

# SENATE BILL 728

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CF HB 935

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By: **Senator Lam**

Introduced and read first time: February 3, 2020

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 7, 2020

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Health Facilities – Freestanding Ambulatory Care Facilities – Administration of**  
3 **Anesthesia**

4 FOR the purpose of requiring the Secretary of Health to establish in regulations a provision  
5 requiring an ambulatory surgical facility to ensure that ~~a health care practitioner~~  
6 ~~administering anesthesia for a procedure has access to certain medical resources~~ an  
7 anesthesia practitioner is not precluded from providing a certain level of support to  
8 treat certain patients in a certain manner; defining certain terms; and generally  
9 relating to the administration of anesthesia at freestanding ambulatory care  
10 facilities.

11 BY repealing and reenacting, with amendments,  
12 Article – Health – General  
13 Section ~~19–3B–01~~ and 19–3B–03  
14 Annotated Code of Maryland  
15 (2019 Replacement Volume)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
17 That the Laws of Maryland read as follows:

18 **Article – Health – General**

19 19–3B–01.

20 (a) In this subtitle the following words have the meanings indicated.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (b) (1) “Ambulatory surgical facility” means any center, service, office facility,  
2 or other entity that:

3 (i) Operates exclusively for the purpose of providing surgical  
4 services to patients requiring a period of postoperative observation but not requiring  
5 hospitalization and in which the expected duration of services would not exceed 24 hours  
6 following admission; and

7 (ii) Seeks reimbursement from payors as an ambulatory surgery  
8 center.

9 (2) “Ambulatory surgical facility” does not include:

10 (i) The office of one or more health care practitioners seeking only  
11 professional reimbursement for the provisions of medical services, unless:

12 1. The office operates under contract or other agreement  
13 with a payor as an ambulatory surgical facility regardless of whether it is paid a technical  
14 or facility fee; or

15 2. The office is designated to receive ambulatory surgical  
16 referrals in accordance with utilization review or other policies adopted by a payor;

17 (ii) Any facility or service owned or operated by a hospital and  
18 regulated under Subtitle 2 of this title;

19 (iii) The office of a health care practitioner with not more than one  
20 operating room if:

21 1. The office does not receive a technical or facility fee; and

22 2. The operating room is used exclusively by the health care  
23 practitioner for patients of the health care practitioner;

24 (iv) The office of a group of health care practitioners with not more  
25 than one operating room if:

26 1. The office does not receive a technical or facility fee; and

27 2. The operating room is used exclusively by members of the  
28 group practice for patients of the group practice; or

29 (v) An office owned or operated by one or more dentists licensed  
30 under the Health Occupations Article.

31 (c) “Freestanding ambulatory care facility” means:

1           (1)    An ambulatory surgical facility;

2           (2)    A freestanding endoscopy facility;

3           (3)    A freestanding facility utilizing major medical equipment;

4           (4)    A kidney dialysis center; or

5           (5)    A freestanding birthing center.

6           (d)    (1)    “Freestanding birthing center” means a facility that provides nurse  
7 midwife services under Title 8, Subtitle 6 of the Health Occupations Article.

8           (2)    “Freestanding birthing center” does not include:

9                   (i)    A hospital regulated under Subtitle 2 of this title; or

10                   (ii)   The private residence of the mother.

11          (e)    (1)    “Freestanding endoscopy facility” means a facility:

12                   (i)    For the testing, diagnosis, or treatment of a medical disorder in  
13 conjunction with the use of microscopic, endoscopic, or laparoscopic equipment that is  
14 inserted in a naturally occurring orifice of the body; and

15                   (ii)   That seeks reimbursement as a freestanding endoscopy facility  
16 from payors or Medicare.

17          (2)    “Freestanding endoscopy facility” does not include:

18                   (i)    The office of one or more health care practitioners unless:

19                            1.   The office operates under a contract or other agreement  
20 with a payor as a freestanding endoscopy facility regardless of whether it is paid a technical  
21 or facility fee; or

22                            2.   The office is designated to receive endoscopic referrals in  
23 accordance with utilization review or other policies adopted by a payor; or

24                   (ii)   Any facility or service operated by a hospital and regulated under  
25 Subtitle 2 of this title.

