

**As Introduced**

**129th General Assembly  
Regular Session  
2011-2012**

**H. B. No. 149**

**Representative Letson**

**Cosponsors: Representatives Yuko, Hagan, R., Antonio**

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**A B I L L**

To amend sections 3702.30 and 3702.31 and to enact 1  
sections 3702.40, 3727.60, and 3727.601 of the 2  
Revised Code regarding the assignment of 3  
circulating nurses in hospitals and ambulatory 4  
surgical facilities. 5

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

**Section 1.** That sections 3702.30 and 3702.31 be amended and 6  
sections 3702.40, 3727.60, and 3727.601 of the Revised Code be 7  
enacted to read as follows: 8

**Sec. 3702.30.** (A) As used in this section: 9

(1) "Ambulatory surgical facility" means a facility, whether 10  
or not part of the same organization as a hospital, that is 11  
located in a building distinct from another in which inpatient 12  
care is provided, and to which any of the following apply: 13

(a) Outpatient surgery is routinely performed in the 14  
facility, and the facility functions separately from a hospital's 15  
inpatient surgical service and from the offices of private 16  
physicians, podiatrists, and dentists. 17

(b) Anesthesia is administered in the facility by an 18

anesthesiologist or certified registered nurse anesthetist, and 19  
the facility functions separately from a hospital's inpatient 20  
surgical service and from the offices of private physicians, 21  
podiatrists, and dentists. 22

(c) The facility applies to be certified by the United States 23  
centers for medicare and medicaid services as an ambulatory 24  
surgical center for purposes of reimbursement under Part B of the 25  
medicare program, Part B of Title XVIII of the "Social Security 26  
Act," 79 Stat. 286 (1965), 42 U.S.C.A. 1395, as amended. 27

(d) The facility applies to be certified by a national 28  
accrediting body approved by the centers for medicare and medicaid 29  
services for purposes of deemed compliance with the conditions for 30  
participating in the medicare program as an ambulatory surgical 31  
center. 32

(e) The facility bills or receives from any third-party 33  
payer, governmental health care program, or other person or 34  
government entity any ambulatory surgical facility fee that is 35  
billed or paid in addition to any fee for professional services. 36

(f) The facility is held out to any person or government 37  
entity as an ambulatory surgical facility or similar facility by 38  
means of signage, advertising, or other promotional efforts. 39

"Ambulatory surgical facility" does not include a hospital 40  
emergency department. 41

(2) "Ambulatory surgical facility fee" means a fee for 42  
certain overhead costs associated with providing surgical services 43  
in an outpatient setting. A fee is an ambulatory surgical facility 44  
fee only if it directly or indirectly pays for costs associated 45  
with any of the following: 46

(a) Use of operating and recovery rooms, preparation areas, 47  
and waiting rooms and lounges for patients and relatives; 48

(b) Administrative functions, record keeping, housekeeping, 49  
utilities, and rent; 50

(c) Services provided by nurses, orderlies, technical 51  
personnel, and others involved in patient care related to 52  
providing surgery. 53

"Ambulatory surgical facility fee" does not include any 54  
additional payment in excess of a professional fee that is 55  
provided to encourage physicians, podiatrists, and dentists to 56  
perform certain surgical procedures in their office or their group 57  
practice's office rather than a health care facility, if the 58  
purpose of the additional fee is to compensate for additional cost 59  
incurred in performing office-based surgery. 60

(3) "Governmental health care program" has the same meaning 61  
as in section 4731.65 of the Revised Code. 62

(4) "Health care facility" means any of the following: 63

(a) An ambulatory surgical facility; 64

(b) A freestanding dialysis center; 65

(c) A freestanding inpatient rehabilitation facility; 66

(d) A freestanding birthing center; 67

(e) A freestanding radiation therapy center; 68

(f) A freestanding or mobile diagnostic imaging center. 69

(5) "Third-party payer" has the same meaning as in section 70  
3901.38 of the Revised Code. 71

(B) By rule adopted in accordance with sections 3702.12 and 72  
3702.13 of the Revised Code, the director of health shall 73  
establish quality standards for health care facilities. The 74  
standards may incorporate accreditation standards or other quality 75  
standards established by any entity recognized by the director. 76

