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S.73

Introduced by Senators Lyons, Cummings, Ingram, McCormack and Westman  
Referred to Committee on Health and Welfare  
Date: February 5, 2019  
Subject: Health; health care facilities; licensure; ambulatory surgical centers  
Statement of purpose of bill as introduced: This bill proposes to establish a  
licensing structure for ambulatory surgical centers.

An act relating to licensure of ambulatory surgical centers

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. 18 V.S.A. chapter 49 is added to read:~~

CHAPTER 49. AMBULATORY SURGICAL CENTERS

Subchapter 1. General Provisions

§ 2141. DEFINITIONS

As used in this chapter:

(1) "Ambulatory surgical center" means any distinct entity that operates exclusively for the purpose of providing outpatient surgical services and other outpatient medical procedures to patients not requiring hospitalization and for which the expected duration of services does not exceed 24 hours following an admission.

1 ~~(2) "Patient" means a person admitted to or receiving health care~~  
2 ~~services from an ambulatory surgical center.~~

3 ~~(3) "Physician" means a physician licensed pursuant to 26 V.S.A.~~  
4 ~~chapter 23 or 33.~~

5 Subchapter 2. Licensure of Ambulatory Surgical Centers

6 § 2151. LICENSE

7 No person shall establish, maintain, or operate an ambulatory surgical  
8 center in this State without first obtaining a license for the ambulatory surgical  
9 center in accordance with this subchapter.

10 § 2152. APPLICATION; FEE

11 (a) An application for licensure of an ambulatory surgical center shall be  
12 made to the Department of Health on forms provided by the Department and  
13 shall include all information required by the Department. Each application for  
14 a license shall be accompanied by a license fee.

15 (b) The annual licensing fee for an ambulatory surgical center shall be  
16 \$2,000.00, provided that the fee for an applicant that presents evidence of  
17 current accreditation by an accrediting organization approved by the  
18 Department shall be reduced by the amount paid to the accrediting  
19 organization to obtain the accreditation.

20 (c) Fees collected under this section shall be credited to a special fund  
21 ~~established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5 and~~

1 ~~shall be available to the Department of Health to offset the costs of licensing~~  
2 ambulatory surgical centers.

3 § 2153. LICENSE REQUIREMENTS

4 (a) Upon receipt of an application for a license and the licensing fee, the  
5 Department of Health shall issue a license if it determines that the applicant  
6 and the ambulatory surgical center facilities meet the following minimum  
7 standards:

8 (1) The applicant shall demonstrate the capacity to operate an  
9 ambulatory surgical center in accordance with rules adopted by the  
10 Department.

11 (2) The applicant shall demonstrate that its facilities comply fully with  
12 standards for health, safety, and sanitation as required by State law, including  
13 standards set forth by the State Fire Marshal and the State Board of Health,  
14 and municipal ordinance.

15 (3) The ambulatory surgical center shall not mix functions or operations  
16 in a common space with another entity during concurrent or overlapping hours  
17 of operation.

18 (4) The clinical services provided by the ambulatory surgical center  
19 shall be managed by a medical director, who shall be a physician.

1 ~~(5) The ambulatory surgical center shall ensure that all patients admitted~~  
2 ~~to or receiving services from the ambulatory surgical center shall be under the~~  
3 ~~care of a practicing physician.~~

4 (6) The ambulatory surgical center's nursing service shall be directed at  
5 all times by a registered nurse or advanced practice registered nurse licensed  
6 pursuant to 26 V.S.A. chapter 28.

7 (7) The ambulatory surgical center shall have an organized medical staff  
8 of not fewer than three members that shall meet at least annually.

9 (b) A license is not transferable or assignable and shall be issued only for  
10 the premises and persons named in the application.

11 § 2154. REVOCATION OF LICENSE HEARING

12 The Department of Health, after notice and opportunity for hearing to the  
13 applicant or licensee, is authorized to deny, suspend, or revoke a license in any  
14 case in which it finds that there has been a substantial failure to comply with  
15 the requirements established under this chapter. Such notice shall be served by  
16 registered mail or by personal service, shall set forth the reasons for the  
17 proposed action, and shall set a date not less than 60 days from the date of the  
18 mailing or service on which the applicant or licensee shall be given  
19 opportunity for a hearing. After the hearing, or upon default of the applicant  
20 or licensee, the Department shall file its findings of fact and conclusions of  
21 law. A copy of the findings and decision shall be sent by registered mail or

1 ~~served personally upon the applicant or licensee. The procedure governing~~  
2 hearings authorized by this section shall be in accordance with the usual and  
3 customary rules provided for such hearings.

