

26:2H-12 et. al
LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 2017 **CHAPTER:** 283

NJSA: 26:2H-12 et. al (Requires surgical practices to apply for licensure as ambulatory care facilities.)

BILL NO: S278 (Substituted for A4995)

SPONSOR(S) Vitale and others

DATE INTRODUCED: 1/12/2016

COMMITTEE: **ASSEMBLY:** Health & Senior Services

SENATE: Health, Human Services & Senior Citizens

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** 1/8/2018

SENATE: 1/8/2018

DATE OF APPROVAL: 1/16/2018

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Third Reprint enacted) Yes

S278

SPONSOR'S STATEMENT: (Begins on page 8 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: Yes 6/26/17
12/7/2017

LEGISLATIVE FISCAL ESTIMATE: No

A4995

SPONSOR'S STATEMENT: (Begins on page 9 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: Yes

LEGISLATIVE FISCAL ESTIMATE: No

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"New 'One Room' law encourages expansion of surgical centers in NJ," NJBIZ, January 16, 2018

RH/CL

P.L. 2017, CHAPTER 283, *approved January 16, 2018*
Senate, No. 278 (*Third Reprint*)

1 AN ACT concerning surgical practices and amending P.L.1971,
2 c.136, P.L.1989, c.19, and P.L.2009, c.24.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 12 of P.L.1971, c.136 (C.26:2H-12) is amended to read
8 as follows:

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

25 b. (1) Application for a license for a health care service or health
26 care facility shall be made upon forms prescribed by the department.
27 The department shall charge a single, nonrefundable fee for the filing
28 of an application for and issuance of a license and a single,
29 nonrefundable fee for any renewal thereof, and a single, nonrefundable
30 fee for a biennial inspection of the facility, as it shall from time to time
31 fix in rules or regulations; provided, however, that no such licensing
32 fee shall exceed \$10,000 in the case of a hospital and \$4,000 in the
33 case of any other health care facility for all services provided by the
34 hospital or other health care facility, and no such inspection fee shall
35 exceed \$5,000 in the case of a hospital and \$2,000 in the case of any
36 other health care facility for all services provided by the hospital or
37 other health care facility. No inspection fee shall be charged for
38 inspections other than biennial inspections. ²Any surgical practice
39 required to apply for licensure by the department as an ambulatory

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 May 15, 2017.

²Senate floor amendments adopted June 26, 2017.

³Assembly floor amendments adopted December 7, 2017.

1 care facility pursuant to P.L. , c. ³[(C.)]³ (pending before the
2 Legislature as this bill) shall be exempt from the initial and renewal
3 license fees required by this section.² The application shall contain the
4 name of the health care facility, the kind or kinds of health care service
5 to be provided, the location and physical description of the institution,
6 and such other information as the department may require.

7 (2) A license shall be issued by the department upon its findings
8 that the premises, equipment, personnel, including principals and
9 management, finances, rules and bylaws, and standards of health care
10 service are fit and adequate and there is reasonable assurance the
11 health care facility will be operated in the manner required by this act
12 and rules and regulations thereunder.

13 (3) The department shall post on its Internet website each
14 inspection report prepared following an inspection of a residential
15 health care facility, as defined in section 1 of P.L.1953, c.212
16 (C.30:11A-1) or licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et
17 seq.), that is performed pursuant to this subsection, along with any
18 other inspection report prepared by or on behalf of the department for
19 such facility.

20 If an inspection reveals a serious health and safety violation at a
21 residential health care facility, the department shall post the inspection
22 report, including the name of the facility and the owner of the facility,
23 on its website no later than 72 hours following the inspection. If a
24 license of a residential health care facility is suspended, the department
25 shall post the suspension on its website no later than 72 hours
26 following the suspension. The department shall update its website to
27 reflect the correction of a serious health and safety violation, and the
28 lifting of a suspension.

29 The department shall notify, as soon as possible, the Commissioner
30 of Human Services, or the commissioner's designee, and the director
31 of the county board of social services or county welfare agency, as
32 appropriate, in the county in which a residential health care facility is
33 located, of a serious health and safety violation at the facility and of
34 any suspension of a license to operate such facility.

35 If the inspection responsibilities under this subsection with respect
36 to such facility are transferred or otherwise assigned to another
37 department, that other department shall post on its Internet website
38 each inspection report prepared following an inspection of such
39 facility performed pursuant to this subsection, along with any other
40 inspection report prepared by or on behalf of that department for such
41 facility, and shall comply with the other requirements specified in this
42 subsection.

43 c. (Deleted by amendment, P.L.1998, c.43) **[.]**

44 d. The commissioner may amend a facility's license to reduce that
45 facility's licensed bed capacity to reflect actual utilization at the
46 facility if the commissioner determines that 10 or more licensed beds
47 in the health care facility have not been used for at least the last two
48 succeeding years. For the purposes of this subsection, the

1 commissioner may retroactively review utilization at a facility for a
2 two-year period beginning on January 1, 1990.

3 e. If a prospective applicant for licensure for a health care service
4 or facility that is not subject to certificate of need review pursuant to
5 P.L.1971, c.136 (C.26:2H-1 et al.) so requests, the department shall
6 provide the prospective applicant with a pre-licensure consultation.
7 The purpose of the consultation is to provide the prospective applicant
8 with information and guidance on rules, regulations, standards and
9 procedures appropriate and applicable to the licensure process. The
10 department shall conduct the consultation within 60 days of the request
11 of the prospective applicant.

12 f. Notwithstanding the provisions of any other law to the
13 contrary, an entity that provides magnetic resonance imaging or
14 computerized axial tomography services shall be required to obtain a
15 license from the department to operate those services prior to
16 commencement of services, except that a physician who is operating
17 such services on the effective date of P.L.2004, c.54 shall have one
18 year from the effective date of P.L.2004, c.54 to obtain the license.

