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A B I L L

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

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

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

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

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

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

physicians, podiatrists, and dentists~~+~~. 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~~+~~. 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~~+~~. 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~~+~~. 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~~+~~. 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, 52
utilities, and rent; 53

(c) Services provided by nurses, orderlies, technical 54
personnel, and others involved in patient care related to 55
providing surgery. 56

"Ambulatory surgical facility fee" does not include any 57
additional payment in excess of a professional fee that is 58
provided to encourage physicians, podiatrists, and dentists to 59
perform certain surgical procedures in their office or their group 60
practice's office rather than a health care facility, if the 61
purpose of the additional fee is to compensate for additional cost 62
incurred in performing office-based surgery. 63

(3) "Governmental health care program" has the same meaning 64
as in section 4731.65 of the Revised Code. 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

~~(5) "Metropolitan statistical area" has the same meaning as 73
in section 3702.51 of the Revised Code. 74~~

~~(6)~~ "Third-party payer" has the same meaning as in section 75
3901.38 of the Revised Code. 76

(B) By rule adopted in accordance with sections 3702.12 and 77
3702.13 of the Revised Code, the director of health shall 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
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 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;

(3) Provisions governing the imposition under section 3702.32 110
of the Revised Code of civil penalties for violations of this 111
section or the rules adopted under this section, including a scale 112
for determining the amount of the penalties. 113

Sec. 3702.31. (A) The quality monitoring and inspection fund 114
is hereby created in the state treasury. The director of health 115
shall use the fund to administer and enforce this section and 116
sections 3702.11 to 3702.20 ~~and~~, 3702.30, and 3702.32 of the 117
Revised Code and rules adopted pursuant to those sections. The 118
director shall deposit in the fund any moneys collected pursuant 119
to this section or section 3702.32 of the Revised Code. All 120
investment earnings of the fund shall be credited to the fund. 121

(B) The director of health shall adopt rules pursuant to 122
Chapter 119. of the Revised Code establishing fees for both of the 123
following: 124

(1) Initial and renewal license applications submitted under 125
section 3702.30 of the Revised Code. The fees established under 126
division (B)(1) of this section shall not exceed the actual and 127
necessary costs of performing the activities described in division 128
(A) of this section. 129

(2) Inspections conducted under section 3702.15 or 3702.30 of 130
the Revised Code. The fees established under division (B)(2) of 131
this section shall not exceed the actual and necessary costs 132
incurred during an inspection, including any indirect costs 133
incurred by the department for staff, salary, or other 134
administrative costs. The director of health shall provide to each 135
health care facility or provider inspected pursuant to section 136
3702.15 or 3702.30 of the Revised Code a written statement of the 137
fee. The statement shall itemize and total the costs incurred. 138
Within fifteen days after receiving a statement from the director, 139
the facility or provider shall forward the total amount of the fee 140

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 170
thousand dollars and not more than ten thousand dollars for each 171
day that the health care facility operates without a license. 172

(B)(1) If a health care facility subject to an order issued 173
under division (A)(1) of this section continues to operate, the 174
director of health may file a petition in the court of common 175
pleas of the county in which the health care facility is located 176
for an injunction enjoining the facility from operating. The court 177
shall grant an injunction upon a showing that the respondent named 178
in the petition is operating without a license. 179

(2) If a health care facility subject to an order issued 180
under division (A)(2) of this section continues to provide the 181
types of services prohibited by the order, the director of health 182
may file a petition in the court of common pleas of the county in 183
which the health care facility is located for an injunction 184
enjoining the facility from performing those types of services. 185
The court shall grant an injunction upon a showing that the 186
respondent named in the petition is providing the types of 187
services prohibited by the director's order. 188

(C) If the director of health determines that a health care 189
facility has violated any provision of section 3702.30 of the 190
Revised Code, other than a violation of division (E) of that 191
section, any provision of Chapter 3701-83 of the Administrative 192
Code, or any other rule adopted by the director of health under 193
section 3702.30 of the Revised Code, the director may do any or 194
all of the following: 195

(1) Revoke, suspend, or refuse to renew the health care 196
facility's license; 197

(2) Prior to or during the pendency of an administrative 198
hearing under Chapter 119. of the Revised Code, issue an order 199
that prohibits the health care facility from performing certain 200

<u>types of services;</u>	201
<u>(3) Provide an opportunity for the health care facility to</u>	202
<u>correct the violation;</u>	203
<u>(4) Impose a civil penalty of not less than one thousand</u>	204
<u>dollars and not more than two hundred fifty thousand dollars upon</u>	205
<u>the health care facility for the violation;</u>	206
<u>(5) Impose an additional civil penalty of not less than five</u>	207
<u>hundred dollars and not more than ten thousand dollars for each</u>	208
<u>day that the health care facility fails to correct the violation.</u>	209
<u>(D) If a health care facility subject to an order issued</u>	210
<u>under division (C)(2) of this section continues to provide the</u>	211
<u>types of services prohibited by the order, the director of health</u>	212
<u>may file a petition in the court of common pleas of the county in</u>	213
<u>which the facility is located for an injunction enjoining the</u>	214
<u>facility from performing those types of services. The court shall</u>	215
<u>grant an injunction upon a showing that the respondent named in</u>	216
<u>the petition is providing the types of services prohibited by the</u>	217
<u>director's order.</u>	218
<u>(E) The director shall deposit all moneys collected as civil</u>	219
<u>penalties under this section into the quality monitoring and</u>	220
<u>inspection fund created under section 3702.31 of the Revised Code</u>	221
<u>for use in accordance with that section.</u>	222
Section 2. That existing sections 3702.30 and 3702.31 of the	223
Revised Code are hereby repealed.	224