

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 818 Session of 2021

INTRODUCED BY J. WARD, MARTIN, PITTMAN, PHILLIPS-HILL, STEFANO, MENSCH, BROWNE, BAKER, ARGALL, SCHWANK AND SCAVELLO, JULY 26, 2021

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 28, 2022

AN ACT

1 Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An
2 act relating to health care; prescribing the powers and
3 duties of the Department of Health; establishing and
4 providing the powers and duties of the State Health
5 Coordinating Council, health systems agencies and Health Care
6 Policy Board in the Department of Health, and State Health
7 Facility Hearing Board in the Department of Justice;
8 providing for certification of need of health care providers
9 and prescribing penalties," in licensing of health care
10 facilities, providing for ambulatory surgical facility
11 permitted surgical procedures; AND ABROGATING REGULATIONS. <--

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 ~~Section 1. The act of July 19, 1979 (P.L.130, No.48), known <--~~
15 ~~as the Health Care Facilities Act, is amended by adding a~~
16 ~~section to read:~~

17 ~~Section 822. Ambulatory surgical facility permitted surgical~~
18 ~~procedures.~~

19 ~~(a) Exception or waiver. An ambulatory surgical facility~~
20 ~~may seek an exception or waiver from the department for surgical~~
21 ~~procedures not specified on the Centers for Medicare and~~

1 ~~Medicaid Services (CMS) Ambulatory Surgical Center Covered~~  
2 ~~Procedures List (ASC CPL) on the effective date of this section~~  
3 ~~or otherwise provided by law or regulation.~~

4 ~~(b) Permitted surgical procedures.~~

5 ~~An ambulatory surgical facility may perform surgical~~  
6 ~~procedures permitted under Federal or State law or regulation~~  
7 ~~and surgical procedures specified on the ASC CPL on the~~  
8 ~~effective date of this section, if it does not conflict with~~  
9 ~~Federal or State law or regulation, without submitting a~~  
10 ~~request for an exception or waiver from the department for~~  
11 ~~approval.~~

12 ~~(c) Publication of surgical procedures. The department~~  
13 ~~shall transmit notice to the Legislative Reference Bureau for~~  
14 ~~publication in the Pennsylvania Bulletin of any updates to the~~  
15 ~~ASC CPL made by the Centers for Medicare and Medicaid Services~~  
16 ~~(CMS). The updates shall be transmitted by the department~~  
17 ~~separately as notices to the Legislative Reference Bureau for~~  
18 ~~publication in the Pennsylvania Bulletin. The department shall~~  
19 ~~publish and maintain the complete ASC CPL on the department's~~  
20 ~~publicly accessible Internet website.~~

21 ~~Section 2. The provisions of 28 Pa. Code § 551.21(d)(1), (2)~~  
22 ~~and (3) are abrogated. The provisions of 28 Pa. Code Chs. 51 and~~  
23 ~~551-571 are abrogated to the extent that they are inconsistent~~  
24 ~~with section 822 of the act.~~

25 ~~Section 3. This act shall take effect in 60 days.~~

26 SECTION 1. THE ACT OF JULY 19, 1979 (P.L.130, NO.48), KNOWN <--  
27 AS THE HEALTH CARE FACILITIES ACT, IS AMENDED BY ADDING A  
28 SECTION TO READ:

29 SECTION 822. AMBULATORY SURGICAL FACILITY PERMITTED SURGICAL  
30 PROCEDURES.

1 (A) EXCEPTION OR WAIVER.--AN AMBULATORY SURGICAL FACILITY  
2 MAY SEEK AN EXCEPTION OR WAIVER FROM THE DEPARTMENT FOR ANY OF  
3 THE FOLLOWING SURGICAL PROCEDURES:

4 (1) A SURGICAL PROCEDURE NOT SPECIFIED IN ASC-CPL.

