



Senate

General Assembly

File No. 617

February Session, 2022

Substitute Senate Bill No. 441

Senate, April 25, 2022

The Committee on Finance, Revenue and Bonding reported through SEN. FONFARA of the 1st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING A CREDIT FOR AMBULATORY SURGICAL CENTERS.

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

1 Section 1. Section 12-263aaa of the 2022 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective July 1, 2023, and applicable to calendar quarters commencing on or*
4 *after July 1, 2023*):

5 (a) As used in this section and sections 12-263bbb to 12-263fff,
6 inclusive, unless the context otherwise requires:

7 (1) "Ambulatory surgical center" means any distinct entity that (A)
8 operates exclusively for the purpose of providing surgical services to
9 patients not requiring hospitalization and in which the expected
10 duration of services would not exceed twenty-four hours following an
11 admission, (B) has an agreement with the Centers for Medicare and
12 Medicaid Services to participate in Medicare as an ambulatory surgical

13 center, and (C) meets the general and specific conditions for
14 participation in Medicare set forth in 42 CFR Part 416, Subparts B and
15 C, as amended from time to time;

16 (2) "Ambulatory surgical center services" means only those
17 procedures or services included in a facility fee payment to an
18 ambulatory surgical center facility associated with each surgical
19 procedure and that are not reimbursable ancillary or professional
20 procedures or services. "Ambulatory surgical services" includes facility
21 services only and does not include surgical procedures, physicians'
22 services, anesthetists' services, radiology services, diagnostic services or
23 ambulance services, if such procedures or services would be reimbursed
24 as a separate line item from facility services under 42 CFR 416.164(a), as
25 amended from time to time;

26 (3) "Gross receipts" means the amount received, whether in cash or in
27 kind, from patients, third-party payers and others for taxable
28 ambulatory surgical center services provided by the ambulatory
29 surgical center in the state, including retroactive adjustments under
30 reimbursement agreements with third-party payers, without any
31 deduction for any expense of any kind;

32 (4) "Net revenue" means gross receipts less payer discounts, charity
33 care and bad debts, to the extent the ambulatory surgical center
34 previously paid tax under this section on the amount of such bad debts;

35 (5) "Payer discounts" means the difference between an ambulatory
36 surgical center's published charges and the payments received by the
37 ambulatory surgical center from one or more health care payers for a
38 rate or method of payment that is different than or discounted from such
39 published charges. "Payer discounts" does not include charity care or
40 bad debts;

41 (6) "Charity care" means free or discounted health care services
42 rendered by an ambulatory surgical center to an individual who cannot
43 afford to pay for such services, including, but not limited to, health care
44 services provided to an uninsured patient who is not expected to pay all

45 or part of an ambulatory surgical center's bill based on income
46 guidelines and other financial criteria set forth in the general statutes or
47 in an ambulatory surgical center's charity care policies on file at the
48 office of such center. "Charity care" does not include bad debts or payer
49 discounts;

50 (7) "Received" means received or accrued, construed according to the
51 method of accounting customarily employed by the ambulatory
52 surgical center;

53 (8) "Medicaid" means the program operated by the Department of
54 Social Services pursuant to section 17b-260 and authorized by Title XIX
55 of the Social Security Act, as amended from time to time;

56 (9) "Medicare" means the programs operated by the Centers for
57 Medicare and Medicaid Services in accordance with Title XVIII of the
58 Social Security Act, as amended from time to time, including, but not
59 limited to, those programs established pursuant to Parts A, B and C of
60 Title XVIII of said act, as amended from time to time;

61 (10) "Medicaid investment" means an amount, as selected by each
62 ambulatory surgical center, equal to (A) fifty per cent of the aggregate
63 Medicaid payments received by the ambulatory surgical center during
64 the applicable reporting period for the provision of ambulatory surgical
65 center services, or (B) fifty per cent of the difference between the
66 aggregate amount of Medicaid payments received by the ambulatory
67 surgical center during the applicable reporting period for the provision
68 of ambulatory surgical center services and the aggregate amount of
69 Medicaid payments that would have been received by a hospital during
70 the applicable reporting period if substantially similar services had been
71 performed at a hospital;

72 (11) "State health plan investment" means an amount equal to twenty-
73 five per cent of the aggregate payments received, from or on behalf of
74 each individual who is covered under a health plan pursuant to section
75 5-259, by an ambulatory surgical center during the applicable reporting
76 period for the provision of ambulatory surgical center services;

77 ~~[(10)]~~ (12) "Commissioner" means the Commissioner of Revenue
78 Services; and

79 ~~[(11)]~~ (13) "Department" means the Department of Revenue Services.

80 (b) For each calendar quarter commencing on or after July 1, 2023,
81 there is hereby imposed a tax on each ambulatory surgical center in this
82 state to be paid each calendar quarter.

