

# **Ambulatory Surgical Facility Fiscal Report**

## **SSB 5778**

### **(Ch. 146, Laws of 2016)**

December 1, 2017



Publication Number 631-069

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## **I. Legislative Directive**

In 2016, the Washington State Legislature passed Substitute Senate Bill (SSB) 5778, which directed the Department of Health (department) to report to the legislative fiscal committees if anticipated licensing fee revenue does not meet the costs of regulating ambulatory surgical facilities (ASFs), and identify the amount of money necessary to compensate.<sup>1</sup>

## **II. Regulatory Background**

In 2007, the Washington State Legislature established a regulatory framework for ASFs, including licensing and inspections for minimum health and safety standards. The department and ASFs share a common goal of ensuring that patients receive safe and quality care. Inspections enhance patient safety by assessing compliance with state and federal laws and requiring corrections for deficiencies.

Currently, 187 ASFs are licensed by the department. Revised Code of Washington (RCW) 70.230.100 requires the department to conduct pre-licensure health and safety inspections for ASFs, and ongoing compliance inspections no more than every 18 months, unless a facility qualifies for a 36-month interval by meeting certain statutory requirements (certified by Medicare or accredited by an approved accrediting body).

To help ASFs comply with health and safety standards in chapter 246-330 Washington Administrative Code (WAC), the department has worked with the Washington Ambulatory Surgery Center Association to provide trainings at industry conferences, host quarterly roundtables and free workshops across the state, and provide technical assistance to individual ASF providers. The department's primary goal is to encourage compliance with regulations to enhance patient safety, but these efforts also have the effect of controlling inspection costs. A single violation found during an inspection takes about two hours to address in post-inspection documentation and communication.

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<sup>1</sup> SSB 5778 also required the department to conduct a benchmark survey to compare Washington's system for regulating ASFs with the licensing systems of other states with a similar number of licensed ASFs. The benchmark survey was conducted, completed, and submitted to the legislature December 2016.

**Table 1: Budget Details**

<u>Cost Categories</u>	<u>FY 18 ANNUAL Budget</u>	<u>FY 19 ANNUAL Budget</u>	<u>FY 20 ANNUAL Budget</u>	<u>3-Year Licensing Cycle Budget</u>
Salaries & Benefits	\$ 575,000	\$ 579,000	\$ 583,000	\$ 1,737,000
Goods & Services	\$ 30,000	\$ 30,000	\$ 30,000	\$ 90,000
Attorney General Support	\$ 20,000	\$ 20,000	\$ 20,000	\$ 60,000
Travel	\$ 40,000	\$ 41,000	\$ 42,000	\$ 123,000
Equipment	\$ 3,000	\$ 3,000	\$ 3,000	\$ 9,000
Internal Service Units	\$ 76,000	\$ 78,000	\$ 82,000	\$ 236,000
Agency & Division Indirect Charges	\$ 201,000	\$ 201,000	\$ 205,000	\$ 607,000
<b>Total Budget</b>	<b>\$ 945,000</b>	<b>\$ 952,000</b>	<b>\$ 965,000</b>	<b>\$ 2,862,000</b>
Estimated Revenue @ Current Rates	\$ 913,000	\$ 190,000	\$ 143,000	\$ 1,246,000
surplus or (deficit)	\$ (32,000)	\$ (762,000)	\$ (822,000)	\$ (1,616,000)

**III. The Impact of Current Fee Revenue**

Currently, ASF fees generate only about 43 percent of the funding needed to support Washington’s regulatory structure. The current revenue from ASF licensing fees is \$1,246,000 for a three-year licensing cycle. This does not support all mandated activities. Based on revenue levels and projected expenditures needed for our required inspection work, we anticipate an average annual funding gap of about \$539,000 for a total of \$1,616,000 over a three-year licensing period. (See Table 1).

The current fee structure supports only one inspection FTE and other licensing and certification activities. One inspector can complete an average of 27 inspections per year, or about 80 over a three-year licensing cycle. If the program were fully funded, the department would complete about 227 inspections over a three-year licensing cycle. This would mean employing 2.8 inspector FTEs as well as having sufficient resources for license processing, complaint investigations, and other administrative costs. The estimated cost of this level of effort is \$2,862,000 over a three-year licensing and inspection cycle.