5 ~~(2) A SURGICAL PROCEDURE NOT PUBLISHED IN A NOTICE UNDER <--~~  
6 ~~SUBSECTION (C)(1).~~

7 ~~(3) (2) A SURGICAL PROCEDURE OTHERWISE PROHIBITED BY <--~~  
8 ~~STATE REGULATION.~~

9 ~~(B) PERMITTED SURGICAL PROCEDURES. AN AMBULATORY SURGICAL <--~~  
10 ~~FACILITY MAY PERFORM ANY OF THE FOLLOWING SURGICAL PROCEDURES~~  
11 ~~WITHOUT SEEKING A REQUEST FOR AN EXCEPTION OR WAIVER OR~~  
12 ~~RECEIVING AN APPROVAL OF AN EXCEPTION OR WAIVER FROM THE~~  
13 ~~DEPARTMENT UNDER SUBSECTION (A):~~

14 ~~(1) A SURGICAL PROCEDURE PERMITTED TO BE PERFORMED BY AN~~  
15 ~~AMBULATORY SURGICAL FACILITY UNDER FEDERAL OR STATE LAW OR~~  
16 ~~REGULATION.~~

17 ~~(2) A SURGICAL PROCEDURE SPECIFIED IN ASC CPL THAT DOES~~  
18 ~~NOT CONFLICT WITH A STATE LAW OR REGULATION.~~

19 ~~(3) A SURGICAL PROCEDURE PUBLISHED IN A NOTICE UNDER~~  
20 ~~SUBSECTION (C)(1).~~

21 ~~(C) PUBLICATION OF SURGICAL PROCEDURES.~~

22 ~~(1) WITHIN 45 DAYS OF THE EFFECTIVE DATE OF AN UPDATE TO~~  
23 ~~ASC CPL MADE BY CMS, THE DEPARTMENT SHALL TRANSMIT NOTICE TO~~  
24 ~~THE LEGISLATIVE REFERENCE BUREAU FOR PUBLICATION IN THE~~  
25 ~~PENNSYLVANIA BULLETIN. THE NOTICE SHALL LIST THE SURGICAL~~  
26 ~~PROCEDURES SPECIFIED IN ASC CPL AND THE UPDATE TO ASC CPL~~  
27 ~~MADE BY CMS, EXCEPT FOR A SURGICAL PROCEDURE THAT IS~~  
28 ~~DISAPPROVED UNDER PARAGRAPH (2).~~

29 ~~(2) FOR AN UPDATE TO ASC CPL MADE BY CMS, THE DEPARTMENT~~  
30 ~~MAY DISAPPROVE A SURGICAL PROCEDURE IF THE DEPARTMENT FINDS~~

1 ~~THAT THE SURGICAL PROCEDURE WOULD CONFLICT WITH STATE LAW OR~~  
2 ~~REGULATION.~~

3 ~~(3) IF THE DEPARTMENT DISAPPROVES A SURGICAL PROCEDURE~~  
4 ~~UNDER PARAGRAPH (2), THE DEPARTMENT SHALL SPECIFY THE STATE~~  
5 ~~LAW OR REGULATION AND THE REASONS FOR THE DISAPPROVAL IN EACH~~  
6 ~~NOTICE PUBLISHED UNDER PARAGRAPH (1) FOR THE DURATION WHEN~~  
7 ~~THE DEPARTMENT MAINTAINS THE DISAPPROVAL OF THE SURGICAL~~  
8 ~~PROCEDURE.~~

9 ~~(4) UPON PUBLICATION OF THE NOTICE UNDER PARAGRAPH (1),~~  
10 ~~OR WITHIN 60 DAYS OF THE EFFECTIVE DATE OF AN UPDATE TO ASC~~  
11 ~~CPL MADE BY CMS, WHICHEVER IS EARLIER, AN AMBULATORY SURGICAL~~  
12 ~~FACILITY MAY PERFORM A SURGICAL PROCEDURE THAT HAS NOT BEEN~~  
13 ~~DISAPPROVED BY THE DEPARTMENT UNDER PARAGRAPH (2).~~

14 ~~(5) THE DEPARTMENT'S DISAPPROVAL OF A SURGICAL PROCEDURE~~  
15 ~~UNDER PARAGRAPH (2) SHALL NOT BE CONSTRUED AS PROHIBITING THE~~  
16 ~~DEPARTMENT'S APPROVAL OF AN EXCEPTION OR WAIVER UNDER~~  
17 ~~SUBSECTION (A).~~