4 § 2155. APPEAL

5 Any applicant or licensee, or the State acting through the Attorney General,  
6 aggrieved by the decision of the Department of Health after a hearing may,  
7 within 30 days after entry of the decision as provided in section 2154 of this  
8 title, appeal to the Superior Court for the district in which the appellant is  
9 located. The court may affirm, modify, or reverse the Department's decision,  
10 and either the applicant or licensee or the Department or State may appeal to  
11 the Vermont Supreme Court for such further review as is provided by law.

12 Pending final disposition of the matter, the status quo of the applicant or  
13 licensee shall be preserved, except as the court otherwise orders in the public  
14 interest.

15 § 2156. INSPECTIONS

16 The Department shall make or cause to be made such inspections and  
17 investigation as it deems necessary.

18 § 2157. RECORDS

19 Information received by the Department through filed reports, inspections,  
20 or as otherwise authorized by law shall (1) not be disclosed publicly in a  
21 ~~manner that identifies or may lead to the identification of one or more~~

1 ~~viduals or ambulatory surgical centers. (2) is exempt from public inspection~~  
2 ~~and copying under the Public Records Act, and (3) shall be kept confidential~~  
3 ~~except as it relates to a proceeding regarding licensure of an ambulatory~~  
4 ~~surgical center.~~

5 § 2158. NONAPPLICABILITY

6 The provisions of chapter 42 of this title, Bill of Rights for Hospital  
7 Patients, do not apply to ambulatory surgical centers.

8 § 2159. RULES

9 The Department shall adopt rules pursuant to 3 V.S.A. chapter 25 as needed  
10 to carry out the purposes of this subchapter and subchapter 3 of this chapter.  
11 To the extent practicable, the Department's rules for licensure of ambulatory  
12 surgical centers shall align with its rules for licensure of hospitals.

13 Sec. 2. EFFECTIVE DATE

14 This act shall take effect on January 1, 2020, provided that any ambulatory  
15 surgical center in operation on that date shall have six months to complete the  
16 licensure process.

~~§ 1. 18 V.S.A. chapter 49 is added to read:~~

~~CHAPTER 49. AMBULATORY SURGICAL CENTERS~~

~~Subchapter 1. General Provisions~~

~~§ 2141. DEFINITIONS~~

~~As used in this chapter:~~

~~(1) "Ambulatory surgical center" means any distinct entity that~~  
~~operates primarily for the purpose of providing surgical services to patients~~  
~~not requiring hospitalization and for which the expected duration of service~~

~~could not exceed 24 hours following an admission. The term does not include:~~

~~(A) a facility that is licensed as part of a hospital; or~~

~~(B) a facility that is used exclusively as an office or clinic for the private practice of one or more licensed health care professionals, unless one or more of the following descriptions apply:~~

~~(i) the facility holds itself out to the public or to other health care providers as an ambulatory surgical center, surgical center, surgery center, surgicenter, or similar facility using a similar name or a variation thereof;~~

~~(ii) procedures are carried out at the facility using general anesthesia, except as used in oral or maxillofacial surgery or as used by a dentist with a general anesthesia endorsement from the Board of Dental Examiners; or~~

~~(iii) patients are charged a fee for the use of the facility in addition to the fee for the professional services of one or more of the health care professionals practicing at that facility.~~

~~(2) "Health care professional" means:~~

~~(A) a physician licensed pursuant to 26 V.S.A. chapter 23 or 33;~~

~~(B) an advanced practice registered nurse licensed pursuant to 26 V.S.A. chapter 28;~~

~~(C) a physician assistant licensed pursuant to 26 V.S.A. chapter 31;~~

~~(D) a podiatrist licensed pursuant to 26 V.S.A. chapter 7; or~~

~~(E) a dentist licensed pursuant to 26 V.S.A. chapter 12.~~

~~(3) "Patient" means a person admitted to or receiving health care services from an ambulatory surgical center.~~

