

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: CS/SB 250

INTRODUCER: Health Policy Committee and Senator Steube

SUBJECT: Ambulatory Surgical Centers and Mobile Surgical Facilities

DATE: December 5, 2017 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	Fav/CS
2.			AHS	
3.			AP	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 250 amends the definition of “ambulatory surgical center” (ASC) or “mobile surgical facility”¹ in s. 395.002, F.S., to allow patients to remain in the ASC for up to 24 hours rather than requiring that patients be admitted and discharged from the ASC within the same working day. This change conforms to the federal definition of an ACS as part of the conditions of participation in the Medicare program.

The bill also requires the Agency for Health Care Administration (AHCA), in consultation with the Board of Medicine and the Board of Osteopathic Medicine, to adopt rules consistent with the American College of Surgeons’ standards document entitled “Optimal Resources for Children’s Surgical Care” to ensure the safe and effective delivery of surgical care to children in ASCs. The bill specifies that ASCs may only provide procedures requiring a length of stay past midnight to children under the age of 18 if specifically authorized by the AHCA.

¹ Chapter 395, Part I, F.S., also includes a provision for mobile surgical facility licensure, which is a portable ASC contracted with the Department of Corrections (DOC) or private correctional facility to serve as the surgery department of a prison hospital. To date, no applications have been received for a mobile surgical facility license and none are anticipated. AHCA, *Senate Bill 250 Analysis* (Oct. 19, 2017) (on file with the Senate Committee on Health Policy).

II. Present Situation:

Ambulatory Surgical Centers

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.² Currently there are 442 licensed ASCs in Florida.³ Between April 2016 and March 2017, there were 3,068,350 visits to ASCs in Florida.⁴ Two of the most popular procedures to have performed at an ASC include cataract procedures with 269,807 performed on adults and colonoscopies with 238,997 performed on adults, also during the same time period.⁵ Average charges for procedures performed at an ASC over this period range from \$2,201 to \$15, 961.⁶

Ambulatory surgical centers are licensed and regulated by the AHCA under the same regulatory framework as hospitals.⁷ In addition, ASCs may seek voluntary accreditation by the Joint Commission or the Accreditation Association for Ambulatory Health Care. The AHCA is required to conduct an annual licensure inspection survey for non-accredited ASCs. The 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. The AHCA is required to conduct annual validation inspections on a minimum of 5 percent of the ASCs which were inspected by an accreditation organization.⁸

Ambulatory surgical centers 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 hours following an admission.⁹

The 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, and CMS determines that such accreditation or licensure provides reasonable assurance that the conditions

² Section 395.002(3), F.S., defines “Ambulatory surgical center” to mean 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, F.S.

³ Supra note 1

⁴ AHCA, *Florida Health Finder*, <http://www.floridahealthfinder.gov/CompareCare/CompareFacilities.aspx> (last viewed Nov. 30, 2017).

⁵ Supra note 4

⁶ Supra note 4

⁷ Sections 395.001-395.1065, F.S., and part II, ch. 408, F.S.

⁸ Rule 59A-5.004, F.A.C.

⁹ 42 C.F.R. s. 416.2.

for coverage are met.¹⁰ All of the CMS conditions for coverage requirements are specifically required in 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; and
- Procedure for patient admission, assessment and discharge.

American College of Surgeons Document: Optimal Resources for Children's Surgical Care

The standards document Optimal Resources for Children's Surgical Care was released in 2015 based on the findings of the Task Force for Children's Surgical Care. The Task Force was an ad hoc multidisciplinary group of invited leaders in relevant disciplines assembled initially from April 30 to May 1, 2012, in Rosemont, IL, and subsequently in 2013, 2014, and 2015 to consider approaches to optimize the delivery of children's surgical care in today's competitive national health care environment.¹¹

The document contains specific standards for children's ambulatory surgical centers. The ambulatory surgery standards were developed because a large proportion of children's surgical needs today are managed on an outpatient basis; the number of children involved may be half or more of all children who undergo surgical procedures. Although these children are generally healthy and do well, the uncommon consequences of perioperative problems, particularly related to anesthesia, may be life threatening. The standards were developed in an effort to minimize this risk. The standards require children's ambulatory surgical centers to have treatment protocols for resuscitation, transfer protocols, and data reporting, and must participate in systems for performance improvement.¹²

III. Effect of Proposed Changes:

CS/SB 250 amends the definition of ASC in s. 395.002, F.S., to allow patients to remain in the ASC for up to 24 hours rather than requiring that patients be admitted and discharged from the ASC within the same working day. This change conforms to the federal definition of an ACS as part of the conditions of participation in the Medicare program.

¹⁰ 42 C.F.R. s. 416.26(a)(1).

¹¹ Optimal Resources for Children's Surgical Care, p. 4, available at https://www.facs.org/~media/files/quality%20programs/csv/acs%20csv_standardsmanual.ashx, (last visited on Dec. 5, 2017).

¹² Id. A p. 12

The bill also amends s. 395.1055, F.S., to require the AHCA, in consultation with the Board of Medicine and the Board of Osteopathic Medicine, to adopt rules consistent with the American College of Surgeons' standards document entitled "Optimal Resources for Children's Surgical Care" to ensure the safe and effective delivery of surgical care to children in ASCs. The rules must, at a minimum, address surgical risk assessments, anesthetic care, resuscitation, transfer agreements, and training and certification requirements for pediatric health care providers. The bill also specifies that ASCs may only provide procedures requiring a length of stay past midnight to children under the age of 18 if specifically authorized pursuant to an AHCA's rule.

The bill establishes an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 250 may have an indeterminate negative fiscal impact on hospitals if more patients choose to have their procedures performed in an ASC.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

CS/SB 250 requires the AHCA to establish rules consistent with the American College of Surgeon's standards document entitled "Optimal Resources for Children's Surgical Care." The bill does not specify a specific version of the document to be used. This reference based on the

title of the document may be problematic for future rulemaking if the title of the document changes or if the standards are significantly changed. It may be advisable to specify a version of the document or to allow for updates to these rules.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 395.002 and 395.1055.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on December 5, 2017:

The CS requires the AHCA, in consultation with the Board of Medicine and the Board of Osteopathic Medicine, to adopt rules consistent with the American College of Surgeons' standards document entitled "Optimal Resources for Children's Surgical Care" to ensure the safe and effective delivery of surgical care to children in ASCs. The bill specifies that ASCs may only provide procedures requiring a length of stay past midnight to children under the age of 18 if specifically authorized by rule.

- B. **Amendments:**

None.