

**As Introduced**

**128th General Assembly  
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**H. B. No. 205**

**Representative Letson**

**Cosponsors: Representatives Ujvagi, Hagan, Luckie, Murray, Mallory,  
Lehner, Winburn**

**—**

**A B I L L**

To amend sections 3702.30 and 3702.31 and to enact 1  
sections 3702.40 and 3727.60 of the Revised Code 2  
to require hospitals and ambulatory surgical 3  
facilities to assign a circulating nurse to each 4  
procedure performed in an operating room or 5  
invasive procedure room and to require surgical 6  
technologists to work under the direct supervision 7  
of circulating nurses. 8

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

**Section 1.** That sections 3702.30 and 3702.31 be amended and 9  
sections 3702.40 and 3727.60 of the Revised Code be enacted to 10  
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. 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  
centers for medicare and medicaid services as an ambulatory 27  
surgical center for purposes of reimbursement under Part B of the 28  
medicare program, Part B of Title XVIII of the "Social Security 29  
Act," 79 Stat. 286 (1965), 42 U.S.C.A. 1395, as amended. 30

(d) The facility applies to be certified by a national 31  
accrediting body approved by the centers for medicare and medicaid 32  
services for purposes of deemed compliance with the conditions for 33  
participating in the medicare program as an ambulatory surgical 34  
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, and waiting rooms and lounges for patients and relatives;	50 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
(5) "Third-party payer" has the same meaning as in section 3901.38 of the Revised Code.	73 74
(B) By rule adopted in accordance with sections 3702.12 and 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	75 76 77 78

standards established by any entity recognized by the director. 79

(C) Every ambulatory surgical facility shall require that 80  
each physician who practices at the facility comply with all 81  
relevant provisions in the Revised Code that relate to the 82  
obtaining of informed consent from a patient. 83

(D) The director shall issue a license to each health care 84  
facility that makes application for a license and demonstrates to 85  
the director that it meets the quality standards established by 86  
the rules adopted under division (B) of this section and satisfies 87  
the informed consent compliance requirements specified in division 88  
(C) of this section. 89

(E)(1) Except as provided in section 3702.301 of the Revised 90  
Code, no health care facility shall operate without a license 91  
issued under this section. 92

(2) If the department of health finds that a physician who 93  
practices at a health care facility is not complying with any 94  
provision of the Revised Code related to the obtaining of informed 95  
consent from a patient, the department shall report its finding to 96  
the state medical board, the physician, and the health care 97  
facility. 98

(3) This division does not create, and shall not be construed 99  
as creating, a new cause of action or substantive legal right 100  
against a health care facility and in favor of a patient who 101  
allegedly sustains harm as a result of the failure of the 102  
patient's physician to obtain informed consent from the patient 103  
prior to performing a procedure on or otherwise caring for the 104  
patient in the health care facility. 105

(F) The rules adopted under division (B) of this section 106  
shall include all of the following: 107

(1) Provisions governing application for, renewal, 108  
suspension, and revocation of a license under this section; 109

(2) Provisions governing orders issued pursuant to section 110  
3702.32 of the Revised Code for a health care facility to cease 111  
its operations or to prohibit certain types of services provided 112  
by a health care facility; 113

(3) Provisions governing the orders issued pursuant to 114  
section 3702.40 of the Revised Code for an ambulatory surgical 115  
facility to cease its operations or to prohibit specified types of 116  
services provided by an ambulatory surgical facility; 117

(4) Provisions governing the imposition under ~~section~~ 118  
~~sections~~ 3702.32 and 3702.40 of the Revised Code of civil 119  
penalties for violations of this section or the rules adopted 120  
under this section, including a scale for determining the amount 121  
of the penalties; 122

(5) The tasks that are intraoperative tasks for purposes of 123  
division (B)(4) of section 3702.40 of the Revised Code. 124

(G) An ambulatory surgical facility that performs or induces 125  
abortions shall comply with section 3701.791 of the Revised Code. 126

