

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 222

INTRODUCER: Senator Steube

SUBJECT: Recovery Care Services

DATE: March 13, 2017

REVISED: \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	<b>Pre-meeting</b>
2.	_____	_____	CA	_____
3.	_____	_____	AHS	_____
4.	_____	_____	AP	_____

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**I. Summary:**

SB 222 amends s. 395.002, F.S., to allow patients in an ambulatory surgical center (ASC) to stay in the center for up to 24 hours. Current law requires that patients in an ASC be discharged on the same working day and restricts patients from staying overnight in an ASC.

The bill also creates the recovery care center (RCC) license type. Under the bill, an RCC provides postsurgical and post-diagnostic medical and general nursing care to patients for whom acute hospitalization is not required and an uncomplicated recovery is expected. A patient's stay in an RCC is limited to 72 hours. The bill excludes intensive care services, coronary care services, and critical care services from the definition of "recovery care services."

The bill specifies requirements that must be met before a patient can be admitted to an RCC. The bill also requires that an RCC have emergency care transfer protocols, a referral or admission agreement with at least one hospital, and procedures for discharge planning and discharge protocols. The bill allows the Agency for Health Care Administration (AHCA) to adopt rules to implement these standards as well as rules pertaining to dietetics, administration of medication, and pharmaceutical services.

**II. Present Situation:**

**Ambulatory Surgical Centers**

An ASC is a facility, that is not a part of a hospital, the primary purpose of which is to provide elective surgical care, in which the patient is admitted and discharged within the same working day and is not permitted to stay overnight.<sup>1</sup>

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<sup>1</sup> Section 395.002(3), F.S., defines "Ambulatory surgical center" to mean a facility the primary purpose of which is to provide elective surgical care, in which the patient is admitted to and discharged from such facility within the same working day and

In Florida, ambulatory procedures are performed in two settings, hospital-based outpatient facilities and freestanding ASCs. Currently, there are 432 licensed ASCs in Florida.<sup>2</sup>

Between July 2015 and June 2016, there were 3,046,297 visits to ASCs in Florida.<sup>3</sup> Hospital outpatient facilities accounted for 1,419,020 (46.5 percent) visits and free standing ASCs accounted for 1,627,277 (53.5 percent) visits. Freestanding ASC average charges range from \$3,034 to \$7,902 and hospital based ASC average charges range from \$8,669 to \$28,624 for the same time period.<sup>4</sup> Two of the most popular procedures to have performed at an ASC include cataract procedures with 264,530 performed and colonoscopies with 232,667 performed, also during the same time period.<sup>5</sup>

### ***ASC Licensure***

ASCs are licensed and regulated by the AHCA under the same regulatory framework as hospitals.<sup>6</sup> Applicants for ASC licensure must submit certain information to AHCA prior to accepting patients for care or treatment, including the:

- Affidavit of compliance with fictitious name;
- Registration of articles of incorporation; and
- ASC's zoning certificate or proof of compliance with zoning requirements.<sup>7</sup>

Upon receipt of an initial application, the AHCA is required to conduct a survey to determine compliance with all laws and rules. ASCs are required to provide certain information during the initial inspection, including the:

- Governing body bylaws, rules, and regulations;
- Roster of registered nurses and licensed practical nurses with current license numbers;
- Fire plan; and
- Comprehensive Emergency Management Plan.<sup>8</sup>

### ***Rules for ASCs***

Pursuant to s. 395.1055, F.S., the AHCA is authorized to adopt rules for hospitals and ASCs. Separate standards may be provided for general and specialty hospitals, ASCs, mobile surgical facilities, and statutory rural hospitals, but the rules for all hospitals and ASCs must include minimum standards for ensuring that:

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is not permitted to stay overnight, and which is not part of a hospital. However, a facility existing for the primary purpose of performing terminations of pregnancy, an office maintained by a physician for the practice of medicine, or an office maintained for the practice of dentistry shall not be construed to be an ambulatory surgical center, provided that any facility or office which is certified or seeks certification as a Medicare ambulatory surgical center shall be licensed as an ambulatory surgical center pursuant to s. 395.003, F.S.

<sup>2</sup> Agency for Health Care Administration, *Senate Bill 222 Analysis* (Jan. 4, 2017) (on file with the Senate Committee on Health Policy).

<sup>3</sup> Agency for Health Care Administration, *Florida Health Finder*, <http://www.floridahealthfinder.gov/CompareCare/CompareFacilities.aspx> (last viewed Mar. 8, 2017).

