

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

BILL: CS/SB 212

INTRODUCER: Health Policy Committee and Senator Gaetz

SUBJECT: Ambulatory Surgical Centers

DATE: February 9, 2016 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|-----------------------------|
| 1. | Looke | Stovall | HP | Fav/CS |
| 2. | Brown | Pigott | AHS | Recommend: Favorable |
| 3. | | | AP | |

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 212 allows patients in an ambulatory surgical center (ASC) to stay in the center for up to 24 hours. Current law requires that patients in an ASC be discharged on the same working day and restricts patients from staying overnight in an ASC.

The bill also requires, as a condition of licensure, that an ASC must provide services to Medicaid and Medicare patients and to patients who qualify for charity care. The bill defines “charity care” as uncompensated care delivered to uninsured patients having incomes at or below 200 percent of the federal poverty level when such services are preauthorized by the licensee and not subject to collection procedures.

The bill is not estimated to have a fiscal impact on state government.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Ambulatory Surgical Centers

An ASC is a facility, that is not a part of a hospital, with a primary purpose to provide elective surgical care, in which the patient is admitted and discharged within the same working day and is not permitted to stay overnight.¹

In Florida, ambulatory procedures are performed in two settings, hospital-based outpatient facilities and freestanding ASCs. Currently, there are 431 licensed ASCs in Florida.² Of these, 413 are Medicare and/or Medicaid certified, and 381 are accredited by either the Accreditation Association for Ambulatory Health Care (AAAHC) or by the Joint Commission.³ In 2008, Medicare paid for 39.1 percent of all procedures performed in ASCs while Medicaid paid for 5.6 percent and commercial payers paid for 46.6 percent.

Between April 2014 and March 2015, there were 2,933,433 visits to ASCs or hospital outpatient facilities in Florida.⁴ Hospital outpatient facilities accounted for 31 percent and free standing ASCs accounted for 59 percent. Freestanding ASC average charges range from \$2,930 to \$7,333 and hospital outpatient facility average charges range from \$7,727 to \$26,034 for the same time period.⁵ Two of the most popular procedures that are performed on adults at an ASC include cataract procedures with 249,184 performed and colonoscopies with 218,745 performed, also during the same time period.⁶

In a survey of ASC research and literature, the Office of Program Policy Analysis and Government Accountability (OPPAGA) found that, generally, the impact on hospitals from competition from ASCs was limited and that ASCs can result in cost savings when performing certain procedures. Additionally, the OPPAGA did not identify any patterns associated with access to services in ASCs and found that the studies largely agree that ASCs, in general, provide timely service and had low rates of unexpected adverse safety events.⁷

¹ Section 395.002(3), F.S., defines “Ambulatory surgical center” or “mobile surgical facility” to mean a facility the primary purpose of which is to provide elective surgical care, in which the patient is admitted to and discharged from such facility within the same working day and is not permitted to stay overnight, and which is not part of a hospital. However, a facility existing for the primary purpose of performing terminations of pregnancy, an office maintained by a physician for the practice of medicine, or an office maintained for the practice of dentistry shall not be construed to be an ambulatory surgical center, provided that any facility or office which is certified or seeks certification as a Medicare ambulatory surgical center shall be licensed as an ambulatory surgical center pursuant to s. 395.003, F.S. Any structure or vehicle in which a physician maintains an office and practices surgery, and which can appear to the public to be a mobile office because the structure or vehicle operates at more than one address, shall be construed to be a mobile surgical facility.

² See AHCA presentation on Ambulatory Surgical Centers, slide 10, presented to the Health Policy Committee on June 10, 2015, (on file with the Senate Committee on Health Policy).

³ Id.

⁴ Agency for Health Care Administration, Florida Health Finder Search, <http://www.floridahealthfinder.gov/CompareCare/CompareFacilities.aspx> (last viewed January 14, 2016).

⁵ Id.

⁶ Id.

⁷ Ambulatory Surgical Centers and Recovery Care Centers, OPPAGA, January 19, 2016, on file with Senate Health Policy Committee staff.

ASC Licensure

ASCs are licensed and regulated by the AHCA under the same regulatory framework as hospitals.⁸ Applicants for ASC licensure must submit certain information to the AHCA prior to accepting patients for care or treatment, including registration of articles of incorporation and a zoning certificate or proof of compliance with zoning requirements.⁹

Upon receipt of an initial application, the AHCA is required to conduct a survey to determine compliance with all laws and rules. ASCs are required to provide certain information during the initial inspection, including:

- The governing body's bylaws, rules, and regulations;
- The roster of registered nurses and licensed practical nurses with current license numbers;
- A fire plan; and
- A comprehensive emergency management plan.¹⁰

Rules for ASCs

Pursuant to s. 395.1055, F.S., the AHCA is authorized to adopt rules for hospitals and ASCs. Separate standards may be provided for general and specialty hospitals, ASCs, and statutory rural hospitals, but the rules for all hospitals and ASCs must include minimum standards for ensuring that:

- A sufficient number of qualified types of personnel and occupational disciplines are on duty and available at all times to provide necessary and adequate patient care;
- Infection control, housekeeping, sanitary conditions, and medical record procedures are established and implemented to adequately protect patients;
- A comprehensive emergency management plan is prepared and updated annually;
- A licensed facility is established, organized, and operated consistent with established standards and rules; and
- A licensed facility conforms to minimum space, equipment, and furnishing standards for the beds in the facility.

AHCA rule ch. 59A-5, F.A.C., implements the minimum standards for ASCs. Those rules also require policies and procedures to ensure the protection of patient rights.