19 g. (1) **【**Notwithstanding the provisions of any other law to the
20 contrary, an entity that operates a surgical practice on the effective
21 date of this section of P.L.2009, c.24, as defined in this subsection,
22 shall be required to register with the department within one year of the
23 effective date of P.L.2009, c.24. **】** (Deleted by amendment, P.L. ,
24 c.) (pending before the Legislature as this bill)

25 (2) **【**An entity that has not commenced operation as a surgical
26 practice on the effective date of this section of P.L.2009, c.24, but has
27 filed or files before the 180th day after the effective date of this section
28 of P.L.2009, c.24 its plans, specifications, and required documents
29 with the municipality in which the surgical practice will be located,
30 shall register with the department prior to the commencement of
31 services. **】** (Deleted by amendment, P.L. , c.) (pending before the
32 Legislature as this bill)

33 (3) **【**As a condition of registration with the department, a surgical
34 practice shall be required to obtain certification by the Centers for
35 Medicare and Medicaid Services as an ambulatory surgery center
36 provider or obtain ambulatory care accreditation from an accrediting
37 body recognized by the Centers for Medicare and Medicaid Services
38 and continually maintain such accreditation. **】** (Deleted by amendment,
39 P.L. , c.) (pending before the Legislature as this bill)

40 (4) **【**As a condition of registration with the department, a surgical
41 practice shall be required to report the following information annually:
42 the number of patients served by payment source, including the
43 number of Medicaid-eligible and medically indigent persons served;
44 the number of new patients accepted; and the number of physicians,
45 physician assistants, and advanced practice nurses providing
46 professional services at the surgical practice. **】** ²(Deleted by

1 amendment, P.L. , c.) (pending before the Legislature as this
 2 bill)]²

3 A surgical practice in operation on the date of enactment of P.L. ,
 4 c. (pending before the Legislature as this bill) shall be required to
 5 ²[be licensed by] apply to² the department ²for licensure² as an
 6 ambulatory care facility licensed to provide surgical and related
 7 services within one year of the date of enactment of P.L. ,
 8 c. (pending before the Legislature as this bill) ¹.

9 A surgical practice that is certified by the Centers for Medicare and
 10 Medicaid Services (CMS) shall not be required to meet the physical
 11 plant and functional requirements specified in N.J.A.C.8:43A-19.1 et
 12 seq. A surgical practice that is not Medicare certified, either by CMS
 13 or by any deeming authority recognized by ³[the]³ CMS, but which
 14 has obtained accreditation from the American Association of
 15 Ambulatory Surgery Facilities or any accrediting body recognized by
 16 CMS and is in operation on the date of enactment of P.L. , c.
 17 (pending before the Legislature as this bill), shall not be required to
 18 meet the physical plant and functional requirements specified in
 19 N.J.A.C.8:43A-19.1 et seq. A surgical practice not in operation on the
 20 date of enactment of P.L. , c. (pending before the
 21 Legislature as this bill), if it is certified by CMS as an ambulatory
 22 surgery center provider, shall also be exempt from these requirements.
 23 A surgical practice required by this subsection to meet the physical
 24 plant and functional requirements specified in N.J.A.C.8:43A-19.1 et
 25 seq. may apply for a waiver of any such requirement in accordance
 26 with N.J.A.C.8:43A-2.9. The commissioner shall grant a waiver of
 27 those physical plant and functional requirements, as the commissioner
 28 deems appropriate, if the waiver does not endanger the life, safety, or
 29 health of patients or the public.

30 A surgical practice required to be licensed pursuant to this
 31 subsection shall be exempt from the ambulatory care facility
 32 assessment pursuant to section 7 of P.L.1992, c.160 (C.26:2H-18.57);
 33 except that, if the entity expands to include any additional room
 34 dedicated for use as an operating room, the entity shall be subject to
 35 the assessment.¹

36 [(5)] ¹(5)¹ As used in this subsection and subsection i. of this
 37 section, "surgical practice" means a structure or suite of rooms that has
 38 the following characteristics:

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

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

46 (c) is established by a physician, physician professional
 47 association surgical practice, or other professional practice form

1 specified by the State Board of Medical Examiners pursuant to
 2 regulation solely for the physician's, association's ¹,¹ or other
 3 professional entity's private medical practice ²["¹; or a dentist, dentist
 4 professional association, or other professional practice form authorized
 5 by the New Jersey Board of Dentistry pursuant to regulation solely for
 6 the dentist's, association's, or other professional entity's private dental
 7 practice¹"]².

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

11 (6) ¹(6)¹ Nothing in this subsection shall be construed to limit the
 12 State Board of Medical Examiners from establishing standards of care
 13 with respect to the practice of medicine.

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

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

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

28 (1) in the case of a [registered surgical practice or] licensed
 29 facility in which a transfer of ownership of the [practice or] facility is
 30 proposed, the commissioner reviews the qualifications of the new
 31 owner or owners and approves the transfer;

32 (2) (a) except as provided in subparagraph (b) of this paragraph,
 33 in the case of a [registered surgical practice or] licensed facility for
 34 which a relocation of the [practice or] facility is proposed, the
 35 relocation is within 20 miles of the [practice's or] facility's current
 36 location or the relocation is to a "Health Enterprise Zone" designated
 37 pursuant to section 1 of P.L.2004, c.139 (C.54A:3-7), there is no
 38 expansion in the ¹[scope of services] number of operating rooms¹
 39 provided at the new location from that of the current location, and the
 40 commissioner reviews and approves the relocation prior to its
 41 occurrence; or

42 (b) in the case of a licensed facility described in paragraph (5) or
 43 (6) of this subsection for which a relocation of the facility is proposed,
 44 the commissioner reviews and approves the relocation prior to its
 45 occurrence;

1 (3) the entity is a ¹~~registered~~¹ surgical practice required to be
2 ~~registered~~ licensed pursuant to ~~paragraph (1) of~~ subsection g. of
3 this section and meets the requirements of that subsection;

4 (4) the entity has filed its plans, specifications, and required
5 documents with the Health Care Plan Review Unit of the Department
6 of Community Affairs or the municipality in which the surgical
7 practice or facility will be located, as applicable, on or before the
8 180th day following the effective date of this section of P.L.2009,
9 c.24;

10 (5) the facility is owned jointly by a general hospital in this State
11 and one or more other parties; ²~~or~~²

12 (6) the facility is owned by a hospital or medical school in this
13 State, or the facility is owned by any hospital approved on or before
14 the effective date of ³~~this act~~ P.L.2015, c.305³ to provide
15 ambulatory surgery services in this State, or the facility is owned by a
16 hospital which applied on or before the effective date of ³~~this act~~
17 P.L.2015, c.305³ to provide ambulatory surgery services in this State
18 so long as the hospital is later approved to provide ambulatory surgery
19 services at the facility, or the facility is owned by any hospital
20 approved to provide ambulatory surgery services at another facility in
21 this State ²; or

