

**SUBJECT:** Permitting ambulatory surgical centers to keep patients for observation

**COMMITTEE:** Public Health — favorable, with amendment

**VOTE:** 9 ayes — Capelo, Laubenberg, Coleman, Dawson, McReynolds, Naishtat, Taylor, Truitt, Zedler  
0 nays

**SENATE VOTE:** On final passage, April 16 — 31-0

**WITNESSES:** For — None  
Against — (*On original version:*) Matt Wall, Texas Hospital Association  
On — Nance Stearman, Texas Department of Health

**BACKGROUND:** Health and Safety Code, ch. 243 is the Texas Ambulatory Surgical Center Licensing Act. It defines ambulatory surgical centers (ASCs) as facilities that operate primarily to provide surgical services to patients who not require overnight hospital care. The Texas Department of Health (TDH) has interpreted this statute to mean that patients must be discharged from ASCs by midnight.

**DIGEST:** SB 594, as amended, would establish that the term “overnight hospital care” in the definition of an ASC did not apply to a patient discharged at 1:00 a.m. or earlier, nor to a patient discharged after 1:00 a.m. in a case where additional post-recovery time could not have been anticipated prior to the surgery.  
The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS SAY:** The purpose of SB 594, as amended, is to give ASCs the flexibility to keep patients with unforeseen post-surgical complications for further observation during nighttime hours. Given TDH’s interpretation of existing statute, ASCs

must discharge patients at midnight, regardless of whether doing so is in the patient's best interest, to remain in compliance with the law. The midnight deadline does not suit all situations. For example, a patient who needs continued observation past midnight due to health complications either must be transferred to a hospital or discharged. The patient might not truly need hospital care or be prepared for its additional cost, but that is the only option for remaining under medical surveillance. Alternately, releasing patients at midnight might put them at risk for injury if they had no transportation or no one to care for them at that hour.

The bill, as amended, would create a statutory discharge deadline of 1:00 a.m., but also would add a provision to allow an ASC to keep a patient past 1:00 a.m. in cases where the additional recovery time could not have been anticipated prior to the surgery. This would allow an ASC to keep a recovering patient under observation past the deadline when it was in that patient's best interest not to be discharged or transferred.

The engrossed version of SB 594 would have addressed the problem with too broad a brush stroke. It inappropriately would have given ASCs the flexibility to keep patients routinely for 24 hours, even though ASCs are designed to care only for patients who need minor or elective surgeries taking only a few hours, including recovery. The 24-hour provision in the engrossed bill would have allowed ASCs do to more complicated, complex procedures on more acutely ill patients than ASCs were designed to accommodate. Doing so would blur the distinction between an ASC and a hospital, in which case ASCs should be regulated as are hospitals. SB 594, as amended, is more narrow and precise. It would solve the problem of inflexible deadlines without turning ASCs into hospitals.

**OPPONENTS  
SAY:**

No apparent opposition.

**NOTES:**

The committee amendment would establish a 1:00 a.m. discharge deadline, except in cases of unanticipated difficulties with post-surgical recovery, in place of a provision in the Senate engrossed version that would have allowed a 24-hour recovery period in all cases.