

**As Introduced**

**124th General Assembly  
Regular Session  
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**S. B. No. 124**

**SENATORS Jordan, Amstutz, Austria, DiDonato, Randy Gardner, Harris,  
Hottinger, Jacobson, Spada, Wachtmann**

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**A B I L L**

To amend sections 3702.30 and 3702.31 and to enact 1  
section 3702.32 of the Revised Code relative to 2  
sanctions for a health care facility's violations 3  
of licensing requirements and quality standards, 4  
injunctions to enjoin such violations, information 5  
and informed consent compliance requirements for 6  
ambulatory surgical facility physicians, and 7  
expanded health care facility rule making authority 8  
of the Director of Health. 9

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 3702.30 and 3702.31 be amended and 10  
section 3702.32 of the Revised Code be enacted to read as follows: 11

**Sec. 3702.30.** (A) As used in this section: 12

(1) "Ambulatory surgical facility" means a facility, whether 13  
or not part of the same organization as a hospital, that is 14  
located in a building distinct from another in which inpatient 15  
care is provided, and to which any of the following apply: 16

(a) Outpatient surgery is routinely performed in the 17  
facility, and the facility functions separately from a hospital's 18  
inpatient surgical service and from the offices of private 19

physicians, podiatrists, and dentists<sup>+</sup>. 20

(b) Anesthesia is administered in the facility by an 21  
anesthesiologist or certified registered nurse anesthetist, and 22  
the facility functions separately from a hospital's inpatient 23  
surgical service and from the offices of private physicians, 24  
podiatrists, and dentists<sup>+</sup>. 25

(c) The facility applies to be certified by the United States 26  
health care financing administration as an ambulatory surgical 27  
center for purposes of reimbursement under Part B of the medicare 28  
program, Part B of Title XVIII of the "Social Security Act," 49 29  
Stat. 620 (1935), 42 U.S.C.A. 301, as amended<sup>+</sup>. 30

(d) The facility applies to be certified by a national 31  
accrediting body approved by the health care financing 32  
administration for purposes of deemed compliance with the 33  
conditions for participating in the medicare program as an 34  
ambulatory surgical center<sup>+</sup>. 35

(e) The facility bills or receives from any third-party 36  
payer, governmental health care program, or other person or 37  
government entity any ambulatory surgical facility fee that is 38  
billed or paid in addition to any fee for professional services<sup>+</sup>. 39

(f) The facility is held out to any person or government 40  
entity as an ambulatory surgical facility or similar facility by 41  
means of signage, advertising, or other promotional efforts. 42

"Ambulatory surgical facility" does not include a hospital 43  
emergency department. 44

(2) "Ambulatory surgical facility fee" means a fee for 45  
certain overhead costs associated with providing surgical services 46  
in an outpatient setting. A fee is an ambulatory surgical facility 47  
fee only if it directly or indirectly pays for costs associated 48  
with any of the following: 49

(a) Use of operating and recovery rooms, preparation areas, 50

and waiting rooms and lounges for patients and relatives;	51
(b) Administrative functions, record keeping, housekeeping, utilities, and rent;	52 53
(c) Services provided by nurses, orderlies, technical personnel, and others involved in patient care related to providing surgery.	54 55 56
"Ambulatory surgical facility fee" does not include any additional payment in excess of a professional fee that is provided to encourage physicians, podiatrists, and dentists to perform certain surgical procedures in their office or their group practice's office rather than a health care facility, if the purpose of the additional fee is to compensate for additional cost incurred in performing office-based surgery.	57 58 59 60 61 62 63
(3) "Governmental health care program" has the same meaning as in section 4731.65 of the Revised Code.	64 65
(4) "Health care facility" means any of the following:	66
(a) An ambulatory surgical facility;	67
(b) A freestanding dialysis center;	68
(c) A freestanding inpatient rehabilitation facility;	69
(d) A freestanding birthing center;	70
(e) A freestanding radiation therapy center;	71
(f) A freestanding or mobile diagnostic imaging center.	72
<del>(5) "Metropolitan statistical area" has the same meaning as in section 3702.51 of the Revised Code.</del>	73 74
<del>(6) "Third-party payer" has the same meaning as in section 3901.38 of the Revised Code.</del>	75 76
(B) By rule adopted in accordance with sections 3702.12 and 3702.13 of the Revised Code, the director of health shall	77 78

establish quality standards for health care facilities. The  
standards may incorporate accreditation standards or other quality  
standards established by any entity recognized by the director.  
~~The rules shall be adopted so as to cause the standards to take  
effect on March 31, 1996.~~

(C) Every ambulatory surgical facility shall require that  
each physician who practices at the facility comply with all  
relevant provisions in the Revised Code that relate to the  
providing of information to, and the obtaining of informed consent  
from, a patient.

(D) The director shall issue a license to each health care  
facility that makes application for a license and demonstrates to  
the director that it meets the quality standards established by  
the rules adopted under division (B) of this section, except that  
if a health care facility located in a metropolitan statistical  
area applies for a license on or after March 31, 1996, and at the  
time the license is to take effect the quality standards are not  
yet in effect, the director shall issue the license without a  
demonstration that the health care facility meets quality  
standards and satisfies the information and informed consent  
compliance requirements specified in division (C) of this section.

~~(D)~~(E) No health care facility shall operate without a  
license issued under this section.