22 (7) (a) ³~~in the case of~~ the facility is a newly licensed ambulatory
23 surgical facility that was created by combining³ two or more registered
24 surgical practices ³~~combining to create a newly licensed ambulatory~~
25 surgical facility³, provided that the number of operating rooms at the
26 newly licensed facility is not greater than the total number of operating
27 rooms prior to the establishment of the newly licensed facility;

28 (b) ³~~in the case of~~ the facility is a licensed ambulatory surgical
29 facility that has expanded by combining with³ one or more registered
30 surgical practices ³~~combining with a licensed ambulatory surgical~~
31 facility³, provided that the number of operating rooms at the newly
32 ³~~enlarged~~ expanded³ facility is not greater than the total number of
33 operating rooms prior to the combination of the practices and facility;
34 or

35 (c) ³~~in the case~~ the facility is a licensed ambulatory surgical
36 facility that has expanded through the combination³ of two or more
37 licensed ³ambulatory³ surgical facilities ³~~combining~~³, provided that
38 the number of operating rooms at the newly ³~~enlarged~~ expanded³
39 facility is not greater than the total number of operating rooms prior to
40 the combining of the facilities².

41 Beginning on the effective date of P.L. , c. (pending before the
42 Legislature as this bill), the department shall not issue a new
43 registration to a surgical practice. Any ¹~~registered~~¹ surgical practice
44 ¹in operation on the effective date of P.L. , c. (pending before the
45 Legislature as this bill)¹ that proposes to ²~~transfer its ownership or~~²

1 relocate on or after the effective date of P.L. , c. (pending
 2 before the Legislature as this bill) shall be required to be licensed by
 3 the department as an ambulatory care facility ¹licensed to provide
 4 providing¹ surgical and related services ¹prior to applying for a new
 5 license pursuant to this subsection] pursuant to subsection g. of this
 6 section¹.

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

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

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

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

28 (5) The department may charge a reasonable fee for filing an
 29 application for registration and for each renewal thereof. **](Deleted by**
 30 **amendment, P.L. , c.) (pending before the Legislature as this bill)**

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

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

35 (2) annually report to the department the name of the facility's
 36 medical director, physician director, and physician director of
 37 anesthesia, as applicable, and the director of nursing services. The
 38 facility shall notify the department ³is] if³ there is any change in a
 39 named director within 30 days of the change ³[or] of³ the director.¹

40 (cf: P.L.2015, c.305, s.1)

41
 42 2. Section 2 of P.L.1989, c.19 (C.45:9-22.5) is amended to read
 43 as follows:

44 2. a. A practitioner shall not refer a patient or direct an
 45 employee of the practitioner to refer a patient to a health care
 46 service in which the practitioner, or the practitioner's immediate
 47 family, or the practitioner in combination with the practitioner's

1 immediate family has a significant beneficial interest; except that,
2 in the case of a practitioner, a practitioner's immediate family ²,² or
3 a practitioner in combination with the practitioner's immediate
4 family who had the significant beneficial interest prior to the
5 effective date of P.L.1991, c.187 (C.26:2H-18.24 et al.), and in the
6 case of a significant beneficial interest in a health care service that
7 provides lithotripsy or radiation therapy pursuant to an oncological
8 protocol that was held prior to the effective date of this section of
9 P.L.2009, c.24, the practitioner may continue to refer a patient or
10 direct an employee to do so if that practitioner discloses the
11 significant beneficial interest to the patient.

12 b. If a practitioner is permitted to refer a patient to a health care
13 service pursuant to this section, the practitioner shall provide the
14 patient with a written disclosure form, prepared pursuant to section
15 3 of P.L.1989, c.19 (C.45:9-22.6), and post a copy of this disclosure
16 form in a conspicuous public place in the practitioner's office.

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

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

22 (2) renal dialysis; ²[and]²

23 (3) ambulatory surgery or procedures ²[requiring] involving the
24 use of any² anesthesia performed at a surgical practice [registered
25 with] licensed by the Department of Health ²[and Senior
26 Services]² pursuant to subsection g. of section 12 of P.L.1971,
27 c.136 (C.26:2H-12) or at an ambulatory care facility licensed by the
28 Department of Health ²[and Senior Services]² to perform surgical
29 and related services ²or lithotripsy services², if the following
30 conditions are met:

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

33 (b) the practitioner's remuneration as an owner of or investor in
34 the practice or facility is directly proportional to ²[his] the
35 practitioner's² ownership interest and not to the volume of patients
36 the practitioner refers to the practice or facility;

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

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

45 (4) medically-necessary intraoperative monitoring services
46 rendered during a neurosurgical, neurological, or neuro-radiological
47 surgical procedure that is performed in a hospital².

1 ²[(cf: P.L.2009, c.24, s.2)] (cf: P.L.2016, c.20, s.1)²

2

3 3. Section 4 of P.L.2009, c.24 (C.45:9-22.5a) is amended to
4 read as follows:

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

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

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

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

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

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

30 ²[(cf: P.L.2009, c.24, s.4)] (cf: P.L.2012, c.17, s.411)²

31

32 ¹4. The Commissioner of Health ²[, the State Board of Medical
33 Examiners, and the New Jersey Board of Dentistry]² shall, in
34 accordance with the "Administrative Procedure Act," P.L.1968,
35 c.410 (C.52:14B-1 et seq.), adopt any rules and regulations as
36 ²[they deem] the commissioner deems² necessary to carry out the
37 provisions of this act.¹

38

39 ¹[4.] 5.¹ Section 1 of this act shall take effect immediately ¹[,
40 and sections] ³[Sections¹], and sections³ 2 and 3 of this act shall take
41 effect one year after the date of enactment ¹, except that the
42 Commissioner of Health ²[, the State Board of Medical Examiners,
43 and the New Jersey Board of Dentistry]² may take any anticipatory
44 administrative action in advance as shall be necessary for the
45 implementation of this act¹.

S278 [3R]

10

1

2

3

Requires surgical practices to apply for licensure as ambulatory

4

care facilities.

SENATE, No. 278

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

SYNOPSIS

Requires surgical practices to be licensed by DHSS as ambulatory care facilities.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning surgical practices and amending P.L.1971,
2 c.136, P.L.1989, c.19, and P.L.2009, c.24.

