

Finance, Revenue and Bonding Committee JOINT FAVORABLE REPORT

Bill No.: Senate Bill 441

Title: AN ACT CONCERNING A CREDIT FOR AMBULATORY SURGICAL CENTERS.

Vote Date: 4/6/2022

Vote Action: Joint Favorable Substitute

PH Date: 3/21/2022

File No.: 617

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SPONSORS OF BILL:

Finance, Revenue and Bonding Committee

Co-sponsors:

Rep. Josh Elliott, 88th District

Rep. Joseph P. Gresko, 121st District

Rep. John K. Hampton, 16th District

Sen. Heather S. Somers, 18th District

Sen. Kevin D. Witkos, 8th District

Rep. John-Michael Parker, 101st District

Rep. Jill Barry, 31st District

REASONS FOR BILL:

This bill creates 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 or would have been received by a hospital if substantially similar services had been performed there instead and (2) payments received from ASC services provided to individuals covered under the state employee health plan or municipal employee's health insurance program (MEHIP).

This tax credit will enable ASC to keep their costs of treatment low.

RESPONSE FROM ADMINISTRATION/AGENCY:

[Jeffrey Beckham, Acting Secretary – Office of Policy Management](#) testified, "as a result of the 2021 legislative session, revisions to the Ambulatory Surgical Centers tax were enacted in an attempt to alleviate concerns about violation of federal regulations regarding the treatment of health care-related taxation. The establishment of this proposed tax credit against the Ambulatory Surgical Centers tax would violate federal law, jeopardizing retroactive and future federal Medicaid reimbursement to the State of Connecticut. Federal regulations state that a health care-related tax must be uniform and broad based. 42 CFR § 433.68(d)(2)(i) states that

credits against a health care-related tax would not make such tax uniform and would thus violate federal law. Federal Medicaid reimbursement, both retroactively and moving forward, would be subject to recoupment at a rate of at least \$0.50 for every \$1 of revenue generated by the Ambulatory Surgical Centers tax.

Additionally, as a result of the 2021 legislative session, the State of Connecticut cut the Ambulatory Surgical Centers tax rate in half, from 6% to 3%, beginning in FY 2024. Establishing a tax credit would not only violate federal law, but could also draw on General Fund revenues because the credit would be refundable if it is greater than an Ambulatory Surgical Center's tax liability."

[Deidre Gifford, Commissioner, Connecticut Department of Social Services](#) testified, "federal Medicaid law prohibits credits on health care-related taxes....As this bill provides directly for an offset that would hold ASCs harmless from the tax, it would violate federal Medicaid statute and regulation....In addition, by enabling ASCs to be effectively taxed at different rates based on different amounts of Medicaid and state employee health plan payment credits, this bill would also violate the federal Medicaid law mandating that health care-related taxes must be uniformly applied...The bill also raises concerns with federal Medicaid payment rules. Federal Medicaid regulations require the state to ensure that health care providers accept Medicaid payment as "payment in full." This bill may be interpreted to violate that provision by effectively increasing the state's Medicaid payment by the amount of the credit calculated based on Medicaid payments. If interpreted as violating federal Medicaid law, this bill could subject the state to federal Medicaid penalties, which could be up to approximately \$10 million per year."

NATURE AND SOURCES OF SUPPORT:

The following individuals submitted written testimony stating, "Ambulatory Surgery Centers provide high-quality, cost effective care to patients throughout Connecticut. We save patients millions of dollars each year through lower co-payments and lower deductibles. We pride ourselves on the level of care we provide to our patients. As you well know, the 6% gross receipts tax has had a chilling effect on our industry. Unlike other businesses, we're not permitted to deduct business expenses; unlike hospital-owned facilities, we already pay a wide range of taxes—on income, sales, property, and more. Under the current tax structure, ASCs are taxed as a small business and as a health-care provider. The bill before you today builds on the committee's efforts from last session and enables the state to benefit from the savings achievable under both the Medicaid and State Employee programs when care is provided in the state's surgical centers. It is a step in the right direction and allows us to be part of the solution as you grapple with ever increasing health care costs."

[Pat Armstrong, Administrator, Cheshire Surgery Center](#)

[Carissa Beaulieu, Chief Executive Officer, Bloomfield Ambulatory Surgery Center](#)

[Jason Benedict, Executive Director, Middlesex Center for Advanced Orthopedic Surgery](#)

[Kyle Friedman, Chief Executive Officer and Administrator, Surgical Center of Connecticut, LLC](#)

[Kathleen Hull, Administrator, Facility Director, Property Manager, St. Francis GI Endoscopy, LLC](#)

[Guen Kaffenberger, RN, Administrator, Danbury Surgical Center](#)

[Dwayne Kertanis, Administrator, Constitution Surgery Center East](#)

[Faith Kycia, Administrator, Surgery Center of Fairfield County](#)