83 (1) The tax imposed by this section for each calendar quarter shall be
84 at the rate of three per cent of each ambulatory surgical center's net
85 revenue received during the calendar quarter, except that such tax shall
86 not be imposed on any amount of such net revenue that constitutes any
87 of the following: (A) Net revenue of a hospital that is subject to the tax
88 imposed under section 12-263q; (B) Medicaid payments received by the
89 ambulatory surgical center for the provision of ambulatory surgical
90 center services; and (C) Medicare payments received by the ambulatory
91 surgical center for the provision of ambulatory surgical center services.

92 (2) Each ambulatory surgical center doing business in the state shall,
93 on or before the last day of January, April, July and October of each year,
94 render to the commissioner a return, on forms prescribed or furnished
95 by the commissioner, reporting the name and location of such
96 ambulatory surgical center, the entire amount of net revenue received
97 by such ambulatory surgical center during the calendar quarter ending
98 on the last day of the preceding month and such other information as
99 the commissioner deems necessary for the proper administration of this
100 section. Except as provided in subdivision (3) of this subsection, the tax
101 imposed under this section shall be due and payable on the due date of
102 such return. Each ambulatory surgical center shall be required to file
103 such return electronically with the department and to make payment of
104 such tax by electronic funds transfer in the manner provided by chapter
105 228g, regardless of whether such ambulatory surgical center would
106 have otherwise been required to file such return electronically or to
107 make such tax payment by electronic funds transfer under the
108 provisions of chapter 228g.

109 (3) (A) Any ambulatory surgical center may file, on or before the due
110 date of a payment of tax imposed under this section, a request for a
111 reasonable extension of time for such payment for reasons of undue
112 hardship. Undue hardship shall be demonstrated by a showing that the
113 ambulatory surgical center is at substantial risk of defaulting on a bond
114 or loan covenant or similar obligation if such ambulatory surgical center
115 were to make payment on the due date of the amount for which the
116 extension is requested. Such request shall be filed on forms prescribed
117 by the commissioner and shall include complete information of such
118 ambulatory surgical center's inability, due to undue hardship, to make
119 payment of the tax on or before the due date of such payment. The
120 commissioner shall not grant any extension for a general statement of
121 hardship by an ambulatory surgical center or for the convenience of an
122 ambulatory surgical center.

123 (B) The commissioner may grant an extension if the commissioner
124 determines an undue hardship exists. Such extension shall not exceed
125 three months from the original due date of the payment, except that the
126 commissioner may grant an additional extension not exceeding three
127 months from the initial extended due date of the payment (i) upon the
128 filing of a subsequent request by the ambulatory surgical center on or
129 before the extended due date of the payment, on forms prescribed by
130 the commissioner, and (ii) upon a showing of extraordinary
131 circumstances, as determined by the commissioner.

132 (4) If the commissioner grants an extension pursuant to subdivision
133 (3) of this subsection, no penalty shall be imposed and no interest shall
134 accrue during the period of time for which an extension is granted if the
135 ambulatory surgical center pays the tax due on or before the extended
136 due date of the payment. If the ambulatory surgical center does not pay
137 such tax by the extended due date, a penalty shall be imposed in
138 accordance with subsection [(c)] (d) of this section and interest shall
139 begin to accrue at a rate of one per cent per month for each month or
140 fraction thereof from the extended due date of such tax until the date of
141 payment.

142 (5) Nothing in this section shall prohibit an ambulatory surgical
143 center from seeking remuneration for the tax imposed by this section.

144 (c) Each ambulatory surgical center shall be allowed, for each
145 reporting period, a credit against the tax imposed under subsection (b)
146 of this section in an amount equal to the sum of the Medicaid investment
147 and the state health plan investment. If the amount of the credit allowed
148 pursuant to this subsection exceeds the ambulatory surgical center's tax
149 liability for the tax imposed under subsection (b) of this section, the
150 ambulatory surgical center shall file a claim for refund in accordance
151 with the provisions of section 12-263ccc. Upon verification of the claim,
152 the commissioner shall treat such excess as an overpayment and shall
153 refund such excess, without interest, to the ambulatory surgical center.

154 [(c)] (d) (1) Except as provided in subdivision (3) of subsection (b) of
155 this section, if any ambulatory surgical center fails to pay the amount of
156 tax reported to be due on such ambulatory surgical center's return
157 within the time specified under the provisions of this section, there shall
158 be imposed a penalty equal to ten per cent of such amount due and
159 unpaid or fifty dollars, whichever is greater. The tax shall bear interest
160 at the rate of one per cent per month or fraction thereof from the due
161 date of such tax until the date of payment.

162 (2) If any ambulatory surgical center has not filed its return within
163 one month of the due date of such return, the commissioner may file
164 such return at any time thereafter, according to the best information
165 obtainable and according to the forms prescribed. There shall be added
166 to the tax imposed upon the basis of such return an amount equal to ten
167 per cent of such tax or fifty dollars, whichever is greater. The tax shall
168 bear interest at the rate of one per cent per month or fraction thereof
169 from the due date of such tax until the date of payment.