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

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

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

26 b. (1) Application for a license for a health care service or
27 health care facility shall be made upon forms prescribed by the
28 department. The department shall charge a single, nonrefundable
29 fee for the filing of an application for and issuance of a license and
30 a single, nonrefundable fee for any renewal thereof, and a single,
31 nonrefundable fee for a biennial inspection of the facility, as it shall
32 from time to time fix in rules or regulations; provided, however,
33 that no such licensing fee shall exceed \$10,000 in the case of a
34 hospital and \$4,000 in the case of any other health care facility for
35 all services provided by the hospital or other health care facility,
36 and no such inspection fee shall exceed \$5,000 in the case of a
37 hospital and \$2,000 in the case of any other health care facility for
38 all services provided by the hospital or other health care facility.
39 No inspection fee shall be charged for inspections other than
40 biennial inspections. The application shall contain the name of the
41 health care facility, the kind or kinds of health care service to be
42 provided, the location and physical description of the institution,
43 and such other information as the department may require. (2) A
44 license shall be issued by the department upon its findings that the
45 premises, equipment, personnel, including principals and

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.

1 management, finances, rules and bylaws, and standards of health
2 care service are fit and adequate and there is reasonable assurance
3 the health care facility will be operated in the manner required by
4 this act and rules and regulations thereunder.

5 c. (Deleted by amendment, P.L.1998, c.43) **【.】**

6 d. The commissioner may amend a facility's license to reduce
7 that facility's licensed bed capacity to reflect actual utilization at the
8 facility if the commissioner determines that 10 or more licensed
9 beds in the health care facility have not been used for at least the
10 last two succeeding years. For the purposes of this subsection, the
11 commissioner may retroactively review utilization at a facility for a
12 two-year period beginning on January 1, 1990.

13 e. If a prospective applicant for licensure for a health care
14 service or facility that is not subject to certificate of need review
15 pursuant to P.L.1971, c.136 (C.26:2H-1 et al.) so requests, the
16 department shall provide the prospective applicant with a pre-
17 licensure consultation. The purpose of the consultation is to
18 provide the prospective applicant with information and guidance on
19 rules, regulations, standards and procedures appropriate and
20 applicable to the licensure process. The department shall conduct
21 the consultation within 60 days of the request of the prospective
22 applicant.

23 f. Notwithstanding the provisions of any other law to the
24 contrary, an entity that provides magnetic resonance imaging or
25 computerized axial tomography services shall be required to obtain
26 a license from the department to operate those services prior to
27 commencement of services, except that a physician who is
28 operating such services on the effective date of P.L.2004, c.54 shall
29 have one year from the effective date of P.L.2004, c.54 to obtain the
30 license.

31 g. (1) **【**Notwithstanding the provisions of any other law to the
32 contrary, an entity that operates a surgical practice on the effective
33 date of this section of P.L.2009, c.24, as defined in this subsection,
34 shall be required to register with the department within one year of
35 the effective date of P.L.2009, c.24.**】** (Deleted by amendment,
36 P.L. , c.)(pending before the Legislature as this bill)

37 (2) **【**An entity that has not commenced operation as a surgical
38 practice on the effective date of this section of P.L.2009, c.24, but
39 has filed or files before the 180th day after the effective date of this
40 section of P.L.2009, c.24 its plans, specifications, and required
41 documents with the municipality in which the surgical practice will
42 be located, shall register with the department prior to the
43 commencement of services.**】** (Deleted by amendment, P.L. , c.)
44 (pending before the Legislature as this bill)

45 (3) **【**As a condition of registration with the department, a
46 surgical practice shall be required to obtain certification by the
47 Centers for Medicare and Medicaid Services as an ambulatory

1 surgery center provider or obtain ambulatory care accreditation
2 from an accrediting body recognized by the Centers for Medicare
3 and Medicaid Services.】 (Deleted by amendment, P.L. , c.)
4 (pending before the Legislature as this bill)

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

14 A surgical practice in operation on the date of enactment of
15 P.L. , c. (pending before the Legislature as this bill) shall be
16 required to be licensed by the department as an ambulatory care
17 facility licensed to provide surgical and related services within one
18 year of the date of enactment of P.L. , c. (pending before the
19 Legislature as this bill)

20 【(5)】 As used in this subsection and subsection i. of this section,
21 "surgical practice" means a structure or suite of rooms that has the
22 following characteristics:

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

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

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

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

38 (6)【 Nothing in this subsection shall be construed to limit the
39 State Board of Medical Examiners from establishing standards of
40 care with respect to the practice of medicine.

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

46 An ambulatory care facility that is licensed to provide surgical
47 and related services on the effective date of this section of

1 P.L.2009, c.24 shall have one year from the effective date of this
2 section of P.L.2009, c.24 to obtain ambulatory care accreditation.

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

8 (1) in the case of a **【registered surgical practice or】** licensed
9 facility in which a transfer of ownership of the **【practice or】** facility
10 is proposed, the commissioner reviews the qualifications of the new
11 owner or owners and approves the transfer;

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

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

24 (3) the entity is a registered surgical practice required to be
25 **【registered】** licensed pursuant to **【paragraph (1) of】** subsection g.
26 of this section and meets the requirements of that subsection;

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

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

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

36 Beginning on the effective date of P.L. , c. (pending before the
37 Legislature as this bill), the department shall not issue a new
38 registration to a surgical practice. Any registered surgical practice
39 that proposes to transfer its ownership or relocate on or after the
40 effective date of P.L. , c. (pending before the Legislature as this
41 bill) shall be required to be licensed by the department as an
42 ambulatory care facility licensed to provide surgical and related
43 services prior to applying for a new license pursuant to this
44 subsection.

45 j. **【(1) The department shall require an applicant for registration**
46 **as a surgical practice, as provided in subsection g. of this section, to**
47 **submit an application for registration in a form and manner**

1 prescribed by the department. The applicant shall submit the name
2 and address of the surgical practice that is to be registered, the name
3 of the chief administrator or designated agent of the practice, the
4 names and addresses of all owners of the practice, the scope of
5 services provided at the practice, proof of certification by the
6 Centers for Medicare and Medicaid Services or accreditation from
7 an accrediting body recognized by the Centers for Medicare and
8 Medicaid Services, and such other information as the commissioner
9 deems necessary and as provided by regulation.