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Sections 395.001-395.1065, F.S., and part II, ch. 408, F.S.

<sup>7</sup> Fla. Admin. R. 59A-5.003(4).

<sup>8</sup> Fla. Admin. R. 59A-5.003(5).

- A sufficient number of qualified types of personnel and occupational disciplines are on duty and available at all times to provide necessary and adequate patient care;
- Infection control, housekeeping, sanitary conditions, and medical record procedures are established and implemented to adequately protect patients;
- A comprehensive emergency management plan is prepared and updated annually;
- Licensed facilities are established, organized, and operated consistent with established standards and rules; and
- Licensed facility beds conform to minimum space, equipment, and furnishing standards.

Rule 59A-5 of the Florida Administrative Code, implements the minimum standards for ASCs. Those rules also require policies and procedures to ensure the protection of patient rights.

### ***Staff and Personnel Rules***

ASCs are required to have written policies and procedures for surgical services, anesthesia services, nursing services, pharmaceutical services, laboratory services, and radiologic services. In providing these services, ACSs are required to have certain professional staff available, including:

- A qualified person responsible for the daily functioning and maintenance of the surgical suite;
- An anesthesiologist, physician, a certified registered nurse anesthetist under the on-site medical direction of a licensed physician, or an anesthesiologist assistant under the direct supervision of an anesthesiologist who must be in the ASC during the anesthesia and post-anesthesia recovery period until all patients are alert or discharged;
- A registered professional nurse who is responsible for coordinating and supervising all nursing services;
- A registered professional circulating nurse for a patient during that patient's surgical procedure; and
- A registered professional nurse who must be in the recovery area at all times when a patient is present.<sup>9</sup>

### ***Infection Control Rules***

ASCs are required to establish an infection control program involving members of the medical, nursing, and administrative staff. The program must include written policies and procedures reflecting the scope of the infection control program. The written policies and procedures must be reviewed at least every 2 years by the infection control program members. The infection control program must include:

- Surveillance, prevention, and control of infection among patients and personnel;
- A system for identifying, reporting, evaluating and maintaining records of infections;
- Ongoing review and evaluation of aseptic, isolation and sanitation techniques employed by the ASC; and
- Development and coordination of training programs in infection control for all personnel.<sup>10</sup>

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<sup>9</sup> Fla. Admin. Code R. 59A-5.0085

<sup>10</sup> Fla. Admin. Code R. 59A-5.011

### ***Emergency Management Plan Rules***

ASCs are required to develop and adopt a written comprehensive emergency management plan for emergency care during an internal or external disaster or emergency. The ASC must review the plan and update it annually.<sup>11</sup>

### ***Accreditation***

ASCs may seek voluntary accreditation by the Joint Commission or the AAAHC. The AHCA is required to conduct an annual licensure inspection survey for non-accredited ASCs. The AHCA is authorized to accept survey reports of accredited ASCs from accrediting organizations if the standards included in the survey report are determined to document that the ASC is in substantial compliance with state licensure requirements. The AHCA is required to conduct annual validation inspections on a minimum of 5 percent of the ASCs which were inspected by an accreditation organization.<sup>12</sup>

The AHCA is required to conduct annual life safety inspections of all ASCs to ensure compliance with life safety codes and disaster preparedness requirements. However, the life-safety inspection may be waived if an accreditation inspection was conducted on an ASC by a certified life safety inspector and the ASC was found to be in compliance with the life safety requirements.<sup>13</sup>

### ***Medicare Requirements***

ASCs are required to have an agreement with the Centers for Medicare and Medicaid Services (CMS) to participate in Medicare. ASCs are also required to comply with specific conditions for coverage. CMS defines “ASC” as any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization and in which the expected duration of services would not exceed 24 hours following an admission.<sup>14</sup>

The CMS may deem an ASC to be in compliance with all of the conditions for coverage if the ASC is accredited by a national accrediting body, or licensed by a state agency, and CMS determines that such accreditation or licensure provides reasonable assurance that the conditions for coverage are met.<sup>15</sup> All of the CMS conditions for coverage requirements are specifically required in Rule 59A-5, F.A.C., and apply to all ASCs in Florida. The conditions for coverage require ASCs to have a:

- Governing body that assumes full legal responsibility for determining, implementing, and monitoring policies governing the ASC’s total operation;
- Quality assessment and performance improvement program;
- Transfer agreement with one or more acute care general hospitals, which will admit any patient referred who requires continuing care;
- Disaster preparedness plan;
- Organized medical staff;

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<sup>11</sup> Fla. Admin. Code R. 59A-5.018.

<sup>12</sup> Fla. Admin. Code R. 59A-5.004.

<sup>13</sup> Id.

<sup>14</sup> 42 C.F.R. s. 416.2.

<sup>15</sup> 42 C.F.R. s. 416.26(a)(1).

- Fire control plan;
- Sanitary environment;
- Infection control program; and
- Procedure for patient admission, assessment and discharge.

### Recovery Care Centers

RCCs are entities that provide short-term nursing care, support, and pain control for patients that do not require acute hospitalization.<sup>16</sup> RCC patients are typically healthy persons that have had elective surgery and RCCs are typically restricted from accepting patients with a higher risk for complications after surgery. RCCs can be either freestanding or attached to an ASC or hospital.<sup>17</sup> In practice, RCCs typically provide care to patients transferred from ASCs following surgery, which can allow ASCs to perform more complex procedures.<sup>18</sup>

RCCs are not eligible for Medicare reimbursement.<sup>19</sup> One 1999 survey noted that RCCs received payment in the following breakdown: 41 percent from managed care plans, 29 percent from self-pay, 16 percent from indemnity plans, and 9 percent from workers' compensation.<sup>20</sup>

Three states, Arizona, Connecticut, and Illinois, have specific licenses for "recovery care centers."<sup>21</sup> California also had a demonstration project for recovery care centers from 1987 to 2000 which has expired.<sup>22</sup> Other states may license RCCs as nursing facilities or hospitals.<sup>23</sup>

Of the three states that currently license RCCs, only Arizona has a continuing program with four currently licensed RCCs.<sup>24</sup> Illinois ended its RCC demonstration project in 2012 and currently is not licensing any new RCCs. The main reason cited for ending the project was that the RCCs were underutilized due to not being Medicare reimbursable.<sup>25</sup> Connecticut's RCC program is still active, however, there are currently no licensed RCCs in the state.<sup>26</sup> See the table below for a comparison of Arizona's, Illinois', and Connecticut's RCC regulations.

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<sup>16</sup> Report to Congress, Medicare Payment Advisory Commission: *Medicare Payment for Post-surgical Recovery Care Centers*, p. 3, (November 2000), available at <https://permanent.access.gpo.gov/lps20907/nov2000medpay.pdf>, (last viewed Mar. 8, 2017).

<sup>17</sup> The most common practice seems to be attaching an RCC to an ASC, for example Illinois has seven licensed RCCs all of which are attached. Telephone conversation with Karen Singer, Division of Healthcare Facilities and Programs, Illinois Department of Public Health (Mar. 8, 2017).

<sup>18</sup> Supra note 16 at 4.

<sup>19</sup> Supra note 16.

<sup>20</sup> Supra note 16 at 6 (citing Federated Ambulatory Surgery Association, *Post-Surgical Recovery Care*, (2000).

<sup>21</sup> ARIZ. REV. STAT. ANN. §§ 36-448.51-36-448.55; CONN. AGENCIES REGS. § 19A-495-571; 210 ILL. COMP. STAT. ANN. 3/35.

<sup>22</sup> CAL. HSC. Code s. 128600. See also Supra note 16 at 6.

<sup>23</sup> Sandra Lee Breisch, *Profits in Short Stays*, AM. ACAD. OF ORTHOPAEDIC SURGEONS BULLETIN (June, 1999), available at <http://www2.aaos.org/bulletin/jun99/asc.htm>, (last viewed Mar. 8, 2017).

<sup>24</sup> See Arizona Department of Health Provider and Facility Databases, available at <http://www.azdhs.gov/licensing/index.php#databases>, (last visited Mar. 8, 2017)

<sup>25</sup> See supra note 17.

<sup>26</sup> Telephone conversation with staff of the Connecticut Department of Health (Mar. 8, 2017).

Regulation	Arizona <sup>27</sup>	Connecticut <sup>28</sup>	Illinois <sup>29</sup>
Licensure Required	X	X	X
Written Policies	X	X	X
Maintain Medical Records	X	X	X
Patient's Bill of Rights	X	X	X
Allows Freestanding Facility or Attached	Not Available.	X	X
Length of Stay	Not Available.	Expected 3 days Maximum 21 days	Expected 48 hours Maximum 72 hours
Emergency Care Transfer Agreement	Not Available.	With a hospital and an ambulance service.	With a hospital within 15 minutes travel time.
Prohibited Patients	Patients needing: Intensive care Coronary care Critical care	Patients needing: Intensive care Coronary care Critical care	Patients with chronic infectious conditions Children under age 3
Prohibited Services	Surgical Radiological Pediatric Obstetrical	Surgical Radiological Pre-adolescent pediatric Hospice Obstetrical services over 24 weeks gestation. Intravenous therapy for non-hospital based RCC	Blood administration (only blood products allowed)
Required Services	Laboratory Pharmaceutical Food	Pharmaceutical Dietary Personal care Rehabilitation Therapeutic Social work	Laboratory Pharmaceutical Food Radiological
Bed Limitation	Not Available.	Not Available.	20
Required Staff	Governing authority Administrator	Governing body Administrator	Consulting committee
Required Medical Personnel	At least two physicians Director of nursing	Medical advisory board Medical director Director of nursing	Medical director Nursing supervisor
Required Personnel When Patients Are Present	Director of nursing 40 hours per week One registered nurse One other nurse	Two persons for patient care	One registered nurse One other nurse

<sup>27</sup> Ariz. Rev. Stat. Ann. §§ 36-448.51-36-448.55; Ariz. Admin. Code §§ R9-10-501-R9-10-518 (updated in 2013, formerly R9-10-1401-R9-10-1412).

<sup>28</sup> Conn. Agencies Regs. § 19a-495-571.

<sup>29</sup> 210 Ill. Comp. Stat. Ann. 3/35; Ill. Admin. Code tit. 77, §§ 210.2500 & 210.2800.

### III. Effect of Proposed Changes:

SB 222 amends the definition of “ambulatory surgical center” in s. 395.002, F.S., to allow a patient to be admitted and discharged from an ASC within 24 hours.<sup>30</sup> Current law requires that patients be discharged from an ASC within the same working day and restricts patients from staying at an ASC overnight.

The bill also creates the RCC license type. The bill defines “recovery care center” as a facility that is not part of a hospital and which provides recovery care services to patients who are admitted and discharged from the facility within 72 hours. The bill defines “recovery care services” as postsurgical and post-diagnostic medical and general nursing care, including postsurgical rehabilitation services provided to patients for whom an acute care hospitalization is not required and an uncomplicated recovery is reasonably expected. The bill specifically excludes intensive care services, coronary care services, and critical care services from the definition of “recovery care services.”

The bill specifies requirements that must be met before a patient can be admitted to an RCC. These requirements include:

- The patient must need recovery care services; and
- A physician must certify that the patient is medically stable and does not need acute care hospitalization;

Patients may be admitted to an RCC upon discharge from an ASC or a hospital or post-diagnosis and post-treatment for recovery care services. The bill also requires that an RCC have emergency care transfer protocols, a referral or admission agreement with at least one hospital, and procedures for discharge planning and discharge protocols. The bill allows the AHCA to adopt rules to implement these standards.

The bill requires the AHCA to adopt rules for fair and reasonable minimum standards to ensure that RCCs have:

- A dietetic department or service, on the premises or under contract, to ensure the provision of appropriate nutritional care and quality food service;
- Procedures to ensure the proper administration of medications including procedures for prescribing, ordering, preparing, and dispensing medications as well as the appropriate monitoring of the effects of such medications; and
- A pharmacy, pharmaceutical department, or service on the premises or under contract.

The bill also makes numerous conforming changes in multiple sections of the Florida Statutes to reflect the new RCC license type.

The bill exempts RCCs from certain licensure provisions in s. 408.810(7)-(10), F.S., related to proof of insurance, the applicant’s financial ability to operate, and CON requirements in order to match the licensure requirements for ASCs and mobile surgical facilities.

The bill establishes an effective date of July 1, 2017.

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<sup>30</sup> This comports with the federal CMS definition of an ASC, see supra note 14.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

SB 222 may have an indeterminate negative fiscal impact on hospitals if more patients choose to have their procedures performed in an ASC or recover in a RCC rather than in a hospital.

## C. Government Sector Impact:

SB 222 requires the AHCA to adopt rules for, license, and regulate RCCs. Such activity may have an indeterminate negative fiscal impact on the agency; however, RCC license fees should offset most, if not all, of such costs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 395.001, 395.002, 395.003, 395.0171, 395.1055, 395.10973, 408.802, 408.820, 385.211, 394.4787, 409.975, and 627.64194.



**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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