~~(E)~~(F) The rules adopted under division (B) of this section  
shall include provisions all of the following:

(1) Provisions governing application for, renewal,  
suspension, and revocation of licenses a license under this  
section;

(2) Provisions governing orders issued pursuant to section  
3702.32 of the Revised Code for a health care facility to cease  
its operations or to prohibit certain types of services provided

by a health care facility; 110

(3) Provisions governing the imposition under section 3702.32 111  
of the Revised Code of civil penalties for violations of this 112  
section or the rules adopted under this section, including a scale 113  
for determining the amount of the penalties. 114

**Sec. 3702.31.** (A) The quality monitoring and inspection fund 115  
is hereby created in the state treasury. The director of health 116  
shall use the fund to administer and enforce this section and 117  
sections 3702.11 to 3702.20 and, 3702.30, and 3702.32 of the 118  
Revised Code and rules adopted pursuant to those sections. The 119  
director shall deposit in the fund any moneys collected pursuant 120  
to this section or section 3702.32 of the Revised Code. All 121  
investment earnings of the fund shall be credited to the fund. 122

(B) The director of health shall adopt rules pursuant to 123  
Chapter 119. of the Revised Code establishing fees for both of the 124  
following: 125

(1) Initial and renewal license applications submitted under 126  
section 3702.30 of the Revised Code. The fees established under 127  
division (B)(1) of this section shall not exceed the actual and 128  
necessary costs of performing the activities described in division 129  
(A) of this section. 130

(2) Inspections conducted under section 3702.15 or 3702.30 of 131  
the Revised Code. The fees established under division (B)(2) of 132  
this section shall not exceed the actual and necessary costs 133  
incurred during an inspection, including any indirect costs 134  
incurred by the department for staff, salary, or other 135  
administrative costs. The director of health shall provide to each 136  
health care facility or provider inspected pursuant to section 137  
3702.15 or 3702.30 of the Revised Code a written statement of the 138  
fee. The statement shall itemize and total the costs incurred. 139  
Within fifteen days after receiving a statement from the director, 140

the facility or provider shall forward the total amount of the fee  
to the director.

(3) The fees described in divisions (B)(1) and (2) of this  
section shall meet both of the following requirements:

(a) For each service described in section 3702.11 of the  
Revised Code, the fee shall not exceed one thousand ~~dollars~~ two  
hundred fifty dollars annually, except that the total fees charged  
to a health care provider under this section shall not exceed five  
thousand dollars annually.

(b) The fee shall exclude any costs reimbursable by the  
United States health care financing administration as part of the  
certification process for the medicare program established under  
Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42  
U.S.C.A. 301, as amended, and the medicaid program established  
under Title XIX of that act.

(4) The director shall not establish a fee for any service  
for which a licensure or inspection fee is paid by the health care  
provider to a state agency for the same or similar licensure or  
inspection.

**Sec. 3702.32.** (A) If the director of health determines that a  
health care facility is operating without a license in violation  
of division (E) of section 3702.30 of the Revised Code, the  
director shall do one or more of the following:

(1) Issue an order that the health care facility cease its  
operations;

(2) Issue an order that prohibits the health care facility  
from performing certain types of services;

(3) Impose a civil penalty of not less than one thousand  
dollars and not more than two hundred fifty thousand dollars upon  
the health care facility for operating without a license;

(4) Impose an additional civil penalty of not less than one thousand dollars and not more than ten thousand dollars for each day that the health care facility operates without a license. 171  
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(B)(1) If a health care facility subject to an order issued under division (A)(1) of this section continues to operate, the director of health may file a petition in the court of common pleas of the county in which the health care facility is located for an injunction enjoining the facility from operating. The court shall grant an injunction upon a showing that the respondent named in the petition is operating without a license. 174  
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(2) If a health care facility subject to an order issued under division (A)(2) of this section continues to provide the types of services prohibited by the order, the director of health may file a petition in the court of common pleas of the county in which the health care facility is located for an injunction enjoining the facility from performing those types of services. The court shall grant an injunction upon a showing that the respondent named in the petition is providing the types of services prohibited by the director's order. 181  
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(C) If the director of health determines that a health care facility has violated any provision of section 3702.30 of the Revised Code, other than a violation of division (E) of that section, any provision of Chapter 3701-83 of the Administrative Code, or any other rule adopted by the director of health under section 3702.30 of the Revised Code, the director may do any or all of the following: 190  
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(1) Revoke, suspend, or refuse to renew the health care facility's license; 197  
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(2) Prior to or during the pendency of an administrative hearing under Chapter 119. of the Revised Code, issue an order that prohibits the health care facility from performing certain 199  
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types of services; 202

(3) Provide an opportunity for the health care facility to 203  
correct the violation; 204

(4) Impose a civil penalty of not less than one thousand 205  
dollars and not more than two hundred fifty thousand dollars upon 206  
the health care facility for the violation; 207

(5) Impose an additional civil penalty of not less than five 208  
hundred dollars and not more than ten thousand dollars for each 209  
day that the health care facility fails to correct the violation. 210

(D) If a health care facility subject to an order issued 211  
under division (C)(2) of this section continues to provide the 212  
types of services prohibited by the order, the director of health 213  
may file a petition in the court of common pleas of the county in 214  
which the facility is located for an injunction enjoining the 215  
facility from performing those types of services. The court shall 216  
grant an injunction upon a showing that the respondent named in 217  
the petition is providing the types of services prohibited by the 218  
director's order. 219

(E) The director shall deposit all moneys collected as civil 220  
penalties under this section into the quality monitoring and 221  
inspection fund created under section 3702.31 of the Revised Code 222  
for use in accordance with that section. 223

**Section 2.** That existing sections 3702.30 and 3702.31 of the 224  
Revised Code are hereby repealed. 225