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

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

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

20 (5) The department may charge a reasonable fee for filing an
21 application for registration and for each renewal thereof. **】** (Deleted
22 by amendment)(pending before the Legislature as this bill)
23 (cf: P.L.2009, c.24, s.1)

24
25 2. Section 2 of P.L.1989, c.19 (C.45:9-22.5) is amended to read
26 as follows:

27 2. a. A practitioner shall not refer a patient or direct an
28 employee of the practitioner to refer a patient to a health care
29 service in which the practitioner, or the practitioner's immediate
30 family, or the practitioner in combination with the practitioner's
31 immediate family has a significant beneficial interest; except that,
32 in the case of a practitioner, a practitioner's immediate family or a
33 practitioner in combination with the practitioner's immediate family
34 who had the significant beneficial interest prior to the effective date
35 of P.L.1991, c.187 (C.26:2H-18.24 et al.), and in the case of a
36 significant beneficial interest in a health care service that provides
37 lithotripsy or radiation therapy pursuant to an oncological protocol
38 that was held prior to the effective date of this section of P.L.2009,
39 c.24, the practitioner may continue to refer a patient or direct an
40 employee to do so if that practitioner discloses the significant
41 beneficial interest to the patient.

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

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

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

4 (2) renal dialysis; and

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

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

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

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

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

25 (cf: P.L.2009, c.24, s.2)

26

27 3. Section 4 of P.L.2009, c.24 (C.45:9-22.5a) is amended to
28 read as follows:

29 4. a. A referral for ambulatory surgery or a procedure requiring
30 anesthesia made prior to the effective date of this section of
31 P.L.2009, c.24 by a practitioner to a surgical practice or ambulatory
32 care facility licensed by the Department of Health and Senior
33 Services to perform surgical and related services shall be deemed to
34 comply with the provisions of section 2 of P.L.1989, c.19 (C.45:9-
35 22.5) if the practitioner personally performed the procedure that is
36 the subject of the referral.

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

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

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

46 (3) is established by a physician, physician professional
47 association surgical practice, or other professional practice form
48 specified by the State Board of Medical Examiners pursuant to

1 N.J.A.C.13:35-6.16(f) solely for the physician's, association's or
2 other professional entity's private medical practice.

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

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

7

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

11

12

13

STATEMENT

14

15 This bill requires all "surgical practices" to be licensed by the
16 Department of Health and Senior Services (DHSS) as ambulatory
17 surgery facilities within one year.

18 A "surgical practice" is defined as a structure or suite of rooms
19 that has the following characteristics:

20 -- has no more than one room dedicated for use as an operating
21 room which is specifically equipped to perform surgery, and is
22 designed and constructed to accommodate invasive diagnostic
23 and surgical procedures;

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

27 -- is established by a physician, physician professional
28 association surgical practice, or other professional practice form
29 specified by the State Board of Medical Examiners pursuant to
30 regulation solely for the physician's, association's or other
31 professional entity's private medical practice.

32 Pursuant to P.L.2009, c.24, all surgical practices were required to
33 register with DHSS by March 21, 2010, and be subject to very
34 limited oversight by DHSS. These one-operating room, physician-
35 owned practices, however, provide the same type of surgical
36 services as the larger, licensed ambulatory surgery facilities and,
37 therefore, should be subject to the same regulations, requirements,
38 and oversight by DHSS in order to ensure the safety of patients who
39 use their services.

40 The bill, therefore, repeals the requirement that surgical practices
41 be registered by DHSS, and provides, instead, that surgical
42 practices must be licensed by DHSS within one year as ambulatory
43 care facilities licensed to provide surgical and related services and
44 be subject to the same regulatory requirements as the larger
45 ambulatory surgical facilities.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 278

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 15, 2017

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 278.

As amended by the committee, this bill requires all “surgical practices” to be licensed by the Department of Health (DOH) as ambulatory surgery facilities within one year.

A "surgical practice" is defined as a structure or suite of rooms that has the following characteristics:

- 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;
- 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
- 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; or a dentist, dentist professional association, or other professional practice form authorized by the New Jersey Board of Dentistry pursuant to regulation solely for the dentist's, association's, or other professional entity's private dental practice.

Pursuant to P.L.2009, c.24, all physician surgical practices were required to register with DOH by March 21, 2010, and be subject to very limited oversight by DOH. These one-operating room, physician-owned practices, however, provide the same type of surgical services as the larger, licensed ambulatory surgery facilities and, therefore, should be subject to the same regulations, requirements, and oversight by DOH in order to ensure the safety of patients who use their services.

The bill, therefore, repeals the requirement that surgical practices be registered by DOH, and provides, instead, that surgical practices

must be licensed by DOH within one year as ambulatory care facilities licensed to provide surgical and related services and be subject to the same regulatory requirements as the larger ambulatory surgical facilities.

The amended bill provides exceptions to physical plant and functional requirements applicable to traditional ambulatory care facilities specified in N.J.A.C.8:43A-19.1 et seq. for surgical practices that:

- are certified by the Centers for Medicare and Medicaid Services (CMS);
- have obtained accreditation from the American Association of Ambulatory Surgery Facilities or any accrediting body recognized by CMS and is in operation on the bill's date of enactment;
- is in operation on the date of enactment of the bill, if it is certified by CMS as an ambulatory surgery center provider; or
- receives a waiver granted by the Commissioner of Health pursuant to current regulations, if the waiver does not endanger the life, safety, or health of patients or the public.

The amended bill further provides that a surgical practice required to be licensed pursuant to the bill will be exempt from the ambulatory care facility assessment; except that, if the entity expands to include any additional room dedicated for use as an operating room, the entity shall be subject to the assessment.

Additionally, the amended bill requires ambulatory care facilities licensed to provide surgical and related services and surgical practices to report to the department any change in ownership of the facility within 30 days of the change in ownership; and 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 or the director.

The committee amended the bill to include dental surgical practices, and to specify that, if a facility is certified by CMS, it does not have to comply with physical plant and functional requirements.

This bill was pre-filed for introduction in the 2016-2017 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

STATEMENT TO
[First Reprint]
SENATE, No. 278

with Senate Floor Amendments
(Proposed by Senator VITALE)

ADOPTED: JUNE 26, 2017

These amendments provide that a surgical practice in operation on the bill's effective date must apply for licensure as an ambulatory care facility, rather than be licensed as an ambulatory care facility.

The amendments eliminate references to dental practices and the New Jersey State Board of Dentistry, so that dental surgeries would not be required to apply for licensure under the bill.

The amendments exempt a surgical practice required to apply for licensure under the bill from the initial and renewal license fees otherwise applicable for ambulatory care facilities.

