



2009 ASSEMBLY BILL 760

February 19, 2010 - Introduced by Representatives PASCH, HILGENBERG, TOWNSEND, BERCEAU, SINICKI, NEWCOMER, JORGENSEN and ZEPNICK, cosponsored by Senators LEHMAN, KEDZIE, TAYLOR and RISSER. Referred to Committee on Health and Healthcare Reform.

1 **AN ACT** *to renumber* subchapter IV of chapter 50 [precedes 50.90]; *to amend*
2 20.435 (6) (jm), 50.56 (3), 51.40 (1) (em), 146.40 (1) (bo), 146.81 (1) (L), 146.997
3 (1) (d) 18. and 149.14 (3) (nm); and *to create* subchapter IV of chapter 50
4 [precedes 50.60] of the statutes; **relating to:** ambulatory surgical facilities.

Analysis by the Legislative Reference Bureau

Under current law, a hospital must be licensed by the Department of Health Services (DHS) to operate in this state. An ambulatory surgical center is not required to be licensed to operate in this state, but must be approved by the federal Department of Health and Human Services to receive reimbursement under the federal Medicare program. An ambulatory surgical center is a distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization.

This bill creates a licensing requirement for ambulatory surgical facilities (ASFs), which are defined as places where major regional anesthesia, general anesthesia, or moderate or deep sedation is produced in humans. The ASF licensing requirement applies to health care facilities and health care provider offices, except that hospitals, outpatient facilities operated by a hospital, and dentist's offices are exempt from the licensing requirement. Under the bill, a facility or provider office is eligible for an ASF license if it is approved as an ambulatory surgical center for purposes of Medicare or is accredited by a national accrediting body. The bill requires that if a person dies as a result of a complication in the administration of an anesthetic or sedative at an ASF, the ASF must report the death to the examining

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board responsible for accrediting the physician or nurse anesthetist that administered the anesthetic or sedative.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.435 (6) (jm) of the statutes, as affected by 2009 Wisconsin Act
2 28, is amended to read:

3 20.435 (6) (jm) *Licensing and support services.* The amounts in the schedule
4 for the purposes specified in ss. 48.685 (2) (am) and (b) 1., (3) (a) and (b), and (5) (a),
5 49.45 (47), 50.02 (2), 50.025, 50.031, 50.065 (2) (am) and (b) 1., (3) (a) and (b), and (5),
6 50.13, 50.135, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.981, and 146.40
7 (4r) (b) and (er), and subch. IV V of ch. 50 and to conduct health facilities plan and
8 rule development activities, for accrediting nursing homes, convalescent homes, and
9 homes for the aged, to conduct capital construction and remodeling plan reviews
10 under ss. 50.02 (2) (b) and 50.36 (2), and for the costs of inspecting, licensing or
11 certifying, and approving facilities, issuing permits, and providing technical
12 assistance, that are not specified under any other paragraph in this subsection. All
13 moneys received under ss. 48.685 (8), 49.45 (42) (c), 49.45 (47) (c), 50.02 (2), 50.025,
14 50.031 (6), 50.065 (8), 50.13, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.93
15 (1) (c), and 50.981, all moneys received from fees for the costs of inspecting, licensing
16 or certifying, and approving facilities, issuing permits, and providing technical
17 assistance, that are not specified under any other paragraph in this subsection, and
18 all moneys received under s. 50.135 (2) shall be credited to this appropriation
19 account.

20 **SECTION 2.** 50.56 (3) of the statutes is amended to read:

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1 50.56 (3) Notwithstanding sub. (2), insofar as a conflict exists between this
2 subchapter, or the rules promulgated under this subchapter, and subch. I, II or IV
3 V, or the rules promulgated under subch. I, II or IV V, the provisions of this
4 subchapter and the rules promulgated under this subchapter control.

