

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1009 (Delegate Reznik)

Health and Government Operations

Finance

Cosmetic Surgical Facilities - Regulation

This bill authorizes the Secretary of Health and Mental Hygiene to adopt regulations to regulate cosmetic surgical facilities. The Secretary is authorized to investigate complaints concerning the conformance of cosmetic surgical facilities to such regulations. If the complaint concerns health care practitioner performance or standards of medical practice, the complaint must be referred to the appropriate health occupations board.

Fiscal Summary

State Effect: General fund expenditures for the Office of Health Care Quality (OHCQ) increase beginning in FY 2014 to investigate complaints about cosmetic surgical facilities. The amount of any such increase cannot be reliably estimated at this time and depends on the regulations adopted by the Secretary and the number of complaints received. Adoption of regulations for cosmetic surgical facilities can be handled with existing resources. Revenues are not affected.

Local Effect: The bill does not directly affect local government operations or finances.

Small Business Effect: Potential minimal. Cosmetic surgical facilities are subject to investigation regarding complaints. Any additional fiscal impact, however, would result from the regulations themselves.

Analysis

Bill Summary: “Cosmetic surgical facility” means an office or a facility in which a cosmetic surgical procedure is performed. “Cosmetic surgical facility” does not include an ambulatory surgical facility, a hospital, or an office owned or operated by one or more

dentists providing services within the scope of practice of dentistry. “Cosmetic surgical procedure” means the use of surgical services to reshape the structure of a human body to change the appearance of an individual. “Cosmetic surgical procedure” generally does not include a procedure done under local anesthesia or mild sedation or liposuction that removes less than 1,000 cubic centimeters of aspirate, except when such procedures are defined to be a cosmetic surgical procedure in regulations adopted by the Secretary.

Regulations adopted by the Secretary must include deeming a “cosmetic surgical facility” to meet specified requirements, if the facility is accredited by an approved accreditation association. Regulations may not require higher standards for “cosmetic surgical facilities” than those required for ambulatory surgical facilities.

The Secretary may adopt regulations that establish the circumstances under which a procedure is a “cosmetic surgical procedure” based on a finding by the Secretary that the procedure raises substantial health and safety concerns that warrant regulation. In establishing which procedure is a “cosmetic surgical procedure,” the Secretary must consider available studies, reports, and literature.

Current Law/Background: The regulatory environment related to cosmetic surgery centers and medical spa facilities provides for limited oversight by the Department of Health and Mental Hygiene (DHMH). Physicians and nurses who perform cosmetic surgery in the State must be licensed, and State law authorizes the State Board of Physicians to discipline licensees who perform cosmetic surgical procedures in offices or facilities that are not accredited by specified accrediting organizations or that are not certified to participate in the Medicare program. However, many cosmetic surgery centers are not subject to licensure or inspection by DHMH. The department has authority over ambulatory surgical centers, defined in State law as any center, service, office facility, or other entity that (1) operates primarily for the purpose of providing surgical services to patients requiring a period of postoperative observation but not requiring overnight hospitalization and (2) seeks reimbursement from payors as an ambulatory surgery center. Since many cosmetic surgery centers bill patients directly, these facilities are not required to obtain a license from DHMH.

The Maryland Health Care Commission lists the cosmetic surgery centers that are certified by the federal Centers for Medicare and Medicaid Services for Medicare participation as ambulatory surgical centers. Some surgical centers seek voluntary accreditation; accredited centers are generally subject to inspection by the accrediting organization.

During the week of September 17, 2012, DHMH began investigating a cluster of three severe invasive Group A *Streptococcus* infections in individuals who recently had liposuction at a cosmetic surgery center, Monarch MedSpa, in Timonium. All

three patients were hospitalized; one subsequently died. An investigation revealed that the facility lacked effective infection control procedures and, as a result, DHMH and Baltimore County ordered the facility closed on September 18, 2012. The outbreak raised questions about the adequacy of oversight of cosmetic surgery procedures.

According to the International Medical Spa Association, the number of medical spas (hybrids of medical clinics and day spas) in the United States has increased more than fourfold since 2007, from around 800 in 2007 to 4,500 in 2013. According to the American Society for Dermatologic Surgery Association, government oversight of medical spas varies greatly from state to state, but in many states medical spas are less regulated than hair and nail salons.

State Fiscal Effect: General fund expenditures for OHCQ increase beginning in fiscal 2014 to investigate complaints about cosmetic surgical facilities. The amount of any such increase cannot be reliably estimated at this time and depends on the regulations adopted by the Secretary and the number of complaints received. Adoption of regulations for cosmetic surgical facilities can be handled with existing resources.

Any additional increase in expenditures would result from the specifics of the regulations adopted, which could require licensure and inspection of “cosmetic surgical facilities” – as long as any such requirements are not more stringent than those for ambulatory surgical centers. While the bill does not specifically require or authorize the Secretary to license cosmetic surgical facilities, DHMH has used similar regulatory authority to license other types of surgical facilities, including surgical abortion facilities. Although the bill does not specifically authorize DHMH to charge cosmetic surgical facilities a fee, to the extent that licensure is required and a licensure fee is established through the regulations, general fund revenues would increase. The amount of any such increase would then depend on the amount of the fee and the number of cosmetic surgical facilities subject to regulation.

As the bill does not establish any penalty provisions, any such impact from enforcement would likewise be a result of regulations adopted.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): American Society for Dermatologic Surgery Association, International Medical Spa Association, Department of Health and Mental Hygiene, Office of Administrative Hearings, Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2013
ncs/ljm Revised - House Third Reader - April 3, 2013

Analysis by: Jennifer B. Chasse

Direct Inquiries to:
(410) 946-5510
(301) 970-5510