

## CHAPTER 283

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

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

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

C.26:2H-12 Operation, requirements for certain health care facilities; application for license; fee.

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

b. (1) Application for a license for a health care service or health care facility shall be made upon forms prescribed by the department. The department shall charge a single, nonrefundable fee for the filing of an application for and issuance of a license and a single, nonrefundable fee for any renewal thereof, and a single, nonrefundable fee for a biennial inspection of the facility, as it shall from time to time fix in rules or regulations; provided, however, that no such licensing fee shall exceed \$10,000 in the case of a hospital and \$4,000 in the case of any other health care facility for all services provided by the hospital or other health care facility, and no such inspection fee shall exceed \$5,000 in the case of a hospital and \$2,000 in the case of any other health care facility for all services provided by the hospital or other health care facility. No inspection fee shall be charged for inspections other than biennial inspections. Any surgical practice required to apply for licensure by the department as an ambulatory care facility pursuant to P.L.2017, c.283 shall be exempt from the initial and renewal license fees required by this section. The application shall contain the name of the health care facility, the kind or kinds of health care service to be provided, the location and physical description of the institution, and such other information as the department may require.

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

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

If an inspection reveals a serious health and safety violation at a residential health care facility, the department shall post the inspection report, including the name of the facility and the owner of the facility, on its website no later than 72 hours following the inspection. If a license

of a residential health care facility is suspended, the department shall post the suspension on its website no later than 72 hours following the suspension. The department shall update its website to reflect the correction of a serious health and safety violation, and the lifting of a suspension.

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

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

c. (Deleted by amendment, P.L.1998, c.43)

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

e. If a prospective applicant for licensure for a health care service or facility that is not subject to certificate of need review pursuant to P.L.1971, c.136 (C.26:2H-1 et al.) so requests, the department shall provide the prospective applicant with a pre-licensure consultation. The purpose of the consultation is to provide the prospective applicant with information and guidance on rules, regulations, standards and procedures appropriate and applicable to the licensure process. The department shall conduct the consultation within 60 days of the request of the prospective applicant.

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

g. (1) (Deleted by amendment, P.L.2017, c.283)

(2) (Deleted by amendment, P.L.2017, c.283)

(3) (Deleted by amendment, P.L.2017, c.283)

(4) A surgical practice in operation on the date of enactment of P.L.2017, c.283 shall be required to apply to the department for licensure as an ambulatory care facility licensed to provide surgical and related services within one year of the date of enactment of P.L.2017, c.283.

A surgical practice that is certified by the Centers for Medicare and Medicaid Services (CMS) shall not be required to meet the physical plant and functional requirements specified in N.J.A.C.8:43A-19.1 et seq. A surgical practice that is not Medicare certified, either by CMS or by any deeming authority recognized by CMS, but which has obtained accreditation from the American Association of Ambulatory Surgery Facilities or any accrediting body recognized by CMS and is in operation on the date of enactment of P.L.2017, c.283, shall not be required to meet the physical plant and functional requirements specified in N.J.A.C.8:43A-19.1 et seq. A surgical practice not in operation on the date of enactment of P.L.2017, c.283, if it is certified by CMS as an ambulatory surgery center provider, shall also be exempt from these requirements. A surgical practice required by this subsection to meet the physical plant and functional

requirements specified in N.J.A.C.8:43A-19.1 et seq. may apply for a waiver of any such requirement in accordance with N.J.A.C.8:43A-2.9. The commissioner shall grant a waiver of those physical plant and functional requirements, as the commissioner deems appropriate, if the waiver does not endanger the life, safety, or health of patients or the public.

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

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

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

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

(c) is established by a physician, physician professional association surgical practice, or other professional practice form specified by the State Board of Medical Examiners pursuant to regulation solely for the physician's, association's, or other professional entity's private medical practice.

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

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

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

i. Beginning on the effective date of this section of P.L.2009, c.24, and as provided in P.L.2017, c.283, the department shall not issue a new license to an ambulatory care facility to provide surgical and related services unless:

(1) in the case of a licensed facility in which a transfer of ownership of the facility is proposed, the commissioner reviews the qualifications of the new owner or owners and approves the transfer;

(2) (a) except as provided in subparagraph (b) of this paragraph, in the case of a licensed facility for which a relocation of the facility is proposed, the relocation is within 20 miles of the facility's current location or the relocation is to a "Health Enterprise Zone" designated pursuant to section 1 of P.L.2004, c.139 (C.54A:3-7), there is no expansion in the number of operating rooms provided at the new location from that of the current location, and the commissioner reviews and approves the relocation prior to its occurrence; or

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

(3) the entity is a surgical practice required to be licensed pursuant to subsection g. of this section and meets the requirements of that subsection;

