

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB HIS 14-02 Recovery Care Services

SPONSOR(S): Health Innovation Subcommittee; Steube

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health Innovation Subcommittee	7 Y, 5 N	Guzzo	Shaw

SUMMARY ANALYSIS

Pursuant to s. 395.002, F.S., an ambulatory surgical center (ASC) is a facility, that is not a part of a hospital, the primary purpose of which is to provide elective surgical care, in which the patient is admitted and discharged within the same working day and is not permitted to stay overnight. Federal law prohibits a patient from staying longer than 24 hours after admission.

The bill changes the allowable length of stay in an ASC from less than one working day to no more than 24 hours, which is the Federal length of stay standard.

The bill creates a new license for a Recovery Care Center (RCC). The new RCC license is modeled after the current licensing procedures for hospitals and ASCs subjecting RCCs to similar regulatory standards, inspections, and rules.

The bill defines RCC as a facility the primary purpose of which is to provide recovery care services. The bill defines recovery care services as:

- Postsurgical and post-diagnostic medical and general nursing care to patients for whom acute-hospitalization is not required and an uncomplicated recovery is reasonably expected; and
- Postsurgical rehabilitation services.

Recovery care services do not include intensive care services, coronary care services, or critical care services.

The bill requires all patients to be certified as medically stable and not in need of acute-hospitalization by their attending or referring physician prior to admission in an RCC. A patient may receive recovery care services in an RCC upon:

- Discharge from an ASC after surgery;
- Discharge from a hospital after surgery or other treatment; or
- Receiving an out-patient medical treatment such as chemotherapy.

RCCs must have emergency care and transfer protocols, including transportation arrangements, and referral or admission agreements with at least one hospital.

The bill will have a fiscal impact on state government. See fiscal comments.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Ambulatory Surgical Centers (ASCs) - General

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

Outpatient procedures account for a growing proportion of surgeries in the United States due to advances in surgical technology and anesthesia. Nationally, 63 percent of all surgeries in 2005 did not require an overnight hospital stay, compared to 51 percent in 1990 and 16 percent in 1980.²

In Florida, ambulatory procedures are performed in two settings, hospital-based outpatient facilities and freestanding ASCs. Currently, there are 633 ASCs in Florida, including 429 freestanding ASCs and 204 hospital-based facilities.³

In 2008, there were 3,121,428 visits to ASCs in Florida. The visits were equally split, with hospital outpatient facilities accounting for 50.8 percent and free standing ASCs accounting for 49.2 percent of the total number of visits. However, the breakdown of the \$21 billion in total charges shows that hospital-based facilities accounted for 74 percent of the charges, while ASCs accounted for 26 percent. The average charge at the hospital-based facilities (\$9,781) was larger than the average charge at the freestanding ASCs (\$3,554).⁴ These visits and charges were paid mainly by commercial Insurance and Medicare. Commercial insurance paid for 46.6 percent of all charges (a total of \$9.8 billion), while Medicare paid for 39.1 percent (\$8.2 billion). The other three payer groups (Medicaid, Other Government and Self-Pay/Charity) accounted for a total of 14.3% (\$3.1 billion) of the charge total. The data and results have been similar since 2006.⁵

In 2012, there were 4,396,508 surgical procedures performed in ASCs in Florida. The top three procedures accounting for the highest percentage of visits to ASCs were upper gastrointestinal endoscopy, colonoscopy, and cataract removal.⁶

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

² U.S. Department of Health and Human Services; Agency for Healthcare Research and Quality; *Healthcare Cost and Utilization Project; Statistical Brier #86* (February 2010).

³ Agency for Health Care Administration, Facilities: All Florida Outpatient Ambulatory Surgical Centers, available at <http://www.floridahealthfinder.gov/CompareCare/ListFacilities.aspx> (report generated February 23, 2014).

⁴ Agency for Health Care Administration, *Statistical Brief, Ambulatory Surgery Procedures in Florida, by Payer and Gender, 2008*, July 2010.

⁵ Agency for Health Care Administration, *Data Summaries and Reports, Total Outpatient Visits by Facility Type 1992-2012*, available at <http://www.floridahealthfinder.gov/researchers/QuickStat/quickstat.aspx> (last visited February 23, 2014).

⁶ Agency for Health Care Administration, *Ambulatory Surgery and Outpatient Procedures, 2012, Total Visits by Category*.