The amendments also provide that the Department of Health may issue a license to an ambulatory care facility to provide surgical and related services in the case of a combination of two or more surgical practices or ambulatory care facilities, provided that the number of operating rooms is no greater than the number prior to the combination.

The amendments eliminate a provision requiring that a surgical practice in operation on or after the effective date of this bill that proposes to transfer its ownership must then be licensed as an ambulatory care facility.

The amendments revise existing law to provide that restrictions on the referral of patients do not apply in the case of ambulatory surgery or procedures involving the use of any anesthesia (rather than cases requiring anesthesia) at a surgical practice or ambulatory care facility under certain specified conditions.

The amendments also make several technical changes. They eliminate an inappropriate indication that the bill deletes paragraph (4) of subsection g. of P.L.1971, c.136 (C.26:2H-12), where in fact the bill replaces that paragraph with new text. The amendments also technically correct the bill to reflect current law. In its current form, sections 2 and 3 of the bill appear to amend two sections of law as they appeared in 2009. These sections of law have been amended by subsequently enacted laws, so the floor amendment inserts language into this bill to reflect how the current law already appears.

STATEMENT TO
[Second Reprint]
SENATE, No. 278

with Senate Floor Amendments
(Proposed by Assemblyman CONAWAY)

ADOPTED: DECEMBER 7, 2017

These Assembly floor amendments make various technical changes to update citations and cross references and to clarify certain provisions.

ASSEMBLY, No. 4995

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED JUNE 12, 2017

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

SYNOPSIS

Requires surgical practices to be licensed by DOH as ambulatory care facilities.

CURRENT VERSION OF TEXT

As introduced.



A4995 CONAWAY

2

1 AN ACT concerning surgical practices and amending P.L.1971,
2 c.136, P.L.1989, c.19, and P.L.2009, c.24.

3

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

6

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

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

26 b. (1) Application for a license for a health care service or
27 health care facility shall be made upon forms prescribed by the
28 department. The department shall charge a single, nonrefundable
29 fee for the filing of an application for and issuance of a license and
30 a single, nonrefundable fee for any renewal thereof, and a single,
31 nonrefundable fee for a biennial inspection of the facility, as it shall
32 from time to time fix in rules or regulations; provided, however,
33 that no such licensing fee shall exceed \$10,000 in the case of a
34 hospital and \$4,000 in the case of any other health care facility for
35 all services provided by the hospital or other health care facility,
36 and no such inspection fee shall exceed \$5,000 in the case of a
37 hospital and \$2,000 in the case of any other health care facility for
38 all services provided by the hospital or other health care facility.
39 No inspection fee shall be charged for inspections other than
40 biennial inspections. The application shall contain the name of the
41 health care facility, the kind or kinds of health care service to be
42 provided, the location and physical description of the institution,
43 and such other information as the department may require.

44 (2) A license shall be issued by the department upon its findings
45 that the premises, equipment, personnel, including principals and

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.

1 management, finances, rules and bylaws, and standards of health
2 care service are fit and adequate and there is reasonable assurance
3 the health care facility will be operated in the manner required by
4 this act and rules and regulations thereunder.

5 (3) The department shall post on its Internet website each
6 inspection report prepared following an inspection of a residential
7 health care facility, as defined in section 1 of P.L.1953, c.212
8 (C.30:11A-1) or licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et
9 seq.), that is performed pursuant to this subsection, along with any
10 other inspection report prepared by or on behalf of the department
11 for such facility.

12 If an inspection reveals a serious health and safety violation at a
13 residential health care facility, the department shall post the
14 inspection report, including the name of the facility and the owner
15 of the facility, on its website no later than 72 hours following the
16 inspection. If a license of a residential health care facility is
17 suspended, the department shall post the suspension on its website
18 no later than 72 hours following the suspension. The department
19 shall update its website to reflect the correction of a serious health
20 and safety violation, and the lifting of a suspension.

21 The department shall notify, as soon as possible, the
22 Commissioner of Human Services, or the commissioner's designee,
23 and the director of the county board of social services or county
24 welfare agency, as appropriate, in the county in which a residential
25 health care facility is located, of a serious health and safety
26 violation at the facility and of any suspension of a license to operate
27 such facility.

28 If the inspection responsibilities under this subsection with
29 respect to such facility are transferred or otherwise assigned to
30 another department, that other department shall post on its Internet
31 website each inspection report prepared following an inspection of
32 such facility performed pursuant to this subsection, along with any
33 other inspection report prepared by or on behalf of that department
34 for such facility, and shall comply with the other requirements
35 specified in this subsection.

36 c. (Deleted by amendment, P.L.1998, c.43) **[.]**

37 d. The commissioner may amend a facility's license to reduce
38 that facility's licensed bed capacity to reflect actual utilization at the
39 facility if the commissioner determines that 10 or more licensed
40 beds in the health care facility have not been used for at least the
41 last two succeeding years. For the purposes of this subsection, the
42 commissioner may retroactively review utilization at a facility for a
43 two-year period beginning on January 1, 1990.

44 e. If a prospective applicant for licensure for a health care
45 service or facility that is not subject to certificate of need review
46 pursuant to P.L.1971, c.136 (C.26:2H-1 et al.) so requests, the
47 department shall provide the prospective applicant with a pre-
48 licensure consultation. The purpose of the consultation is to

1 provide the prospective applicant with information and guidance on
2 rules, regulations, standards and procedures appropriate and
3 applicable to the licensure process. The department shall conduct
4 the consultation within 60 days of the request of the prospective
5 applicant.

6 f. Notwithstanding the provisions of any other law to the
7 contrary, an entity that provides magnetic resonance imaging or
8 computerized axial tomography services shall be required to obtain
9 a license from the department to operate those services prior to
10 commencement of services, except that a physician who is
11 operating such services on the effective date of P.L.2004, c.54 shall
12 have one year from the effective date of P.L.2004, c.54 to obtain the
13 license.

