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Co-Sponsored by:
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)

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

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

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

b. (1) Application for a license for a health care service or health care facility shall be made upon forms prescribed by the department. The department shall charge a single, nonrefundable fee for the filing of an application for and issuance of a license and a single, nonrefundable fee for any renewal thereof, and a single, nonrefundable fee for a biennial inspection of the facility, as it shall from time to time fix in rules or regulations; provided, however, that no such licensing fee shall exceed $10,000 in the case of a hospital and $4,000 in the case of any other health care facility for all services provided by the hospital or other health care facility, and no such inspection fee shall exceed $5,000 in the case of a hospital and $2,000 in the case of any other health care facility for all services provided by the hospital or other health care facility. No inspection fee shall be charged for inspections other than biennial inspections. The application shall contain the name of the health care facility, the kind or kinds of health care service to be provided, the location and physical description of the institution, 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:
1Senate SHH committee amendments adopted June 2, 2011.
2Senate floor amendments adopted June 27, 2011.
3Assembly AHR committee amendments adopted November 21, 2011.
license shall be issued by the department upon its findings that the
premises, equipment, personnel, including principals and
management, finances, rules and bylaws, and standards of health
care service are fit and adequate and there is reasonable assurance
the health care facility will be operated in the manner required by
this act and rules and regulations thereunder.

c. (Deleted by amendment, P.L.1998, c.43)
d. The commissioner may amend a facility's license to reduce
that facility's licensed bed capacity to reflect actual utilization at the
facility if the commissioner determines that 10 or more licensed
beds in the health care facility have not been used for at least the
last two succeeding years. For the purposes of this subsection, the
commissioner may retroactively review utilization at a facility for a
two-year period beginning on January 1, 1990.
e. If a prospective applicant for licensure for a health care
service or facility that is not subject to certificate of need review
pursuant to P.L.1971, c.136 (C.26:2H-1 et al.) so requests, the
department shall provide the prospective applicant with a pre-
licensure consultation. The purpose of the consultation is to
provide the prospective applicant with information and guidance on
rules, regulations, standards and procedures appropriate and
applicable to the licensure process. The department shall conduct
the consultation within 60 days of the request of the prospective
applicant.
f. Notwithstanding the provisions of any other law to the
contrary, an entity that provides magnetic resonance imaging or
computerized axial tomography services shall be required to obtain
a license from the department to operate those services prior to
commencement of services, except that a physician who is
operating such services on the effective date of P.L.2004, c.54 shall
have one year from the effective date of P.L.2004, c.54 to obtain the
license.
g. (1) [Notwithstanding the provisions of any other law to the
contrary, an entity that operates a surgical practice on the effective
date of this section of P.L.2009, c.24, as defined in this subsection,
shall be required to register with the department within one year of
the effective date of P.L.2009, c.24.] (Deleted by amendment,
P.L. , c. ) (pending before the Legislature as this bill)

(2) [An entity that has not commenced operation as a surgical
practice on the effective date of this section of P.L.2009, c.24, but
has filed or files before the 180th day after the effective date of this
section of P.L.2009, c.24 its plans, specifications, and required
documents with the municipality in which the surgical practice will
be located, shall register with the department prior to the
commencement of services.] (Deleted by amendment, P.L. , c. )
(pending before the Legislature as this bill)
(3) [As a condition of registration with the department, a surgical practice shall be required to obtain certification by the Centers for Medicare and Medicaid Services as an ambulatory surgery center provider or obtain ambulatory care accreditation from an accrediting body recognized by the Centers for Medicare and Medicaid Services.] (Deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill)

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

A surgical practice in operation on the date of enactment of P.L. , c. (pending before the Legislature as this bill) shall be required to be licensed by the department as an ambulatory care facility licensed to provide surgical and related services within one year of the date of enactment of P.L. , c. (pending before the Legislature as this bill). A surgical practice in operation on the date of enactment of P.L. , c. (pending before the Legislature as this bill) shall be required to be licensed pursuant to this subsection that is certified by the Centers for Medicare & Medicaid Services as an ambulatory surgery center provider shall not be required to meet the physical plant and functional requirements specified in N.J.A.C.8:43A-19.1 et seq. If the surgical practice is not so certified by the Centers for Medicare & Medicaid Services, it shall not be required to meet the physical plant and functional requirements specified in N.J.A.C.8:43A-19.1 et seq. A surgical practice that is not Medicare certified, either by the Centers for Medicare & Medicaid Services or by any deeming authority recognized by the Centers for Medicare and Medicaid Services, but which has obtained accreditation from the American Association for Accreditation of Ambulatory Surgery Facilities or any accrediting body recognized by the Centers for Medicare & Medicaid Services and is in operation on the date of enactment of P.L. , c. (pending before the Legislature as this bill), shall not be required to meet the physical plant and functional requirements specified in N.J.A.C.8:43A-19.1 et seq. A surgical practice not in operation on the date of enactment of P.L. , c. (pending before the Legislature as this bill), if it is certified by the Centers for Medicare & Medicaid Services and is in operation on the date of enactment of P.L. , c. (pending before the Legislature as this bill), shall not be required to meet the physical plant and functional requirements specified in N.J.A.C.8:43A-19.1 et seq. A surgical practice required by this subsection to meet the physical plant and functional requirements specified in N.J.A.C.8:43A-19.1 et seq. may apply for a waiver of any such requirement in accordance with N.J.A.C.8:43A-2.9. The
commissioner shall grant a waiver of those physical plant and functional requirements, as the commissioner deems appropriate, if the waiver does not endanger the life, safety, or health of patients or the public.