18 ~~(6) THE DEPARTMENT SHALL PUBLISH AND CONTINUALLY~~  
19 ~~MAINTAIN A COMPLETE LIST OF SURGICAL PROCEDURES FROM ASC CPL~~  
20 ~~THAT MAY BE PERFORMED OR ARE PROHIBITED FROM BEING PERFORMED~~  
21 ~~BY AN AMBULATORY SURGICAL FACILITY ON THE DEPARTMENT'S~~  
22 ~~PUBLICLY ACCESSIBLE INTERNET WEBSITE.~~

23 ~~(B) REVIEW PERIOD.--~~ <--

24 ~~(1) UPON RECEIPT OF A REQUEST FOR AN EXCEPTION OR WAIVER~~  
25 ~~UNDER SUBSECTION (A), THE DEPARTMENT SHALL, WITHIN 60~~  
26 ~~CALENDAR DAYS, PROVIDE A WRITTEN RESPONSE TO THE AMBULATORY~~  
27 ~~SURGICAL FACILITY THAT APPROVES OR DENIES THE REQUEST OR~~  
28 ~~SHALL PROVIDE NOTICE THAT THE DEPARTMENT IS UNABLE TO ISSUE A~~  
29 ~~DETERMINATION BECAUSE A SUBSTANTIVE ELEMENT IS MISSING THAT~~  
30 ~~IS NECESSARY FOR THE DEPARTMENT TO APPROVE OR DENY THE~~

1       REQUEST.

2           (2) IF THE DEPARTMENT DENIES THE REQUEST, THE DEPARTMENT  
3       SHALL INCLUDE THE BASIS FOR THE DENIAL, INCLUDING STATUTORY  
4       OR REGULATORY CITATIONS THAT FORM THE BASIS OF THE DENIAL.

5           (3) IF THE DEPARTMENT DETERMINES THAT IT IS UNABLE TO  
6       ISSUE A DETERMINATION, THE DEPARTMENT SHALL SPECIFY THE  
7       SUBSTANTIVE ELEMENT THAT IS NEEDED FOR THE FACILITY TO  
8       RESUBMIT ITS REQUEST. UPON RECEIPT OF THE FACILITY'S  
9       RESUBMITTED APPLICATION, THE DEPARTMENT SHALL APPROVE OR DENY  
10       THE RESUBMITTED APPLICATION WITHIN 60 CALENDAR DAYS OF  
11       RECEIPT OF THE RESUBMITTED APPLICATION. THE DEPARTMENT SHALL  
12       DENY AN INCOMPLETE RESUBMITTED APPLICATION.

13           (4) IF THE DEPARTMENT DOES NOT APPROVE, DENY OR PROVIDE  
14       NOTICE THAT THE DEPARTMENT IS UNABLE TO ISSUE A DETERMINATION  
15       ON AN INITIAL APPLICATION OR DOES NOT APPROVE OR DENY A  
16       RESUBMITTED APPLICATION WITHIN 60 CALENDAR DAYS, THE REQUEST  
17       SHALL BE DEEMED APPROVED AND THE AMBULATORY SURGICAL FACILITY  
18       MAY PROCEED AS IF THE REQUEST HAS BEEN APPROVED BY THE  
19       DEPARTMENT.

20           (C) PERMITTED SURGICAL PROCEDURES.--AN AMBULATORY SURGICAL  
21       FACILITY MAY PERFORM SURGICAL PROCEDURES PERMITTED UNDER FEDERAL  
22       OR STATE LAW OR REGULATION AND SURGICAL PROCEDURES SPECIFIED ON  
23       THE ASC-CPL ON THE EFFECTIVE DATE OF THIS SECTION THAT DO NOT  
24       OTHERWISE CONFLICT WITH STATE REGULATIONS RELATING TO LICENSE  
25       CLASSIFICATION, CONSTRUCTION AND DESIGN STANDARDS, PERSONNEL,  
26       EQUIPMENT, GOVERNANCE AND MANAGEMENT AND NOTIFICATION  
27       REQUIREMENTS. THE DEPARTMENT MAY NOT REQUIRE AN AMBULATORY  
28       SURGICAL FACILITY TO REQUEST AN EXCEPTION OR WAIVER OR RECEIVE  
29       AN APPROVAL OF AN EXCEPTION OR WAIVER TO 28 PA. CODE § 551.21(D)  
30       (RELATING TO CRITERIA FOR AMBULATORY SURGERY) FROM THE