~~Subchapter 2. Licensure of Ambulatory Surgical Centers~~

~~§ 2151. LICENSE~~

~~No person shall establish, maintain, or operate an ambulatory surgical center in this State without first obtaining a license for the ambulatory surgical center in accordance with this subchapter.~~

~~§ 2152. APPLICATION; FEE~~

~~(a) An application for licensure of an ambulatory surgical center shall be made to the Department of Health on forms provided by the Department and shall include all information required by the Department. Each application for a license shall be accompanied by a license fee.~~

~~(b) The annual licensing fee for an ambulatory surgical center shall be \$500.00.~~

~~(c) Fees collected under this section shall be credited to a special fund established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5 and shall be available to the Department of Health to offset the costs of licensing ambulatory surgical centers.~~

~~§ 2153. LICENSE REQUIREMENTS~~

~~(a) Upon receipt of an application for a license and the licensing fee, the Department of Health shall issue a license if it determines that the applicant and the ambulatory surgical center facilities meet the following minimum standards:~~

~~(1) The applicant shall demonstrate the capacity to operate an ambulatory surgical center in accordance with rules adopted by the Department.~~

~~(2) The applicant shall demonstrate that its facilities comply fully with standards for health, safety, and sanitation as required by State law, including standards set forth by the State Fire Marshal and the Department of Health, and municipal ordinance.~~

~~(3) The applicant shall have a clear process for responding to patient complaints.~~

~~(4) The applicant shall participate in the Patient Safety Surveillance and Improvement System established pursuant to chapter 43A of this title.~~

~~(b) A license is not transferable or assignable and shall be issued only for the premises and persons named in the application.~~

~~§ 2154. REVOCATION OF LICENSE; HEARING~~

~~The Department of Health, after notice and opportunity for hearing to the applicant or licensee, is authorized to deny, suspend, or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this chapter. Such notice shall be served by registered mail or by personal service, shall set forth the reasons for the proposed action, and shall set a date not less than 60 days from the date of the mailing or service on which the applicant or licensee shall be given opportunity for a hearing. After the hearing, or upon default of the applicant or licensee, the Department shall file its findings of fact and conclusions of law. A copy of the findings and decision shall be sent by registered mail or served personally upon the applicant or licensee. The procedure governing hearings authorized by this section shall be in accordance with the usual and customary rules provided for such hearings.~~

§ 2155. APPEAL

*Any applicant or licensee, or the State acting through the Attorney General, aggrieved by the decision of the Department of Health after a hearing may, within 30 days after entry of the decision as provided in section 2154 of this title, appeal to the Superior Court for the district in which the appellant is located. The court may affirm, modify, or reverse the Department's decision, and either the applicant or licensee or the Department or State may appeal to the Vermont Supreme Court for such further review as is provided by law. Pending final disposition of the matter, the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest.*

§ 2156. INSPECTIONS

*The Department of Health shall make or cause to be made such inspections and investigation as it deems necessary.*

§ 2157. RECORDS

*Information received by the Department of Health through filed reports, inspections, or as otherwise authorized by law shall:*

*(1) not be disclosed publicly in a manner that identifies or may lead to the identification of one or more individuals or ambulatory surgical centers;*

*(2) is exempt from public inspection and copying under the Public Records Act; and*

*(3) shall be kept confidential except as it relates to a proceeding regarding licensure of an ambulatory surgical center.*

§ 2156. INSPECTIONS

*The Department of Health shall make or cause to be made such inspections and investigations as it deems necessary. If the Department finds a violation as the result of an inspection or investigation, the Department shall post a report on the Department's website summarizing the violation and any corrective action required.*

§ 2157. RECORDS

*(a) Information received by the Department of Health through filed reports, inspections, or as otherwise authorized by law shall:*

*(1) not be disclosed publicly in a manner that identifies or may lead to the identification of one or more individuals or ambulatory surgical centers;*

*(2) be exempt from public inspection and copying under the Public Records Act; and*

~~(3) be kept confidential except as it relates to a proceeding regarding licensure of an ambulatory surgical center.~~

~~(b) The provisions of subsection (a) of this section shall not apply to the summary reports of violations required to be posted on the Department's website pursuant to section 2156 of this chapter.~~

§ 2158. NONAPPLICABILITY

The provisions of chapter 42 of this title, Bill of Rights for Hospital Patients, do not apply to ambulatory surgical centers.