(4) the entity has filed its plans, specifications, and required documents with the Health Care Plan Review Unit of the Department of Community Affairs or the municipality in which the surgical practice or facility will be located, as applicable, on or before the 180th day following the effective date of this section of P.L.2009, c.24;

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

(6) the facility is owned by a hospital or medical school in this State, or the facility is owned by any hospital approved on or before the effective date of P.L.2015, c.305 to provide ambulatory surgery services in this State, or the facility is owned by a hospital which applied on or before the effective date of P.L.2015, c.305 to provide ambulatory surgery services in this State so long as the hospital is later approved to provide ambulatory surgery services at the facility, or the facility is owned by any hospital approved to provide ambulatory surgery services at another facility in this State; or

(7) (a) the facility is a newly licensed ambulatory surgical facility that was created by combining two or more registered surgical practices, provided that the number of operating rooms at the newly licensed facility is not greater than the total number of operating rooms prior to the establishment of the newly licensed facility;

(b) the facility is a licensed ambulatory surgical facility that has expanded by combining with one or more registered surgical practices, provided that the number of operating rooms at the newly expanded facility is not greater than the total number of operating rooms prior to the combination of the practices and facility; or

(c) the facility is a licensed ambulatory surgical facility that has expanded through the combination of two or more licensed ambulatory surgical facilities, provided that the number of operating rooms at the newly expanded facility is not greater than the total number of operating rooms prior to the combining of the facilities.

Beginning on the effective date of P.L.2017, c.283, the department shall not issue a new registration to a surgical practice. Any surgical practice in operation on the effective date of P.L.2017, c.283 that proposes to relocate on or after the effective date of P.L.2017, c.283 shall be required to be licensed by the department as an ambulatory care facility providing surgical and related services pursuant to subsection g. of this section.

j. (Deleted by amendment, P.L.2017, c.283)

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

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

(2) annually report to the department the name of the facility's medical director, physician director, and physician director of anesthesia, as applicable, and the director of nursing services. The facility shall notify the department if there is any change in a named director within 30 days of the change of the director.

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

C.45:9-22.5 Referral of patient by practitioner regulated.

2. a. A practitioner shall not refer a patient or direct an employee of the practitioner to refer a patient to a health care service in which the practitioner, or the practitioner's immediate family, or the practitioner in combination with the practitioner's immediate family has a significant beneficial interest; except that, in the case of a practitioner, a practitioner's immediate family, or a practitioner in combination with the practitioner's immediate family who had the significant beneficial interest prior to the effective date of P.L.1991, c.187 (C.26:2H-18.24 et al.), and in the case of a significant beneficial interest in a health care service that provides lithotripsy or radiation therapy pursuant to an oncological protocol that was held prior to the effective date of this section of P.L.2009, c.24, the practitioner may

continue to refer a patient or direct an employee to do so if that practitioner discloses the significant beneficial interest to the patient.

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

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

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

(2) renal dialysis;

(3) ambulatory surgery or procedures involving the use of any anesthesia performed at a surgical practice licensed by the Department of Health pursuant to subsection g. of section 12 of P.L.1971, c.136 (C.26:2H-12) or at an ambulatory care facility licensed by the Department of Health to perform surgical and related services or lithotripsy services, if the following conditions are met:

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

(b) the practitioner's remuneration as an owner of or investor in the practice or facility is directly proportional to the practitioner's ownership interest and not to the volume of patients the practitioner refers to the practice or facility;

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

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

(4) medically-necessary intraoperative monitoring services rendered during a neurosurgical, neurological, or neuro-radiological surgical procedure that is performed in a hospital; and

(5) Referrals that a practitioner makes, or directs an employee of the practitioner to make, to a health care service in which the referring practitioner has a significant beneficial interest, when participants in an alternative payment model registered with the Department of Health pursuant to section 3 of P.L.2017, c.111 (C.45:9-22.5c) make a bona fide determination that the significant beneficial interest is reasonably related to the alternative payment model standards filed with the Department of Health, provided that the determination is documented and retained for a period of 10 years.

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

C.45:9-22.5a Certain referrals for procedures involving anesthesia.

4. a. A referral for ambulatory surgery or a procedure requiring anesthesia made prior to the effective date of this section of P.L.2009, c.24 by a practitioner to a surgical practice or ambulatory care facility licensed by the Department of Health to perform surgical and related services shall be deemed to comply with the provisions of section 2 of P.L.1989, c.19 (C.45:9-22.5) if the practitioner personally performed the procedure that is the subject of the referral.

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

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

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

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

4. The Commissioner of Health shall, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt any rules and regulations as the commissioner deems necessary to carry out the provisions of this act.

5. Section 1 of this act shall take effect immediately, and sections 2 and 3 of this act shall take effect one year after the date of enactment, except that the Commissioner of Health may take any anticipatory administrative action in advance as shall be necessary for the implementation of this act.

Approved January 16, 2018.