



## **American College of Surgeons Definition of Surgery Legislative Toolkit**

This document is an assortment of talking points, data, and facts about codifying a definition of surgery in state law. Overall, this toolkit can be used to help inform Fellows of the American College of Surgeons (ACS) about advocacy efforts to establish definitions of surgery in the states as well as educate lawmakers on the benefits that a definition of surgery provides to ensure patient safety and maintain the high quality surgical care performed by trained surgeons.

Included in the document are the following:

1. History and Background of Definition of Surgery Laws
2. Sample Letter to Legislators
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## Definition of Surgery Background

Legislation that defines surgery and its scope is a proactive means for ACS state chapters to ensure that patients are protected and treated with the highest level of surgical care. State regulatory bodies have established high standards for surgeons by setting minimum requirements for education and training for the purpose of ensuring patient safety and quality outcomes.

To ensure that these high standards of patient safety and quality are clearly understood in the rapidly changing medical profession, the American College of Surgeons adopted the following definition for surgery:

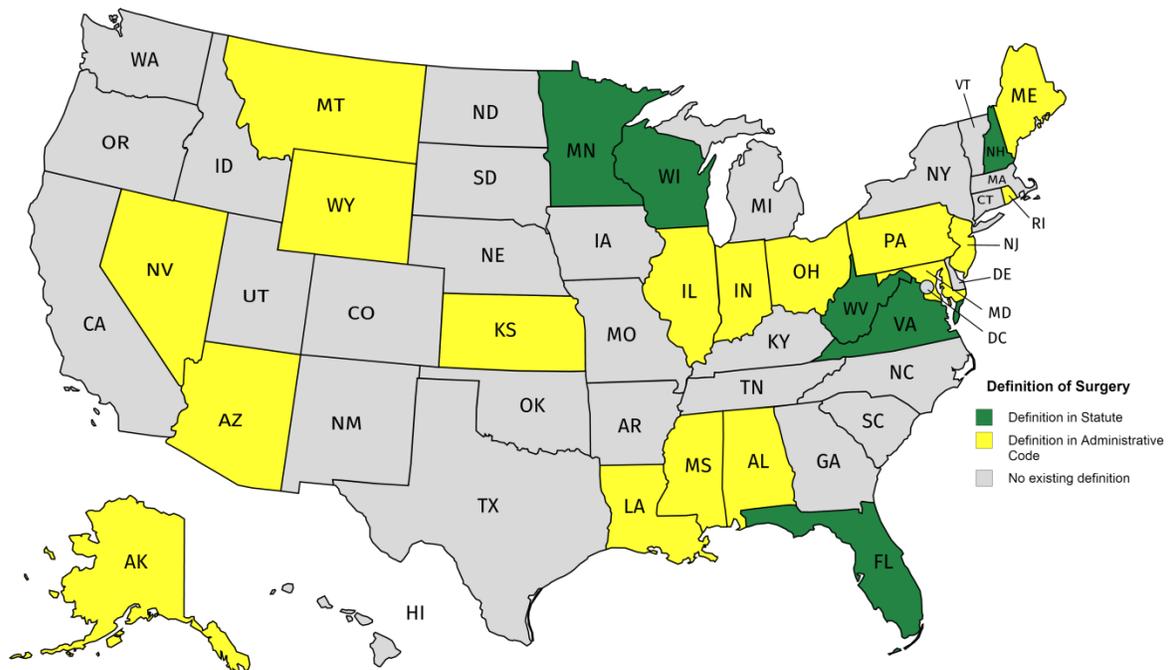
*Surgery is performed for the purpose of structurally altering the human body by incision or destruction of tissues and is part of the practice of medicine. Surgery also is the diagnostic or therapeutic treatment of conditions or disease processes by any instruments causing localized alteration or transportation of live human tissue, which include lasers, ultrasound, ionizing radiation, scalpels, probes, and needles. The tissue can be cut, burned, vaporized, frozen, sutured, probed, or manipulated by closed reduction for major dislocations and fractures, or otherwise altered by any mechanical, thermal, light-based, electromagnetic, or chemical means. Injection of diagnostic or therapeutic substances into body cavities, internal organs, joints, sensory organs, and the central nervous system is also considered to be surgery (this does not include administration by nursing personnel of some injections, such as subcutaneous, intramuscular, and intravenous when ordered by a physician). All of these surgical procedures are invasive, including those that are performed with lasers, and the risks of any surgical intervention are not eliminated by using a light knife or laser in place of a metal knife or scalpel. Patient safety and quality of care are paramount, and the College therefore believes that patients should be assured that individuals who perform these types of surgery are licensed physicians (defined as doctors of medicine or osteopathy) who meet appropriate professional standards.*

The American Medical Association House of Delegates adopted the definition of surgery created by the College in 2007, providing uniformity within the house of medicine and surgery.



## Definition of Surgery in the States

Currently, 23 states have defined surgery in laws or regulations.



