by a nonprofit educational institution
113 solely for the students, faculty and staff of such institution and their

114 dependents, or any Christian Science sanatorium operated, or listed
115 and certified, by the First Church of Christ, Scientist, Boston,
116 Massachusetts.

This act shall take effect as follows:	
Section 1	<i>July 1, 2004</i>
Sec. 2	<i>July 1, 2004</i>

PH *Joint Favorable*

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-Effect	FY 05 \$	FY 06 \$
Health Care Access, Off.	GF - Revenue Gain	Potential Minimal	Potential Minimal
Public Health, Dept.	GF - Revenue Gain	None	Potential Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

It is anticipated that the Office of Health Care Access will be able to process Certificate of Need (CON) requests from outpatient surgical facilities in FY 05 and subsequent fiscal years without requiring additional resources. A minimal increase in revenues associated with CON applications would also result.

The bill expands the definition of outpatient surgical facility to include entities providing interventional radiology procedures that include the use of moderate or deep sedation, or moderate or deep analgesia or general anesthesia. If this results in additional requests for licensure by the Department of Public Health, a potential minimal revenue gain from collection of a \$500 biennial fee would result. It is expected that such organizations would begin to enter into the licensure process in FY 06. Any resulting workload increase for the department would be expected to be accommodated within its anticipated budgetary resources.

OLR BILL ANALYSIS

HB 5531

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

This bill revises the law on outpatient surgical facilities by:

1. amending the definition of "outpatient surgical facility" to eliminate the term "free standing" and include facilities performing interventional radiology procedures;
2. requiring licensure of outpatient surgical facilities by the Department of Public Health (DPH) except for certain facilities that do not have to be licensed until a later date; and
3. requiring outpatient surgical facilities to obtain, except in certain cases, a certificate of need (CON) from the Office of Health Care Access (OHCA).

The bill also makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2004

DEFINITION OF OUTPATIENT SURGICAL FACILITY

By law, an "outpatient surgical facility" is one (1) established, operated, or maintained by an entity, individual, firm, partnership, corporation, limited liability company, or association, other than 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 the 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 adds to this definition facilities providing interventional

radiology procedures. (The bill does not define these.)

The bill also redefines outpatient surgical facility, for purposes of DPH licensure of health care institutions, by referring to "outpatient surgical facility" instead of "free standing outpatient surgical facility."

OUTPATIENT SURGICAL FACILITIES LICENSURE

Under current law, an outpatient surgical facility must obtain a DPH license unless the entity operating it (1) provides evidence to OHCA that it was operating on or before July 1, 2003; (2) obtains from OHCA, by July 1, 2003, a determination that a CON is not required and provides OHCA with satisfactory evidence that it began developing the facility before that date; or (3) between July 1, 2003 and June 30, 2004, obtains a CON, based on OHCA's policies and procedures in effect as of July 1, 2003. If an outpatient facility meets any of these exceptions, the law allows it to operate without a license until March 30, 2007, by which time it must obtain a license.

The bill restricts these exceptions to those facilities that can show (1) they were operating before July 1, 2003 or (2) received a determination from OHCA, by July 1, 2003, that a CON wasn't required. It eliminates the requirement in the second exception above that the entity provide OHCA with satisfactory evidence that it began developing the facility before July 1, 2003 and associated criteria OHCA had to consider in determining whether this was true. It instead specifies that any entity otherwise in compliance with the law can operate until March 30, 2007 without a license. It must obtain a license to continue operating after that date.

CERTIFICATE OF NEED

The bill requires an outpatient surgical facility to obtain a CON from OHCA. Certificate of need (CON) is a regulatory process, administered by OHCA, for reviewing 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, or 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 an outpatient surgical facility asking to transfer

or change ownership or control does not need a CON under the following conditions: (1) the facility is owned and controlled exclusively by state-licensed physicians and (2) the transfer or change of ownership or control (a) does not give ownership or control (wholly or in part) to anyone who is not a licensed physician and (b) involves 49% or less of the facility's ownership or control.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Report
Yea 20 Nay 2