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**TENNESSEE DEPARTMENT OF HEALTH
MEMORANDUM**

Date: November 8, 2017
To: Woody McMillin, Director of Communication and Media Relations
From: Wanda E. Hines, Board Administrator

Name of Board or Committee: Board for Licensing Health Care Facilities-
Performance Improvement Issue Standing Committee
Meeting
(Call-in Number: 1-888-757-2790 passcode: 152602#)

Date of Meeting: December 5, 2017
Time: 9:00 a.m. – 12:00 noon
Place: Poplar Conference Room
665 Mainstream Drive, First Floor
Nashville, TN 37243
Major Item(s) on Agenda: See attachment.

This memo shall be forwarded from individual programs to the Public Information Office on the 15th day of the preceding month. The Public Information Office will prepare the monthly list of meetings within the Department and have ready for distribution to state media by the 28th day of the preceding month.



JOHN J. DREYZEHNER, MD, MPH
COMMISSIONER

BILL HASLAM
GOVERNOR

*THE MISSION OF THE TENNESSEE DEPARTMENT OF HEALTH IS TO PROTECT, PROMOTE AND IMPROVE
THE HEALTH AND PROSPERITY OF PEOPLE IN TENNESSEE*

AGENDA

**BOARD FOR LICENSING HEALTH CARE FACILITIES
PERFORMANCE IMPROVEMENT ISSUE STANDING COMMITTEE MEETING**

**DECEMBER 5, 2017
POPLAR CONFERENCE ROOM, FIRST FLOOR
9:00 a.m.**

**PLEASE REMEMBER TO SILENCE YOUR ELECTRONIC DEVICES WHEN
THE BOARD IS IN SESSION**

1. Call the Meeting to Order and Establish a Quorum.
2. Revisit-Ambulatory Surgical Treatment Center (ASTC) Rules and Regulations 1200-08-10-.01(7)(b) ASTC definition.

REPRESENTATIVE(S): Patti Cotton, Attorney and Dr. Steven J. Smith

3. Revisit-National HealthCare Corporation (NHC) proposed language for nursing home rules 1200-08-06-.06 from the NF Drug Disposal Rules for SB 1320 – PC 355.
4. Other Discussion(s).
5. Public Comments.
6. Adjourn.

MINUTES
BOARD FOR LICENSING HEALTH CARE FACILITIES
PERFORMANCE IMPROVEMENT ISSUE (PI) STANDING COMMITTEE MEETING
December 5, 2017

The Board for Licensing Health Care Facilities' Performance Improvement Issue (PI) Standing Committee meeting began on December 5, 2017. Jim Shulman served as chair for this meeting.

A quorum roll call vote was taken:

Mr. Jim Shulman – here
Ms. Janet Williford – here
Dr. René Saunders – here
Ms. Gina Throneberry – here
Ms. Patricia Ketterman – not here
Dr. Lisa Piercey – not here

A quorum was established.

The first item for discussion was a continuation of the standing committee's deliberation on ambulatory surgical treatment (ASTC) rule, 1200-08-10-.01(7)(b), for the ASTC definition concerning four hours or less under anesthesia. Ann Reed, Director of Licensure, recapped this item from the last PI Standing Committee. She stated this is the third time the item has been before the standing committee. At the last PI Standing Committee written support was provided, but the committee wanted further medical providers such as anesthesiologists to testify to medical safety, current practice in surgery centers. The committee also questioned the results of surveys and wanted further information on this. Further information on other state requirements related to surgery centers and why Medicare changed its requirements was also requested.

Ms. Reed turned the discussion over to Caroline Tippens with OGC for further information. Ms. Tippens recapped the contents of the Standing Committee's packet of information which included the timeline and reasoning for the development of the current ASTC rule and contact with Pennsylvania. She was unable to speak directly to a PA representative to further discuss, but did recite to the committee a waiver mechanism being in place to address the anesthesia timeframe requirement in law. Ms. Tippens also stated she spoke with Julio Griffin at CMS regarding the change of the Medicare requirements. She reported the change was related to payment which this was previously provided to the committee.

Dr. Saunders made a motion to change the four (4) hour anesthesia rule to six (6) hours; no second was received. The motion died.

Mr. Shulman asked for Patti Cotten, attorney for Parkwest Plastic Surgery, to speak. Ms. Cotten summarized the summary provided to the committee. She stated the change is needed due to advancements in anesthesia and medicine as the rule is 14 years old. Ms. Cotten also stated she talked with Yarnell Beatty with TMA who indicated support for the rule change. Ms. Cotten relayed to the Standing Committee that Mr. Beatty felt a polling of TMA members was not realistic with some

indicating four (4) hours being a good rule. This would be due in part to economic reasons especially if employed in a hospital setting and not based upon safety reasons.

Paige Proffitt, President Tennessee Ambulatory Surgery Center Association (TASCA), addressed the Standing Committee. She had provided to the committee information on the current ASTC definition of ASTC and CMS rules. Ms. Proffitt stated most ASTCs are accredited with accreditation requiring policies and procedures being in place requiring history and physicals completed, anesthesia assessments, patient selection criteria to be in place, etc. This determines who can have surgery in an ASTC. She stated appropriate candidates for surgery are chosen using the above process. Ms. Proffitt indicated three (3) different practitioners provided letters including academic articles regarding anesthesia use.