IF a surgical practice does not charge patients or third party payers a facility fee, room charge, or other similar fee or charge, it shall be exempt from the ambulatory care facility assessment pursuant to section 7 of P.L.1992, c.160 (C.26:2H-18.57); except that, if the entity expands to include any additional rooms dedicated for use as an operating room, the entity shall be subject to the assessment, regardless of whether it charges patients and third party payers a facility fee, room charge, or other similar fee or charge.

As used in this subsection and subsection i. of this section, "surgical practice" means a structure or suite of rooms that has the following characteristics:

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

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

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

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

Nothing in this subsection shall be construed to limit the State Board of Medical Examiners from establishing standards of care with respect to the practice of medicine.

An ambulatory care facility licensed to provide surgical and related services shall be required to obtain ambulatory care accreditation from an accrediting body recognized by the Centers for Medicare and Medicaid Services as a condition of licensure by the department.

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

Beginning on the effective date of this section of P.L.2009, c.24, and as provided in P.L. , c. (pending before the Legislature as this bill), the department shall not issue a new registration to a
surgical practice or a new license to an ambulatory care facility to provide surgical and related services unless:

(1) in the case of a licensed facility in which a transfer of ownership of the facility is proposed, the commissioner reviews the qualifications of the new owner or owners and approves the transfer;

(2) (a) except as provided in subparagraph (b) of this paragraph, in the case of a licensed facility for which a relocation of the facility is proposed, the relocation is within 20 miles of the facility's current location or the relocation is to a "Health Enterprise Zone" designated pursuant to section 1 of P.L.2004, c.139 (C.54A:3-7), there is no expansion in the scope of services provided at the new location from that of the current location, and the commissioner reviews and approves the relocation; or

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

(3) the entity is a registered surgical practice required to be licensed pursuant to subsection g. of this section and meets the requirements of that subsection;

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

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

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

Beginning on the effective date of P.L. , c. (pending before the Legislature as this bill), the department shall not issue a new registration to a surgical practice. Any surgical practice in operation on the effective date of P.L. , c. (pending before the Legislature as this bill) that proposes to transfer its ownership or relocate on or after the effective date of P.L. , c. (pending before the Legislature as this bill) shall be required to be licensed by the department as an ambulatory care facility providing surgical and related services pursuant to subsection g. of this section.

j. (1) The department shall require an applicant for registration as a surgical practice, as provided in subsection g. of this section, to submit an application for registration in a form and manner prescribed by the department. The applicant shall submit the name
and address of the surgical practice that is to be registered, the name of the chief administrator or designated agent of the practice, the names and addresses of all owners of the practice, the scope of services provided at the practice, proof of certification by the Centers for Medicare and Medicaid Services or accreditation from an accrediting body recognized by the Centers for Medicare and Medicaid Services, and such other information as the commissioner deems necessary and as provided by regulation.

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

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

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

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

1. An ambulatory care facility licensed to provide surgical and related services and a surgical practice shall:

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

   (2) annually report to the department the name of the facility’s medical director, physician director, and physician director of anesthesia, as applicable, and the director of nursing services. The facility shall notify the department if there is any change in a named director, within 30 days of the change of the director.¹

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

²[2.] ²a. Within 90 days of the effective date of this act, the Department of Health and Senior Services shall consult with physician-owners of surgical practices and their representatives regarding physical plant differences between single-operating room surgical facilities and multiple-operating room ambulatory care facilities.

   b.]² The Department of Health and Senior Services shall adopt such rules and regulations, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), as it deems necessary to carry out the purposes of this act.¹

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

   2. a. A practitioner shall not refer a patient or direct an employee of the practitioner to refer a patient to a health care
service in which the practitioner, or the practitioner's immediate
family, or the practitioner in combination with the practitioner's
immediate family has a significant beneficial interest; except that,
in the case of a practitioner, a practitioner's immediate family or a
practitioner in combination with the practitioner's immediate family
who had the significant beneficial interest prior to the effective date
significant beneficial interest in a health care service that provides
lithotripsy or radiation therapy pursuant to an oncological protocol
that was held prior to the effective date of this section of P.L.2009,
c.24, the practitioner may continue to refer a patient or direct an
employee to do so if that practitioner discloses the significant
beneficial interest to the patient.

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

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

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

(2) renal dialysis; and

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

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

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

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

(d) disclosure of the referring practitioner's significant
beneficial interest in the practice or facility is made to the patient in
writing, at or prior to the time that the referral is made, consistent
with the provisions of section 3 of P.L.1989, c.19 (C.45:9-22.6).
(cf: P.L.2009, c.24, s.2)

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

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

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

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

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

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

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

4. Section 5. Sections 1, 2 and 3 of this act shall take effect immediately, and sections 4 of this act shall take effect one year after the date of enactment.