[Maurizio Nichele, MD, Shoreline Colonoscopy Suites](#)

[David Shipley, MHA, MSPT, Administrator, Norwalk Surgery Center](#)

[David Sones, Vice President of Operations and Administrator, Southwest Connecticut Surgery Center](#)

[Mark Spina, Director of Operations, Endoscopy Center of Connecticut](#)

[Ed Staunton, Executive Director, Stamford Ambulatory Surgical Center](#)

[June Sullivan, Administrator, Coastal Digestive Care Center, LLC](#)

[Lisa Walton-Bogel, Center Director, Eastern Connecticut Endoscopy Center](#)

[Bill Wollman, Executive Director, Evergreen Endoscopy Center LLC](#)

[Lori Woodworth, Administrator, Guilford Surgery Center LLC](#)

[Connecticut State Medical Society \(CSMS\)](#) testified, "CSMS remains strongly opposed to any form of taxation on ASCs. Connecticut is one of only three states in the country to impose this burden on our ASCs and we would strongly advocate for the removal of any such tax.

The gross receipts tax on the ASCs is patently unfair and burdensome because of the way it is structured. Every dollar in the door of the ASC is taxed without regard for the expenses incurred, staffing employed, or equipment utilized. This has been particularly onerous during the COVID-19 pandemic as many additional expenses were incurred to protect patients and staff. The current ASC tax cripples ASCs by removing millions in capital each year that would otherwise be reinvested in staffing and medical technology.

Senate Bill 441 would provide a tax credit for ASCs against the net revenue tax based on the Medicaid services provided. This bill would allow ASCs to reduce their tax liability while expanding access to care by encouraging ASCs to increase services to Medicaid enrollees."

[Dorfman, Michael, MD, et al, Digestive Disease Associates Endoscopy Suite, LLC](#) testified, "unfortunately, the 6% gross receipts tax has a profound negative impact on small business' like ours. We are now witnessing ongoing cost increases, and inflationary pressures, all along our supply chain. We are also seeing a considerable increase in our payroll costs in this very tight labor market. The additional burden of the state-imposed ASC tax only serves to challenge the very existence of fully independent business' like ours. If we cannot get a handle on these escalating costs, our only option may be a partial, or full sale, to a third party (hospital, surgical management company, or private equity) where better reimbursement rates would

help us offset these growing costs. We are hoping to avoid this reality, and hope the state will act to protect low-cost Ambulatory Surgical Centers like ours."

[Amanda Gunthel, President, Connecticut Association of Ambulatory Surgery Centers](#) testified, "reimbursements under the Medicaid program have not been increased for decades and simply do not keep pace with the cost of care today. As an example, when providing a colonoscopy, a physician might need to use clips when removing polyps - the cost of the clips alone are more than the Medicaid reimbursement for the procedure. This doesn't even include the anesthesia, staffing requirements, equipment and other costs necessary to provide the care. In the case of a lithotripsy - which can be done in an ASC - Medicaid will not even reimburse for the procedure. And one more example, in orthopedic cases where things like screws and other implants are required for a case (for a shoulder or a knee) - equipment that is costly - is not reimbursed under Medicaid. All of these examples create barriers to accessing care in surgery centers."

[Tarik Kardestuncer, President, Connecticut Orthopaedic Society](#) testified, "the 6% Gross Tax levied on ASC surgical services 7 years ago by the State Legislature is a hefty financial burden on ASCs as it translates to an effective tax rate of 30+% and it is applied to all revenue, including "Pass Through Reimbursement"...Last year the legislature passed changes to the ASC tax effective in 2023. One of the changes will eliminate the current \$1 million dollar exemption of revenue, the tax credits proposed in Senate Bill 441, will assist some ASCs by offsetting a portion of the \$1 million dollar exemption they currently receive per State statute. Members of the orthopaedic community appreciate the partial remedy proposed in this bill and we also seek to rectify the ZERO reimbursement by Medicaid for implants when procedures are performed in ASCs."

[Alan Solinsky, MD, Executive Board Member, Connecticut Society of Eye Physicians](#) testified, "for the past six years physicians have strongly opposed any form of taxation on ASCs. We have provided testimony to this committee on many occasions supporting the many reasons why this tax should be eliminated, including the fact that Connecticut is one of only three states in the country to impose this burden on our ASCs and adds to the enormous and far-reaching health consequences of Connecticut's inability to retain and recruit physicians in this state. This alone should be a reason to seriously consider the removal of the ASC tax in its entirety and would go a long way to leveling the playing field in attracting young physicians and surgeons to Connecticut."

NATURE AND SOURCES OF OPPOSITION:

[David Godbout, Connecticut Resident](#) opposed the bill on the grounds that the current session of the Connecticut General Assembly is illegal, in breach of Article 3, Section 16 of the State Constitution.

Reported by: Brie J. Wolf

Date: April 19, 2022