

[Third Reprint]

**SENATE, No. 2780**

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**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

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INTRODUCED MARCH 10, 2011

**Sponsored by:**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

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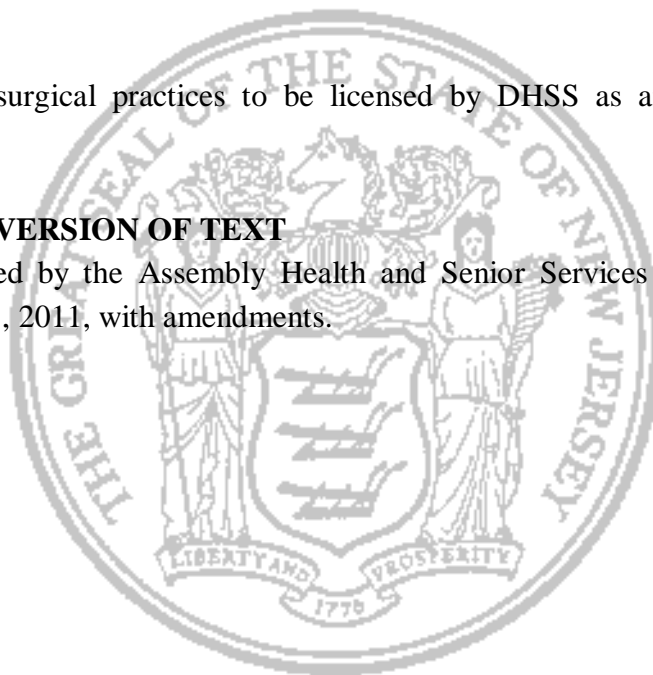
**Senators Gordon and Stack**

**SYNOPSIS**

Requires surgical practices to be licensed by DHSS as ambulatory care facilities.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Health and Senior Services Committee on November 21, 2011, with amendments.



**(Sponsorship Updated As Of: 1/10/2012)**

1 AN ACT concerning surgical practices and amending P.L.1971,  
2 c.136, P.L.1989, c.19, and P.L.2009, c.24.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. Section 12 of P.L.1971, c.136 (C.26:2H-12) is amended to  
8 read as follows:

9 12. a. No health care service or health care facility shall be  
10 operated unless it shall: (1) possess a valid license issued pursuant  
11 to this act, which license shall specify the kind or kinds of health  
12 care services the facility is authorized to provide; (2) establish and  
13 maintain a uniform system of cost accounting approved by the  
14 commissioner; (3) establish and maintain a uniform system of  
15 reports and audits meeting the requirements of the commissioner;  
16 (4) prepare and review annually a long range plan for the provision  
17 of health care services; and (5) establish and maintain a centralized,  
18 coordinated system of discharge planning which assures every  
19 patient a planned program of continuing care and which meets the  
20 requirements of the commissioner which requirements shall, where  
21 feasible, equal or exceed those standards and regulations  
22 established by the federal government for all federally-funded  
23 health care facilities but shall not require any person who is not in  
24 receipt of State or federal assistance to be discharged against his  
25 will.

26 b. (1) Application for a license for a health care service or  
27 health care facility shall be made upon forms prescribed by the  
28 department. The department shall charge a single, nonrefundable  
29 fee for the filing of an application for and issuance of a license and  
30 a single, nonrefundable fee for any renewal thereof, and a single,  
31 nonrefundable fee for a biennial inspection of the facility, as it shall  
32 from time to time fix in rules or regulations; provided, however,  
33 that no such licensing fee shall exceed \$10,000 in the case of a  
34 hospital and \$4,000 in the case of any other health care facility for  
35 all services provided by the hospital or other health care facility,  
36 and no such inspection fee shall exceed \$5,000 in the case of a  
37 hospital and \$2,000 in the case of any other health care facility for  
38 all services provided by the hospital or other health care facility.  
39 No inspection fee shall be charged for inspections other than  
40 biennial inspections. The application shall contain the name of the  
41 health care facility, the kind or kinds of health care service to be  
42 provided, the location and physical description of the institution,  
43 and such other information as the department may require. (2) A

**EXPLANATION** – Matter enclosed in bold-faced brackets [thus] in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SHH committee amendments adopted June 2, 2011.

<sup>2</sup>Senate floor amendments adopted June 27, 2011.

<sup>3</sup>Assembly AHE committee amendments adopted November 21, 2011.

1 license shall be issued by the department upon its findings that the  
2 premises, equipment, personnel, including principals and  
3 management, finances, rules and bylaws, and standards of health  
4 care service are fit and adequate and there is reasonable assurance  
5 the health care facility will be operated in the manner required by  
6 this act and rules and regulations thereunder.

