

Rulemaking Hearing Rules
Department of Health
Board of Osteopathic Examination
Division of Health Related Boards

Chapter 1050-02
General Rules and Regulations Governing the Practice of Osteopathy

New Rule

Table of Contents

1050-02-.21 Office Based Surgery

1050-02-.21 Office Based Surgery. Osteopathic physicians who perform Level III surgical procedures in the office based setting, pursuant to Public Chapter 373 of the Public Acts of 2007, shall perform only the Level III surgical procedures contained on the Centers for Medicare & Medicaid Services (CMS) list of procedures published in Volume 71, Number 226 of the Federal Register dated November 24, 2006, as it may from time to time be amended that are authorized for reimbursement at the Ambulatory Surgical Center (ASC) level and only those cosmetic surgical procedures that, based upon reasonable medical judgment, would require Level III sedation which is defined as follows:

- (1) The use of a general anesthesia, deep sedation, or major conduction anesthesia and pre-operative sedation. This includes the use of:
 - (a) General Anesthesia: loss of consciousness and loss of vital reflexes with probable requirement of external support of pulmonary or cardiac functions; and/or
 - (b) Major Conduction Anesthesia (epidural, spinal, caudal); and/or
 - (c) The use of nitrous oxide in conjunction with other types of sedatives.

Authority: T.C.A. §§ 63-9-101, 63-9-106, and 63-9-117.

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 25th day of January, 2008, and will become effective on the 9th day of April, 2008. (FS 01-12-08; DBID 2813)

Addendum

Economic Impact Statement

- (1) Type or types of small business subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:

Osteopathic physicians and osteopathic medical practices that perform Level III surgeries in their offices.
- (2) Identification and estimate of the number of small businesses subject to the proposed rule:

As of December 31, 2006, Tennessee had seven hundred and fourteen (714) licensed osteopathic physicians who were eligible for licensure renewal. It is not known how many of these licensees are presently performing office-based surgery. However, approximately one tenth of one percent (0.1%) of Tennessee's licensed medical doctors have become accredited or are seeking accreditation for Level III surgeries.

- (3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

There are no projected reporting, recordkeeping and other administrative costs associated with adherence to the proposed rule. No new professional skills are needed.

- (4) Statement of the probable effect on impacted small businesses and consumers:

The types of Level III surgeries performed by osteopathic physicians and osteopathic medical practices in their offices which can be made available to patients may be reduced. Patients would instead have these procedures in hospitals or in ambulatory surgical treatment centers. This may, in turn, reduce revenues to the small businesses and increase some consumer expenses.

- (5) Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:

The Board does not believe there are less burdensome, less intrusive or less costly alternatives to the proposed rule that would adequately protect the public and comply with Public Chapter 373 of the Public Acts of 2007 requires promulgation.

- (6) Comparison of the proposed rule with any federal or state counterparts:

Federal The Board is not aware of any federal counterparts. Osteopathic physicians and are not licensed by the federal government.

State The Board's office surgery rule is similar to the language being adopted by the Board of Medical Examiners in Tennessee and other states.

- (7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

It is not possible to exempt the impacted small businesses from all or any part of the requirements contained in the proposed rule because the impacted small businesses are the Board's licensees. Public Chapter 373 of the Public Acts of 2007 states the Board has the "duty and responsibility to regulate the practice of office-based surgery, including the promulgation of rules necessary to promote patient health and safety in such practices," and to "adopt rules establishing a specific list of approved Level III surgical procedures that can be performed in a physician's office in this state."