



General Assembly

February Session, 2004

Amendment

LCO No. 4894

HB0553104894HDO

Offered by:

REP. FELTMAN, 6th Dist.

To: House Bill No. 5531

File No. 440

Cal. No. 307

**"AN ACT CONCERNING REGULATION OF OUTPATIENT
SURGICAL FACILITIES."**

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

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 Section 1 of public act 03-274 is repealed and the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

5 (a) As used in this section and subsection (a) of section 19a-490, as
6 amended, "outpatient surgical facility" means any entity, individual,
7 firm, partnership, corporation, limited liability company or association,
8 other than a hospital, engaged in providing surgical services or
9 diagnostic procedures for human health conditions that include the
10 use of moderate or deep sedation, moderate or deep analgesia or
11 general anesthesia, as such levels of anesthesia are defined from time
12 to time by the American Society of Anesthesiologists, or by such other
13 professional or accrediting entity [as] recognized by the Department of
14 Public Health. An outpatient surgical facility shall not include a
15 medical office owned and operated exclusively by a person or persons

16 licensed pursuant to section 20-13, provided such medical office: (1)
17 Has no operating room or designated surgical area; (2) bills no facility
18 fees to third party payers; (3) administers no deep sedation or general
19 anesthesia; (4) performs only minor surgical procedures incidental to
20 the work performed in said medical office of the physician or
21 physicians that own and operate such medical office; and (5) uses only
22 light or moderate sedation or analgesia in connection with such
23 incidental minor surgical procedures. Nothing in this subsection shall
24 be construed to affect any obligation to comply with the provisions of
25 section 19a-691.

26 (b) No entity, individual, firm, partnership, corporation, limited
27 liability company or association, other than a hospital, shall
28 individually or jointly establish or operate an outpatient surgical
29 facility in this state without complying with chapter 368z, except as
30 otherwise provided by this section, and obtaining a license within the
31 time specified in this subsection from the Department of Public Health
32 for such facility pursuant to the provisions of this chapter, unless such
33 entity, individual, firm, partnership, corporation, limited liability
34 company or association: [meets any of the following exceptions:] (1)
35 Provides to the Office of Health Care Access satisfactory evidence that
36 it was in operation on or before July 1, 2003, [; (2) obtains] and (2)
37 obtained, on or before July 1, 2003, from the Office of Health Care
38 Access, a determination that a certificate of need is not required. [and
39 provides the office with satisfactory evidence that it has commenced
40 development of an outpatient surgical facility prior to July 1, 2003; or
41 (3) obtains, between July 1, 2003, and June 30, 2004, inclusive, a
42 certificate of need from the office in accordance with the policies and
43 procedures utilized by the office in approving certificates of need as of
44 July 1, 2003. If an] An entity, individual, firm, partnership, corporation,
45 limited liability company or association [satisfies any of the exceptions
46 in this subsection, it] otherwise in compliance with this section may
47 operate an outpatient surgical facility without a license through March
48 30, 2007, and shall have until March 30, 2007, to obtain a license from
49 the Department of Public Health. [No outpatient surgical facility may

50 be established between July 1, 2003, and July 1, 2004, unless it satisfies
51 one of the exceptions in this subsection.]

52 [(c) The factors to be considered by the Commissioner of Health
53 Care Access in making a determination pursuant to subdivision (2) of
54 subsection (b) of this section as to whether development of an
55 outpatient surgical facility has been commenced shall include, but
56 need not be limited to, whether the applicant for such determination
57 has (1) contractually committed to a site for a facility, (2) expended
58 significant funds for predevelopment expenses for the facility, such as
59 consultation and equipment purchases, or (3) entered into contractual
60 arrangements with third-party payors for services related to the
61 operation of the facility. If any application for a determination
62 pursuant to subdivision (2) of subsection (b) of this section is denied,
63 the applicant may request that such denial be reviewed and
64 reconsidered by the commissioner. The commissioner shall give notice
65 of the grounds for such denial and shall conduct a hearing concerning
66 such denial in accordance with the provisions of chapter 54 concerning
67 contested cases.]

68 [(d)] (c) Notwithstanding the provisions of this section, [each] no
69 outpatient surgical facility shall be required to comply with section
70 19a-617a, 19a-631, 19a-632, as amended, 19a-637a, as amended, 19a-
71 644, as amended, 19a-645, 19a-646, 19a-648, 19a-649, as amended, 19a-
72 650, 19a-652, or 19a-654 to 19a-683, inclusive, as amended. Each
73 outpatient surgical facility shall continue to be subject to the
74 obligations and requirements applicable to such facility, including, but
75 not limited to, any applicable provision of chapter 368v [or chapter
76 368z] and those provisions of chapter 368z not specified in this
77 subsection, except that a request for permission to undertake a transfer
78 or change of ownership or control shall not be required pursuant to
79 subsection (a) of section 19a-638, as amended, if the Office of Health
80 Care Access determines that the following conditions are satisfied: (1)
81 Prior to any such transfer or change of ownership or control, the
82 outpatient surgical facility shall be owned and controlled exclusively
83 by persons licensed pursuant to section 20-13, either directly or

84 through a limited liability company, formed pursuant to chapter 613, a
85 corporation, formed pursuant to chapters 601 and 602, or a limited
86 liability partnership, formed pursuant to chapter 614, that is
87 exclusively owned by persons licensed pursuant to section 20-13, or is
88 under the interim control of an estate executor or conservator pending
89 transfer of an ownership interest or control to a person licensed under
90 section 20-13, and (2) after any such transfer or change of ownership or
91 control, persons licensed pursuant to section 20-13, a limited liability
92 company, formed pursuant to chapter 613, a corporation, formed
93 pursuant to chapters 601 and 602, or a limited liability partnership,
94 formed pursuant to chapter 614, that is exclusively owned by persons
95 licensed pursuant to section 20-13, shall own and control no less than a
96 sixty per cent interest in the outpatient surgical facility.