ASC - Licensure

ASCs are licensed and regulated by the Agency for Health Care Administration (AHCA) under the same regulatory framework as hospitals.⁷

Applicants for ASC licensure must submit certain information to AHCA prior to accepting patients for care or treatment, including the:⁸

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

Upon receipt of an initial application, AHCA is required to conduct a survey to determine compliance with all laws and rules. ASCs are required to provide certain information during the initial inspection, including the:⁹

- Governing body bylaws, rules and regulations;
- Roster of registered nurses and licensed practical nurses with current license numbers;
- Fire plan; and
- Comprehensive Emergency Management Plan.

Rules for ASCs

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

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

AHCA adopted rule 59A-5, F.A.C., to implement the minimum standards for ASCs.

Staff and Personnel Rules

ASCs are required to have written policies and procedures for surgical services, anesthesia services, nursing services, pharmaceutical services, and laboratory and radiologic services. In providing these services, ACSs are required have certain professional staff available, including:¹⁰

- A Registered nurse to serve as operating room circulating nurse;
- An Anesthesiologist or other physician, or a certified registered nurse anesthetist under the on-site medical direction of a licensed physician in the ASC during the anesthesia and post-anesthesia recovery period until all patients are alert or discharged; and
- A Registered professional nurse in the recovery area during the patient's recovery period.

⁷ Sections 395.001-395.1065, F.S., and Part II, Chapter 408, F.S.

⁸ Rule 59A-5.003(4), F.A.C.

⁹ Rule 59A-5.003(5), F.A.C.

¹⁰ Rule 59A-5.0085, F.A.C.

Infection Control Rules

ASCs are required to establish an infection control program, which must include written policies and procedures reflecting the scope of the infection control program. The written policies and procedures must be reviewed at least every two years by the infection control program members. The infection control program must include:¹¹

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

Emergency Management Plan Rules

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

Accreditation

ASCs may seek voluntary accreditation by the Joint Commission for Health Care Organizations or the Accreditation Association for Ambulatory Health Care. AHCA is required to conduct an annual licensure inspection survey for non-accredited ASCs. AHCA is authorized to accept survey reports of accredited ASCs from accrediting organizations if the standards included in the survey report are determined to document that the ASC is in substantial compliance with state licensure requirements. AHCA is required to conduct annual validation inspections on a minimum of 5 percent of the ASCs which were inspected by an accreditation organization.¹²

AHCA is required to conduct annual life safety inspections of all ASCs to ensure compliance with life safety codes and disaster preparedness requirements. However, the life-safety inspection may be waived if an accreditation inspection was conducted on an ASC by a certified life safety inspector and the ASC was found to be in compliance with the life safety requirements.¹³

Currently, 373 of the 429 total licensed ASCs in Florida are accredited by a national accrediting organization.¹⁴

Federal Requirements

Medicare

ASCs are required to have an agreement with the Centers for Medicare and Medicaid Services (CMS) to participate in Medicare. ASCs are also required to comply with specific conditions for coverage. CMS defines "ASC" as any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization and in which the expected duration of services would not exceed 24 hours¹⁵ following an admission.¹⁶

¹¹ Rule 59A-5.011, F.A.C.

¹² Rule 59A-5.004, F.A.C.

¹³ *Id.*

¹⁴ Agency for Health Care Administration, *Ambulatory Surgical Center Regulatory Overview*, March 2014. (on file with subcommittee staff).

¹⁵ State Operations Manual Appendix L, *Guidance for Surveyors: Ambulatory Surgical Centers* (Rev. 99, 01-31-14) exceeding the 24-hour time frame is expected to be a rare occurrence, and each rare occurrence is expected to be demonstrated to have been something which ordinarily could not have been foreseen. Not meeting this requirement constitutes condition-level noncompliance with §416.25. In addition, review of the cases that exceed the time frame may also reveal noncompliance with CfCs related to surgical services, patient admission and assessment, and quality assurance/performance improvement.

¹⁶ Section 416.2, Title 42, C.F.R.

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

- Governing body that assumes full legal responsibility for determining, implementing, and monitoring policies governing the ASC's total operation;
- Quality assessment and performance improvement program;
- Transfer agreement with one or more acute care general hospitals, which will admit any patient referred who requires continuing care;
- Disaster preparedness plan;
- Organized medical staff;
- Fire control plan;
- Sanitary environment;
- Infection control program;
- Procedure for patient admission, assessment and discharge;

Recovery Care Centers

Recovery care centers (RCCs) are entities that provide short-term nursing care, support, and pain control for patients that do not require acute hospitalization.¹⁸ RCC patients are typically healthy persons that have had elective surgery. RCCs can be either freestanding or attached to an ASC or hospital. In practice, RCCs typically provide care to patients transferred from ASCs following surgery, which allows ASCs to perform more complex procedures.¹⁹

RCCs are not eligible for Medicare reimbursement.²⁰ One 1999 survey noted that RCCs received payment in the following breakdown: 41% from managed care plans, 29% from self-pay, 16% from indemnity plans, and 9% from workers' compensation.²¹

Three states, Arizona, Connecticut, and Illinois, have specific licenses for "recovery care centers."²² Other states license RCCs as nursing facilities or hospitals.²³ One study found that eighteen states allow RCCs to have stays over 24 hours, usually with a max stay of 72 hours.²⁴

¹⁷ Section 416.26(1), Title 42, C.F.R.

