

New York State Law FAQ: Accreditation Mandate for Office-Based Surgery Facilities

In July 2007, the State of New York passed a law mandating that all doctors performing surgeries in their offices have their offices reviewed and accredited by July 14, 2009, or face penalties from the state medical board. In addition, beginning Jan. 14, 2008, all “adverse events” occurring in these offices must be reported to the state Department of Health.

Q. What is the definition of office-based surgery under the law?

A. The new law defines office-based surgery as a surgical or invasive procedure requiring general anesthesia, moderate or deep sedation, and certain liposuction procedures performed in a location other than a hospital. It excludes minor procedures, including those requiring “minimal sedation” and procedures with local or topical anesthesia. The law applies to physicians and physician assistants (PAs). Dentists and podiatrists are not subject to the law.

Q. How does the law define “minor procedures”?

A. “Minor procedures” means (i) procedures that can be performed safely with a minimum of discomfort where the likelihood of complications requiring hospitalization is minimal; (ii) procedures performed with local or topical anesthesia; or (iii) liposuction with removal of less than 500 cc of fat under unsupplemented local anesthesia. (New York State Public Health Law Sec. 230-d)

Q. How does the law define “minimal sedation”?

A. “Minimal sedation” means a drug-induced state during which (i) patients respond normally to verbal commands; (ii) cognitive function and coordination may be impaired; and (iii) ventilatory and cardiovascular functions are unaffected. (New York State Public Health Law Sec. 230-d)

Q. What “adverse events” must be reported?

A. “Adverse event” means (i) patient death within thirty days; (ii) unplanned transfer to a hospital; (iii) unscheduled hospital admission within seventy-two hours of the office-based surgery, for longer than twenty-four hours; or (iv) any other serious or life-threatening event. Adverse events must be reported to the Department of Health’s Patient Safety Center (PSC) within one-business day of the occurrence. (New York State Public Health Law Sec. 230-d)

Q. Will those reports be kept confidential?

A. Reports to the Patient Safety Center are confidential and exempt from discovery in civil proceedings and from disclosure under New York State’s Freedom of Information Law. However, the PSC may refer the report to the Office of Professional Medical Conduct, if appropriate. In addition, accrediting agencies will be required to report aggregate data on adverse events for all office-based practices they accredit. The Department of Health is permitted to disclose aggregate data to the public.

Q. What are the accreditation requirements under the law?

A. Beginning on July 14, 2009, all office-based surgery practices are required to obtain and maintain full accredited status with a nationally recognized accrediting agency, as determined by the New York State Commissioner of Health. After July 14, 2009, office-based surgery in a non-accredited office-based practice will be prohibited, and would constitute professional misconduct by the physician. The physician could lose his or her license.

Q. Which agencies have been selected by the Commissioner of Health to accredit office-based surgeries?

A. To date, the New York Department of Health has not designated approved accrediting agencies. However, the Accreditation Association for Ambulatory Health Care expects to be an approved organization based on actions by other states, all of which have recognized AAAHC as an accrediting organization when they pass legislation requiring the accreditation of office-based surgery practices.

Q. What other states have mandatory accreditation of office-based surgery?

A. States that mandate accreditation of office-based surgery include California, Florida, South Carolina, Tennessee, and Rhode Island. A more complete list can be found on the AAAHC Web site.

Q. Are all New York practices, regardless of size, subject to the accreditation requirements – even if only one physician in the practice performs these procedures?

A. Yes. The requirement for accreditation applies to practices of all sizes and to the practice as a whole, regardless of how many physicians are in the group. Each site performing office-based surgery must be accredited.

Q. Will accredited office-based surgery practices receive any enhanced fees from Medicaid?

A. No. Medicaid, however, does not prohibit office-base surgery practices from negotiating enhanced fees from private insurers.

Q. Will accredited office-based surgeries be able to bill insurance companies the same rates as an ambulatory surgery center?

A. No. Under the New York law, accreditation has nothing to do with billing. Accreditation is not the same as being licensed or Medicare-certified as an ambulatory surgery facility. The law focuses on patient safety. However, accreditation shows payers that an office-based surgery practice is interested in safety, and can be used as a bargaining point when negotiating contracts.