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To: Members of the State Board of Health

From: Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division

Through: D. Randy Kuykendall, MLS; Director *DRK*

Date: November 16, 2016

Subject: Proposed Amendment to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter 20, Ambulatory Surgical Center and Ambulatory Surgical Center with Convalescent Center, with a Request for the Rulemaking Hearing to occur on January 18, 2017

The Division of Health Facilities and Emergency Medical Services is proposing a technical revision to Chapter 20, Ambulatory Surgical Center and Ambulatory Surgical Center with Convalescent Center.

When the Division rewrote this chapter of regulation in 2015, language about a deemed facility being eligible for a license fee discount was inadvertently omitted from the rule. That language regarding license fee discounts for deemed facilities had been previously adopted by the Board and is necessary to comply with House Bill 12-1294.

The Division has been relying on similar language in its Chapter 2, general licensure provisions to ensure that all eligible facilities are aware of this fee discount. However; in order to ensure consistency and clarity for all deemed facility types, the Division is proposing this amendment to reinstate that specific language.

The Division does not anticipate any controversy regarding this technical but necessary revision.

**STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY**

For Amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities,
Chapter 20, Ambulatory Surgical Center and Ambulatory Surgical Center with
Convalescent Center
November 16, 2016

Basis and Purpose:

The Division inadvertently omitted language regarding license fee discounts when this rule was rewritten in 2015. The language that was omitted had previously been vetted by stakeholders and adopted by the Board. The Division just recently became aware of this issue so it is proposing this technical amendment to reinstate the missing language which is necessary to comply with the state statute as outlined below. In addition to restoring the omitted language for Ambulatory Surgical Centers adopted by the Board of Health on June 18, 2014, the proposed rule creates a parallel standard for an Ambulatory Surgical Center with a Convalescent Center to align with the rule revisions adopted by the Board of Health on December 17, 2014.

House Bill 12-1294 required the Department of Public Health and Environment to deem health facilities that are currently accredited by an accrediting organization recognized by the Federal Centers for Medicare and Medicaid Services (CMS) as satisfying the requirements for renewal of a health facility license. In addition, the legislation required that the Department provide an appropriate credit or reduced fee to a health facility that achieves license renewal through deemed status.

The state legislation expanded upon a concept in Section 1865(a)(1) of the Social Security Act which allows providers “accredited” by an approved national accreditation organization to be exempt from routine state agency surveys that determine compliance with Medicare conditions. Accreditation by an accrediting organization is voluntary and is not required for Medicare certification.

There are currently eight accreditation organizations recognized by CMS - the Accreditation Association for Ambulatory Health Care (AAAHC); the Accreditation Commission for Health Care, Inc. (ACHC); the American Association for Accreditation of Ambulatory Surgery Facilities (AAASF); the American Osteopathic Association/Healthcare Facilities Accreditation Program (AOA/HFAP); the Center for Improvement in Healthcare Quality (CIHQ); the Community Health Accreditation Program (CHAP); DNV Healthcare (DNV); and the Joint Commission (JC). CMS allows these accrediting organizations to grant deeming authority for the following health facility types: hospitals, ambulatory surgical centers; hospices and home care agencies.

The proposed change to Chapter 20 clarifies that the Department will acknowledge ambulatory surgical centers and ambulatory surgical centers with convalescent centers that are accredited by an accrediting organization recognized by CMS as having deeming authority for Medicare and offer them a reduced renewal license fee.

These rules are promulgated pursuant to the following statutes:

Section 25-1.5-103, C.R.S. (2016)

Section 25-3-101, C.R.S. (2016)

Section 25-3-102.1, C.R.S. (2016)

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

Yes House Bill 12-1294

No

Is this rulemaking due to a federal statutory or regulatory change?

Yes

No

Does this rule incorporate materials by reference?

Yes

No

Does this rule create or modify fines or fees?

Yes

No

REGULATORY ANALYSIS

For Amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities,
Chapter 20, Ambulatory Surgical Center and Ambulatory Surgical Center with
Convalescent Center
November 16, 2016

1. A description of the classes of persons who will be affected by the rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the rule.

The classes of persons who will be affected by the proposed amendments are the corporate or individual business owners of, ambulatory surgical centers and ambulatory surgical centers with convalescent centers.

2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected class of persons.

No actual impact of this technical amendment is expected. Although the proposed language needs to be reinstated in Chapter 20, the Department has relied on similar language in its Chapter 2 general licensing regulations to ensure that all eligible facility types were aware of the 10 percent license fee discount.

3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The Division does not anticipate any additional costs will be incurred by it or any other agency.

4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The proposed amendment is necessary in order to comply with House Bill 12-1294 and correct an inadvertent omission of rule language that was previously vetted by stakeholders and adopted by the Board of Health.

5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There is no less costly or less intrusive method for achieving the purpose of the rule, particularly since the license fee reduction is mandated by statute.

6. Alternative rules or alternatives to rulemaking considered and why rejected.

Since ambulatory surgical center fees are included in rule and House Bill 12-1294 affects those license fees, no other alternatives to the proposed rule changes were seriously considered or deemed appropriate.

7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.

Once the Division discovered this omission, it researched its prior rule-making files affecting this Chapter to determine how this happened and immediately took action to correct the situation. The short term consequence is that the Division will continue to rely on its Chapter 2 general licensure language regarding eligibility for this license fee discount until the proposed revision becomes effective. The long term consequence of this revision is that specific language regarding the deemed discount for ambulatory surgical centers and ambulatory surgical centers with convalescent centers will be reinstated as previously adopted by the Board of Health.