¹⁸ MEDICARE PAYMENT ADVISORY COMM'N, REPORT TO THE CONGRESS: MEDICARE PAYMENT FOR POST-SURGICAL RECOVERY CARE CENTERS 3 (2000).

¹⁹ *Id.* at 4.

²⁰ See MEDICARE PAYMENT ADVISORY COMM'N, *supra* note 7.

²¹ MEDICARE PAYMENT ADVISORY COMM'N, *supra* note 7, at 6 (citing Federated Ambulatory Surgery Association, Post-Surgical Recovery Care, (2000)).

²² ARIZ. REV. STAT. ANN. §§ 36-448.51-36-448.55; CONN. AGENCIES REGS. § 19A-495-571; 210 ILL. COMP. STAT. ANN. 3/35.

²³ Sandra Lee Breisch, *Profits in Short Stays*, AM. ACAD. OF ORTHOPAEDIC SURGEONS BULLETIN (June, 1999), available at <http://www2.aaos.org/bulletin/jun99/asc.htm>.

²⁴ MEDICARE PAYMENT ADVISORY COMM'N, *supra* note 7, at 4 (citing Federated Ambulatory Surgery Association, Post-Surgical Recovery Care, (2000)).

Comparison of RCC Regulations in Arizona, Connecticut, and Illinois

	Arizona ²⁵	Connecticut ²⁶	Illinois ²⁷
Licensure Required	X	X	X
Written Policies	X	X	X
Maintain Medical Records	X	X	X
Patient's Bill of Rights	X	X	X
Allows Freestanding Facility or Attached	Not Available.	X	X
Length of Stay	Not Available.	Expected 3 days Max 21 days	Expected 48 hours Max 72 hours
Emergency Care Transfer Agreement	Not Available.	With a hospital and an ambulance service.	With a hospital within fifteen minutes travel time.
Prohibited Patients	Patients needing: <ul style="list-style-type: none"> • Intensive care • Coronary care • Critical care 	Patients needing: <ul style="list-style-type: none"> • Intensive care • Coronary care • Critical care 	<ul style="list-style-type: none"> • Patients with chronic infectious conditions • Children under 3 years of age
Prohibited Services	<ul style="list-style-type: none"> • Surgical • Radiological • Pediatric • Obstetrical 	<ul style="list-style-type: none"> • Surgical • Radiological • Pre-adolescent pediatric • Hospice • Obstetrical services over 24 week gestation • Intravenous therapy for non-hospital based RCC 	<ul style="list-style-type: none"> • Blood administration (only blood products allowed)
Required Services	<ul style="list-style-type: none"> • Laboratory • Pharmaceutical • Food 	<ul style="list-style-type: none"> • Pharmaceutical • Dietary • Personal care • Rehabilitation • Therapeutic • Social work 	<ul style="list-style-type: none"> • Laboratory • Pharmaceutical • Food • Radiological
Bed Limitation	Not Available.	Not Available.	20
Required Staff	<ul style="list-style-type: none"> • Governing authority • Administrator 	<ul style="list-style-type: none"> • Governing body • Administrator 	<ul style="list-style-type: none"> • Consulting committee
Required Medical Personnel	<ul style="list-style-type: none"> • At least two physicians • Director of nursing 	<ul style="list-style-type: none"> • Medical advisory board • Medical director • Director of nursing 	<ul style="list-style-type: none"> • Medical director • Nursing supervisor
Required Personnel When Patients Are Present	<ul style="list-style-type: none"> • Director of nursing forty hours per week • One registered nurse • One other nurse 	<ul style="list-style-type: none"> • Two persons for patient care 	<ul style="list-style-type: none"> • One registered nurse • One other nurse

Effect of Proposed Changes

²⁵ ARIZ. REV. STAT. ANN. §§ 36-448.51-36-448.55; ARIZ. ADMIN. CODE §§ R9-10-501-R9-10-518 (updated in 2013, formerly R9-10-1401-R9-10-1412).