(C) Every ambulatory surgical facility shall require that 77

each physician who practices at the facility comply with all 78  
relevant provisions in the Revised Code that relate to the 79  
obtaining of informed consent from a patient. 80

(D) The director shall issue a license to each health care 81  
facility that makes application for a license and demonstrates to 82  
the director that it meets the quality standards established by 83  
the rules adopted under division (B) of this section and satisfies 84  
the informed consent compliance requirements specified in division 85  
(C) of this section. 86

(E)(1) Except as provided in division (H) of this section and 87  
in section 3702.301 of the Revised Code, no health care facility 88  
shall operate without a license issued under this section. 89

(2) If the department of health finds that a physician who 90  
practices at a health care facility is not complying with any 91  
provision of the Revised Code related to the obtaining of informed 92  
consent from a patient, the department shall report its finding to 93  
the state medical board, the physician, and the health care 94  
facility. 95

(3) This division does not create, and shall not be construed 96  
as creating, a new cause of action or substantive legal right 97  
against a health care facility and in favor of a patient who 98  
allegedly sustains harm as a result of the failure of the 99  
patient's physician to obtain informed consent from the patient 100  
prior to performing a procedure on or otherwise caring for the 101  
patient in the health care facility. 102

(F) The rules adopted under division (B) of this section 103  
shall include all of the following: 104

(1) Provisions governing application for, renewal, 105  
suspension, and revocation of a license under this section; 106

(2) Provisions governing orders issued pursuant to section 107  
3702.32 of the Revised Code for a health care facility to cease 108

its operations or to prohibit certain types of services provided 109  
by a health care facility; 110

(3) Provisions governing the orders issued pursuant to 111  
section 3702.40 of the Revised Code for an ambulatory surgical 112  
facility to cease its operations or to prohibit specified types of 113  
services provided by an ambulatory surgical facility; 114

(4) Provisions governing the imposition under ~~section~~ 115  
sections 3702.32 and 3702.40 of the Revised Code of civil 116  
penalties for violations of this section or the rules adopted 117  
under this section, including a scale for determining the amount 118  
of the penalties. 119

(G) An ambulatory surgical facility that performs or induces 120  
abortions shall comply with section 3701.791 of the Revised Code. 121

(H) The following entities are not required to obtain a 122  
license as a freestanding diagnostic imaging center issued under 123  
this section: 124

(1) A hospital registered under section 3701.07 of the 125  
Revised Code that provides diagnostic imaging; 126

(2) An entity that is reviewed as part of a hospital 127  
accreditation or certification program and that provides 128  
diagnostic imaging; 129

(3) An ambulatory surgical facility that provides diagnostic 130  
imaging in conjunction with or during any portion of a surgical 131  
procedure. 132

**Sec. 3702.31.** (A) The quality monitoring and inspection fund 133  
is hereby created in the state treasury. The director of health 134  
shall use the fund to administer and enforce this section and 135  
sections 3702.11 to 3702.20, 3702.30, 3702.301, ~~and~~ 3702.32, and 136  
3702.40 of the Revised Code and rules adopted pursuant to those 137  
sections. The director shall deposit in the fund any moneys 138

collected pursuant to this section or section 3702.32 or 3702.40 139  
of the Revised Code. All investment earnings of the fund shall be 140  
credited to the fund. 141

(B) The director of health shall adopt rules pursuant to 142  
Chapter 119. of the Revised Code establishing fees for both of the 143  
following: 144

(1) Initial and renewal license applications submitted under 145  
section 3702.30 of the Revised Code. The fees established under 146  
division (B)(1) of this section shall not exceed the actual and 147  
necessary costs of performing the activities described in division 148  
(A) of this section. 149

(2) Inspections conducted under section 3702.15 or 3702.30 of 150  
the Revised Code. The fees established under division (B)(2) of 151  
this section shall not exceed the actual and necessary costs 152  
incurred during an inspection, including any indirect costs 153  
incurred by the department for staff, salary, or other 154  
administrative costs. The director of health shall provide to each 155  
health care facility or provider inspected pursuant to section 156  
3702.15 or 3702.30 of the Revised Code a written statement of the 157  
fee. The statement shall itemize and total the costs incurred. 158  
Within fifteen days after receiving a statement from the director, 159  
the facility or provider shall forward the total amount of the fee 160  
to the director. 161