Since ASF licensing began in 2009, the department has conducted 203 ASF initial inspections. The department lacks the resources to conduct ongoing inspections of every licensed ASF. The current backlog is 147 ongoing compliance inspections (with those most overdue being five years old). The inspection backlog will continue to grow over time without changes.

It is also important to note that the department is contracted and funded by the Centers for Medicare and Medicaid Services (CMS) to provide inspections for Medicare-certified ASFs. Of the 187 state-licensed ASFs, 156 are also Medicare certified. While conducting CMS inspections, department inspectors may also apply Washington State ASF health and safety standards. During the 2015-2017 biennium, 68 percent of Medicare inspections revealed condition-level findings,<sup>2</sup> which are also state violations. The department is concerned that similar patterns of noncompliance, representing potential for patient harm, may be occurring in ASFs that are state licensed only and not receiving CMS certification inspections.

The department has begun cost-saving measures like educating the regulated community on our care standards to increase compliance and reduce inspection time addressing deficiencies; cross-training of inspection staff; and scheduling inspections in close proximity to one another to consolidate travel expenses. However, other cost increases, such as costs of enforcement actions, travel, and salary increases as negotiated in the recent collective bargaining agreements, have made it difficult for the department to realize savings for the measures implemented.

**Table 2: Inspection Schedules for ASFs by Facility Type**

	Facility Type				
	State Licensed Only	State Licensed and Medicare Certified		State Licensed and Accredited	
# of ASFs in category	11	156		20	
Inspection Requirement and frequency	State inspection every 18 months	State inspection every 36 months	Medicare inspection every 36 months	State inspection every 36 months	Accrediting organization inspection every 36 months

**IV. Fee History**

RCW 43.70.250 requires licensing fees to fully cover the costs of administering a licensing program. The original ASF licensing fees were adopted in 2009. In 2012, the department sought to raise fees to a level that would fully support our required work. This effort was opposed by stakeholders, and the department agreed to a lesser fee increase and indicated it would monitor revenue and expenditures for a period of time.

<sup>2</sup> A condition level finding is a system level deficient practice or egregious finding significant enough to demonstrate that the entire condition of participation or section of federal regulations is deficient.

Similar efforts in 2014 to raise fees were also opposed by ASF stakeholders. A 2015 budget proviso in Engrossed Substitute Senate Bill (ESSB) 6052 restricted the department from raising ASF fees during the 2015-2017 biennium. The 2016 legislature passed SSB 5778, which required this fiscal report and extended the stay on ASF fee increases until July 1, 2018.

Two primary factors have impacted ASF revenues and expenditures. First, the original fee structure, adopted in 2009, was based on licensing a projected 300 ASFs paying an annual fee, similar to acute care hospitals. Much of the ASF law was based on our experience with licensing hospitals. The actual number of 187 licensed ASFs is 38 percent lower than projected. This led to the department obtaining less fee revenue than needed to hire qualified nurse inspectors, which delayed our ability to begin ASF inspections until 2012.

Second, the department's ASF inspection effort was calculated on on-site ASF inspections averaging four hours each. However, the types of surgeries being performed, level of acuity, and level of potential patient risk in modern ASFs is far more complex than anticipated when the legislation passed in 2007. On-site inspections have proved to be much more complex, requiring qualified registered nurse inspectors to observe surgeries and related activities. Actual onsite inspections average nearly 12 hours for a single operating room facility, three times the original estimated effort.

## **V. Conclusion and Recommendations**

The department's funding challenges have resulted in a significant decrease in the state's ability to inspect licensed ASFs. Current licensing fee revenues of \$1,246,000 every three years is significantly less than the estimated cost of ASF licensing, inspection, complaint investigation and related costs, and does not provide the level of funding needed to meet the department's minimum obligations to protect patient health and safety. Additional revenues are needed to meet this shortfall, which under RCW 43.70.250 should be born through licensing fees. Based on revenue levels and projected expenditures necessary to conduct our required inspection work, we anticipate an average annual funding gap of about \$539,000 for a total of \$1,616,000 over three years. A fee increase is necessary to adequately fund the state's ASF inspection and licensing program.

Another change in the law that would aid the department in better managing the program budget would be to change the current three-year licensing cycle in chapter 70.230 RCW to a one-year licensing cycle. This would benefit the ASFs by requiring one annual payment instead of an up-front three-year payment.