7 c. (Deleted by amendment, P.L.1998, c.43)<sup>3</sup>【.】<sup>3</sup>

8 d. The commissioner may amend a facility's license to reduce  
9 that facility's licensed bed capacity to reflect actual utilization at the  
10 facility if the commissioner determines that 10 or more licensed  
11 beds in the health care facility have not been used for at least the  
12 last two succeeding years. For the purposes of this subsection, the  
13 commissioner may retroactively review utilization at a facility for a  
14 two-year period beginning on January 1, 1990.

15 e. If a prospective applicant for licensure for a health care  
16 service or facility that is not subject to certificate of need review  
17 pursuant to P.L.1971, c.136 (C.26:2H-1 et al.) so requests, the  
18 department shall provide the prospective applicant with a pre-  
19 licensure consultation. The purpose of the consultation is to  
20 provide the prospective applicant with information and guidance on  
21 rules, regulations, standards and procedures appropriate and  
22 applicable to the licensure process. The department shall conduct  
23 the consultation within 60 days of the request of the prospective  
24 applicant.

25 f. Notwithstanding the provisions of any other law to the  
26 contrary, an entity that provides magnetic resonance imaging or  
27 computerized axial tomography services shall be required to obtain  
28 a license from the department to operate those services prior to  
29 commencement of services, except that a physician who is  
30 operating such services on the effective date of P.L.2004, c.54 shall  
31 have one year from the effective date of P.L.2004, c.54 to obtain the  
32 license.

33 g. (1) 【Notwithstanding the provisions of any other law to the  
34 contrary, an entity that operates a surgical practice on the effective  
35 date of this section of P.L.2009, c.24, as defined in this subsection,  
36 shall be required to register with the department within one year of  
37 the effective date of P.L.2009, c.24.】 (Deleted by amendment,  
38 P.L. , c. ) (pending before the Legislature as this bill)

39 (2) 【An entity that has not commenced operation as a surgical  
40 practice on the effective date of this section of P.L.2009, c.24, but  
41 has filed or files before the 180th day after the effective date of this  
42 section of P.L.2009, c.24 its plans, specifications, and required  
43 documents with the municipality in which the surgical practice will  
44 be located, shall register with the department prior to the  
45 commencement of services.】 (Deleted by amendment, P.L. , c. )  
46 (pending before the Legislature as this bill)

1 (3) ~~As a condition of registration with the department, a~~  
2 ~~surgical practice shall be required to obtain certification by the~~  
3 ~~Centers for Medicare and Medicaid Services as an ambulatory~~  
4 ~~surgery center provider or obtain ambulatory care accreditation~~  
5 ~~from an accrediting body recognized by the Centers for Medicare~~  
6 ~~and Medicaid Services.~~ (Deleted by amendment, P.L. , c. )  
7 (pending before the Legislature as this bill)

8 (4) ~~As a condition of registration with the department, a~~  
9 ~~surgical practice shall be required to report the following~~  
10 ~~information annually: the number of patients served by payment~~  
11 ~~source, including the number of Medicaid-eligible and medically~~  
12 ~~indigent persons served; the number of new patients accepted; and~~  
13 ~~the number of physicians, physician assistants, and advanced~~  
14 ~~practice nurses providing professional services at the surgical~~  
15 ~~practice.~~ (Deleted by amendment, P.L. , c. ) (pending before the  
16 Legislature as this bill)

17 A surgical practice in operation on the date of enactment of  
18 P.L. , c. (pending before the Legislature as this bill) shall be  
19 required to be licensed by the department as an ambulatory care  
20 facility licensed to provide surgical and related services within one  
21 year of the date of enactment of P.L. ,c. (pending before the  
22 Legislature as this bill)<sup>1</sup>.