1 DEPARTMENT FOR SURGICAL PROCEDURES SPECIFIED IN ASC-CPL.

2 (D) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING  
3 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS  
4 SUBSECTION:

5 "ASC-CPL." THE CMS 2022 AMBULATORY SURGICAL CENTER COVERED  
6 PROCEDURES LIST, EFFECTIVE JANUARY 1, 2022.

7 "CMS." THE CENTERS FOR MEDICARE AND MEDICAID SERVICES.

8 "SUBSTANTIVE ELEMENT." MATERIAL INFORMATION NECESSARY FOR <--  
9 THE DEPARTMENT TO APPROVE OR DENY A REQUEST FOR AN EXCEPTION OR  
10 WAIVER.

11 SECTION 2. THE PROVISIONS OF 28 PA. CODE ~~§§ 51.22 AND~~ <--  
12 ~~551.21(D)(1), (2) AND (3)~~ § 51.22 ARE ABROGATED. THE PROVISIONS <--  
13 OF 28 PA. CODE CHS. 51 AND 551-571 ARE ABROGATED TO THE EXTENT <--  
14 THAT THEY ARE INCONSISTENT WITH THE ADDITION OF SECTION 822 OF  
15 THE ACT. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ABROGATE  
16 REGULATIONS RELATING TO ENVIRONMENTAL SERVICES, FIRE AND SAFETY  
17 SERVICES, CONSTRUCTION STANDARDS, PATIENT AND PEDIATRIC  
18 STANDARDS, BOARD CERTIFIED STANDARDS FOR PHYSICIANS AND  
19 ANESTHESIA SERVICES. 28 PA. CODE § 551.21 ARE ABROGATED INSOFAR <--  
20 AS THEY ARE INCONSISTENT WITH THE ADDITION OF SECTION 822 OF THE  
21 ACT.

22 SECTION 3. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

SENATE BILL NO. 818

PRINTERS NO. 1833

PRIME SPONSOR: J. Ward

COST / (SAVINGS)

FUND	FY 2021/22	FY 2022/23
General Fund	\$0	\$0

**SUMMARY:** Senate Bill 818, Printer’s Number 1833, amends the Health Care Facilities Act regarding surgical procedures at ambulatory surgical facilities. This legislation would be effective 60 days following enactment.

**ANALYSIS:** SB 818 provides that ambulatory surgical facilities (ASFs) may seek an exception from the Department of Health (DOH) to perform a surgical procedure not specified in the Centers for Medical and Medicaid Services (CMS) 2022 Ambulatory Surgical Center Covered Procedures List in effect on January 1, 2022, or any other procedure that is prohibited by state regulation.

The bill provides that DOH must provide a written response to a request for an exception within 60 days of receipt. A request for an exception is deemed approved if DOH takes no action within 60 days. A denial of a request must include the basis for the denial, including statutory or regulatory citations. If DOH determines that a request is incomplete, it must specify the necessary information for DOH to make a determination. DOH must act on a resubmitted request within 60 days.

The bill provides that ASFs may perform surgical procedures that are permitted under federal or state law or regulation as well as procedures that are included the CMS 2022 Ambulatory Surgical Center Covered Procedures List that do not conflict with state regulations relating to license, classification, construction and design standards, personnel, equipment, governance and management, and notification requirements.

**FISCAL IMPACT:** Enactment of this legislation would have no adverse impact on Commonwealth funds.

**PREPARED BY:** Nick McClure  
House Appropriations Committee (R)

**DATE:** June 29, 2022

*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*