Staff and Personnel Rules

ASCs are required to have written policies and procedures for surgical services, anesthesia services, nursing services, pharmaceutical services, laboratory services, and radiologic services. In providing these services, ACSs are required to have certain professional staff available, including:

- A qualified person responsible for the daily functioning and maintenance of the surgical suite;
- An anesthesiologist, physician, a certified registered nurse anesthetist under the on-site medical direction of a licensed physician, or an anesthesiologist assistant under the direct

⁸ Sections 395.001-395.1065, F.S., and Part II, Chapter 408, F.S.

⁹ Rule 59A-5.003(4), F.A.C.

¹⁰ Rule 59A-5.003(5), F.A.C.

supervision of an anesthesiologist who must be in the ASC during the anesthesia and post-anesthesia recovery period until all patients are alert or discharged;

- A registered professional nurse who is responsible for coordinating and supervising all nursing services;
- A registered professional circulating nurse for a patient during that patient's surgical procedure; and
- A registered professional nurse who must be in the recovery area at all times when any patients are present.¹¹

Infection Control Rules

ASCs are required to establish an infection control program involving members of the medical, nursing, and administrative staff. The program must include written policies and procedures reflecting the scope of the infection control program. The written policies and procedures must be reviewed at least every two years by the infection control program members. The infection control program must include:

- Surveillance, prevention, and control of infection among patients and personnel;
- A system for identifying, reporting, evaluating and maintaining records of infections;
- Ongoing review and evaluation of aseptic, isolation, and sanitation techniques employed by the ASC; and
- Development and coordination of training programs in infection control for all personnel.¹²

Emergency Management Plan Rules

ASCs are required to develop and adopt a written comprehensive emergency management plan for emergency care during an internal or external disaster or emergency. The ASC must review the plan and update it annually.¹³

Accreditation

ASCs may seek voluntary accreditation by the Joint Commission or the AAAHC. The AHCA is required to conduct an annual licensure inspection survey for non-accredited ASCs. The AHCA is authorized to accept survey reports of accredited ASCs from accrediting organizations if the standards included in the survey report are determined to document that the ASC is in substantial compliance with state licensure requirements. The AHCA is required to conduct annual validation inspections on a minimum of five percent of the ASCs which were inspected by an accreditation organization.¹⁴

AHCA is required to conduct annual life safety inspections of all ASCs to ensure compliance with life safety codes and disaster preparedness requirements. However, the life-safety inspection may be waived if an accreditation inspection was conducted on an ASC by a certified life safety inspector and the ASC was found to be in compliance with the life safety requirements.¹⁵

¹¹ Rule 59A-5.0085, F.A.C.

¹² Rule 59A-5.011, F.A.C.

¹³ Rule 59A-5.018, F.A.C.

¹⁴ Rule 59A-5.004, F.A.C.

¹⁵ Id.

Medicare Requirements

ASCs are required to have an agreement with the federal Centers for Medicare & Medicaid Services (CMS) in order to participate in Medicare. ASCs are also required to comply with specific conditions for coverage. CMS defines “ASC” as any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization and in which the expected duration of services would not exceed 24 hours following an admission.¹⁶

CMS may deem an ASC to be in compliance with all of the conditions for coverage if the ASC is accredited by a national accrediting body, or licensed by a state agency, and CMS determines that such accreditation or licensure provides reasonable assurance that the conditions for coverage are met.¹⁷ All of the CMS conditions for coverage requirements are specifically required in AHCA rule ch. 59A-5, F.A.C., and apply to all ASCs in Florida. The conditions for coverage require ASCs to have:

- A governing body that assumes full legal responsibility for determining, implementing, and monitoring policies governing the ASC’s total operation;
- A quality assessment and performance improvement program;
- A transfer agreement with one or more acute care general hospitals, which will admit any patient referred who requires continuing care;
- A disaster preparedness plan;
- An organized medical staff;
- A fire control plan;
- A sanitary environment;
- An infection control program; and
- A procedure for patient admission, assessment, and discharge.

III. Effect of Proposed Changes:

The bill amends the definition of “ambulatory surgical center” in s. 395.002, F.S., to allow a patient to be admitted and discharged from an ASC within 24 hours. Current law requires that patients be discharged from an ASC within the same working day and restricts patients from staying at an ASC overnight.

The bill also amends s. 395.003, F.S., to require, as a condition of licensure, that ASCs provide services to Medicaid and Medicare patients and to patients who qualify for charity care. The bill defines “charity care” as uncompensated care delivered to uninsured patients having incomes at or below 200 percent of the federal poverty level when such services are preauthorized by the licensee and not subject to collection procedures.

The bill also includes conforming changes for statutory cross-references.

The bill establishes an effective date of July 1, 2016.

¹⁶ 42 C.F.R. §416.2

¹⁷ 42 C.F.R. §416.26(a)(1)

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 212 may have an indeterminate positive fiscal impact on patients in Florida who are able to have a surgical procedure performed in an ASC if the costs are less in these settings than in a hospital.

The bill may have an indeterminate negative fiscal impact on hospitals if more patients choose to have their procedures performed in an ASC rather than in a hospital.

The bill may have a negative fiscal impact on ASCs that are required to provide services to Medicare and Medicaid patients as well as patients who qualify for charity care if the ASCs do not currently provide such services.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 395.002 and 395.003.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on January 19, 2016:

The CS amends SB 212 to remove all provisions of the bill except a change to the definition of “ambulatory surgical center” which allows patients to recover in an ASC for 24 hours, rather than requiring that patients be released on the same business day. The CS also requires that ASCs provide services to Medicaid and Medicare patients as well as patients who qualify for charity care. The CS defines “charity care” as uncompensated care delivered to uninsured patients having incomes at or below 200 percent of the federal poverty level when such services are preauthorized by the licensee and not subject to collection procedures.

- B. **Amendments:**

None.