

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1278 (Delegate Kelly)  
Health and Government Operations

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State Board of Physicians - Offices or Facilities for Performing Surgical  
Procedures

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This bill authorizes the State Board of Physicians (MBP) to discipline a licensed physician who performs a breast augmentation, breast lift, breast reduction, abdominoplasty, or facelift in an office or facility that is not accredited or certified by specified entities, unless the physician has hospital privileges to perform the procedures.

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Fiscal Summary

**State Effect:** The bill is not expected to materially affect State finances or operations, as discussed below.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

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Analysis

**Bill Summary:** The office or facility must be (1) accredited by the American Association for Accreditation of Ambulatory Surgical Facilities, the Accreditation Association for Ambulatory Health Care, or the Joint Commission on the Accreditation of Healthcare Organizations or (2) certified to participate in the Medicare program.

**Current Law:** Subject to hearing provisions, a disciplinary panel of MBP, on the affirmative vote of a majority of the quorum of the panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if a licensee violates any 1 of 42 statutory disciplinary grounds. One such ground is if the licensee performs a

cosmetic surgical procedure in an office or a facility that is not (1) accredited by the American Association for Accreditation of Ambulatory Surgical Facilities, the Accreditation Association for Ambulatory Health Care, or the Joint Commission on the Accreditation of Healthcare Organizations or (2) certified to participate in the Medicare program.

“Cosmetic surgical procedure” means the use of surgical services to reshape the structure of a human body in order to change the appearance of an individual. The definition *does not* include a procedure done under local anesthesia or mild sedation, or liposuction that removes less than 1,000 cubic centimeters of aspirate.

**Background:** According to a 2011 *NBC News* article, some doctors offer “awake” surgeries for cosmetic procedures such as breast implantations and abdominoplasty, in which the patient remains lucid and alert during the procedure due to the use of local anesthesia and mild sedatives rather than general anesthesia. Proponents of the practice claim the procedures allow patients to interact with their doctors and have more control over the outcomes of the procedures. Critics, however, claim that such practices are unsafe and are primarily used by doctors who are not cosmetic surgery specialists, and who lack hospital privileges, as a way to provide cosmetic surgery procedures in the privacy of their offices without the use of expensive general anesthesia and certified anesthesiologists. Critics also claim that the use of local anesthesia exempts facilities that offer such procedures from having to obtain accreditation from national health and safety organizations.

**State Fiscal Effect:** MBP advises that the bill does not impact board operations or finances. MBP notes that physicians are already subject to discipline for performing cosmetic surgical procedures in an unaccredited facility under existing law and that there may be some overlap between the existing grounds for discipline and the bill’s requirements.

However, the Department of Legislative Services (DLS) advises that the extent of this overlap depends on whether the procedures specified in the bill (breast augmentation, breast lift, breast reduction, abdominoplasty, and facelift) qualify as “cosmetic surgical procedures.” If the procedures are performed using local anesthesia or mild sedation, then the procedures do not meet the definition of “cosmetic surgical procedure” and physicians are not subject to discipline under existing law if the procedures are performed in unaccredited facilities. Therefore, to the extent physicians perform these procedures using local anesthesia or mild sedation, MBP may receive more complaints and disciplinary cases under the bill if the procedures are performed in unaccredited facilities.

According to MBP’s annual report, in fiscal 2015, the board investigated only one allegation involving the performance of a cosmetic surgical procedure in an unaccredited

facility. Given the low volume of cases for this similar grounds for discipline, DLS advises that MBP can likely handle any increase in complaints and related disciplinary cases under the bill with existing resources.

**Small Business Effect:** Physicians who perform the bill's specified procedures using local anesthesia or mild sedation are subject to discipline if the procedures are not performed in an accredited facility.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

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