14 g. (1) **【**Notwithstanding the provisions of any other law to the
15 contrary, an entity that operates a surgical practice on the effective
16 date of this section of P.L.2009, c.24, as defined in this subsection,
17 shall be required to register with the department within one year of
18 the effective date of P.L.2009, c.24.**】 Deleted by amendment,**
19 P.L. , c.) (pending before the Legislature as this bill)

20 (2) **【**An entity that has not commenced operation as a surgical
21 practice on the effective date of this section of P.L.2009, c.24, but
22 has filed or files before the 180th day after the effective date of this
23 section of P.L.2009, c.24 its plans, specifications, and required
24 documents with the municipality in which the surgical practice will
25 be located, shall register with the department prior to the
26 commencement of services.**】 Deleted by amendment, P.L. , c.)**
27 (pending before the Legislature as this bill)

28 (3) **【**As a condition of registration with the department, a
29 surgical practice shall be required to obtain certification by the
30 Centers for Medicare and Medicaid Services as an ambulatory
31 surgery center provider or obtain ambulatory care accreditation
32 from an accrediting body recognized by the Centers for Medicare
33 and Medicaid Services.**】 Deleted by amendment, P.L. , c.)**
34 (pending before the Legislature as this bill)

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

44 A surgical practice in operation on the date of enactment of
45 P.L. , c. (pending before the Legislature as this bill) shall be
46 required to be licensed by the department as an ambulatory care
47 facility licensed to provide surgical and related services within one

1 year of the date of enactment of P.L. , c. (pending before the
2 Legislature as this bill).

3 A surgical practice that is certified by the Centers for Medicare
4 & Medicaid Services shall not be required to meet the physical
5 plant and functional requirements specified in N.J.A.C.8:43A-19.1
6 et seq. A surgical practice that is not Medicare certified, either by
7 the Centers for Medicare & Medicaid Services or by any deeming
8 authority recognized by the Centers for Medicare and Medicaid
9 Services, but which has obtained accreditation from the American
10 Association for Accreditation of Ambulatory Surgery Facilities or
11 any accrediting body recognized by the Centers for Medicare &
12 Medicaid Services and is in operation on the date of enactment of
13 P.L. , c. (pending before the Legislature as this bill), shall not be
14 required to meet the physical plant and functional requirements
15 specified in N.J.A.C.8:43A-19.1 et seq. A surgical practice not in
16 operation on the date of enactment of P.L. , c. (pending before
17 the Legislature as this bill), if it is certified by the Centers for
18 Medicare & Medicaid Services as an ambulatory surgery center
19 provider, shall also be exempt from these requirements. A surgical
20 practice required by this subsection to meet the physical plant and
21 functional requirements specified in N.J.A.C.8:43A-19.1 et seq.
22 may apply for a waiver of any such requirement in accordance with
23 N.J.A.C.8:43A-2.9. The commissioner shall grant a waiver of those
24 physical plant and functional requirements, as the commissioner
25 deems appropriate, if the waiver does not endanger the life, safety,
26 or health of patients or the public.

27 A surgical practice required to be licensed pursuant to this
28 subsection shall be exempt from the ambulatory care facility
29 assessment pursuant to section 7 of P.L.1992, c.160 (C.26:2H-
30 18.57); except that, if the entity expands to include any additional
31 rooms dedicated for use as an operating room, the entity shall be
32 subject to the assessment.

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

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

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

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

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

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

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

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

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

21 (1) in the case of a **[registered surgical practice or]** licensed
22 facility in which a transfer of ownership of the **[practice or]** facility
23 is proposed, the commissioner reviews the qualifications of the new
24 owner or owners and approves the transfer;

25 (2) (a) except as provided in subparagraph (b) of this paragraph,
26 in the case of a **[registered surgical practice or]** licensed facility for
27 which a relocation of the **[practice or]** facility is proposed, the
28 relocation is within 20 miles of the **[practice's or]** facility's current
29 location or the relocation is to a "Health Enterprise Zone"
30 designated pursuant to section 1 of P.L.2004, c.139 (C.54A:3-7),
31 there is no expansion in the **[scope of services]** number of
32 operating rooms provided at the new location from that of the
33 current location, and the commissioner reviews and approves the
34 relocation; or

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

38 (3) the entity is a surgical practice required to be **[registered]**
39 licensed pursuant to **[paragraph (1) of]** subsection g. of this section
40 and meets the requirements of that subsection;

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

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

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

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

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

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

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

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

35 (5) The department may charge a reasonable fee for filing an
36 application for registration and for each renewal thereof.] Deleted
37 by amendment, P.L. , c.) (pending before the Legislature as this
38 bill)

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

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

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

48 (cf: P.L.2015, c.6, s.1)

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

5

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

8 2. a. A practitioner shall not refer a patient or direct an
9 employee of the practitioner to refer a patient to a health care
10 service in which the practitioner, or the practitioner's immediate
11 family, or the practitioner in combination with the practitioner's
12 immediate family has a significant beneficial interest; except that,
13 in the case of a practitioner, a practitioner's immediate family, or a
14 practitioner in combination with the practitioner's immediate family
15 who had the significant beneficial interest prior to the effective date
16 of P.L.1991, c.187 (C.26:2H-18.24 et al.), and in the case of a
17 significant beneficial interest in a health care service that provides
18 lithotripsy or radiation therapy pursuant to an oncological protocol
19 that was held prior to the effective date of this section of P.L.2009,
20 c.24, the practitioner may continue to refer a patient or direct an
21 employee to do so if that practitioner discloses the significant
22 beneficial interest to the patient.

23 b. If a practitioner is permitted to refer a patient to a health care
24 service pursuant to this section, the practitioner shall provide the
25 patient with a written disclosure form, prepared pursuant to section
26 3 of P.L.1989, c.19 (C.45:9-22.6), and post a copy of this disclosure
27 form in a conspicuous public place in the practitioner's office.

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

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

33 (2) renal dialysis; and

34 (3) ambulatory surgery or procedures requiring anesthesia
35 performed at a surgical practice **【registered with】** licensed by the
36 Department of Health pursuant to subsection g. of section 12 of
37 P.L.1971, c.136 (C.26:2H-12) or at an ambulatory care facility
38 licensed by the Department of Health to perform surgical and
39 related services or lithotripsy services, if the following conditions
40 are met:

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

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

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

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

8 (cf: P.L.2013, c.178, s.1)

9

10 4. Section 4 of P.L.2009, c.24 (C.45:9-22.5a) is amended to
11 read as follows:

12 4. a. A referral for ambulatory surgery or a procedure
13 requiring anesthesia made prior to the effective date of this section
14 of P.L.2009, c.24 by a practitioner to a surgical practice or
15 ambulatory care facility licensed by the Department of Health to
16 perform surgical and related services shall be deemed to comply
17 with the provisions of section 2 of P.L.1989, c.19 (C.45:9-22.5) if
18 the practitioner personally performed the procedure that is the
19 subject of the referral.