**Sec. 3702.31.** (A) The quality monitoring and inspection fund 127  
is hereby created in the state treasury. The director of health 128  
shall use the fund to administer and enforce this section and 129  
sections 3702.11 to 3702.20, 3702.30, 3702.301, ~~and~~ 3702.32, and 130  
3702.40 of the Revised Code and rules adopted pursuant to those 131  
sections. The director shall deposit in the fund any moneys 132  
collected pursuant to this section or section 3702.32 or 3702.40 133  
of the Revised Code. All investment earnings of the fund shall be 134  
credited to the fund. 135

(B) The director of health shall adopt rules pursuant to 136  
Chapter 119. of the Revised Code establishing fees for both of the 137  
following: 138

(1) Initial and renewal license applications submitted under 139

section 3702.30 of the Revised Code. The fees established under 140  
division (B)(1) of this section shall not exceed the actual and 141  
necessary costs of performing the activities described in division 142  
(A) of this section. 143

(2) Inspections conducted under section 3702.15 or 3702.30 of 144  
the Revised Code. The fees established under division (B)(2) of 145  
this section shall not exceed the actual and necessary costs 146  
incurred during an inspection, including any indirect costs 147  
incurred by the department for staff, salary, or other 148  
administrative costs. The director of health shall provide to each 149  
health care facility or provider inspected pursuant to section 150  
3702.15 or 3702.30 of the Revised Code a written statement of the 151  
fee. The statement shall itemize and total the costs incurred. 152  
Within fifteen days after receiving a statement from the director, 153  
the facility or provider shall forward the total amount of the fee 154  
to the director. 155

(3) The fees described in divisions (B)(1) and (2) of this 156  
section shall meet both of the following requirements: 157

(a) For each service described in section 3702.11 of the 158  
Revised Code, the fee shall not exceed one thousand seven hundred 159  
fifty dollars annually, except that the total fees charged to a 160  
health care provider under this section shall not exceed five 161  
thousand dollars annually. 162

(b) The fee shall exclude any costs reimbursable by the 163  
United States centers for medicare and medicaid services as part 164  
of the certification process for the medicare program established 165  
under Title XVIII of the "Social Security Act," 79 Stat. 286 166  
(1935), 42 U.S.C.A. 1395, as amended, and the medicaid program 167  
established under Title XIX of the "Social Security Act," 79 Stat. 168  
286 (1965), 42 U.S.C. 1396. 169

(4) The director shall not establish a fee for any service 170

for which a licensure or inspection fee is paid by the health care 171  
provider to a state agency for the same or similar licensure or 172  
inspection. 173

Sec. 3702.40. (A) As used in this section: 174

(1) "Circulating nurse" means a registered nurse who is 175  
educated, trained, or experienced in perioperative nursing and who 176  
is responsible for coordinating the nursing care and safety needs 177  
of a patient in an operating room or invasive procedure room. 178

(2) "Physician" means a person who holds a valid certificate 179  
issued under Chapter 4731. of the Revised Code authorizing the 180  
person to practice medicine and surgery, osteopathic medicine and 181  
surgery, or podiatric medicine and surgery. 182

(3) "Registered nurse" means a person who is licensed as a 183  
registered nurse under Chapter 4723. of the Revised Code. 184

(B) An ambulatory surgical facility shall do all of the 185  
following: 186

(1) Assign a circulating nurse to each procedure performed in 187  
an operating room or invasive procedure room of the facility; 188

(2) Ensure that the circulating nurse assigned to a procedure 189  
described in division (B)(1) of this section is present in the 190  
operating room or invasive procedure room for the entire duration 191  
of the procedure unless it becomes necessary for the nurse to 192  
leave the room as required by the procedure or the nurse is 193  
relieved by another circulating nurse; 194

(3) Ensure that a circulating nurse assigned to a procedure 195  
described in division (B)(1) of this section is not assigned to 196  
another procedure that is scheduled to occur concurrently or that 197  
may overlap in time with the procedure to which the nurse was 198  
originally assigned; 199

