

# HOUSE BILL REPORT

## SSB 5778

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**As Reported by House Committee On:**  
Health Care & Wellness

**Title:** An act relating to ambulatory surgical facilities.

**Brief Description:** Concerning ambulatory surgical facilities.

**Sponsors:** Senate Committee on Health Care (originally sponsored by Senators Becker, Frockt, Keiser, Bailey, Dammeier, Lias, Hatfield, Angel, Dansel, King, Baumgartner, Brown, Cleveland, Warnick, Honeyford, Parlette, Hill, Rivers, Fain, Braun, Litzow, Conway, Sheldon, Ericksen and Hewitt).

**Brief History:**

**Committee Activity:**

Health Care & Wellness: 2/23/16, 2/26/16 [DPA].

**Brief Summary of Substitute Bill  
(As Amended by Committee)**

- Prohibits the Secretary of Health from increasing ambulatory surgical facility licensing fees until July 1, 2018.
- Directs the Department of Health to conduct a benchmark survey to compare Washington's ambulatory surgical facility licensing program with comparable programs in other states in terms of licensing standards, staffing levels, training, and expenditures.
- Requires third-party payors to accept the survey results of an ambulatory surgical facility if the survey was conducted pursuant to certification by the federal Centers for Medicare and Medicaid Services or accreditation by an accrediting organization.

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**HOUSE COMMITTEE ON HEALTH CARE & WELLNESS**

**Majority Report:** Do pass as amended. Signed by 15 members: Representatives Cody, Chair; Riccelli, Vice Chair; Schmick, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Caldier, Clibborn, DeBolt, Jinkins, Johnson, Moeller, Robinson, Rodne, Short, Tharinger and Van De Wege.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Chris Blake (786-7392).

**Background:**

An ambulatory surgical facility is an entity that provides outpatient surgical services for patients who are discharged within 24 hours of admission and do not require inpatient hospitalization.

Ambulatory surgical facilities are licensed by the Department of Health (Department) on a three-year renewal cycle. Requirements for an applicant to become licensed as an ambulatory surgical facility include submitting a written application, submitting building plans for any new construction or alterations, meeting on-site survey requirements, submitting proof of operation of a coordinated quality improvement program, submitting a copy of a facility safety and emergency training program, and paying a fee.

An ambulatory surgical facility must be surveyed every 18 months by the Department. An ambulatory surgical facility may be deemed to have met the survey requirement if it successfully completed a Department survey in the previous 18 months and it submits proof of certification as a Medicare ambulatory surgical facility or accreditation by an organization with substantially equivalent survey standards as the Department. Approved accrediting organizations include the Joint Commission, the Accreditation Association for Ambulatory Health Care, the American Association for Accreditation of Ambulatory Surgery Facilities, or the Centers for Medicare and Medicaid Services (CMS).

Fees for ambulatory surgical facility licenses are tiered according to the number of surgical procedures performed annually and whether the ambulatory surgical facility is accredited, certified by CMS, or only licensed by the Department. At the low end of the scale, an ambulatory surgical facility that performs 1,000 surgical procedures annually or less and is accredited must pay \$3,630 every three years for a license. At the top of the scale, an ambulatory surgical facility that performs more than 5,000 surgical procedures annually and is only licensed by the Department must pay \$10,068 every three years for a license.

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**Summary of Amended Bill:**

The Secretary of Health may not increase ambulatory surgical facility licensing fees or begin rulemaking to increase the fees until July 1, 2018. The Department must report to the fiscal committees of the Legislature if it anticipates that ambulatory surgical facility licensing fees will not cover the cost of regulation, including the amount of state general funds necessary to cover the insufficient funds. The reports shall be made by December 1, 2016, and December 1, 2017. The Ambulatory Surgical Facility Account is eliminated.

The Department must conduct a benchmark survey that compares Washington's ambulatory surgical facility licensing program with comparable programs in other states in terms of licensing standards, staffing levels, training, and expenditures and analyze any differences in costs. The survey must assess the extent to which program costs are supported through licensing fees or State General Fund money or other resources. The Department shall submit

its findings to the health care committees of the Legislature by December 1, 2016. The findings must include recommendations for statutory, regulatory, and administrative changes to reduce ambulatory surgical facility licensing fees.

The frequency of Department surveys of ambulatory surgical facilities is clarified as either:

1. no more than once every 18 months; or
2. no more than once every 36 months for those ambulatory surgical facilities that: (a) have had a survey in connection with certification by the Centers for Medicare and Medicaid Services (CMS) or accreditation with an approved accreditation organization; (b) have maintained their certification or accreditation since that survey; and (c) have provided, as soon as practicable, evidence of certification or accreditation and the fact of a survey's occurrence.