23 A surgical practice <sup>3</sup>required to be licensed pursuant to this  
24 subsection]<sup>3</sup> <sup>2</sup>that is certified by the Centers for Medicare &  
25 Medicaid Services <sup>3</sup>as an ambulatory surgery center provider]<sup>3</sup>  
26 shall not be required to meet the physical plant and functional  
27 requirements specified in N.J.A.C.8:43A-19.1 et seq. <sup>3</sup>[If the  
28 surgical practice is not so certified by the Centers for Medicare &  
29 Medicaid Services, it<sup>2</sup>] A surgical practice that is not Medicare  
30 certified, either by the Centers for Medicare & Medicaid Services or  
31 by any deeming authority recognized by the Centers for Medicare  
32 and Medicaid Services, but which has obtained accreditation from  
33 the American Association for Accreditation of Ambulatory Surgery  
34 Facilities or any accrediting body recognized by the Centers for  
35 Medicare & Medicaid Services and is in operation on the date of  
36 enactment of P.L. , c. (pending before the Legislature as this  
37 bill), shall not be required to meet the physical plant and functional  
38 requirements specified in N.J.A.C.8:43A-19.1 et seq. A surgical  
39 practice not in operation on the date of enactment of P.L. , c.  
40 (pending before the Legislature as this bill), if it is certified by the  
41 Centers for Medicare & Medicaid Services as an ambulatory  
42 surgery center provider, shall also be exempt from these  
43 requirements. A surgical practice required by this subsection to  
44 meet the physical plant and functional requirements specified in  
45 N.J.A.C.8:43A-19.1 et seq.<sup>3</sup> may apply for a waiver of <sup>3</sup>[one or  
46 more physical plant <sup>2</sup>and functional<sup>2</sup> requirements] any such  
47 requirement<sup>3</sup> in accordance with N.J.A.C.8:43A-2.9. The

1 commissioner shall grant a waiver of those physical plant <sup>2</sup>and  
2 functional<sup>2</sup> requirements, as the commissioner deems appropriate, if  
3 the waiver does not endanger the life, safety, or health of patients or  
4 the public.

5 <sup>2</sup>["If a surgical practice does not charge patients or third party  
6 payers a facility fee, room charge, or other similar fee or charge, it]  
7 A surgical practice required to be licensed pursuant to this  
8 subsection<sup>2</sup> shall be exempt from the ambulatory care facility  
9 assessment pursuant to section 7 of P.L.1992, c.160 (C.26:2H-  
10 18.57); except that, if the entity expands to include any additional  
11 rooms dedicated for use as an operating room, the entity shall be  
12 subject to the assessment<sup>2</sup>], regardless of whether it charges  
13 patients and third party payers a facility fee, room charge, or other  
14 similar fee or charge.<sup>1</sup>].<sup>2</sup>

15 **[(5)] <sup>3</sup>(5)<sup>3</sup>** As used in this subsection and subsection i. of this  
16 section, "surgical practice" means a structure or suite of rooms that  
17 has the following characteristics:

18 (a) has no more than one room dedicated for use as an operating  
19 room which is specifically equipped to perform surgery, and is  
20 designed and constructed to accommodate invasive diagnostic and  
21 surgical procedures;

22 (b) has one or more post-anesthesia care units or a dedicated  
23 recovery area where the patient may be closely monitored and  
24 observed until discharged; and

25 (c) is established by a physician, physician professional  
26 association surgical practice, or other professional practice form  
27 specified by the State Board of Medical Examiners pursuant to  
28 regulation solely for the physician's, association's or other  
29 professional entity's private medical practice.

30 **["Surgical practice"** includes an unlicensed entity that is certified  
31 by the Centers for Medicare and Medicaid Services as an  
32 ambulatory surgery center provider.

33 **(6)] <sup>3</sup>(6)<sup>3</sup>** Nothing in this subsection shall be construed to limit  
34 the State Board of Medical Examiners from establishing standards  
35 of care with respect to the practice of medicine.

36 h. An ambulatory care facility licensed to provide surgical and  
37 related services shall be required to obtain ambulatory care  
38 accreditation from an accrediting body recognized by the Centers  
39 for Medicare <sup>2</sup>**[and] &<sup>2</sup>** Medicaid Services as a condition of  
40 licensure by the department.

41 An ambulatory care facility that is licensed to provide surgical  
42 and related services on the effective date of this section of  
43 P.L.2009, c.24 shall have one year from the effective date of this  
44 section of P.L.2009, c.24 to obtain ambulatory care accreditation.

45 i. Beginning on the effective date of this section of P.L.2009,  
46 c.24, and as provided in P.L. , c. (pending before the Legislature  
47 as this bill), the department shall not issue a new **[**registration to a

1 surgical practice or a new] license to an ambulatory care facility to  
2 provide surgical and related services unless:

3 (1) in the case of a [registered surgical practice or] licensed  
4 facility in which a transfer of ownership of the [practice or] facility  
5 is proposed, the commissioner reviews the qualifications of the new  
6 owner or owners and approves the transfer;

7 (2) (a) except as provided in subparagraph (b) of this paragraph,  
8 in the case of a [registered surgical practice or] licensed facility for  
9 which a relocation of the [practice or] facility is proposed, the  
10 relocation is within 20 miles of the [practice's or] facility's current  
11 location or the relocation is to a "Health Enterprise Zone"  
12 designated pursuant to section 1 of P.L.2004, c.139 (C.54A:3-7),  
13 there is no expansion in the <sup>3</sup>[scope of services] number of  
14 operating rooms<sup>3</sup> provided at the new location from that of the  
15 current location, and the commissioner reviews and approves the  
16 relocation; or