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

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

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

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

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

37 (cf: P.L.2012, c.17, s.411)

38

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

42

43

44

STATEMENT

45

46 This bill requires all "surgical practices" to be licensed by the
47 Department of Health (DOH) as ambulatory surgery facilities
48 (ACFs) within one year after its enactment.

1 A "surgical practice" is defined in the law as a structure or suite
2 of rooms that has the following characteristics:

3 -- has no more than one room dedicated for use as an operating
4 room which is specifically equipped to perform surgery, and is
5 designed and constructed to accommodate invasive diagnostic
6 and surgical procedures;

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

10 -- is established by a physician, physician professional
11 association surgical practice, or other professional practice form
12 specified by the State Board of Medical Examiners pursuant to
13 regulation solely for the physician's, association's or other
14 professional entity's private medical practice.

15 The bill provides as follows:

- 16 • The requirement that surgical practices be registered by DOH is
17 repealed. In lieu of this requirement, surgical practices are to be
18 licensed by DOH, within one year after the date of enactment, as
19 ACFs licensed to provide surgical and related services, and be
20 subject to the same regulatory requirements as the larger ACFs.
- 21 • A surgical practice that is certified by the Centers for Medicare
22 & Medicaid Services (CMS) is not required to meet the physical
23 plant and functional requirements specified in N.J.A.C.8:43A-
24 19.1 et seq. A surgical practice that is not Medicare certified,
25 either by CMS or by any deeming authority recognized by CMS,
26 but which has obtained accreditation from the American
27 Association for Accreditation of Ambulatory Surgery Facilities or
28 any accrediting body recognized by CMS and is in operation on
29 the date of enactment of the bill, is not required to meet the
30 physical plant and functional requirements specified in
31 N.J.A.C.8:43A-19.1 et seq. A surgical practice not in operation
32 on the date of enactment of the bill, if it is certified by CMS as an
33 ambulatory surgery center provider, is also exempt from these
34 requirements. A surgical practice required to meet the physical
35 plant and functional requirements specified in N.J.A.C.8:43A-
36 19.1 et seq. may apply for a waiver of any such requirement in
37 accordance with N.J.A.C.8:43A-2.9. The commissioner is to
38 grant a waiver of those physical plant and functional
39 requirements, as the commissioner deems appropriate, if the
40 waiver does not endanger the life, safety, or health of patients or
41 the public.
- 42 • A surgical practice that is required to be licensed under the bill is
43 exempt from the assessment on ACFs pursuant to N.J.S.A.26:2H-
44 18.57; except that, if the entity expands to include any additional
45 rooms dedicated for use as an operating room, it will be subject to
46 the assessment.

ASSEMBLY HEALTH AND SENIOR SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4995

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 19, 2017

The Assembly Health and Senior Services Committee reports favorably and with committee amendments Assembly Bill No. 4995.

As amended by the committee, this bill requires all “surgical practices” to be licensed by the Department of Health (DOH) as ambulatory surgery facilities (ACFs) within one year after the date of enactment.

A "surgical practice" is defined in the law as a structure or suite of rooms that: (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 solely for the physician's, association's, or other professional entity's private medical practice.

As amended by the committee, the bill repeals the requirement that surgical practices register with DOH. Instead, within one year after the date of enactment of the bill, surgical practices are to be licensed by DOH as ACFs licensed to provide surgical and related services, and will be subject to the same regulatory requirements as apply to the larger ACFs.

A surgical practice that is certified by the Centers for Medicare & Medicaid Services (CMS) will 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 CMS or by any deeming authority recognized by CMS, but which has obtained accreditation from the American Association for Accreditation of Ambulatory Surgery Facilities or any accrediting body recognized by CMS and is in operation on the date of enactment of the bill, is not 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 the bill, if it is certified by CMS as an ambulatory surgery center provider, is also exempt from these requirements. A surgical

practice required 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 is to 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.

A surgical practice that is required to be licensed under the bill will be exempt from the assessment that currently applies to ACFs, except that, if the entity expands to include any additional rooms dedicated for use as an operating room, it will be subject to the assessment.

COMMITTEE AMENDMENTS:

The committee amended the bill to incorporate two recent enactments, P.L.2015, c.305 and P.L.2016, c.20, and to make various technical corrections to the bill.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 4995

with Assembly Floor Amendments
(Proposed by Assemblyman CONAWAY)

ADOPTED: DECEMBER 7, 2017

These Assembly floor amendments revise the requirement for surgical practice licensure under the bill to provide that a surgical practice that is in operation on the date of enactment of the bill will be required to apply for licensure by the Department of Health as an ambulatory care facility licensed to perform surgical and related services within one year of the date of enactment of the bill; as introduced, the facilities would have been required to be licensed the department within one year of the date of enactment of the bill.

The Assembly floor amendments provide that facilities required to apply for licensure under the bill will be exempt from the current initial and renewal license fees.

The Assembly floor amendments add an additional exception to the prohibition against licensure of new ambulatory care facilities to provide surgical and related services in order to permit the issuance of new licenses in the case of: two or more registered surgical practices combining to create a newly licensed ambulatory surgical facility; one or more registered surgical practices combining with a licensed ambulatory surgical facility; or two or more ambulatory surgical facilities combining. In all such cases, the exception is conditioned on the total number of operating rooms in the combined or new facility not exceeding the total number of operating rooms at the practices and facilities prior to the combination of the practices or facilities.

The Assembly floor amendments remove a requirement that surgical practices in operation on the effective date of the bill would be required to be licensed by the department as a condition of transferring ownership of the practice.

The Assembly floor amendments revise the current exception to the prohibition against physician self-referrals to provide that it applies to ambulatory surgery or procedures “involving the use of any anesthesia,” subject to certain conditions; currently, the exception is limited to ambulatory surgery or procedures “requiring the use of anesthesia.”

The Assembly floor amendments make various technical changes to update cross references to the federal Centers for Medicaid and Medicare Services.

The Assembly floor amendments make a technical revision to the rulemaking provision of the bill and relocate the section within the bill.

The Assembly floor amendments revise the effective date to reflect the new numbering of the sections and to provide that the

Commissioner of Health may take any anticipatory administrative action in advance of the effective date of sections 2 and 3 of the bill as is necessary for the implementation of the bill.