STAKEHOLDER Comment

For Amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter 20, Ambulatory Surgical Center and Ambulatory Surgical Center with Convalescent Center

The following individuals and/or entities were included in the development of these proposed rules:

Stakeholders representing ambulatory surgical centers, the House Bill 12-1294 forum group and the Colorado Ambulatory Surgery Center Association were involved in the original development of the deeming discount fee language.

The following individuals and/or entities were notified that this rule-making was proposed for consideration by the Board of Health and early stakeholder participation was encouraged:

All currently licensed ambulatory surgical centers and ambulatory surgical centers with convalescent centers.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

There were no major factual or policy issues encountered because the proposed change is necessary to align with statute and correct an inadvertent omission of language that was previously approved by the Board of Health.

Please identify health equity and environmental justice (HEEJ) impacts. Does this proposal impact Coloradoans equally or equitably? Does this proposal provide an opportunity to advance HEEJ? Are there other factors that influenced these rules?

The proposed amendment does not have any health equity or environmental justice impact.

1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

2 Health Facilities and Emergency Medical Services Division

3 STANDARDS FOR HOSPITALS AND HEALTH FACILITIES: CHAPTER 20 - AMBULATORY SURGICAL
4 CENTER AND AMBULATORY SURGICAL CENTER WITH A CONVALESCENT CENTER

5 6 CCR 1011-1 Chap 20

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7 SECTION 24 - LICENSE FEES

8 24.1 As part of the licensing process described at 6 CCR 1011-1, Chapter 2, sections 2.4 through 2.7, an
9 applicant for an ambulatory surgical center license shall submit, in the form and manner specified by the
10 Department, a license application with the corresponding nonrefundable fee as set forth below:

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12 (B) ~~Renewal license: A license applicant shall submit with an application for licensure a~~
13 ~~nonrefundable fee as follows: Base: \$1,440; Per Operating or Procedure Room: \$200. The~~
14 ~~renewal fee shall not exceed \$3,000.~~ A LICENSE APPLICANT SHALL SUBMIT AN APPLICATION FOR
15 LICENSURE WITH A NONREFUNDABLE FEE AS SHOWN IN THE TABLE BELOW. THE TOTAL RENEWAL FEE
16 SHALL NOT EXCEED \$3,000.

17 (1) A LICENSE APPLICANT THAT IS ACCREDITED BY AN ACCREDITING ORGANIZATION RECOGNIZED
18 BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES AS HAVING DEEMING AUTHORITY
19 MAY BE ELIGIBLE FOR A 10 PERCENT DISCOUNT OFF THE BASE RENEWAL LICENSE FEE. IN
20 ORDER TO BE ELIGIBLE FOR THIS DISCOUNT, THE LICENSE APPLICANT SHALL AUTHORIZE ITS
21 ACCREDITING ORGANIZATION TO SUBMIT DIRECTLY TO THE DEPARTMENT COPIES OF ALL
22 SURVEYS AND PLAN(S) OF CORRECTION FOR THE PREVIOUS LICENSE YEAR, ALONG WITH THE
23 MOST RECENT LETTER OF ACCREDITATION SHOWING THE LICENSE APPLICANT HAS FULL
24 ACCREDITATION STATUS.

BASE FEE	BASE FEE WITH DEEMING DISCOUNT	PROCEDURE ROOM FEE
\$1,440	\$1,295	\$200 PER ROOM

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27 SECTION 25 – AMBULATORY SURGICAL CENTER WITH A CONVALESCENT CENTER

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29 25.7 License Fees:

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31 (B) ~~Renewal license: A license applicant shall submit with an application for licensure a~~
32 ~~nonrefundable fee as follows: Base: \$1,800; Per Operating or Procedure Room: \$200. The~~
33 ~~renewal fee shall not exceed \$3,360.~~ A LICENSE APPLICANT SHALL SUBMIT AN APPLICATION FOR

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LICENSURE WITH A NONREFUNDABLE FEE AS SHOWN IN THE TABLE BELOW. THE TOTAL RENEWAL FEE SHALL NOT EXCEED \$3,360.

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(1) A LICENSE APPLICANT THAT IS ACCREDITED BY AN ACCREDITING ORGANIZATION RECOGNIZED BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES AS HAVING DEEMING AUTHORITY MAY BE ELIGIBLE FOR A 10 PERCENT DISCOUNT OFF THE BASE AMBULATORY SURGICAL CENTER RENEWAL FEE. IN ORDER TO BE ELIGIBLE FOR THIS DISCOUNT, THE LICENSE APPLICANT SHALL AUTHORIZE ITS ACCREDITING ORGANIZATION TO SUBMIT DIRECTLY TO THE DEPARTMENT COPIES OF ALL SURVEYS AND PLAN(S) OF CORRECTION FOR THE PREVIOUS LICENSE YEAR, ALONG WITH THE MOST RECENT LETTER OF ACCREDITATION SHOWING THE LICENSE APPLICANT HAS FULL ACCREDITATION STATUS.

ASC BASE FEE	ASC BASE FEE WITH DEEMING DISCOUNT	CONVALESCENT CENTER FEE	PROCEDURE ROOM FEE
\$1,440	\$1,295	\$360	\$200 PER ROOM

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