26          (f)    (1)    “Freestanding facility operating major medical equipment” means a  
27 facility using major medical equipment.

1           (2) “Freestanding facility operating major medical equipment” does not  
2 include any facility or service owned or operated by a hospital and regulated under Subtitle  
3 2 of this title.

4           (g) “Health care practitioner” means a person who is licensed, certified, or  
5 otherwise authorized under the Health Occupations Article to provide medical services in  
6 the ordinary course of business or practice of a profession.

7           (h) (1) “Kidney dialysis center” means a facility that provides hemodialysis or  
8 chronic peritoneal dialysis.

9           (2) “Kidney dialysis center” does not include any facility or service owned  
10 or operated by a hospital and regulated under Subtitle 2 of this title.

11           (i) “License” means a license issued by the Secretary under this subtitle.

12           (j) “Major medical equipment” means:

13               (1) Cardiac catheterization equipment;

14               (2) A computer tomography (CT) scanner;

15               (3) A lithotripter;

16               (4) Radiation therapy equipment, including a linear accelerator; or

17               (5) A magnetic resonance imager (MRI).

18           (k) **“NONSTERILE PROCEDURE ROOM” MEANS A ROOM:**

19               (1) **IN WHICH MINOR SURGICAL PROCEDURES ARE PERFORMED,**  
20 **INCLUDING ENDOSCOPY AND ENDOSCOPIC PROCEDURES REQUIRING DEEP**  
21 **SEDATION;**

22               (2) **THAT CAN ONLY BE ACCESSED FROM A SEMI-RESTRICTED**  
23 **CORRIDOR OR AN UNRESTRICTED CORRIDOR;**

24               (3) **THAT IS NOT USED FOR OPEN SURGICAL PROCEDURES THAT:**

25                       (i) **ENTER THE THORAX, ABDOMEN, PELVIS, CRANIUM, OR**  
26 **SPINE; OR**

27                       (ii) **ROUTINELY REQUIRE INDUCTION OF DEEP SEDATION OR**  
28 **GENERAL ANESTHESIA FOR THE ENTIRETY OF THE SURGICAL PROCEDURE; AND**

1                   **(4) IN WHICH DEEP SEDATION OR GENERAL ANESTHESIA MAY BE**  
2 **INDUCED IF:**

3                   **(I) WARRANTED BY THE CLINICAL SITUATION; AND**

4                   **(II) THE ROOM IS EQUIPPED TO SAFELY CONDUCT THE**  
5 **REQUIRED LEVEL OF ANESTHESIA.**

6           **~~[(k)]~~ (L) "Payor" means:**

7                   (1) A health insurer, nonprofit health service plan, or health maintenance  
8 organization that holds a certificate of authority to offer health insurance policies or  
9 contracts in the State in accordance with this article or the Insurance Article;

10                  (2) A third party administrator or any other entity under contract with a  
11 Maryland business to administer health benefits; or

12                  (3) A self-insured group.

13           **(M) "STERILE OPERATING ROOM" MEANS A ROOM IN A SURGICAL SUITE**  
14 **THAT MEETS THE REQUIREMENTS OF A RESTRICTED AREA AND IS DESIGNATED AND**  
15 **EQUIPPED FOR PERFORMING SURGICAL OPERATIONS OR OTHER INVASIVE**  
16 **PROCEDURES THAT MAY REQUIRE AN ASEPTIC FIELD.**

17           **~~[(l)]~~ (N) "Surgical services" has the meaning incorporated in the Centers for**  
18 **Medicare and Medicaid Services State Operations Manual – Guidance for Surveyors:**  
19 **Ambulatory Surgical Centers.**

20 19-3B-03.

