



House Bill 1575 Allows ASCs to Regain their Licenses

While the ambulatory surgical facility licensure law was effective July 1, 2009, significant confusion regarding the implementation of the law by the Washington State Department of Health (DOH) remains. House Bill 1575, which was introduced on January 26, 2011, seeks to eliminate that confusion and clarify the types of facilities that are subject to the licensure law.

Background

Codified at chapter 70.230 RCW, the ambulatory surgical facility licensure law requires any distinct entity that operates for the primary purpose of providing specialty or multispecialty outpatient surgical services in which patients are admitted to and discharged from the facility within 24 hours to be licensed by DOH as an ambulatory surgical facility. The licensure law excludes from its scope “outpatient specialty or multi-specialty surgical services routinely and customarily performed in the office of a practitioner in an individual or group practice that do not require general anesthesia.” This provision in the law is often referred to as the “practitioner office exception.”

On October 20, 2009, DOH issued guidance in the form of “Frequently Asked Questions” that narrowed the applicability of the licensure law by broadening the practitioner office exception. According to its guidance, DOH interprets the licensure law to apply to only those facilities where outpatient surgery is performed with general anesthesia. Consequently, practitioner offices and other types of facilities where outpatient surgery is performed without general anesthesia are ineligible for licensure. Thus, while many physicians performing such procedures are subject to new rules governing office-based surgery adopted by the Medical Quality Assurance Commission in September 2010, their facilities are now ineligible for licensure.

House Bill 1575

As a result of the change in DOH’s interpretation of the licensure law in October 2009, approximately 60 ambulatory surgery centers were required to relinquish their licenses. On January 26, 2011, House Bill 1575 was introduced. It is anticipated that, if passed, the legislation would permit these ambulatory surgery centers to regain their licenses.

Under HB 1575, “ambulatory surgical facility” is defined to include surgical suites that are adjacent to the office of a practitioner if the primary purpose of those suites is to offer specialty or multispecialty outpatient surgical services, regardless of the type of anesthesia used. Surgical suites may share certain spaces with the office of a practitioner, including a reception area, restroom, waiting room, and walls.

HB 1575 clarifies that the practitioner office exception applies to outpatient specialty or multispecialty surgical services routinely and customarily performed in the office of a practitioner in an individual or group practice, where the primary purpose of the office is not the performance of surgical services. It also clarifies that surgical services in which general anesthesia is a planned event must be performed only in a licensed ambulatory surgical facility or in a licensed hospital or hospital-associated surgical center.

This article has been prepared by Emily R. Studebaker of Garvey Schubert Barer. It is not a substitute for legal advice or individual analysis of a particular legal matter. Transmission and receipt of this publication does not create an attorney-client relationship.

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