

**As Reported by the Senate Health, Human Services and Aging  
Committee**

**124th General Assembly  
Regular Session  
2001-2002**

**Am. 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

## As Reported by the Senate Health, Human Services and Aging Committee

inpatient surgical service and from the offices of private  
physicians, podiatrists, and dentists+.

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

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

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

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

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

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

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

## As Reported by the Senate Health, Human Services and Aging Committee

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| (a) Use of operating and recovery rooms, preparation areas,<br>and waiting rooms and lounges for patients and relatives;  | 50<br>51                               |
| (b) Administrative functions, record keeping, housekeeping,<br>utilities, and rent;   | 52<br>53                               |
| (c) Services provided by nurses, orderlies, technical<br>personnel, and others involved in patient care related to<br>providing surgery.  | 54<br>55<br>56                         |
| "Ambulatory surgical facility fee" does not include any<br>additional payment in excess of a professional fee that is<br>provided to encourage physicians, podiatrists, and dentists to<br>perform certain surgical procedures in their office or their group<br>practice's office rather than a health care facility, if the<br>purpose of the additional fee is to compensate for additional cost<br>incurred in performing office-based surgery. | 57<br>58<br>59<br>60<br>61<br>62<br>63 |
| (3) "Governmental health care program" has the same meaning<br>as in section 4731.65 of the Revised Code.   | 64<br>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) <del>"Metropolitan statistical area" has the same meaning as<br/>in section 3702.51 of the Revised Code.</del>  | 73<br>74                               |
| (6) "Third-party payer" has the same meaning as in section<br>3901.38 of the Revised Code.  | 75<br>76                               |
| (B) By rule adopted in accordance with sections 3702.12 and   | 77                                     |

As Reported by the Senate Health, Human Services and Aging Committee

3702.13 of the Revised Code, the director of health shall  
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

## As Reported by the Senate Health, Human Services and Aging Committee

by a health care facility;

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

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

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

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

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

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As Reported by the Senate Health, Human Services and Aging Committee

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;

As Reported by the Senate Health, Human Services and Aging Committee

(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. 170  
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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. 173  
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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. 180  
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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: 189  
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(1) Revoke, suspend, or refuse to renew the health care facility's license; 196  
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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 198  
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As Reported by the Senate Health, Human Services and Aging Committee

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| <u>types of services;</u>  | 201   |
| <u>(3) Provide an opportunity for the health care facility to correct the violation;</u>   | 202<br>203  |
| <u>(4) 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 the violation;</u>  | 204<br>205<br>206   |
| <u>(5) Impose an additional civil penalty of not less than five hundred dollars and not more than ten thousand dollars for each day that the health care facility fails to correct the violation.</u>  | 207<br>208<br>209   |
| <u>(D) If a health care facility subject to an order issued under division (C)(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 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.</u> | 210<br>211<br>212<br>213<br>214<br>215<br>216<br>217<br>218 |
| <u>(E) The director shall deposit all moneys collected as civil penalties under this section into the quality monitoring and inspection fund created under section 3702.31 of the Revised Code for use in accordance with that section.</u>  | 219<br>220<br>221<br>222                                    |
| <b>Section 2.</b> That existing sections 3702.30 and 3702.31 of the Revised Code are hereby repealed.  | 223<br>224  |