97 [(e)] (d) The provisions of this section shall not apply to persons
98 licensed to practice dentistry or dental medicine pursuant to chapter
99 379 or to outpatient clinics licensed pursuant to this chapter.

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

103 [(g) On and after July 1, 2004, any entity, individual, firm,
104 partnership, corporation, limited liability company or association that
105 meets the definition of outpatient surgical facility pursuant to
106 subsection (a) of this section, shall be subject to the rights and
107 obligations that exist under statutes in effect as of June 30, 2003, and
108 nothing in this section shall be used or introduced in any proceeding to
109 suggest or infer or otherwise indicate or imply that such entity,
110 individual, firm, partnership, corporation, limited liability company or
111 association is or is not a free standing outpatient surgical facility under
112 section 19a-630. No implication shall be created by this section, or used
113 in any manner in any proceeding of any kind, as to whether or not a
114 certificate of need is required on or after July 1, 2004.]

115 [(h)] (f) The Commissioner of Public Health may provide a waiver

116 for outpatient surgical facilities from the physical plant and staffing
117 requirements of the licensing regulations adopted pursuant to chapter
118 368v, provided no waiver may be granted unless the health, safety and
119 welfare of patients is ensured.

120 Sec. 2. (NEW) (*Effective July 1, 2004*) (a) The Office of Health Care
121 Access shall study the feasibility of, and may make recommendations
122 for, establishment of an expedited process by which outpatient
123 surgical facilities may obtain a certificate of need in accordance with
124 section 1 of this act. Said commissioner shall consider as possible
125 criteria for eligibility for such expedited process that an outpatient
126 surgical facility: (1) Be required to obtain a certificate of need solely
127 because of the establishment of such facility; (2) have only one
128 operating room; (3) perform surgeries in only one medical specialty;
129 (4) accept no facility fees for its services; (5) demonstrate in a business
130 plan that such facility shall be a low volume outpatient surgical facility
131 and shall have nominal adverse economic effect on other providers of
132 similar surgical services in proximity to such facility; and (6) provide
133 services to patients insured by Medicaid or state-administered general
134 assistance. Such recommendations for an expedited process may apply
135 to any certificate of need decision and certificate of need application
136 required under chapter 368z of the general statutes. On or before
137 January 1, 2005, said commissioner shall submit a report, in accordance
138 with section 11-4a of the general statutes, to the joint standing
139 committee of the General Assembly having cognizance of matters
140 relating to public health summarizing the results of such study.

141 Sec. 3. (*Effective from passage*) There is established a task force to
142 study issues related to outpatient surgical facilities. The task force shall
143 consider (1) the need for licensure and whether the provisions of
144 chapter 368z of the general statutes should apply to the performance of
145 oral maxillofacial surgery, (2) licensure requirements for procedures
146 not requiring moderate or deep sedation, moderate or deep analgesia
147 or general anesthesia and other procedures being performed in
148 settings other than hospitals or outpatient surgical facilities, and (3)
149 transfer agreements between outpatient surgical facilities and hospitals

150 and the appropriate compensation under such agreements. The task
151 force shall consist of (A) the Commissioner of Public Health, or said
152 commissioner's designee, (B) the Commissioner of the Office of Health
153 Care Access, or said commissioner's designee, and (C) the cochairs,
154 vicechairs and ranking members of the joint standing committee of the
155 General Assembly having cognizance of matters relating to public
156 health, or their designees. Not later than January 1, 2005, such task
157 force shall report its findings and recommendations to the Governor,
158 the president pro tempore, majority leader and minority leader of the
159 Senate, the speaker, majority leader and minority leader of the House
160 of Representatives, and the joint standing committee of the General
161 Assembly having cognizance of matters relating to public health.

162 Sec. 4. Subdivision (1) of section 19a-630 of the general statutes, as
163 amended by section 30 of public act 03-3 of the June 30 special session,
164 is repealed and the following is substituted in lieu thereof (*Effective July*
165 *1, 2004*):

166 (1) "Health care facility or institution" means any facility or
167 institution engaged primarily in providing services for the prevention,
168 diagnosis or treatment of human health conditions, including, but not
169 limited to: Outpatient clinics; [free standing] outpatient surgical
170 facilities; imaging centers; home health agencies, as defined in section
171 19a-490, as amended; clinical laboratory or central service facilities
172 serving one or more health care facilities, practitioners or institutions;
173 hospitals; nursing homes; rest homes; nonprofit health centers;
174 diagnostic and treatment facilities; rehabilitation facilities; and mental
175 health facilities. "Health care facility or institution" includes any parent
176 company, subsidiary, affiliate or joint venture, or any combination
177 thereof, of any such facility or institution, but does not include any
178 health care facility operated by a nonprofit educational institution
179 solely for the students, faculty and staff of such institution and their
180 dependents, or any Christian Science sanatorium operated, or listed
181 and certified, by the First Church of Christ, Scientist, Boston,
182 Massachusetts."

This act shall take effect as follows:	
Section 1	<i>July 1, 2004</i>
Sec. 2	<i>July 1, 2004</i>
Sec. 3	<i>from passage</i>
Sec. 4	<i>July 1, 2004</i>