§ 2159. RULES

The Department of Health shall adopt rules pursuant to 3 V.S.A. chapter 25 as needed to carry out the purposes of this chapter.

Sec. 1a. 18 V.S.A. § 1909 is amended to read:

§ 1909. INSPECTIONS

The licensing agency shall make or cause to be made such inspections and ~~investigation~~ investigations as it deems necessary. If the licensing agency finds a violation as the result of an inspection or investigation, the licensing agency shall post a report on the licensing agency's website summarizing the violation and any corrective action required.

Sec. 1b. 18 V.S.A. § 1910 is amended to read:

§ 1910. RECORDS

(a) Information received by the licensing agency through filed reports, inspection, or as otherwise authorized ~~under this by law,~~ shall:

(1) not be disclosed publicly in such a manner as to identify individuals or hospitals, except in a proceeding involving the question of licensure that identifies or may lead to the identification of one or more individuals or hospitals;

(2) be exempt from public inspection and copying under the Public Records Act; and

(3) be kept confidential except as it relates to a proceeding regarding licensure of a hospital.

(b) The provisions of subsection (a) of this section shall not apply to the summary reports of violations required to be posted on the licensing agency's website pursuant to section 1909 of this chapter.

~~§ 2. EFFECTIVE DATE~~

~~This act shall take effect on January 1, 2020, provided that any ambulatory surgical center in operation on that date shall have six months to complete the licensure process.~~

Sec. 1. 18 V.S.A. chapter 49 is added to read:

CHAPTER 49. AMBULATORY SURGICAL CENTERS

Subchapter 1. General Provisions

§ 2141. DEFINITIONS

As used in this chapter:

(1) "Ambulatory surgical center" means any distinct entity that operates primarily for the purpose of providing surgical services to patients not requiring hospitalization and for which the expected duration of services would not exceed 24 hours following an admission. The term does not include:

(A) a facility that is licensed as part of a hospital; or

(B) a facility that is used exclusively as an office or clinic for the private practice of one or more licensed health care professionals, unless one or more of the following descriptions apply:

(i) the facility holds itself out to the public or to other health care providers as an ambulatory surgical center, surgical center, surgery center, surgicenter, or similar facility using a similar name or a variation thereof;

(ii) procedures are carried out at the facility using general anesthesia, except as used in oral or maxillofacial surgery or as used by a dentist with a general anesthesia endorsement from the Board of Dental Examiners; or

(iii) patients are charged a fee for the use of the facility in addition to the fee for the professional services of one or more of the health care professionals practicing at that facility.

(2) "Health care professional" means:

(A) a physician licensed pursuant to 26 V.S.A. chapter 23 or 33;

(B) an advanced practice registered nurse licensed pursuant to 26 V.S.A. chapter 28;

(C) a physician assistant licensed pursuant to 26 V.S.A. chapter 31;

(D) a podiatrist licensed pursuant to 26 V.S.A. chapter 7; or

(E) a dentist licensed pursuant to 26 V.S.A. chapter 12.

(3) "Patient" means a person admitted to or receiving health care services from an ambulatory surgical center.

Subchapter 2. Licensure of Ambulatory Surgical Centers

§ 2151. LICENSE

No person shall establish, maintain, or operate an ambulatory surgical center in this State without first obtaining a license for the ambulatory surgical center in accordance with this subchapter.

§ 2152. APPLICATION; FEE

(a) An application for licensure of an ambulatory surgical center shall be made to the Department of Health on forms provided by the Department and shall include all information required by the Department. Each application for a license shall be accompanied by a license fee.

(b) The annual licensing fee for an ambulatory surgical center shall be \$600.00.

(c) Fees collected under this section shall be credited to the Hospital Licensing Fees Special Fund and shall be available to the Department of Health to offset the costs of licensing ambulatory surgical centers.

