



August 17<sup>th</sup>, 2012

Joshua M. Sharfstein, M.D., Secretary of Health and Mental Hygiene  
c/o Michele Phinney, Director, Office of Regulation and Policy Coordination  
Department of Health and Mental Hygiene  
201 W. Preston Street, Room 512  
Baltimore, MD 21201

Dear Secretary Sharfstein:

On behalf of the ambulatory surgery centers (ASCs) in the state of Maryland, the Maryland Ambulatory Surgery Association (MASA) strongly opposes the proposed amendment to Regulation .03 under **COMAR 10.05.05 Freestanding Ambulatory Surgery Facilities**. The proposal would increase the licensing fee for ASCs from \$700 to \$4,000 per three year term, greatly impacting small businesses in the state of Maryland.

We respectfully request that the Department of Health and Mental Hygiene (Department) refrain from promulgating this amendment. We offer the following information:

1. The stated purpose of the rule change is to “offset the cost of surveying the 300 plus ambulatory surgery center (ASC) providers as well as the costs associated with investigation of complaints and other survey and administrative activities.” However, there is no cost data offered to justify this radical increase in fees, making the fee increase arbitrary and unsupported.
2. ASCs in Maryland deliver safe, high quality surgical care to the residents of our state. Medicare, Medicaid and other health insurance companies gain advantage for their patients because of the substantially lower costs associated with ASCs compared to hospitals for the same procedures. ASCs must keep costs down to be able to offer lower cost surgical services. Many of the ASCs in Maryland are small single operating room and single specialty ASCs. The enormous fee increase proposed (560%) will have a substantial negative effect on a large number of these facilities, reducing their financial viability. This may result in cost increases for the health care system at large, as well as increased unemployment claims for the state of Maryland if ASCs are forced to lay off employees or close their doors because their businesses have become unprofitable.
3. The Department’s “Estimate of Economic Impact” inaccurately represents the

amendment as having “little or no economic impact on small businesses.” As mentioned above, many of the ASCs in Maryland are small businesses, and in addition to the current \$700 licensing fee, ASCs are also subject to substantial fees, both legal and administrative, to become State licensed, Medicare certified and accredited (mandated by CareFirst). There are also great expenses necessary to achieve and maintain compliance with the regulations underlying the licensure, certification and accreditation. The extraordinary fee increase in the Department’s proposal could be crippling to ASC industry and its small businesses throughout Maryland.

4. ASCs are NOT able to pass the increased costs onto patients or insurance carriers. Most ASCs have contracts with insurance carriers which have agreed upon fixed fees for given procedures. ASCs are not allowed to bill patients outside of these contracts. Therefore the 560% increase in this fee will be a non-recoverable expense for each facility.
5. This fee increase is effectively a tax on a targeted segment of the Maryland economy. ASCs are being singled out unjustly. There is no mention of an increased fee (or tax) on hospitals, birthing centers, dialysis centers or other outpatient facilities. No justification is given for this discriminatory fee.

For the reasons mentioned above, MASA strongly urges the Department to refrain from promulgating this proposed amendment. Thank you for considering our concerns.

Sincerely,

Andrea M. Hyatt, CASC, President  
Maryland Ambulatory Surgery Association

cc: Joint Committee on Administrative, Executive, and Legislative Review