Notification to the Department that a survey related to certification or accreditation has occurred must be provided as soon as practicable, rather than within 30 days. Survey reports are to be made available to the Department surveyors during a survey or upon request.

If a third-party payor, such as a carrier or managed health care system, requires that a licensed ambulatory surgical facility complete a survey as part of a contract, the survey requirement must be deemed as having been met if the ambulatory surgical facility successfully completed a survey pursuant to a CMS certification or by an accrediting organization. The third party payor may not impose additional survey requirements on the ambulatory surgical facility.

#### **Amended Bill Compared to Substitute Bill:**

The amended bill removes the limit on ambulatory surgical facility licensing fee increases as the lesser of 3 percent of the current fee or the inflation rate. Ambulatory surgical facility licensing fees may not be increased and rulemaking related to the increase in ambulatory surgical facility licensing fees may not begin until July 1, 2018.

The amended bill requires the Department of Health (Department) to report to the fiscal committees of the Legislature if it anticipates that ambulatory surgical facility license fees will not cover the costs of regulation. The report must indicate the amount of State General Funds required to cover the shortfall.

The Department must conduct a benchmark survey to compare Washington's ambulatory surgical facility licensing program with the programs of similar states. The survey must review licensing standards, staffing levels, training, and expenditures, and analyze any differences in costs. The survey must assess the extent to which program costs are supported through licensing fees or State General Fund money or other resources. The Department shall submit its findings to the health care committees of the Legislature by December 1, 2016. The findings must include recommendations for statutory, regulatory, and administrative changes to reduce ambulatory surgical facility licensing fees.

The amended bill restructures provisions regarding the frequency of surveys. An ambulatory surgical facility using the 36-month Department survey cycle must have maintained its certification or accreditation since the survey in connection with its certification or

accreditation following the last Department survey. Use of the 36-month Department survey cycle is conditioned on the ambulatory surgical facility's notification to the Department of its certification or accreditation.

Existing law is restored to require ambulatory surgical facilities to provide the Department with evidence that the ambulatory surgical facility is certified or accredited. Requires the notification to be provided as soon as practicable (current law is 30 days) and to state that a survey occurred and the date of the survey.

Existing law is restored to require ambulatory surgical facilities to make reports of surveys available. Requires survey reports to be made available during a survey or upon request instead of "during a survey, upon request."

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The Department survey is complex, thorough, time-consuming, and expensive and new practices are discouraged from attempting to become accredited. Department survey standards differ from those of the Centers for Medicare and Medicaid Centers standards. Each time a new survey is performed, the ambulatory surgical facility must respond to new findings which vary depending on the surveyor. This bill limits the number of inspections to a reasonable number. This bill's mandate that third-party payors must accept any valid accreditation that meets CMS standards is immensely reasonable. This bill does not change the standards that must be met, so it does not reduce the quality of the care or the safety of the care being provided. This bill allows health care providers to focus on better ways to care for patients, so the patients are the winners in this. Many ambulatory surgical facilities are surveyed by two to four entities within an 18-month period. The duplication of surveys does not increase patient care or safety. This bill eliminates the duplicative nature of these surveys to a level of what a hospital would undergo which should reduce costs. The surveys are overly burdensome and require hours of unnecessary work by both the Department and facility staff. The surveys are almost all identical and just add cost without adding any value.

This bill protects Washington's ambulatory surgical facilities, which already pay among the highest fees in the nation, from unnecessary additional fee increases. Only four states have higher fees than Washington. In 2015 the Department sought to raise fees by approximately 67 percent. The Department does not provide more services than other states, but the higher costs can be attributed to inefficiency in the program. Surveys are about 98 percent of the cost of the program. Surveyors are often not familiar with this type of facility or the

operating rooms which result in additional time conducting the survey and post-survey activity which increases costs without helping patient care.

To base fees on a cost-reimbursement that cannot be controlled is incongruent with today's health care world.

(Opposed) None.

(Other) There are concerns about the fee cap because the initial projections were based on the number of facilities that were expected to become licensed, but the actual number was fewer. Since each category of licensure must be self-supporting, if fees are inadequate the profession may end up being subsidized by the Department. There could be an amendment to benchmark Washington's program costs against other comparable states and their costs.

**Persons Testifying:** (In support) Gordon Johns, Pacific Cataract and Laser Institute; and Ellie Studebaker and David Fitzgerald, Washington Ambulatory Surgery Center Association.

(Other) Drew Bouton, Washington Department of Health.

**Persons Signed In To Testify But Not Testifying:** None.