

**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.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: CS/SB 222

INTRODUCER: Health Policy Committee and Senators Steube and Brandes

SUBJECT: The Length of Time a Patient May Stay at an Ambulatory Surgical Center

DATE: March 14, 2017

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|---------|----------------|-----------|---------------|
| 1. | Looke   | Stovall        | HP        | <b>Fav/CS</b> |
| 2. |         |                | CA        |               |
| 3. |         |                | AHS       |               |
| 4. |         |                | AP        |               |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 222 amends s. 395.002, F.S., to allow 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.

**II. Present Situation:**

**Ambulatory Surgical Centers**

An ASC is a facility, that is not a part of a hospital, the primary purpose of which is 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.<sup>1</sup>

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<sup>1</sup> Section 395.002(3), F.S., defines “Ambulatory surgical center” 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.

In Florida, ambulatory procedures are performed in two settings, hospital-based outpatient facilities and freestanding ASCs. Currently, there are 432 licensed ASCs in Florida.<sup>2</sup>

Between July 2015 and June 2016, there were 3,046,297 visits to ASCs in Florida.<sup>3</sup> Hospital outpatient facilities accounted for 1,419,020 (46.5 percent) visits and free standing ASCs accounted for 1,627,277 (53.5 percent) visits. Freestanding ASC average charges range from \$3,034 to \$7,902 and hospital based ASC average charges range from \$8,669 to \$28,624 for the same time period.<sup>4</sup> Two of the most popular procedures to have performed at an ASC include cataract procedures with 264,530 performed and colonoscopies with 232,667 performed, also during the same time period.<sup>5</sup>

### ***ASC Licensure***

ASCs are licensed and regulated by the AHCA under the same regulatory framework as hospitals.<sup>6</sup> Applicants for ASC licensure must submit certain information to AHCA prior to accepting patients for care or treatment, including the:

- Affidavit of compliance with fictitious name;
- Registration of articles of incorporation; and
- ASC's zoning certificate or proof of compliance with zoning requirements.<sup>7</sup>

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 bylaws, rules, and regulations;
- Roster of registered nurses and licensed practical nurses with current license numbers;
- Fire plan; and
- Comprehensive Emergency Management Plan.<sup>8</sup>

### ***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, mobile surgical facilities, 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;

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<sup>2</sup> Agency for Health Care Administration, *Senate Bill 222 Analysis* (Jan. 4, 2017) (on file with the Senate Committee on Health Policy).

<sup>3</sup> Agency for Health Care Administration, *Florida Health Finder*, <http://www.floridahealthfinder.gov/CompareCare/CompareFacilities.aspx> (last viewed Mar. 8, 2017).

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Sections 395.001-395.1065, F.S., and part II, ch. 408, F.S.

<sup>7</sup> Fla. Admin. R. 59A-5.003(4).

<sup>8</sup> Fla. Admin. R. 59A-5.003(5).

- Licensed facilities are established, organized, and operated consistent with established standards and rules; and
- Licensed facility beds conform to minimum space, equipment, and furnishing standards.

Rule 59A-5 of the Florida Administrative Code, 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 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 a patient is present.<sup>9</sup>

### ***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 2 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.<sup>10</sup>

### ***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.<sup>11</sup>

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<sup>9</sup> Fla. Admin. Code R. 59A-5.0085

<sup>10</sup> Fla. Admin. Code R. 59A-5.011

<sup>11</sup> Fla. Admin. Code R. 59A-5.018.

### ***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 5 percent of the ASCs which were inspected by an accreditation organization.<sup>12</sup>

The 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.<sup>13</sup>

### ***Medicare Requirements***

ASCs are required to have an agreement with the Centers for Medicare and Medicaid Services (CMS) 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.<sup>14</sup>

The 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.<sup>15</sup> All of the CMS conditions for coverage requirements are specifically required in Rule 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;
- Quality assessment and performance improvement program;
- Transfer agreement with one or more acute care general hospitals, which will admit any patient referred who requires continuing care;
- Disaster preparedness plan;
- Organized medical staff;
- Fire control plan;
- Sanitary environment;
- Infection control program; and
- Procedure for patient admission, assessment and discharge.

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<sup>12</sup> Fla. Admin. Code R. 59A-5.004.

<sup>13</sup> Id.

<sup>14</sup> 42 C.F.R. s. 416.2.

<sup>15</sup> 42 C.F.R. s. 416.26(a)(1).

**Effect of Proposed Changes:**

CS/SB 222 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. This comports with the federal CMS definition of an ASC.<sup>16</sup> 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 establishes an effective date of July 1, 2017.

**III. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**IV. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

CS/SB 222 may have an indeterminate negative fiscal impact on hospitals if more patients choose to have their procedures performed in an ASC.

**C. Government Sector Impact:**

None.

**V. Technical Deficiencies:**

None.

**VI. Related Issues:**

None.

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<sup>16</sup> See supra note 14.

**VII. Statutes Affected:**

This bill substantially amends section 395.002 of the Florida Statutes.

**VIII. 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 March 14, 2017:**

The CS eliminates all provisions in the bill except a change to the definition of “ambulatory surgical center” to allow patients to recover in an ASC for up to 24 hours before being discharged.

- B. **Amendments:**

None.