

## Proposed Regulations for Ambulatory Surgical Centers Licensed by the Texas Department of State Health Services

On June 17, 2005, the Texas Health and Human Services Commission published proposed rule changes in the *Texas Register* on behalf of the Department of State Health Services (the "Department") regarding the facility licensure requirements for Ambulatory Surgical Centers ("ASCs"). The purpose of this client alert is to highlight the proposed rule changes that, if approved, could affect the management and licensure status of ASCs in Texas. The deadline for submitting comments to the Department is July 17, 2005

Facility Licensure. Prohibits the use of a single ASC license by multiple facilities. Modifies the fee and term for initial licenses to two-year terms for \$4,000, effective immediately. Modifies the fee and term for renewal licenses to two-year terms for \$4,000, effective January 1, 2006. The fee and term for renewal licenses issued through December 31, 2005, will be either \$2000 for a one-year license, or \$4000 for a two-year license. Modifies and expands the licensure revocation and enforcement section to align the ASC enforcement language with the other Texas facility licensing rules.

Governing Body Policies. Requires ASC governing bodies to adopt, implement and enforce written policies regarding accurate billing for services and supplies, billing complaints and policies regarding assignment of health care benefit payments compliant with Texas Insurance Code Article 21.24-1. The Department has taken the stance that Article 21.24-1 prohibits providers who accept assignment of benefits from waiving any applicable co-payments or deductibles.

"ASC" Definition. Specifies that the planned total length of stay for an ASC patient should not exceed 23 hours and that patient stays of greater than 23 hours should occur infrequently and must be the result of an unanticipated medical condition. Specifies that the 23-hour period begins with the induction of anesthesia.

Definition of Available Medical Staff for Emergencies. Changes the definition of "available" from "able to respond rapidly to emergency situations" to "able to assume responsibility for the delivery of patient care services within five minutes."

Anesthesia Services. Defines the scope of anesthesia services that may be provided by an ASC as the following types: topical, local, regional and general anesthesia and minimum, moderate and deep sedation. Specifies criteria and guidelines for ASC anesthesia service policies, including compliance with the American Society of Anesthesiologists guidelines and standards. Further specifies qualification criteria for physicians and nurses who administer anesthesia. Requires the anesthesiologist or operating physician to be available until all patients operated on that day have been discharged from the post-anesthesia care unit ("PACU"). Requires a physician to be on call and able to respond by phone or in person within 30 minutes until all patients have been discharged from the ASC. Establishes discharge evaluation requirements for patients who remain in the ASC for extended observation for post operative monitoring for anesthesia. Establishes emergency equipment and supply requirements for ASCs and requirements specific to those ASCs providing moderate sedation, deep sedation, regional anesthesia or general anesthesia. Requires treatment rooms to comply with National Fire Protection Association requirements for an anesthetizing location if anesthesia is administered in the treatment room.

This alert is for informational purposes only and is not intended to be legal advice. Transmission is not intended to create and receipt does not establish an attorney-client relationship. Legal advice of any nature should be sought from legal counsel. For more information about Haynes and Boone and our practices, please visit [www.haynesboone.com](http://www.haynesboone.com)

**Surgical Services.** Requires an appropriate history, physical examination and pertinent preoperative diagnostic studies to be incorporated into the patient's medical record prior to surgery. Requires the ASC to develop policies and procedures in accordance with specified criteria with respect to the decontamination, disinfection, sterilization, and storage of sterile supplies. Requires ASC medical records to include an evaluation of nutritional needs and evidence of how identified needs were met for patients with a length of stay greater than eight hours. Currently, ASC use of flammable germicides for preoperative surgical skin preparation is not permitted. The proposed rules would permit the use of flammable germicides, but with restrictions. Also establishes a requirement for ASCs to report surgical suite fires to the Department within two business days and to implement a corrective action plan within 30 days.

**Facility Staffing.** Requires ASCs providing *topical, local, regional or general anesthesia, or minimal, moderate or deep sedation* to have a second individual on duty and on the premises who is trained and currently certified in basic cardiac life support until all patients have been discharged from the facility. Requires ASCs providing *moderate sedation* to have an individual trained and currently certified in advanced cardiac life support available until all patients have been discharged from the PACU. Requires ASCs providing *deep sedation, regional anesthesia or general anesthesia* to have an individual who is trained and currently certified in advanced cardiac life support on duty and on the premises and sufficiently free of other duties to enable the individual to respond rapidly to emergency situations until all patients have been discharged from the PACU.

**Reporting Requirements.** Requires ASCs to report incidents within 10 business days (rather than 30 days) and requires the reporting of the following additional types of incidents: 1) death of a patient while under the care of the ASC; 2) the transfer of any ASC patient to a hospital; 3) patient development of complications within 24 hours of discharge from the ASC resulting in admission to a hospital; and 4) a patient stay exceeding 23 hours. Requires ASCs to provide an annual report on a form designated by the Department to include the types and numbers of procedures performed and the average length of stay during the previous 12-month period. Requires an ASC that performs an abortion to comply with the reporting requirements specified in the Texas Health and Safety Code at §245.011.

If you would like more information about the proposed rules or would like assistance in submitting comments to the Department for consideration in promulgating the final rules, please contact one of the attorneys listed below in the Haynes and Boone Health Care Practice Group.

Stephen Allison  
(210) 978-7416  
[allisons@haynesboone.com](mailto:allisons@haynesboone.com)

Stacy Brainin  
(214) 651-5584  
[brainins@haynesboone.com](mailto:brainins@haynesboone.com)

Greta Cowart  
(214) 651-5592  
[cowartg@haynesboone.com](mailto:cowartg@haynesboone.com)

Felicity Fowler  
(713) 547-2072  
[fowlerf@haynesboone.com](mailto:fowlerf@haynesboone.com)

Earl Harcrow  
(817) 347-6646  
[harcrowe@haynesboone.com](mailto:harcrowe@haynesboone.com)

Michael Hood  
(214) 651-5673  
[hoodm@haynesboone.com](mailto:hoodm@haynesboone.com)

Jeffrey King  
(512) 867-8413  
[kingj@haynesboone.com](mailto:kingj@haynesboone.com)

Lewis Lefko  
(214) 651-5608  
[lefkol@haynesboone.com](mailto:lefkol@haynesboone.com)

Thomas Mayo  
(214) 651-5768  
[mayotw@haynesboone.com](mailto:mayotw@haynesboone.com)

Bill Morrison  
(214) 651-5018  
[morrisonb@haynesboone.com](mailto:morrisonb@haynesboone.com)

Michael Warnecke  
(214) 651-5659  
[warneckem@haynesboone.com](mailto:warneckem@haynesboone.com)

George Young  
(817) 347-6609  
[youngg@haynesboone.com](mailto:youngg@haynesboone.com)