(3) The fees described in divisions (B)(1) and (2) of this 162  
section shall meet both of the following requirements: 163

(a) For each service described in section 3702.11 of the 164  
Revised Code, the fee shall not exceed one thousand seven hundred 165  
fifty dollars annually, except that the total fees charged to a 166  
health care provider under this section shall not exceed five 167  
thousand dollars annually. 168

(b) The fee shall exclude any costs reimbursable by the 169

United States centers for medicare and medicaid services as part 170  
of the certification process for the medicare program established 171  
under Title XVIII of the "Social Security Act," 79 Stat. 286 172  
(1935), 42 U.S.C.A. 1395, as amended, and the medicaid program 173  
established under Title XIX of the "Social Security Act," 79 Stat. 174  
286 (1965), 42 U.S.C. 1396. 175

(4) The director shall not establish a fee for any service 176  
for which a licensure or inspection fee is paid by the health care 177  
provider to a state agency for the same or similar licensure or 178  
inspection. 179

**Sec. 3702.40. (A) As used in this section:** 180

(1) "Circulating nurse" means a registered nurse who is 181  
educated, trained, or experienced in perioperative nursing and who 182  
is responsible for coordinating the nursing care and safety needs 183  
of a patient in an operating room or invasive procedure room. 184

(2) "General anesthesia," "deep sedation," "moderate 185  
sedation," and "minimal sedation" have the same meanings as in 186  
rules the state medical board adopts under section 4731.05 of the 187  
Revised Code for purposes of regulating office-based surgeries. 188

(3) "Registered nurse" means a person who is licensed as a 189  
registered nurse under Chapter 4723. of the Revised Code. 190

(B) Except as provided in division (C) of this section, an 191  
ambulatory surgical facility shall do all of the following: 192

(1) Assign a circulating nurse to each procedure performed in 193  
an operating room or invasive procedure room of the facility; 194

(2) Ensure that the circulating nurse assigned to a procedure 195  
described in division (B)(1) of this section is present in the 196  
operating room or invasive procedure room for the entire duration 197  
of the procedure unless it becomes necessary for the nurse to 198  
leave the room as required by the procedure or the nurse is 199

<u>relieved by another circulating nurse;</u>	200
<u>(3) Ensure that a circulating nurse assigned to a procedure</u>	201
<u>described in division (B)(1) of this section is not assigned to</u>	202
<u>another procedure that is scheduled to occur concurrently or that</u>	203
<u>may overlap in time with the procedure to which the nurse was</u>	204
<u>originally assigned;</u>	205
<u>(4) Prohibit a circulating nurse from administering general</u>	206
<u>anesthesia, deep sedation, moderate sedation, or minimal sedation</u>	207
<u>and from monitoring a patient who has been placed under such</u>	208
<u>anesthesia or sedation.</u>	209
<u>(C) An ambulatory surgical facility is not required to comply</u>	210
<u>with division (B) of this section with respect to a procedure</u>	211
<u>described in division (B)(1) of this section if any of the</u>	212
<u>following is the case:</u>	213
<u>(1) The patient is not placed under general anesthesia, deep</u>	214
<u>sedation, moderate sedation, or minimal sedation.</u>	215
<u>(2) The procedure involves the use of endoscopy.</u>	216
<u>(3) The procedure is performed for the primary purpose of</u>	217
<u>relieving pain.</u>	218
<u>(4) The procedure is the surgery known as LASIK or</u>	219
<u>laser-assisted in situ keratomileusis.</u>	220
<u>(5) The procedure uses extracorporeal shock wave therapy.</u>	221
<u>(6) The director of health or governor has declared a natural</u>	222
<u>disaster or emergency that affects the public health.</u>	223
<u>(D) If the director of health determines that an ambulatory</u>	224
<u>surgical facility has violated this section, the director may do</u>	225
<u>either or both of the following:</u>	226
<u>(1) Provide an opportunity for the ambulatory surgical</u>	227
<u>facility to correct the violation within a period of time</u>	228
<u>specified by the director;</u>	229



