

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 509 (Senator Middleton)

Finance and Education, Health, and
Environmental Affairs

Cosmetic Surgery - Regulation

This bill requires an office or facility in which a cosmetic surgical procedure is performed to be licensed by the Secretary of Health and Mental Hygiene as a freestanding ambulatory care facility. The bill also repeals provisions of law excluding from the definition of “cosmetic surgical procedure” (1) a procedure done under local anesthesia or mild sedation or (2) a specified liposuction procedure. In addition, the bill authorizes the State Board of Physicians to take specified disciplinary actions against a licensee who performs a cosmetic surgical procedure in a freestanding ambulatory care facility unless the licensee has been approved through the credentialing process or is participating in a specified practitioner performance evaluation process.

Fiscal Summary

State Effect: General fund expenditures increase under the bill beginning in FY 2014 to hire additional permanent staff to license and inspect cosmetic surgical facilities. This increase is offset, in part, by an increase in general fund revenues due to additional licensing fees collected. As discussed below, actual expenditures and revenues depend on the number of cosmetic surgical facilities in the State (which is unknown) and cannot be reliably estimated at this time.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: “Freestanding ambulatory care facilities” are defined as ambulatory surgical facilities, freestanding endoscopy facilities, freestanding facilities utilizing major medical equipment, kidney dialysis centers, and freestanding birthing centers. The Office of Health Care Quality (OHCQ) within the Department of Health and Mental Hygiene (DHMH) is required to license and inspect such facilities. Currently, OHCQ has a staffing deficit of 107 surveyors.

“Ambulatory surgical facilities” are defined as entities that (1) operate primarily for the purpose of providing surgical services to patients requiring a period of postoperative observation but not requiring overnight hospitalization and (2) seek reimbursement from payors as ambulatory surgery centers. The law provides several exclusions from the licensing requirement; generally, the exclusions are for the office of a health care practitioner that does not seek a technical or facility fee. The requirement that an entity “seek reimbursement from payors as *ambulatory surgery centers*” to be licensed serves to exclude offices and facilities, including cosmetic surgical centers, that do not seek such reimbursement.

The State Board of Physicians is authorized – subject to specified hearing provisions and on the affirmative vote of a majority of the quorum – to reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee performs a cosmetic surgical procedure in an office or facility that is not properly accredited or certified.

OHCQ advises that the number of offices or facilities where cosmetic surgical procedures are performed is unknown.

Background: 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.

In October, DHMH sought public comment as to the need for additional oversight of outpatient surgical centers, including cosmetic surgical centers. After reviewing the public comments, DHMH recommended that the General Assembly strengthen oversight of cosmetic surgical centers, including (1) broadening the definition of “ambulatory surgical facility” to include all facilities where certain invasive procedures are performed, regardless of how the procedure is billed and (2) with respect to physician discipline,

clarifying that a physician cannot satisfy the requirements of the law by operating in an accredited facility without fully participating in the facility's credentialing and quality control procedures. The bill codifies these recommendations.

State Fiscal Effect: OHCQ advises that, under the bill, general fund expenditures increase by approximately \$235,000 annually beginning in fiscal 2014. This estimate assumes that there are 100 cosmetic surgical facilities in the State and reflects the cost of hiring three full-time health facility nurse surveyors and one part-time (50%) fire safety inspector to license and inspect the facilities.

The Department of Legislative Services notes OHCQ's ongoing staffing deficit and inability to absorb additional duties but advises that the actual number of cosmetic surgical facilities in the State is unknown. Thus, while general fund expenditures increase under the bill to hire additional permanent staff, actual staffing needs and expenditures depend on the number of cosmetic surgical facilities in the State and cannot be reliably estimated at this time.

Expenditures are offset, in part, by general fund revenues from fees collected. The licensing fee for ambulatory surgical centers is \$700, which is assessed triennially. *For illustrative purposes only*, licensing fees for 100 cosmetic surgical facilities in the State would total \$70,000 on a triennial basis. However, actual revenues (like actual expenditures) depend on the number of cosmetic surgical facilities in the State and cannot be reliably estimated at this time.

Small Business Effect: In addition to paying the \$700 licensing fee, a cosmetic surgical facility must pay potentially significant costs associated with meeting the requirements for licensing. These costs may include purchasing major equipment, altering office layouts, and hiring additional personnel. Furthermore, any facility that becomes licensed as an ambulatory surgical facility must obtain federal accreditation in order to accept payment from Medicare or Medicaid. (The fees and requirements for accreditation are substantial.) However, the bill's effect on small businesses, though potentially meaningful, is indeterminate because it is unknown how many of the cosmetic surgical facilities (1) exist in the State; (2) are considered small businesses; and (3) will elect to become licensed as ambulatory surgical facilities rather than cease to provide cosmetic surgical services.

Additional Information

Prior Introductions: None.

Cross File: HB 1116 (Delegate Bromwell) - Health and Government Operations.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

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mc/ljm

Analysis by: Jennifer A. Ellick

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