5 **SECTION 3.** Subchapter IV of chapter 50 [precedes 50.60] of the statutes is
6 created to read:

SUBCHAPTER IV

AMBULATORY SURGICAL FACILITIES

9 **50.60 Definitions. (1)** In this subchapter:

10 (a) “Ambulatory surgical facility” means any place at which an anesthetic
11 agent is administered to humans to produce major regional anesthesia or general
12 anesthesia or at which a sedative is administered to humans to produce moderate
13 sedation or deep sedation, but “ambulatory surgical facility” does not include any of
14 the following:

15 1. A hospital that is approved under s. 50.35; or a provider-based entity, as
16 defined in 42 CFR 413.65 (a) (2), that satisfies the requirements under 42 CFR
17 413.65 (g) for provider-based status in relation to a hospital that is approved under
18 s. 50.35.

19 2. A facility that is primarily used for the practice of dentistry, as defined in s.
20 447.01 (8).

21 (b) “Major regional anesthesia” means neuraxial, nerve plexus, or proximal
22 nerve branch anesthesia. “Major regional anesthesia” does not include a field block,
23 a block distal to the elbow or knee, or anesthesia produced by a distal nerve branch
24 injection or a trigger point injection.

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1 (c) “Medicare” means the program under Title XVIII of the federal social
2 security act, 42 USC 1395 et seq.

3 **50.61 License required.** No person may operate an ambulatory surgical
4 facility unless the person has a valid license issued under s. 50.62.

5 **50.62 Qualifications for and issuance of license. (1)** The department
6 shall issue a license to operate an ambulatory surgical facility to an applicant to
7 which any of the following applies:

8 (a) The applicant has an agreement with the federal Centers for Medicare and
9 Medicaid Services to participate in Medicare as an ambulatory surgical center and
10 satisfies the conditions under 42 CFR part 416 subparts B and C.

11 (b) The applicant is accredited by the Accreditation Association for Ambulatory
12 Health Care or the American Association for Accreditation of Ambulatory Surgery
13 Facilities, is accredited as an ambulatory surgical center by The Joint Commission,
14 or is accredited by another national accrediting body from which the federal Centers
15 for Medicare and Medicaid Services accepts accreditation of ambulatory surgical
16 centers under 42 CFR 416.26 for purposes of participation in Medicare.

17 (2) An applicant for a license under this section shall provide the department
18 with a copy of an agreement described under sub. (1) (a) or the report of an
19 accreditation body described under sub. (1) (b).

20 (3) A license issued under this section is valid for 2 years from the date of
21 issuance.

22 **50.63 Mandatory reporting to examining board.** If a complication related
23 to administration of an anesthetic or a sedative at an ambulatory surgical facility
24 results in the death of the person to whom the anesthetic or sedative was
25 administered within 72 hours after completion of the procedure for which the

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1 anesthetic or sedative was administered, the ambulatory surgical facility shall
2 report the complication and death to one of the following:

3 (1) If the anesthetic or sedative was administered by a physician, to the medical
4 examining board.

5 (2) If the anesthetic or sedative was administered by a nurse anesthetist, to the
6 board of nursing.

7 **SECTION 4.** Subchapter IV of chapter 50 [precedes 50.90] of the statutes, as
8 affected by 2009 Wisconsin Act 28, is renumbered subchapter V of ch. 50 [precedes
9 50.90].

10 **SECTION 5.** 51.40 (1) (em) of the statutes is amended to read:

11 51.40 (1) (em) "Facility" means a place, other than a hospital or ambulatory
12 surgical facility, that is licensed, registered, certified, or approved by the department
13 or a county under ch. 50 or 51.

14 **SECTION 6.** 146.40 (1) (bo) of the statutes is amended to read:

15 146.40 (1) (bo) "Hospice" means a hospice that is licensed under subch. IV V
16 of ch. 50.

17 **SECTION 7.** 146.81 (1) (L) of the statutes is amended to read:

18 146.81 (1) (L) A hospice licensed under subch. IV V of ch. 50.

19 **SECTION 8.** 146.997 (1) (d) 18. of the statutes is amended to read:

20 146.997 (1) (d) 18. A hospice licensed under subch. IV V of ch. 50.

21 **SECTION 9.** 149.14 (3) (nm) of the statutes is amended to read:

22 149.14 (3) (nm) Hospice care provided by a hospice licensed under subch. IV
23 V of ch. 50.

24 **SECTION 10. Effective dates.** This act takes effect on the day after publication
25 except as follows:

