

* * * Regulation of Ambulatory Surgical Centers * * *

Sec. 1. 18 V.S.A. chapter 49 is added to read:

CHAPTER 49. AMBULATORY SURGICAL CENTERS

Subchapter 1. General Provisions

§ 2141. DEFINITIONS

As used in this chapter:

(1) "Ambulatory surgical center" means any distinct entity that operates exclusively for the purpose of providing outpatient surgical services and other outpatient medical procedures to patients not requiring hospitalization and for which the expected duration of services does not exceed 24 hours following an admission.

(2) "Patient" means a person admitted to or receiving health care services from an ambulatory surgical center.

(3) "Physician" means a physician licensed pursuant to 26 V.S.A. chapter 23 or 33.

Subchapter 2. Licensure of Ambulatory Surgical Centers

§ 2151. LICENSE

No person shall establish, maintain, or operate an ambulatory surgical center in this State without first obtaining a license for the ambulatory surgical center in accordance with this subchapter.

§ 2152. APPLICATION; FEE

(a) An application for licensure of an ambulatory surgical center shall be made to the Department of Health on forms provided by the Department and shall include all information required by the Department. Each application for a license shall be accompanied by a license fee.

(b) The annual licensing fee for an ambulatory surgical center shall be \$2,000.00.

(c) Fees collected under this section shall be credited to a special fund established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5 and shall be available to the Department of Health to offset the costs of licensing ambulatory surgical centers.

§ 2153. LICENSE REQUIREMENTS

(a) Upon receipt of an application for a license, or a Deemed-by-accreditation license application, and the licensing fee, the Department of Health shall issue a license if it determines that the applicant and the ambulatory surgical center facilities meet the following minimum standards:

(1) The applicant shall demonstrate that its facilities comply fully with standards for health, safety, and sanitation as required by State law, including standards set forth by the State Fire Marshal and the State Board of Health, and municipal ordinance.

(2) The ambulatory surgical center shall not mix functions or operations in a common space with another entity during concurrent or overlapping hours of operation.

(3) The ambulatory surgical center shall agree to be an active participant in Vermont's health care reform initiatives.

(4)(A) The ambulatory surgical center shall have an effective procedure for the immediate transfer to a hospital of patients requiring emergency medical care beyond the capabilities of the ambulatory surgical center.

(B) The ambulatory surgical center shall have a transport agreement with at least one emergency medical services provider for emergency patient transportation.

(5) The clinical services provided by the ambulatory surgical center shall be managed by a medical director, who shall be a physician.

(6)(A) The ambulatory surgical center shall ensure that all patients admitted to or receiving services from the ambulatory surgical center shall be under the care of a practicing physician. The ambulatory surgical center shall use the uniform credentialing application form described in subsection 9408a(b) of this title.

(B) All physicians performing procedures or surgeries, or both, at the ambulatory surgical center shall maintain after-hours on-call policies and 24-hour call coverage to respond to patient inquiries.

(7) The ambulatory surgical center's nursing service shall be directed at all times by a registered nurse or advanced practice registered nurse licensed pursuant to 26 V.S.A. chapter 28.

(8) A physician shall examine each patient immediately prior to a procedure or surgery to evaluate the risk of anesthesia and of the procedure or surgery to be performed.

(9) The ambulatory surgical center shall have an organized medical staff of not fewer than three members that shall meet at least annually.

(10) Professional case records shall be compiled for all patients and signed by the treating physician. These records shall be kept on file for a minimum of 6 years.

(11) Accounting records of all operating procedures shall be kept on a monthly basis, and complete operating and financial statements shall be compiled at least once annually and kept on file for 6 years.

(12) The ambulatory surgical center facilities, including the buildings and grounds, shall be subjected to inspection by the Department, its designees, and other authorized entities at all times.

(13) A license is not transferable or assignable and shall be issued only for the premises and entity named in the application.

(14) All ambulatory surgical centers shall accept payment for compensation claims of uninsured crime victims paid for by the Victims Compensation Board established in 13 V.S.A. § 5352 at 70 percent of billed charges and shall not bill any balance to the uninsured crime victim.

(b) Deemed-by-accreditation License.

An ASC that meets the following criteria shall be eligible to apply for a deemed-by-accreditation license from the Department:

(1) on the date of application, the entity is accredited to provide ambulatory surgery services by the Accreditation Association for Ambulatory Health Care, Inc. (AAAHC), the Joint Commission or any other national accrediting body as determined by the Department; and

(2) on the date of application, the entity is certified or has applied for certification as an ASC by the Centers for Medicare and Medicaid Services for participation in the Medicare program.

§ 2154. REVOCATION OF LICENSE, HEARING

The Department of Health, after notice and opportunity for hearing to the applicant or licensee, is authorized to deny, suspend, or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this chapter. Such notice shall be served by registered mail or by personal service, shall set forth the reasons for the proposed action, and shall set a date not less than 60 days from the date of the mailing or service on which the

applicant or licensee shall be given opportunity for a hearing. After the hearing, or upon default of the applicant or licensee, the Department shall file its findings of fact and conclusions of law. A copy of the findings and decision shall be sent by registered mail or served personally upon the applicant or licensee. The procedure governing hearings authorized by this section shall be in accordance with the usual and customary rules provided for such hearings.

§ 2155. APPEAL

Any applicant or licensee, or the State acting through the Attorney General, aggrieved by the decision of the Department of Health after a hearing may, within 30 days after entry of the decision as provided in section 2174 of this title, appeal to the Superior Court for the district in which the appellant is located. The court may affirm, modify, or reverse the Department's decision, and either the applicant or licensee or the Department or State may appeal to the Vermont Supreme Court for such further review as is provided by law.

Pending final disposition of the matter, the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest.

§ 2156. INSPECTIONS

The Department shall make or cause to be made such inspections and investigation as it deems necessary.

§ 2157. RECORDS

Information that identifies or may lead to the identification of one or more individuals is exempt from public inspection and copying under the Public Records Act and shall be kept confidential.

§ 2172. QUALITY AND SURGICAL VOLUME REPORTING REQUIREMENTS

(a) If the ambulatory surgical center is certified to participate in the Medicare program, the ambulatory surgical center shall participate in the Centers for Medicare and Medicaid Services' Ambulatory Surgical Center Quality Reporting Program and provide a link to Medicare's Ambulatory Surgical Measures Facility reporting on its website.

(a)(1) If the ambulatory surgical center is not certified to participate in the Medicare program, the ambulatory surgical center shall report at least annually to the Green Mountain Care Board and to the Vermont Program for Quality in Healthcare:

(1) Measures of quality, including process and performance measures, that are valid, reliable, and useful, including comparisons to appropriate national benchmarks for high quality and successful results.

(2) Measures of patient safety that are valid, reliable, and useful, including comparisons to appropriate industry benchmarks for safety.

(3) Measures of health care-associated infections that are valid, reliable, and useful, including comparisons to appropriate industry

benchmarks.

(b) Within 45 days following the close of each ambulatory surgical center's fiscal year, the ambulatory surgical center shall provide to the Green Mountain Care Board, and the Vermont Program for Quality in Healthcare the ambulatory surgical center's volume of surgeries and procedures for the preceding calendar year.