(2) Prior to or during the pendency of an adjudication under Chapter 119. of the Revised Code, issue an order that requires the ambulatory surgical facility to cease operation or prohibits the facility from performing the types of services specified by the director. 230  
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(E) If an ambulatory surgical facility subject to an order issued under division (D)(2) of this section continues to operate or to perform 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 order enjoining the facility from continuing to operate or continuing to perform those types of services. The court shall grant the injunction on a showing that the respondent named in the petition is continuing to operate or perform the types of services prohibited by the director's order. 235  
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**Sec. 3727.60.** (A) As used in this section: 245

(1) "Circulating nurse" means a registered nurse who is educated, trained, or experienced in perioperative nursing and who is responsible for coordinating the nursing care and safety needs of a patient in an operating room or invasive procedure room. 246  
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(2) "General anesthesia," "deep sedation," "moderate sedation," and "minimal sedation" have the same meanings as in rules the state medical board adopts under section 4731.05 of the Revised Code for purposes of regulating office-based surgeries. 250  
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(3) "Registered nurse" means a person who is licensed as a registered nurse under Chapter 4723. of the Revised Code. 254  
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(B) Except as provided in division (C) of this section, a hospital shall do all of the following: 256  
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(1) Assign a circulating nurse to each procedure performed in an operating room or invasive procedure room of the hospital; 258  
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(2) Ensure that the circulating nurse assigned to a procedure described in division (B)(1) of this section is present in the operating room or invasive procedure room for the entire duration of the procedure unless it becomes necessary for the nurse to leave the room as required by the procedure or the nurse is relieved by another circulating nurse; 260  
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(3) Ensure that a circulating nurse assigned to a procedure described in division (B)(1) of this section is not assigned to another procedure that is scheduled to occur concurrently or that may overlap in time with the procedure to which the nurse was originally assigned; 266  
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(4) Prohibit a circulating nurse from administering general anesthesia, deep sedation, moderate sedation, or minimal sedation and from monitoring a patient who has been placed under such anesthesia or sedation. 271  
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(C) A hospital is not required to comply with division (B) of this section with respect to a procedure described in division (B)(1) of this section if any of the following is the case: 275  
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(1) The patient is not placed under general anesthesia, deep sedation, moderate sedation, or minimal sedation. 278  
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(2) The procedure involves the use of endoscopy. 280

(3) The procedure is performed for the primary purpose of relieving pain. 281  
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(4) The procedure is the surgery known as LASIK or laser-assisted in situ keratomileusis. 283  
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(5) The procedure uses extracorporeal shock wave therapy. 285

(6) The director of health or governor has declared a natural disaster or emergency that affects the public health. 286  
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(D) If the director of health determines that a hospital has violated this section, the director may provide an opportunity for 288  
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the hospital to correct the violation within a period of time 290  
specified by the director. 291

(E) If a hospital fails to correct a violation determined by 292  
the director under division (D) of this section within the period 293  
of time specified by the director, the director may file a 294  
petition in the court of common pleas of the county in which the 295  
hospital is located for an order enjoining the hospital from 296  
continuing to operate or continuing to perform the types of 297  
services that are associated with the violation. The court shall 298  
grant the injunction on a showing that the respondent named in the 299  
petition is continuing to operate or perform the types of services 300  
associated with the violation. 301

(F) The director of health shall adopt rules regarding the 302  
establishment and collection of fees from hospitals to cover the 303  
costs of administering and enforcing this section. The rules shall 304  
be adopted in accordance with Chapter 119. of the Revised Code. 305

Each hospital subject to the fees established in the rules 306  
shall pay the fees in a manner that complies with those rules. 307

**Sec. 3727.601. Fees collected under section 3727.60 of the** 308  
**Revised Code shall be deposited into the state treasury to the** 309  
**credit of the hospital circulating nurse requirement fund, which** 310  
**is hereby created. The fund shall be used by the department of** 311  
**health for administering and enforcing section 3727.60 of the** 312  
**Revised Code and rules adopted pursuant to that section. All** 313  
**investment earnings from the fund shall be credited to the fund.** 314

**Section 2.** That existing sections 3702.30 and 3702.31 of the 315  
Revised Code are hereby repealed. 316