Dr. Saunders questioned why academic information provided was eight to nine years old. Dr. Lou Adams spoke via phone to this item. He stated there has been no change in the data and that the eight to nine year old data still provides current support of current anesthesia use. Dr. Adams stated the selection process of patients is the method to use in choosing patients for procedures in a surgery center. Dr. Saunders stated she felt the literature was convenient and that a follow-up study has been conducted. She stated she wanted current information on anesthesia use and outcomes. Dr. Adams stated based on the literature provided patients have not had adverse outcomes so there has been no need to do further studies.

Mr. Shulman questioned Ms. Proffitt on whether she knows why Pennsylvania and Tennessee have maintained the four hour anesthesia requirement. Ms. Proffitt stated she has worked in other states and that these states have chosen to align with Medicare requirements. She felt Tennessee is just now having an issue and hasn't seen this cited before in Tennessee. Ms. Proffitt says complications including anesthesia complications are tracked with trends shown. She feels the data received from the accrediting bodies and quality organizations is good data. Dr. Saunders asked who accredits these centers. Ms. Proffitt stated AAAC or Joint Commission is the most common, but there are some others used. Dr. Saunders asked if the accrediting bodies speak to the anesthesia timeframes. Ms. Proffitt stated no.

Dr. Saunders asked what does the surgery center association wish for the language to say. Ms. Proffitt stated align with the Medicare rules and other states.

Dr. Delozier a practicing surgeon with a licensed ASTC addressed the committee giving support to the requested rule change and language.

Mr. Shulman suggested a motion be made to indicate alignment of the state licensure requirements to the Medicare rules. Ms. Tippens asked the committee if they wanted to address the following portion of the rule (7)(a-c). Ms. Throneberry stated she did not understand (a). Ms. Tippens stated (a-c) is consistent with the old Medicare rules and are language of the Board, but the other portion of the ASTC definition is statutory. Mr. Shulman asked what the current Medicare requirement was. Ms. Proffitt stated it can be found at 416.2 of the Medicare guidelines that define an ASTC. She reiterated that (a-c) of the state licensure rules was removed from the Medicare rules.

Dr. Saunders stated if the Medicare definition is followed then emergency surgeries can be performed in an ASTC. Dr. Adams and Ms. Proffitt stated this would not happen as these patients would not meet the patient selection requirements. They further stated the Medical Advisory Board of the ASTC would not

allow. Ms. Cotten also stated the Medicare rules provide a list of approved ASTC surgeries that must be followed if certified.

Dr. Saunders stated she is not sure all ASTCs follow the same bylaws and not sure of all situations that may arise with a patient so she would not feel comfortable making a change to the state licensure rules. Ms. Tippens stated the ASTC rules and regulations state that an ASTC must follow its own policies and procedures or it will be cited. Dr. Saunders stated this is understood, but still not sure all ASTCs practice the same. Tamra Turberville, East Tennessee Regional Office Administrator addressed the committee via phone stating the list of approved surgeries can be found on the CMS website and is very lengthy.

Mr. Shulman stated he didn't know how to address those facilities that aren't certified and aren't required to follow the CMS list of surgeries. Ms. Tippens stated this list could be inserted into the rules, but would be lengthy and is frowned upon in rule development. She further stated ASTCs are certified so this shouldn't be an issue. Ms. Reed indicated there are some licensed only ASTCs.

Ms. Proffitt stated (c) could stay. She further stated ASTCs don't do emergent surgeries as their patients don't come from the emergency room, but are elective procedures.

Mr. Shulman made a motion to remove (a) & (b) and to include (c) language in the full ASTC definition; seconded by Janet Williford. Ms. Throneberry abstained from the vote. Motion approved by a vote 2 to 1 (Dr. Saunders voted no to approve).

Ms. Reed asked about the development of an interpretative guideline (IG) to have in place during the interim of the rulemaking hearing and approval. Mr. Shulman stated the IG was needed. **Ms. Williford made a motion to draft an IG for the approved rulemaking language that was presented and voted upon at this meeting; seconded by Mr. Shulman. Ms. Throneberry abstained from the vote. Motion was approved.**

The next item for discussion was the revisit of National HealthCare Corporation's (NHC) proposed rule language for nursing home rule 1200-08-06-.06 regarding the NF Drug Disposal Rules in PC 355. Ms. Reed gave background to the agenda item. She stated this had been before the committee previously and at that presentation the committee directed further work to be done on the presented rule language to offer clarity. Ms. Reed stated that OCF and individuals/associations in the industry reworked the rule language and is presenting that today. The discussion was moved to Ms. Tippens. Ms. Tippens stated the rule language underwent a reorganization of the rule language with some clarification of wording in the rule. She also stressed these rules by the PC were emergency rules. **Dr. Saunders made a motion to approve the rule language as presented; seconded by Ms. Throneberry. Motion was approved.**

The standing committee meeting was adjourned.