21           (a) (1) After consultation with representatives of payors, health care  
22 practitioners, and freestanding ambulatory care facilities, the Secretary shall by regulation  
23 establish:

24                   (i) Procedures to implement the provisions of this subtitle; and

25                   (ii) Standards to ensure quality of care and patient safety that shall  
26 include:

27                           1. Procedures for credentialing and practitioner performance  
28 evaluation;

29                           2. Qualifications of health care practitioners and support  
30 personnel;

1                   3. Procedures to be followed in the event of an emergency,  
2 including a requirement that in the event of an emergency the patient be transported to  
3 the nearest appropriate emergency care facility;

4                   4. Procedures for quality control of any biomedical  
5 equipment;

6                   5. Procedures for postoperative recovery;

7                   6. Procedures for discharge;

8                   **7. PROCEDURES FOR ENSURING THAT A HEALTH CARE**  
9 ~~**PRACTITIONER ADMINISTERING ANESTHESIA FOR A PROCEDURE HAS ACCESS TO**~~  
10 ~~**ALL MEDICAL RESOURCES NECESSARY TO ADEQUATELY AND SAFELY CARE FOR THE**~~  
11 ~~**PATIENT, AS DETERMINED BY THE PRACTITIONER IN CONSULTATION WITH THE**~~  
12 ~~**HEALTH CARE PROVIDER PERFORMING THE PROCEDURE**~~ **AN ANESTHESIA**  
13 **PRACTITIONER IS NOT PRECLUDED FROM PROVIDING THE HIGHEST LEVEL OF**  
14 **ANESTHESIA SUPPORT THAT MAY BE REQUIRED TO SAFELY TREAT PATIENTS**  
15 **UNDERGOING PROCEDURES IN A FREESTANDING AMBULATORY SURGICAL FACILITY**  
16 **PERFORMED IN A NONSTERILE PROCEDURE ROOM OR A STERILE OPERATING ROOM;**

17                   [7.] 8. The use of ultrasound imaging in a freestanding birthing  
18 center; and

19                   [8.] 9. Any other procedures that the Secretary considers  
20 necessary for quality of care and patient safety.

21                   (2) The procedures for practitioner performance evaluation required under  
22 paragraph (1)(ii)1 of this subsection shall include a review of care provided to patients at  
23 the freestanding ambulatory care facility by members of the medical staff.

24                   (3) The review of care shall:

25                   (i) Be undertaken for cases chosen at random and for cases with  
26 unexpected adverse outcomes;

27                   (ii) Be based on objective review standards;

28                   (iii) Include a review of the appropriateness of the plan of care for the  
29 patient, particularly any medical procedures performed on the patient, in relation to the  
30 patient's condition; and

31                   (iv) Except as provided in paragraph (4) of this subsection, be  
32 conducted by at least two members of the medical staff who:

1                               1.     As appropriate, are of the same specialty as the member  
2 of the medical staff under review; and

3                               2.     Have been trained in the freestanding ambulatory care  
4 facility's policies and procedures regarding practitioner performance evaluation.

5                               (4)    A review of the care provided by a member of the medical staff who is a  
6 solo practitioner shall be conducted by an external reviewer.

7                               (5)    A freestanding ambulatory care facility shall take into account the  
8 results of the practitioner performance evaluation process for a member of the medical staff  
9 in the reappointment process.

10                           (b)    If appropriate certification by Medicare is available, obtaining the certification  
11 shall be a condition of licensure for:

12                               (1)    An ambulatory surgical facility; and

13                               (2)    A kidney dialysis center.

14                           (c)    Each freestanding ambulatory care facility shall provide assurances  
15 satisfactory to the Secretary that the freestanding ambulatory care facility does not  
16 discriminate against patients, including discrimination based on ability to pay for  
17 nonelective procedures.

18                           (d)    The Secretary may delegate to the Kidney Disease Commission the  
19 Secretary's authority under § 19-3B-07 of this subtitle to inspect kidney dialysis centers.

20                           (e)    (1)    Except as provided in paragraph (2) of this subsection, the Department  
21 shall survey freestanding ambulatory care facilities in accordance with federal regulations.

22                               (2)    The Department shall survey each freestanding birthing center at least  
23 once per calendar year.

24                           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
25 October 1, 2020.