170 (3) Subject to the provisions of section 3-12-3a, the commissioner may
171 waive all or part of the penalties provided under this subsection when
172 it is proven to the commissioner's satisfaction that the failure to pay any
173 tax on time was due to reasonable cause and was not intentional or due
174 to neglect.

175 (4) The commissioner shall notify the Commissioner of Social
176 Services of any amount delinquent under this section and, upon receipt
177 of such notice, the Commissioner of Social Services shall deduct and
178 withhold such amount from amounts otherwise payable by the
179 Department of Social Services to the delinquent ambulatory surgical
180 center.

181 [(d)] (e) (1) Any person required under this section to pay any tax, file
182 a return, keep any records or supply any information and who wilfully
183 fails, at the time required by law, to pay such tax, file such return, keep
184 such records or supply such information shall, in addition to any other
185 penalty provided by law, be fined not more than one thousand dollars
186 or imprisoned not more than one year, or both. As used in this
187 subsection, "person" includes any officer or employee of an ambulatory
188 surgical center under a duty to pay such tax, file such return, keep such
189 records or supply such information. Notwithstanding the provisions of
190 section 54-193, no person shall be prosecuted for a violation of the
191 provisions of this subsection committed on or after July 1, 1997, except
192 within three years after such violation has been committed.

193 (2) Any person who wilfully delivers or discloses to the commissioner
194 or the commissioner's authorized agent any list, return, account,
195 statement or other document, known by such person to be fraudulent
196 or false in any material matter, shall, in addition to any other penalty
197 provided by law, be guilty of a class D felony. No person shall be
198 charged with an offense under both this subdivision and subdivision (1)
199 of this subsection in relation to the same tax period but such person may
200 be charged and prosecuted for both such offenses upon the same
201 information.

202 [(e)] (f) For the fiscal year ending June 30, 2024, and each fiscal year
203 thereafter, the Comptroller is authorized to record as revenue for each
204 fiscal year the amount of tax imposed under the provisions of this
205 section prior to the end of each fiscal year and which tax is received by
206 the Commissioner of Revenue Services not later than five business days
207 after the last day of July immediately following the end of each fiscal

208 year.

209 Sec. 2. (*Effective from passage*) Section 465 of public act 21-2 of the June
210 special session shall take effect July 1, 2023, and shall be applicable to
211 calendar quarters commencing on or after July 1, 2023.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2023, and applicable to calendar quarters commencing on or after July 1, 2023</i>	12-263aaa
Sec. 2	<i>from passage</i>	New section

FIN Joint Favorable Subst.

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 23 \$	FY 24 \$
Department of Revenue Services	GF - Revenue Loss	None	1.5 million

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a state revenue loss of \$1.5 million in FY 24 and annually thereafter by establishing a refundable tax credit against the ambulatory surgical centers gross receipt tax based on a portion of certain payments for services outlined in the bill.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 441****AN ACT CONCERNING A CREDIT FOR AMBULATORY SURGICAL CENTERS.****SUMMARY**

This bill authorizes a refundable state tax credit against the ambulatory surgical center (ASC) gross receipts tax based on a portion of the (1) Medicaid payments the ASC received and (2) payments it received from ASC services provided to individuals covered under the state employee health plan or municipal employees health insurance program (MEHIP).

The bill also makes a technical correction to the effective date of a provision in the FY 22-23 budget implementer act authorizing ASCs to file written refund claims (PA 21-2, June Special Session, § 465).

EFFECTIVE DATE: July 1, 2023, and applicable to calendar quarters beginning on or after July 1, 2023, except the technical correction is effective upon passage.

ASC TAX CREDIT

Under the bill, the tax credit is equal to the sum of the ASC's "Medicaid investment" and "state health plan investment":

1. The "Medicaid investment" is an amount, selected by each ASC, equal to 50% of the (a) aggregate Medicaid payments the ASC received during the applicable reporting period for ASC services or (b) difference between these payments and the aggregate Medicaid payments that would have been received by a hospital during the reporting period if substantially similar services had been performed there.
2. The "state health plan investment" is 25% of the aggregate

payments received from or on behalf of each individual covered under the state employee health plan or MEHIP for providing ASC services.

If the credit amount allowed exceeds the ASC's gross receipts tax liability for the reporting period, the ASC must file a refund claim with the Department of Revenue Services (DRS), according to the statutory process for making these claims. After verifying the claim, the DRS commissioner must treat the excess as an overpayment and refund it to the ASC without interest.

BACKGROUND

ASC Services

By law, "ASC services" are the procedures and services included in a facility fee payment to an ASC that are (1) associated with a surgical procedure and (2) not reimbursable ancillary or professional procedures or services. They include facility services only and exclude surgical procedures and physicians', anesthetists', radiology, diagnostic, and ambulance services separately reimbursed to an ASC from the facility fee payment.

Related Bill

sHB 5475 (§ 44), favorably reported by the Finance, Revenue and Bonding Committee, includes the same correction to the ASC filing effective date provision.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 51 Nay 0 (04/06/2022)