§ 2153. LICENSE REQUIREMENTS

(a) Upon receipt of an application for a license and the licensing fee, the Department of Health shall issue a license if it determines that the applicant and the ambulatory surgical center facilities meet the following minimum standards:

(1) The applicant shall demonstrate the capacity to operate an ambulatory surgical center in accordance with rules adopted by the Department.

(2) The applicant shall demonstrate that its facilities comply fully with standards for health, safety, and sanitation as required by State law, including standards set forth by the State Fire Marshal and the Department of Health, and municipal ordinance.

(3) The applicant shall have a clear process for responding to patient complaints.

(4) The applicant shall participate in the Patient Safety Surveillance and Improvement System established pursuant to chapter 43A of this title.

(5) The applicant shall maintain certification from the Centers for Medicare and Medicaid Services and shall accept Medicare and Medicaid patients for ambulatory surgical center facility services.

(6) The ambulatory surgical center facilities, including the buildings and grounds, shall be subject to inspection by the Department, its designees, and other authorized entities at all times.

(b) A license is not transferable or assignable and shall be issued only for the premises and persons named in the application.

§ 2154. REVOCATION OF LICENSE; HEARING

The Department of Health, after notice and opportunity for hearing to the applicant or licensee, is authorized to deny, suspend, or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this chapter. Such notice shall be served by registered mail or by personal service, shall set forth the reasons for the proposed action, and shall set a date not less than 60 days from the date of the mailing or service on which the applicant or licensee shall be given opportunity for a hearing. After the hearing, or upon default of the applicant or licensee, the Department shall file its findings of fact and conclusions of law. A copy of the findings and decision shall be sent by registered mail or served personally upon the applicant or licensee. The procedure governing hearings authorized by this section shall be in accordance with the usual and customary rules provided for such hearings.

§ 2155. APPEAL

Any applicant or licensee, or the State acting through the Attorney General, aggrieved by the decision of the Department of Health after a hearing may, within 30 days after entry of the decision as provided in section 2154 of this title, appeal to the Superior Court for the district in which the appellant is located. The court may affirm, modify, or reverse the Department's decision, and either the applicant or licensee or the Department or State may appeal to the Vermont Supreme Court for such further review as is provided by law. Pending final disposition of the matter, the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest.

§ 2156. INSPECTIONS

The Department of Health shall make or cause to be made such inspections and investigations as it deems necessary. If the Department finds a violation as the result of an inspection or investigation, the Department shall post a report on the Department's website summarizing the violation and any corrective action required.

§ 2157. RECORDS

(a) Information received by the Department of Health through filed reports, inspections, or as otherwise authorized by law shall:

(1) not be disclosed publicly in a manner that identifies or may lead to the identification of one or more individuals or ambulatory surgical centers;

(2) be exempt from public inspection and copying under the Public Records Act; and

(3) be kept confidential except as it relates to a proceeding regarding licensure of an ambulatory surgical center.

(b) The provisions of subsection (a) of this section shall not apply to the summary reports of violations required to be posted on the Department's website pursuant to section 2156 of this chapter.

§ 2158. NONAPPLICABILITY

The provisions of chapter 42 of this title, Bill of Rights for Hospital Patients, do not apply to ambulatory surgical centers.

§ 2159. RULES

The Department of Health shall adopt rules pursuant to 3 V.S.A. chapter 25 as needed to carry out the purposes of this chapter. The rules shall include requirements regarding:

(1) the ambulatory surgical center's maintenance of a transport agreement with at least one emergency medical services provider for emergency patient transportation;

(2) the ambulatory surgical center's maintenance of a publicly accessible policy for providing charity care to eligible patients; and

(3) the ambulatory surgical center's participation in quality reporting programs offered by the Centers for Medicare and Medicaid Services.

Sec. 2. 18 V.S.A. § 1909 is amended to read:

§ 1909. INSPECTIONS

The licensing agency shall make or cause to be made such inspections and ~~investigation~~ investigations as it deems necessary. If the licensing agency finds a violation as the result of an inspection or investigation, the licensing agency shall post a report on the licensing agency's website summarizing the violation and any corrective action required.