17 (b) in the case of a licensed facility described in paragraph (5) or  
18 (6) of this subsection for which a relocation of the facility is  
19 proposed, the commissioner reviews and approves the relocation;

20 (3) the entity is a <sup>1</sup>[registered]<sup>1</sup> surgical practice required to be  
21 [registered] licensed pursuant to [paragraph (1) of] subsection g.  
22 of this section and meets the requirements of that subsection;

23 (4) the entity has filed its plans, specifications, and required  
24 documents with the Health Care Plan Review Unit of the  
25 Department of Community Affairs or the municipality in which the  
26 surgical practice or facility will be located, as applicable, on or  
27 before the 180th day following the effective date of this section of  
28 P.L.2009, c.24;

29 (5) the facility is owned jointly by a general hospital in this  
30 State and one or more other parties; or

31 (6) the facility is owned by a hospital or medical school.

32 Beginning on the effective date of P.L. , c. (pending before the  
33 Legislature as this bill), the department shall not issue a new  
34 registration to a surgical practice. Any <sup>1</sup>[registered]<sup>1</sup> surgical  
35 practice <sup>1</sup>in operation on the effective date of P.L. , c. (pending  
36 before the Legislature as this bill)<sup>1</sup> that proposes to transfer its  
37 ownership or relocate on or after the effective date of P.L. ,  
38 c. (pending before the Legislature as this bill) shall be required to  
39 be licensed by the department as an ambulatory care facility  
40 <sup>3</sup>[licensed to provide] providing<sup>3</sup> surgical and related services  
41 <sup>3</sup>[prior to applying for a new license pursuant to this subsection]  
42 pursuant to subsection g. of this section<sup>3</sup>.

43 j. [(1) The department shall require an applicant for registration  
44 as a surgical practice, as provided in subsection g. of this section, to  
45 submit an application for registration in a form and manner  
46 prescribed by the department. The applicant shall submit the name

1 and address of the surgical practice that is to be registered, the name  
2 of the chief administrator or designated agent of the practice, the  
3 names and addresses of all owners of the practice, the scope of  
4 services provided at the practice, proof of certification by the  
5 Centers for Medicare and Medicaid Services or accreditation from  
6 an accrediting body recognized by the Centers for Medicare and  
7 Medicaid Services, and such other information as the commissioner  
8 deems necessary and as provided by regulation.

9 (2) The registration shall be valid for a one-year period and may  
10 be renewed upon submission to the department of an application for  
11 renewal.

12 (3) The commissioner may suspend, revoke, or deny a  
13 registration if the registrant or applicant, as applicable, is not in  
14 compliance with the requirements of this section.

15 (4) No registered surgical practice shall be owned, managed, or  
16 operated by any person convicted of a crime relating adversely to  
17 the person's capability of owning, managing, or operating the  
18 practice.

19 (5) The department may charge a reasonable fee for filing an  
20 application for registration and for each renewal thereof. ~~](Deleted~~  
21 ~~by amendment)(pending before the Legislature as this bill)~~

22 <sup>1</sup>k. An ambulatory care facility licensed to provide surgical and  
23 related services and a surgical practice shall:

24 (1) report to the department any change in ownership of the  
25 facility, within 30 days of the change in ownership; and

26 (2) annually report to the department the name of the facility's  
27 medical director, physician director, and physician director of  
28 anesthesia, as applicable, and the director of nursing services. The  
29 facility shall notify the department if there is any change in a named  
30 director, within 30 days of the change of the director.<sup>1</sup>

31 (cf: P.L.2009, c.24, s.1)  
32

33 <sup>1</sup>2. <sup>3</sup>[a. Within 90 days of the effective date of this act, the  
34 Department of Health and Senior Services shall consult with  
35 physician-owners of surgical practices and their representatives  
36 regarding physical plant differences between single-operating room  
37 surgical facilities and multiple-operating room ambulatory care  
38 facilities.

