



# Operating Rooms

- Definition - “...a room used for the performance of surgical procedures requiring one or more incisions and that is required to comply with all applicable licensure codes and standards for an operating room.”
- CON always required, regardless of cost.
- CON availability controlled by need formula.
- Facility license always required.
- Must have CON to get a facility license.
- Facility fee is paid to licensed facilities only.

# Procedure Rooms

- Not defined in statute or rule
- No CON required
- No facility license required
- No limitations on types of procedures

BUT...

- Facility fee is paid for surgery performed in procedure rooms located in licensed facilities (hospitals and ASCs).

# What is a Procedure Room?

- Until November 27, 2012...
- Any surgical room that failed to meet at least one of the regulatory minimums for an OR and cost less than \$2 million was a “procedure room.”
  - Examples: lighting, square footage, medical gasses, ventilation, ceiling height, etc.

# Legal Challenge

- Surgical Care Affiliates v. DHHS challenged this approach.
- Result: On November 27, 2012, DHHS lifted the requirement that hospitals and ASCs only build procedure rooms that fall below the safety standards for ORs.
- Procedure rooms can now be built to full OR standards.

# Observations

- Since November 27, 2012, DHHS does not apply the CON law to procedure rooms built by hospitals or ASCs for less than \$2 million.
  - Creates a strong incentive to build and use procedure rooms rather than ORs.
- DHHS does apply the CON law to procedure rooms built by physician offices.
- Surgery performed in procedure rooms is not reported to DHSR nor is that surgery volume used in the OR need formula.
  - This artificially suppresses new need determinations for ORs