OLR Bill Analysis
SB 1131

AN ACT CONCERNING THE AMBULATORY SURGICAL CENTERS TAX.

SUMMARY

Beginning July 1, 2019, this bill changes the ambulatory surgical center (ASC) tax by (1) limiting the tax base to an ASC’s net revenue from ASC services, rather than its gross receipts, and (2) establishing a credit against the tax for a portion of the ASC’s Medicaid payments.

The bill also requires the Department of Social Services (DSS) commissioner, before July 15, 2019, and annually thereafter, to seek approval from the Centers for Medicare and Medicaid (CMS) to exempt from the ASC tax the (1) first $1 million of net revenue in each fiscal year and (2) Medicaid and Medicare payments an ASC receives for providing ASC services during the fiscal year. The bill requires each ASC to provide the DSS commissioner with certain information to allow him to make the calculations necessary for the annual waiver request. Under the bill, the information the ASCs provide to DSS is considered confidential tax return information.

The bill also makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2019

TAX BASE AND RATE

Beginning July 1, 2019, the bill sunsets the current 6% gross receipts tax on ASCs and instead imposes a 6% net revenue tax with certain exclusions.

Under current law, until July 1, 2019, the tax is based on an ASC’s gross receipts for each quarter, excluding (1) the first $1 million in the applicable fiscal year and (2) any portion of the ASC’s gross receipts that constitutes net patient revenue of a hospital subject to the hospital
provider tax. Beginning July 1, 2019, current law exempts from the tax, in addition to any portion of the ASC’s gross receipts that constitutes net patient revenue of a hospital subject to the hospital provider tax, (1) the first $1 million of the ASC’s gross receipts in the applicable fiscal year, excluding Medicaid and Medicare payments, and (2) gross receipts from any Medicaid and Medicare payments the ASC receives.

For calendar quarters beginning July 1, 2019, the bill instead bases the tax on the total net revenue the ASC receives for providing ASC services, excluding the:

1. first $1 million of net revenue (other than Medicaid and Medicare payments) in the applicable fiscal year,

2. net revenue from Medicaid and Medicare payments, and

3. net revenue of a hospital that is subject to the hospital provider tax.

The bill maintains the tax rate at 6%. Under the bill, similar definitions of net revenue and gross receipts that apply under the hospital provider tax apply to the ASC tax. “Net revenue” means gross receipts minus payer discounts, charity care, and bad debts on which the taxpayer previously paid the tax. “Gross receipts” means the amount received (cash or in-kind) from patients, third-party payers, and others for taxable ASC services the taxpayer provides in the state. It includes retroactive adjustments under reimbursement agreements with third-party payers, with no deduction for expenses.

Under the bill, “ASC services” are the items and services included in a facility fee payment to an ASC that are (1) associated with a surgical procedure and (2) not separately reimbursable ancillary or professional services. They exclude surgical procedures and physicians, anesthetists, radiology, diagnostic, and ambulance services that are separately reimbursed to an ASC from the facility fee payment.

By law, and under the bill, an ASC is a distinct entity that (1)
operates exclusively to provide surgical services to patients not requiring hospitalization where the services are not expected to take more than 24 hours, (2) has an agreement with the CMS to participate in Medicare as an ASC, and (3) meets the federal requirements to do so.

As is the case under the current ASC tax, the bill does not prohibit an ASC from seeking remuneration for the tax it imposes.

**CREDIT FOR MEDICAID PAYMENTS**

For calendar quarters beginning July 1, 2019, the bill authorizes ASCs to take a credit against the ASC tax equal to the greater of:

1. 50% of the Medicaid payments an ASC received for providing ASC services during the quarter or
2. 50% of the difference between such payments and the payments that would have been received by a hospital if substantially similar procedures or services had been performed there during the quarter.

ASCs may carry forward unused credits for up to 36 calendar quarters (i.e., 9 years).

Under federal law, provider taxes must (1) be broad-based and uniform, unless CMS grants a waiver of either or both of these requirements, and (2) not include a direct or indirect guarantee that providers be held harmless (42 CFR 433.68).

**REQUEST FOR FEDERAL WAIVER**

The bill requires the DSS commissioner to seek approval from CMS to exempt from the ASC tax the (1) first $1 million of net revenue an ASC receives in a fiscal year and (2) Medicare and Medicaid payments it receives for providing ASC services in a fiscal year. He must do so before July 15, 2019, and by December 31 each year thereafter. (The bill does not specify what happens with the exemptions established under the bill if CMS denies the waiver request.)
By September 30 each year, each ASC must provide to the commissioner certain information necessary for the annual waiver request. Specifically, each ASC must indicate, for the prior calendar year, its net revenue and total Medicaid and Medicare payments it received for providing ASC services.

Under the bill, the information the ASCs provide to DSS is considered confidential tax return information. Existing law establishes narrow conditions under which return information may be disclosed and sets penalties for unauthorized disclosures (a fine of up to $1,000, up to one year in prison, or both (CGS § 12-15(g)).

The bill exempts these waivers from the statutes requiring the DSS commissioner to submit notice of any proposed amendment to the Medicaid state plan to the Human Services and Appropriations committees before submitting it to the federal government.

COMMITTEE ACTION
Finance, Revenue and Bonding Committee

Joint Favorable
Yea 50 Nay 0 (05/01/2019)