

**Act 87 (formerly SB818) amends the Health Care Facilities Act adding Section 822
Ambulatory Surgical Facility Permitted Surgical Procedures.**

This notice is to summarize the effect of [Act 87 \(formerly SB818\)](#), effective on September 9, 2022, on ambulatory surgical facilities (ASFs) in the Commonwealth. Act 87 amends the Health Care Facilities Act (35 P.S. §§448.101-448.904b) by expanding what procedures may be performed in an ASF without an exception; creating a timeframe in which exception requests must be denied, approved or determined to be incomplete; and requiring an explanation of the basis for a denied or incomplete request.

Specifically, ASFs will no longer be required to obtain approval for an exception to 28 Pa. Code § 551.21(d) if the procedure appears on the Centers for Medicaid & Medicare Services ASC Covered Surgical Procedures list for CY 2022 (CMS ASC-CPL). Additionally, Act 87 abrogated Section 51.22, 28 Pa. Code §51.22, removing the prohibition on performing cardiac catheterizations outside of an acute care hospital.

If an ASF has been granted an exception to Section 551.21(d) that is no longer required pursuant to Act 87, in the next 90 days, the ASF will receive a written notice from the Department of Health (Department) indicating that the exception is no longer in effect. If an ASF does not receive a notice and believes a notice should have been issued, they should email Garrison Gladfelter at ra-paexcept@pa.gov and include a copy of the exception decision letter(s) and the procedure(s), including their CPT/HCPCS Codes, no longer requiring an exception.

While ASFs are not required to seek an exception to Section 551.21 (d) to perform procedures on the CMS ASC-CPL, regulatory requirements relating to license classification; construction and design standards; personnel; equipment; governance and management; and notification continue to be in effect. Prior to performing any procedures on the CMS ASC-CPL that are new to the facility, ASFs must provide notice to the Department in accordance with 28 Pa. Code § 51.3(a). The Department must determine that the ASF is in compliance with all licensure requirements by granting an occupancy before any new health care service can be offered. 28 Pa. Code § 51.3(l).

Please note that some new procedures may result in the ASF being required to submit narratives and building plans to Division of Safety Inspection (DSI) Plan Review. For example, an ASF that was originally approved under the Endoscopy alternate guidelines and that chooses to perform orthopedic procedures would not need an exception to Section 551.21(d) to perform orthopedic procedures on the CMS ASC-CPL, but they would need to go through DSI Plan review process in accordance with 28 Pa. Code Chs. 51 and 571 as the ASF's suitability to safely offer orthopedic procedures had not been previously determined. As a further example, an ASF that is a registered Class A and is seeking to perform a procedure on the CMS ASC-CPL that requires monitored anesthesia care (MAC) would not require an exception to 28 Pa. Code § 551.21(d), but would require the ASF to become licensed as a Class B ASF. The Class A ASF

would be required to go through DSI plan review for a full life safety and FGI evaluation to become licensed as a Class B ASF authorized to perform the procedure requiring MAC.

To the extent an ASF would still require an exception to a regulation, Act 87 requires the Department to issue a determination within 60 days of the ASF's submission of the request. If the request is denied or determined to be incomplete, the Department's determination will include an explanation of the basis for the determination. An incomplete request can be corrected and resubmitted as a new request. A resubmitted request that continues to be incomplete will be denied. An initial or resubmitted request that is denied must seek a reconsideration in accordance with 28 Pa. Code § 51.34 (c).

It is the responsibility of ASFs to assure they are compliant with all Federal, State, Local laws and regulations that apply to ASFs. 28 Pa. Code § 553.3 (1). Any questions about this notice may be directed to the Division of Acute and Ambulatory Care via email ra-daac@pa.gov.