²⁶ CONN. AGENCIES REGS. § 19A-495-571.

²⁷ 210 ILL. COMP. STAT. ANN. 3/35; ILL. ADMIN. CODE tit. 77, §§ 210.2500 & 210.2800.

Pursuant to s. 395.002(3), F.S., patients receiving services in an ASC must be discharged on the same working day that they were admitted and they are not permitted to stay overnight. Federal regulations limit the length of stay in an ASC to 24 hours following admission. The bill amends s. 395.002(3), F.S., to allow a patient to stay at an ASC for no longer than 24 hours to conform to the federal length of stay requirements.

The bill creates a new license for a Recovery Care Center (RCC). The new RCC license is modeled after the current licensing procedures for hospitals and ASCs in Chapters 395 and 408, F.S. The bill adds RCCs to the list of facilities subject to the provisions of Chapter 395, Part I. An applicant for RCC licensure will have to follow the general licensing procedures of Chapter 408, Part II. Additionally, the applicant will be subject to the license, inspection, safety, facility and other requirements of Chapter 395, Part I.

The bill defines RCC as a facility the primary purpose of which is to provide recovery care services. The bill defines recovery care services are defined as:

- Postsurgical and post-diagnostic medical and general nursing care to patients for whom acute-hospitalization is not required and an uncomplicated recovery is reasonably expected; and
- Postsurgical rehabilitation services.

Recovery care services do not include intensive care services, coronary care services, or critical care services.

The bill requires all patients to be certified as medically stable and not in need of acute-hospitalization by their attending or referring physician prior to admission in an RCC. A patient may receive recovery care services in an RCC upon:

- Discharge from an ASC after surgery;
- Discharge from a hospital after surgery or other treatment; or
- Receiving an out-patient medical treatment such as chemotherapy.

RCCs must have emergency care and transfer protocols, including transportation arrangements, and referral or admission agreements with at least one hospital.

Further, AHCA is authorized to adopt rules to implement admission and discharge procedures.

Section 395.1055, F.S., directs AHCA to adopt rules for hospitals and ASCs that set standards to ensure patient safety, including requirements for:

- Staffing;
- Infection control;
- Housekeeping;
- Medical records;
- Emergency management;
- Inspections;
- Accreditation;
- Organization, including a governing body and organized medical staff;
- Departments and services;
- Quality assessment and improvement;
- Minimum space; and
- Equipment and furnishings.

The bill authorizes AHCA to adopt by rule appropriate standards for RCCs.

In addition, the bill requires AHCA to adopt rules to set standards for dietetic departments, proper use of medications, and pharmacies in RCCs.

The license fee for the RCC license will be set by rule by AHCA and must be at least \$1,500.²⁸

B. SECTION DIRECTORY:

Section 1: Amends s. 395.001, F.S., relating to legislative intent.

Section 2: Amends s. 395.002, F.S., relating to definitions.

Section 3: Amends s. 395.003, F.S., relating to licensure; denial, suspension, and revocation.

Section 4: Creates s. 395.0171, F.S., relating to recovery care center admissions; emergency and transfer protocols; discharge planning and protocols.

Section 5: Amends s. 395.1055, F.S., relating to rules and enforcement.

Section 6: Amends s. 395.10973, F.S., relating to powers and duties of the agency.

Section 7: Amends s. 395.301, F.S., relating to itemized patient bill; form and content prescribed by the agency.

Section 8: Amends s. 408.802, F.S., relating to applicability.

Section 9: Amends s. 408.820, F.S., relating to exemptions.

Section 10: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Section 408.805, F.S., requires AHCA to set license fees that are reasonably calculated to cover the cost of regulation.

2. Expenditures:

The creation of the RCC license will require AHCA to regulate these facilities in accordance with chapters 395 and 408, F.S., and any rules adopted by AHCA. This will result in an indeterminate negative fiscal impact; however, the fees associated with the new license may cover the expenses incurred by AHCA in enforcement and regulation of the new license.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals needing surgery may save money by being able to stay longer in an ASC or stay in an RCC rather than having to be transferred to a hospital.

Being able to keep patients longer in an ASC may have a positive fiscal impact on the ASC by being able to perform more complex procedures.

Hospitals may experience a negative fiscal impact if patients receive care in an ASC or RCC.

D. FISCAL COMMENTS:

²⁸ Section 395.004, F.S.
STORAGE NAME: pcb02a.HIS
DATE: 3/11/2014

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides sufficient rule-making authority to AHCA to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES