

[Third Reprint]

SENATE, No. 278

STATE OF NEW JERSEY
217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

SYNOPSIS

Requires surgical practices to apply for licensure as ambulatory care facilities.

CURRENT VERSION OF TEXT

As amended by the General Assembly on December 7, 2017.



(Sponsorship Updated As Of: 1/9/2018)

1 AN ACT concerning surgical practices and amending P.L.1971,
2 c.136, P.L.1989, c.19, and P.L.2009, c.24.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 12 of P.L.1971, c.136 (C.26:2H-12) is amended to read
8 as follows:

9 12. a. No health care service or health care facility shall be
10 operated unless it shall: (1) possess a valid license issued pursuant to
11 this act, which license shall specify the kind or kinds of health care
12 services the facility is authorized to provide; (2) establish and maintain
13 a uniform system of cost accounting approved by the commissioner;
14 (3) establish and maintain a uniform system of reports and audits
15 meeting the requirements of the commissioner; (4) prepare and review
16 annually a long range plan for the provision of health care services;
17 and (5) establish and maintain a centralized, coordinated system of
18 discharge planning which assures every patient a planned program of
19 continuing care and which meets the requirements of the
20 commissioner which requirements shall, where feasible, equal or
21 exceed those standards and regulations established by the federal
22 government for all federally-funded health care facilities but shall not
23 require any person who is not in receipt of State or federal assistance
24 to be discharged against his will.

25 b. (1) Application for a license for a health care service or health
26 care facility shall be made upon forms prescribed by the department.
27 The department shall charge a single, nonrefundable fee for the filing
28 of an application for and issuance of a license and a single,
29 nonrefundable fee for any renewal thereof, and a single, nonrefundable
30 fee for a biennial inspection of the facility, as it shall from time to time
31 fix in rules or regulations; provided, however, that no such licensing
32 fee shall exceed \$10,000 in the case of a hospital and \$4,000 in the
33 case of any other health care facility for all services provided by the
34 hospital or other health care facility, and no such inspection fee shall
35 exceed \$5,000 in the case of a hospital and \$2,000 in the case of any
36 other health care facility for all services provided by the hospital or
37 other health care facility. No inspection fee shall be charged for
38 inspections other than biennial inspections. ²Any surgical practice
39 required to apply for licensure by the department as an ambulatory
40 care facility pursuant to P.L. , c. ³[(C.)]³ (pending before the
41 Legislature as this bill) shall be exempt from the initial and renewal
42 license fees required by this section.² The application shall contain the
43 name of the health care facility, the kind or kinds of health care service

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SHH committee amendments adopted May 15, 2017.

²Senate floor amendments adopted June 26, 2017.

³Assembly floor amendments adopted December 7, 2017.

1 to be provided, the location and physical description of the institution,
2 and such other information as the department may require.

3 (2) A license shall be issued by the department upon its findings
4 that the premises, equipment, personnel, including principals and
5 management, finances, rules and bylaws, and standards of health care
6 service are fit and adequate and there is reasonable assurance the
7 health care facility will be operated in the manner required by this act
8 and rules and regulations thereunder.

9 (3) The department shall post on its Internet website each
10 inspection report prepared following an inspection of a residential
11 health care facility, as defined in section 1 of P.L.1953, c.212
12 (C.30:11A-1) or licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et
13 seq.), that is performed pursuant to this subsection, along with any
14 other inspection report prepared by or on behalf of the department for
15 such facility.

16 If an inspection reveals a serious health and safety violation at a
17 residential health care facility, the department shall post the inspection
18 report, including the name of the facility and the owner of the facility,
19 on its website no later than 72 hours following the inspection. If a
20 license of a residential health care facility is suspended, the department
21 shall post the suspension on its website no later than 72 hours
22 following the suspension. The department shall update its website to
23 reflect the correction of a serious health and safety violation, and the
24 lifting of a suspension.

25 The department shall notify, as soon as possible, the Commissioner
26 of Human Services, or the commissioner's designee, and the director
27 of the county board of social services or county welfare agency, as
28 appropriate, in the county in which a residential health care facility is
29 located, of a serious health and safety violation at the facility and of
30 any suspension of a license to operate such facility.

31 If the inspection responsibilities under this subsection with respect
32 to such facility are transferred or otherwise assigned to another
33 department, that other department shall post on its Internet website
34 each inspection report prepared following an inspection of such
35 facility performed pursuant to this subsection, along with any other
36 inspection report prepared by or on behalf of that department for such
37 facility, and shall comply with the other requirements specified in this
38 subsection.

39 c. (Deleted by amendment, P.L.1998, c.43) **【.】**

40 d. The commissioner may amend a facility's license to reduce that
41 facility's licensed bed capacity to reflect actual utilization at the
42 facility if the commissioner determines that 10 or more licensed beds
43 in the health care facility have not been used for at least the last two
44 succeeding years. For the purposes of this subsection, the
45 commissioner may retroactively review utilization at a facility for a
46 two-year period beginning on January 1, 1990.

47 e. If a prospective applicant for licensure for a health care service
48 or facility that is not subject to certificate of need review pursuant to

1 P.L.1971, c.136 (C.26:2H-1 et al.) so requests, the department shall
 2 provide the prospective applicant with a pre-licensure consultation.
 3 The purpose of the consultation is to provide the prospective applicant
 4 with information and guidance on rules, regulations, standards and
 5 procedures appropriate and applicable to the licensure process. The
 6 department shall conduct the consultation within 60 days of the request
 7 of the prospective applicant.

8 f. Notwithstanding the provisions of any other law to the
 9 contrary, an entity that provides magnetic resonance imaging or
 10 computerized axial tomography services shall be required to obtain a
 11 license from the department to operate those services prior to
 12 commencement of services, except that a physician who is operating
 13 such services on the effective date of P.L.2004, c.54 shall have one
 14 year from the effective date of P.L.2004, c.54 to obtain the license.

15 g. (1) ~~Notwithstanding the provisions of any other law to the~~
 16 ~~contrary, an entity that operates a surgical practice on the effective~~
 17 ~~date of this section of P.L.2009, c.24, as defined in this subsection,~~
 18 ~~shall be required to register with the department within one year of the~~
 19 ~~effective date of P.L.2009, c.24.] (Deleted by amendment, P.L. ,~~
 20 ~~c.) (pending before the Legislature as this bill)~~

21 (2) ~~An entity that has not commenced operation as a surgical~~
 22 ~~practice on the effective date of this section of P.L.2009, c.24, but has~~
 23 ~~filed or files before the 180th day after the effective date of this section~~
 24 ~~of P.L.2009, c.24 its plans, specifications, and required documents~~
 25 ~~with the municipality in which the surgical practice will be located,~~
 26 ~~shall register with the department prior to the commencement of~~
 27 ~~services.] (Deleted by amendment, P.L. , c.) (pending before the~~
 28 ~~Legislature as this bill)~~

29 (3) ~~As a condition of registration with the department, a surgical~~
 30 ~~practice shall be required to obtain certification by the Centers for~~
 31 ~~Medicare and Medicaid Services as an ambulatory surgery center~~
 32 ~~provider or obtain ambulatory care accreditation from an accrediting~~
 33 ~~body recognized by the Centers for Medicare and Medicaid Services~~
 34 ~~and continually maintain such accreditation.] (Deleted by amendment,~~
 35 ~~P.L. , c.) (pending before the Legislature as this bill)~~

36 (4) ~~As a condition of registration with the department, a surgical~~
 37 ~~practice shall be required to report the following information annually:~~
 38 ~~the number of patients served by payment source, including the~~
 39 ~~number of Medicaid-eligible and medically indigent persons served;~~
 40 ~~the number of new patients accepted; and the number of physicians,~~
 41 ~~physician assistants, and advanced practice nurses providing~~
 42 ~~professional services at the surgical practice.] ²~~(Deleted by~~
 43 ~~amendment, P.L. , c.) (pending before the Legislature as this~~
 44 ~~bill)]²~~~~

45 A surgical practice in operation on the date of enactment of
 46 P.L. , c. (pending before the Legislature as this bill) shall be
 47 required to ²be licensed by ²the department ²for licensure²

1 as an ambulatory care facility licensed to provide surgical and related
2 services within one year of the date of enactment of P.L. _____, c.
3 (pending before the Legislature as this bill) ¹.

4 A surgical practice that is certified by the Centers for Medicare and
5 Medicaid Services (CMS) shall not be required to meet the physical
6 plant and functional requirements specified in N.J.A.C.8:43A-19.1 et
7 seq. A surgical practice that is not Medicare certified, either by CMS
8 or by any deeming authority recognized by ³~~the~~³ CMS, but which
9 has obtained accreditation from the American Association of
10 Ambulatory Surgery Facilities or any accrediting body recognized by
11 CMS and is in operation on the date of enactment of P.L. _____, c.
12 (pending before the Legislature as this bill), shall not be required to
13 meet the physical plant and functional requirements specified in
14 N.J.A.C.8:43A-19.1 et seq. A surgical practice not in operation on the
15 date of enactment of P.L. _____, c. (pending before the
16 Legislature as this bill), if it is certified by CMS as an ambulatory
17 surgery center provider, shall also be exempt from these requirements.
18 A surgical practice required by this subsection to meet the physical
19 plant and functional requirements specified in N.J.A.C.8:43A-19.1 et
20 seq. may apply for a waiver of any such requirement in accordance
21 with N.J.A.C.8:43A-2.9. The commissioner shall grant a waiver of
22 those physical plant and functional requirements, as the commissioner
23 deems appropriate, if the waiver does not endanger the life, safety, or
24 health of patients or the public.

25 A surgical practice required to be licensed pursuant to this
26 subsection shall be exempt from the ambulatory care facility
27 assessment pursuant to section 7 of P.L.1992, c.160 (C.26:2H-18.57);
28 except that, if the entity expands to include any additional room
29 dedicated for use as an operating room, the entity shall be subject to
30 the assessment.¹

31 **[(5)] ¹(5)¹** As used in this subsection and subsection i. of this
32 section, "surgical practice" means a structure or suite of rooms that has
33 the following characteristics:

34 (a) has no more than one room dedicated for use as an operating
35 room which is specifically equipped to perform surgery, and is
36 designed and constructed to accommodate invasive diagnostic and
37 surgical procedures;

38 (b) has one or more post-anesthesia care units or a dedicated
39 recovery area where the patient may be closely monitored and
40 observed until discharged; and

41 (c) is established by a physician, physician professional
42 association surgical practice, or other professional practice form
43 specified by the State Board of Medical Examiners pursuant to
44 regulation solely for the physician's, association's ^{1,1} or other
45 professional entity's private medical practice ²**1**; or a dentist, dentist
46 professional association, or other professional practice form authorized
47 by the New Jersey Board of Dentistry pursuant to regulation solely for

1 the dentist's, association's, or other professional entity's private dental
2 practice¹]².

3 **["Surgical practice"** includes an unlicensed entity that is certified
4 by the Centers for Medicare and Medicaid Services as an ambulatory
5 surgery center provider.

6 **(6)]¹(6)¹** Nothing in this subsection shall be construed to limit the
7 State Board of Medical Examiners from establishing standards of care
8 with respect to the practice of medicine.

9 h. An ambulatory care facility licensed to provide surgical and
10 related services shall be required to obtain ambulatory care
11 accreditation from an accrediting body recognized by the Centers for
12 Medicare and Medicaid Services as a condition of licensure by the
13 department.

14 An ambulatory care facility that is licensed to provide surgical and
15 related services on the effective date of this section of P.L.2009, c.24
16 shall have one year from the effective date of this section of P.L.2009,
17 c.24 to obtain ambulatory care accreditation.

18 i. Beginning on the effective date of this section of P.L.2009,
19 c.24, and as provided in P.L. , c. (pending before the Legislature as
20 this bill), the department shall not issue a new **[registration to a**
21 **surgical practice or a new]** license to an ambulatory care facility to
22 provide surgical and related services unless:

23 (1) in the case of a **[registered surgical practice or]** licensed
24 facility in which a transfer of ownership of the **[practice or]** facility is
25 proposed, the commissioner reviews the qualifications of the new
26 owner or owners and approves the transfer;

27 (2) (a) except as provided in subparagraph (b) of this paragraph,
28 in the case of a **[registered surgical practice or]** licensed facility for
29 which a relocation of the **[practice or]** facility is proposed, the
30 relocation is within 20 miles of the **[practice's or]** facility's current
31 location or the relocation is to a "Health Enterprise Zone" designated
32 pursuant to section 1 of P.L.2004, c.139 (C.54A:3-7), there is no
33 expansion in the ¹**[scope of services]** number of operating rooms¹
34 provided at the new location from that of the current location, and the
35 commissioner reviews and approves the relocation prior to its
36 occurrence; or

37 (b) in the case of a licensed facility described in paragraph (5) or
38 (6) of this subsection for which a relocation of the facility is proposed,
39 the commissioner reviews and approves the relocation prior to its
40 occurrence;

41 (3) the entity is a ¹**[registered]**¹ surgical practice required to be
42 **[registered]** licensed pursuant to **[paragraph (1) of]** subsection g. of
43 this section and meets the requirements of that subsection;

44 (4) the entity has filed its plans, specifications, and required
45 documents with the Health Care Plan Review Unit of the Department
46 of Community Affairs or the municipality in which the surgical
47 practice or facility will be located, as applicable, on or before the

1 180th day following the effective date of this section of P.L.2009,
2 c.24;

3 (5) the facility is owned jointly by a general hospital in this State
4 and one or more other parties; ²[or]²

5 (6) the facility is owned by a hospital or medical school in this
6 State, or the facility is owned by any hospital approved on or before
7 the effective date of ³[this act] P.L.2015, c.305³ to provide
8 ambulatory surgery services in this State, or the facility is owned by a
9 hospital which applied on or before the effective date of ³[this act]
10 P.L.2015, c.305³ to provide ambulatory surgery services in this State
11 so long as the hospital is later approved to provide ambulatory surgery
12 services at the facility, or the facility is owned by any hospital
13 approved to provide ambulatory surgery services at another facility in
14 this State ²; or

15 (7) (a) ³[in the case of] the facility is a newly licensed ambulatory
16 surgical facility that was created by combining³ two or more registered
17 surgical practices ³[combining to create a newly licensed ambulatory
18 surgical facility]³ , provided that the number of operating rooms at the
19 newly licensed facility is not greater than the total number of operating
20 rooms prior to the establishment of the newly licensed facility;

21 (b) ³[in the case of] the facility is a licensed ambulatory surgical
22 facility that has expanded by combining with³ one or more registered
23 surgical practices ³[combining with a licensed ambulatory surgical
24 facility]³ , provided that the number of operating rooms at the newly
25 ³[enlarged] expanded³ facility is not greater than the total number of
26 operating rooms prior to the combination of the practices and facility;
27 or

28 (c) ³[in the case] the facility is a licensed ambulatory surgical
29 facility that has expanded through the combination³ of two or more
30 licensed ³ambulatory³ surgical facilities ³[combining]³ , provided that
31 the number of operating rooms at the newly ³[enlarged] expanded³
32 facility is not greater than the total number of operating rooms prior to
33 the combining of the facilities².

34 Beginning on the effective date of P.L. , c. (pending before the
35 Legislature as this bill), the department shall not issue a new
36 registration to a surgical practice. Any ¹[registered]¹ surgical practice
37 ¹in operation on the effective date of P.L. , c. (pending before the
38 Legislature as this bill)¹ that proposes to ²[transfer its ownership or]²
39 relocate on or after the effective date of P.L. , c. (pending
40 before the Legislature as this bill) shall be required to be licensed by
41 the department as an ambulatory care facility ¹[licensed to provide]
42 providing¹ surgical and related services ¹[prior to applying for a new
43 license pursuant to this subsection] pursuant to subsection g. of this
44 section¹.

1 j. ~~[(1)~~ The department shall require an applicant for registration
2 as a surgical practice, as provided in subsection g. of this section, to
3 submit an application for registration in a form and manner prescribed
4 by the department. The applicant shall submit the name and address of
5 the surgical practice that is to be registered, the name of the chief
6 administrator or designated agent of the practice, the names and
7 addresses of all owners of the practice, the scope of services provided
8 at the practice, proof of certification by the Centers for Medicare and
9 Medicaid Services or accreditation from an accrediting body
10 recognized by the Centers for Medicare and Medicaid Services, and
11 such other information as the commissioner deems necessary and as
12 provided by regulation.

13 (2) The registration shall be valid for a one-year period and may be
14 renewed upon submission to the department of an application for
15 renewal.

16 (3) The commissioner may suspend, revoke, or deny a registration
17 if the registrant or applicant, as applicable, is not in compliance with
18 the requirements of this section.

19 (4) No registered surgical practice shall be owned, managed, or
20 operated by any person convicted of a crime relating adversely to the
21 person's capability of owning, managing, or operating the practice.

22 (5) The department may charge a reasonable fee for filing an
23 application for registration and for each renewal thereof. ~~](Deleted by~~
24 ~~amendment, P.L. , c.) (pending before the Legislature as this bill)~~

25 ¹k. An ambulatory care facility licensed to provide surgical and
26 related services and a surgical practice shall:

27 (1) report to the department any change in ownership of the
28 facility within 30 days of the change in ownership; and

29 (2) annually report to the department the name of the facility's
30 medical director, physician director, and physician director of
31 anesthesia, as applicable, and the director of nursing services. The
32 facility shall notify the department ³[is] if³ there is any change in a
33 named director within 30 days of the change ³[or] of³ the director.¹

34 (cf: P.L.2015, c.305, s.1)

35

36 2. Section 2 of P.L.1989, c.19 (C.45:9-22.5) is amended to read
37 as follows:

38 2. a. A practitioner shall not refer a patient or direct an
39 employee of the practitioner to refer a patient to a health care
40 service in which the practitioner, or the practitioner's immediate
41 family, or the practitioner in combination with the practitioner's
42 immediate family has a significant beneficial interest; except that,
43 in the case of a practitioner, a practitioner's immediate family ^{2,2} or
44 a practitioner in combination with the practitioner's immediate
45 family who had the significant beneficial interest prior to the
46 effective date of P.L.1991, c.187 (C.26:2H-18.24 et al.), and in the
47 case of a significant beneficial interest in a health care service that

1 provides lithotripsy or radiation therapy pursuant to an oncological
 2 protocol that was held prior to the effective date of this section of
 3 P.L.2009, c.24, the practitioner may continue to refer a patient or
 4 direct an employee to do so if that practitioner discloses the
 5 significant beneficial interest to the patient.

6 b. If a practitioner is permitted to refer a patient to a health care
 7 service pursuant to this section, the practitioner shall provide the
 8 patient with a written disclosure form, prepared pursuant to section
 9 3 of P.L.1989, c.19 (C.45:9-22.6), and post a copy of this disclosure
 10 form in a conspicuous public place in the practitioner's office.

11 c. The restrictions on referral of patients established in this
 12 section shall not apply to:

13 (1) medical treatment or a procedure that is provided at the
 14 practitioner's medical office and for which a bill is issued directly in
 15 the name of the practitioner or the practitioner's medical office;

16 (2) renal dialysis; ²[and]²

17 (3) ambulatory surgery or procedures ²[requiring] involving the
 18 use of any² anesthesia performed at a surgical practice [registered
 19 with] licensed by the Department of Health ²[and Senior
 20 Services]² pursuant to subsection g. of section 12 of P.L.1971,
 21 c.136 (C.26:2H-12) or at an ambulatory care facility licensed by the
 22 Department of Health ²[and Senior Services]² to perform surgical
 23 and related services ²or lithotripsy services², if the following
 24 conditions are met:

25 (a) the practitioner who provided the referral personally
 26 performs the procedure;

27 (b) the practitioner's remuneration as an owner of or investor in
 28 the practice or facility is directly proportional to ²[his] the
 29 practitioner's² ownership interest and not to the volume of patients
 30 the practitioner refers to the practice or facility;

31 (c) all clinically-related decisions at a facility owned in part by
 32 non-practitioners are made by practitioners and are in the best
 33 interests of the patient; and

34 (d) disclosure of the referring practitioner's significant
 35 beneficial interest in the practice or facility is made to the patient in
 36 writing, at or prior to the time that the referral is made, consistent
 37 with the provisions of section 3 of P.L.1989, c.19 (C.45:9-22.6) ²;
 38 and

39 (4) medically-necessary intraoperative monitoring services
 40 rendered during a neurosurgical, neurological, or neuro-radiological
 41 surgical procedure that is performed in a hospital² .

42 ²[cf: P.L.2009, c.24, s.2)] (cf: P.L.2016, c.20, s.1)²

44 3. Section 4 of P.L.2009, c.24 (C.45:9-22.5a) is amended to
 45 read as follows:

46 4. a. A referral for ambulatory surgery or a procedure requiring
 47 anesthesia made prior to the effective date of this section of

1 P.L.2009, c.24 by a practitioner to a surgical practice or ambulatory
2 care facility licensed by the Department of Health ²【and Senior
3 Services】² to perform surgical and related services shall be deemed
4 to comply with the provisions of section 2 of P.L.1989, c.19
5 (C.45:9-22.5) if the practitioner personally performed the procedure
6 that is the subject of the referral.

7 b. As used in this section, "surgical practice" means a structure
8 or suite of rooms that has the following characteristics:

9 (1) has no more than one room dedicated for use as an operating
10 room which is specifically equipped to perform surgery, and is
11 designed and constructed to accommodate invasive diagnostic and
12 surgical procedures;

13 (2) has one or more post-anesthesia care units or a dedicated
14 recovery area where the patient may be closely monitored and
15 observed until discharged; and

16 (3) is established by a physician, physician professional
17 association surgical practice, or other professional practice form
18 specified by the State Board of Medical Examiners pursuant to
19 N.J.A.C.13:35-6.16(f) solely for the physician's, association's or
20 other professional entity's private medical practice.

21 【"Surgical practice" includes an unlicensed entity that is certified
22 by the Centers for Medicare and Medicaid Services as an
23 ambulatory surgery center provider.】

24 ²【(cf: P.L.2009, c.24, s.4)】 (cf: P.L.2012, c.17, s.411)²

25

26 ¹4. The Commissioner of Health ²【, the State Board of Medical
27 Examiners, and the New Jersey Board of Dentistry】² shall, in
28 accordance with the "Administrative Procedure Act," P.L.1968,
29 c.410 (C.52:14B-1 et seq.), adopt any rules and regulations as
30 ²【they deem】 the commissioner deems² necessary to carry out the
31 provisions of this act.¹

32

33 ¹【4.】 5.¹ Section 1 of this act shall take effect immediately ¹【,
34 and sections】³【Sections¹】 , and sections³ 2 and 3 of this act shall take
35 effect one year after the date of enactment ¹, except that the
36 Commissioner of Health ²【, the State Board of Medical Examiners,
37 and the New Jersey Board of Dentistry】² may take any anticipatory
38 administrative action in advance as shall be necessary for the
39 implementation of this act¹.