(4) Ensure that any person the ambulatory surgical facility 200

has employed or contracted with to work as a surgical technologist 201  
for a procedure, or has assigned to assist with the performance of 202  
one or more intraoperative tasks as specified by the director of 203  
health in rules adopted under divisions (B) and (F)(5) of section 204  
3702.30 of the Revised Code for a procedure, works under the 205  
direct supervision of the circulating nurse assigned to the same 206  
procedure or the circulating nurse who relieves the circulating 207  
nurse assigned to the procedure as described in division (B)(2) of 208  
this section. 209

(C) If the director of health determines that an ambulatory 210  
surgical facility has violated this section, the director may do 211  
one or both of the following: 212

(1) Provide an opportunity for the ambulatory surgical 213  
facility to correct the violation within a period of time 214  
specified by the director; 215

(2) Prior to or during the pendency of an administrative 216  
hearing under Chapter 119. of the Revised Code, issue an order 217  
that requires the ambulatory surgical facility to cease operation 218  
or prohibits the facility from performing the types of services 219  
specified by the director. 220

(D) If an ambulatory surgical facility subject to an order 221  
issued under division (C)(2) of this section continues to operate 222  
or to perform the types of services prohibited by the order, the 223  
director of health may file a petition in the court of common 224  
pleas of the county in which the facility is located for an order 225  
enjoining the facility from continuing to operate or continuing to 226  
perform those types of services. The court shall grant the 227  
injunction on a showing that the respondent named in the petition 228  
is continuing to operate or perform the types of services 229  
prohibited by the director's order. 230

**Sec. 3727.60. (A) As used in this section:** 231



(1) "Circulating nurse" means a registered nurse who is 232  
educated, trained, or experienced in perioperative nursing and who 233  
is responsible for coordinating the nursing care and safety needs 234  
of a patient in an operating room or invasive procedure room. 235

(2) "Physician" means a person who holds a valid certificate 236  
issued under Chapter 4731. of the Revised Code authorizing the 237  
person to practice medicine and surgery, osteopathic medicine and 238  
surgery, or podiatric medicine and surgery. 239

(3) "Registered nurse" means a person who is licensed as a 240  
registered nurse under Chapter 4723. of the Revised Code. 241

(B) A hospital shall do all of the following: 242

(1) Assign a circulating nurse to each procedure performed in 243  
an operating room or invasive procedure room or invasive procedure 244  
room of the hospital; 245

(2) Ensure that the circulating nurse assigned to a procedure 246  
described in division (B)(1) of this section is present in the 247  
operating room or invasive procedure room for the entire duration 248  
of the procedure unless it becomes necessary for the nurse to 249  
leave the room as required by the procedure or the nurse is 250  
relieved by another circulating nurse; 251

(3) Ensure that a circulating nurse assigned to a procedure 252  
described in division (B)(1) of this section is not assigned to 253  
another procedure that is scheduled to occur concurrently or that 254  
may overlap in time with the procedure to which the nurse was 255  
originally assigned; 256

(4) Ensure that any person the hospital has employed or 257  
contracted with to work as a surgical technologist for a surgical 258  
procedure, or has assigned to assist with the performance of one 259  
or more intraoperative tasks as specified by the director of 260  
health in rules adopted under division (E) of this section for a 261  
procedure, works under the direct supervision of the circulating 262

nurse assigned to the same procedure or the circulating nurse who 263  
relieves the circulating nurse assigned to the procedure as 264  
described in division (B)(2) of this section. 265

(C) If the director of health determines that a hospital has 266  
violated this section, the director may provide an opportunity for 267  
the hospital to correct the violation within a period of time 268  
specified by the director. 269

(D) If a hospital fails to correct a violation determined by 270  
the director under division (C) of this section within the amount 271  
of time specified by the director, the director may file a 272  
petition in the court of common pleas of the county in which the 273  
hospital is located for an order enjoining the hospital from 274  
continuing to operate or continuing to perform the types of 275  
services that are associated with the violation. The court shall 276  
grant the injunction on a showing that the respondent named in the 277  
petition is continuing to operate or perform the types of services 278  
associated with the violation. 279

(E) The director of health shall adopt rules to specify the 280  
tasks that are intraoperative tasks for purposes of division 281  
(B)(4) of this section. 282

**Section 2.** That existing sections 3702.30 and 3702.31 of the 283  
Revised Code are hereby repealed. 284