39 b.]<sup>3</sup> The Department of Health and Senior Services shall adopt  
40 such rules and regulations, pursuant to the "Administrative  
41 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as it deems  
42 necessary to carry out the purposes of this act.<sup>1</sup>  
43

44 <sup>1</sup>[2.] 3.<sup>1</sup> Section 2 of P.L.1989, c.19 (C.45:9-22.5) is amended  
45 to read as follows:

46 2. a. A practitioner shall not refer a patient or direct an  
47 employee of the practitioner to refer a patient to a health care

1 service in which the practitioner, or the practitioner's immediate  
2 family, or the practitioner in combination with the practitioner's  
3 immediate family has a significant beneficial interest; except that,  
4 in the case of a practitioner, a practitioner's immediate family or a  
5 practitioner in combination with the practitioner's immediate family  
6 who had the significant beneficial interest prior to the effective date  
7 of P.L.1991, c.187 (C.26:2H-18.24 et al.), and in the case of a  
8 significant beneficial interest in a health care service that provides  
9 lithotripsy or radiation therapy pursuant to an oncological protocol  
10 that was held prior to the effective date of this section of P.L.2009,  
11 c.24, the practitioner may continue to refer a patient or direct an  
12 employee to do so if that practitioner discloses the significant  
13 beneficial interest to the patient.

14 b. If a practitioner is permitted to refer a patient to a health care  
15 service pursuant to this section, the practitioner shall provide the  
16 patient with a written disclosure form, prepared pursuant to section  
17 3 of P.L.1989, c.19 (C.45:9-22.6), and post a copy of this disclosure  
18 form in a conspicuous public place in the practitioner's office.

19 c. The restrictions on referral of patients established in this  
20 section shall not apply to:

21 (1) medical treatment or a procedure that is provided at the  
22 practitioner's medical office and for which a bill is issued directly in  
23 the name of the practitioner or the practitioner's medical office;

24 (2) renal dialysis; and

25 (3) ambulatory surgery or procedures requiring anesthesia  
26 performed at a surgical practice **[registered with]** licensed by the  
27 Department of Health and Senior Services pursuant to subsection g.  
28 of section 12 of P.L.1971, c.136 (C.26:2H-12) or at an ambulatory  
29 care facility licensed by the Department of Health and Senior  
30 Services to perform surgical and related services, if the following  
31 conditions are met:

32 (a) the practitioner who provided the referral personally  
33 performs the procedure;

34 (b) the practitioner's remuneration as an owner of or investor in  
35 the practice or facility is directly proportional to his ownership  
36 interest and not to the volume of patients the practitioner refers to  
37 the practice or facility;

38 (c) all clinically-related decisions at a facility owned in part by  
39 non-practitioners are made by practitioners and are in the best  
40 interests of the patient; and

41 (d) disclosure of the referring practitioner's significant  
42 beneficial interest in the practice or facility is made to the patient in  
43 writing, at or prior to the time that the referral is made, consistent  
44 with the provisions of section 3 of P.L.1989, c.19 (C.45:9-22.6).

45 (cf: P.L.2009, c.24, s.2)

46

47 <sup>1</sup>**[3.] 4.** Section 4 of P.L.2009, c.24 (C.45:9-22.5a) is amended  
48 to read as follows:



1       4. a. A referral for ambulatory surgery or a procedure requiring  
2 anesthesia made prior to the effective date of this section of  
3 P.L.2009, c.24 by a practitioner to a surgical practice or ambulatory  
4 care facility licensed by the Department of Health and Senior  
5 Services to perform surgical and related services shall be deemed to  
6 comply with the provisions of section 2 of P.L.1989, c.19 (C.45:9-  
7 22.5) if the practitioner personally performed the procedure that is  
8 the subject of the referral.

9       b. As used in this section, "surgical practice" means a structure  
10 or suite of rooms that has the following characteristics:

11       (1) has no more than one room dedicated for use as an operating  
12 room which is specifically equipped to perform surgery, and is  
13 designed and constructed to accommodate invasive diagnostic and  
14 surgical procedures;

15       (2) has one or more post-anesthesia care units or a dedicated  
16 recovery area where the patient may be closely monitored and  
17 observed until discharged; and

18       (3) is established by a physician, physician professional  
19 association surgical practice, or other professional practice form  
20 specified by the State Board of Medical Examiners pursuant to  
21 N.J.A.C.13:35-6.16(f) solely for the physician's, association's or  
22 other professional entity's private medical practice.

23       ["Surgical practice" includes an unlicensed entity that is certified  
24 by the Centers for Medicare and Medicaid Services as an  
25 ambulatory surgery center provider.]

26 (cf: P.L.2009, c.24, s.4)

27  
28       <sup>1</sup>[4. Section] 5. Sections<sup>1</sup> <sup>1</sup>and 2<sup>1</sup> of this act shall take effect  
29 immediately, and sections <sup>1</sup>[2 and 3] 3 and 4<sup>1</sup> of this act shall take  
30 effect one year after the date of enactment.