Sec. 3. 18 V.S.A. § 1910 is amended to read:

§ 1910. RECORDS

(a) Information received by the licensing agency through filed reports, inspection, or as otherwise authorized under this by law, shall:

(1) not be disclosed publicly in such a manner as to identify individuals or hospitals, except in a proceeding involving the question of licensure that identifies or may lead to the identification of one or more individuals or hospitals;

(2) be exempt from public inspection and copying under the Public Records Act; and

(3) be kept confidential except as it relates to a proceeding regarding licensure of a hospital.

(b) The provisions of subsection (a) of this section shall not apply to the summary reports of violations required to be posted on the licensing agency's website pursuant to section 1909 of this chapter.

Sec. 3a. 18 V.S.A. § 9373 is amended to read:

§ 9373. DEFINITIONS

As used in this chapter:

\* \* \*

(18) "Net patient revenues" has the same meaning as in 33 V.S.A. § 1951.

Sec. 4. 18 V.S.A. § 9375(b) is amended to read:

(b) The Board shall have the following duties:

\* \* \*

(14)(A) Collect and review annualized data from ambulatory surgical centers licensed pursuant to chapter 49 of this title, which shall include net patient revenues and which may include data on an ambulatory surgical center's scope of services, volume, payer mix, and coordination with other aspects of the health care system. The Board's processes shall be appropriate to ambulatory surgical centers' scale, their role in Vermont's health care system, and their administrative capacity, and the Board shall seek to minimize the administrative burden of data collection on ambulatory surgical centers. The Board shall also consider ways in which ambulatory surgical centers can be integrated into systemwide payment and delivery system reform.

(B) In its annual report pursuant to subsection (d) of this section, the Board shall describe its oversight of ambulatory surgical centers pursuant to subdivision (A) of this subdivision (14) for the most recently concluded 12-month period of the Board's review, including the amount of each ambulatory surgical center's net patient revenues and, using claims data from the Vermont Healthcare Claims Uniform Reporting and Evaluation System (VHCURES), information regarding high-volume outpatient surgeries and procedures performed in ambulatory surgical center and hospital settings in Vermont, any changes in utilization over time, and a comparison of the commercial insurance rates paid for the same surgeries and procedures performed in ambulatory surgical centers and in hospitals in Vermont.

*Sec. 4a. AMBULATORY SURGICAL CENTER REPORTING;  
APPLICABILITY; PROSPECTIVE REPEAL*

(a) 18 V.S.A. § 9375(b)(14) (Green Mountain Care Board; ambulatory surgical center reporting requirements) is repealed on January 16, 2026.

(b) The information to be reported by the Green Mountain Care Board pursuant to 18 V.S.A. § 9375(b)(14)(B) shall be included beginning with the Board's 2021 annual report.

(c) Notwithstanding any provision of 18 V.S.A. § 9375(b)(14) or this section to the contrary, following submission of its 2023 annual report, the Green Mountain Care Board shall not be required to collect, review, or report further data regarding an ambulatory surgical center that was in operation on January 1, 2019.

*Sec. 5. 18 V.S.A. § 9405b is amended to read:*

§ 9405b. HOSPITAL COMMUNITY REPORTS AND AMBULATORY  
SURGICAL CENTER QUALITY REPORTS

\* \* \*

(d) The Commissioner of Health shall publish or otherwise make publicly available on its website each ambulatory surgical center's performance results from quality reporting programs offered by the Centers for Medicare and Medicaid Services and shall update the information at least annually.

*Sec. 6. EFFECTIVE DATES*

*(a) Sec. 1 (18 V.S.A. chapter 49) shall take effect on January 1, 2020, provided that any ambulatory surgical center in operation on that date shall have six months to complete the licensure process.*

*(b) Secs. 2 (18 V.S.A. § 1909) and 3 (18 V.S.A. § 1910) shall take effect on July 1, 2019.*

*(c) Secs. 3a (18 V.S.A. § 9373), 4 (18 V.S.A. § 9375(b)), and 4a (ambulatory surgical center reporting; applicability; prospective repeal) and this section shall take effect on passage.*

*(d) Sec. 5 (18 V.S.A. § 9405b) shall take effect on January 1, 2020.*