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Ten of those states have definitions that include a form of the word “incision” (Alabama, Arkansas, Arizona, Florida, Indiana, Kansas, Louisiana, Maine, Ohio, Rhode Island). Nine states included “diagnosis” as a part of the definition of surgery, which closely mirrors the ACS statement (Arizona, Kansas, Maryland, Mississippi, Nevada, Ohio, Pennsylvania, West Virginia, and Wisconsin). Three states specifically define surgery to start at the point of incision and end at the close of the incision or when all operative devices have been removed (Indiana, Maine, New Jersey). Other states specifically define types of surgeries, such as elective, cosmetic, minor, major, or ophthalmic surgery.



This model language is intended to provide a basic statutory framework for states to adopt a definition of surgery. It should be noted that some states may wish to utilize modified language, or language reflective of legislative standards/formats which can vary from state to state.

### **Model Bill**

AN ACT

SURGERY DEFINED; WHO MAY PERFORM SURGERY

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF \_\_\_\_\_:

**SECTION 1.** Section 123 of Chapter 456 is amended to read:

“12-3-456. DEFINITION OF SURGERY. --

- A. “Surgery” means a procedure performed for the purpose of structurally altering the human body by incision or destruction of tissues and is part of the practice of medicine for the diagnostic or therapeutic treatment of conditions or disease processes by any instruments causing localized alteration or transportation of live human tissue, which include lasers, ultrasound, ionizing radiation, scalpels, probes, and needles. During surgery the tissue can be cut, burned, vaporized, frozen, sutured, probed, or manipulated by closed reduction for major dislocation and fractures, or otherwise altered by any mechanical, thermal, light-based, electromagnetic, or chemical means. Injection of diagnostic or therapeutic substances into body cavities, internal organs, joints, sensory organs, and the central nervous system is also considered to be surgery.

***(B & C are OPTIONAL ADDITIONS/AMENDMENTS TO ADDRESS VARIATIONS IN STATE LAWS)***

- B. No person shall perform surgery unless he is (i) licensed by the Board of Medicine as a doctor of medicine, osteopathy, or podiatry; (ii) licensed by the Board of Dentistry as a doctor of dentistry; (iii) jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner; (iv) a physician assistant acting under the supervision of a doctor of medicine, osteopathy, or podiatry; or (v) acting pursuant to the orders and under the appropriate supervision of a licensed doctor of medicine, osteopathy, podiatry, or dentistry. For the purpose of this section, incision shall not mean the scraping or brushing of live tissue.



- C. Nothing in this section shall be construed to restrict, limit, change, or expand the scope of practice in effect of [DATE], of any profession licensed by any of the health regulatory boards within the department.



### Sample Letter to Legislator from ACS Chapter

DATE  
OFFICIAL  
TITLE  
ADDRESS 1  
ADDRESS 2  
CITY, STATE ZIP

Dear TITLE LAST NAME,

The STATE Chapter of the American College of Surgeons (ACS) urges you to support legislation BILL NUMBER that will establish a definition of surgery to provide a clear guidance for the practice of medicine in STATE and ensure patient safety and quality outcomes.

The STATE CHAPTER ABBREVIATION is the largest surgical organization in our state with over XXX members. The STATE CHAPTER ABBREVIATION has a strong history of addressing matters related to patient safety and quality, and believes the proposed legislation will ensure that patients are protected and treated with the highest level of care.

Surgeons are held to very high standards by regulatory agencies for education, continued training, and quality to maintain safe surgical settings and processes for performing surgical procedures. Patients have come to expect such standards of care when undergoing complex and high risk procedures. Any and all medical professionals performing a surgical procedure that transforms living tissue in an irreversible way should be held to the same standards for training and quality to ensure patient safety and quality outcomes. A clear and concise definition for surgery provides a standard marker for the practice of medicine and surgery in our state.

In the interest of patient quality and safety, the STATE Chapter of the American College of Surgeons urges you to enact a definition of surgery, and support BILL NUMBER.

Sincerely,

Chapter President



AMERICAN COLLEGE OF SURGEONS

*Inspiring Quality:  
Highest Standards, Better Outcomes*

### Sample Letter to Legislator from Individual Surgeon

DATE  
NAME  
TITLE  
ADDRESS 1  
ADDRESS 2  
CITY, STATE ZIP

Dear TITLE LAST NAME,

As a practicing surgeon and constituent, I ask that you support BILL NUMBER to establish a definition of surgery in STATE.

Surgery is a complex and risky procedure that irreversibly transforms living tissue. As such, I have undergone years of education and training to perform surgical procedures on patients. In addition, the state has established lengthy regulations requiring continued education and training to maintain my license. These requirements are essential to ensuring a high standard of quality care and patient safety.

A definition of surgery in state statute provides clarity and safeguards that the standards for surgical care remain high.

Please support BILL NUMBER to protect patients and ensure quality surgical outcomes.

Sincerely,

SURGEON NAME



## Sample Action Alert

### Take Action to Enact Definition of Surgery in STATE

The SENATE/HOUSE (COMMITTEE) is expected to vote on BILL NUMBER that will establish a definition of surgery in STATE.

The American College of Surgeons has adopted a definition of surgery as a way for states to set clear guidelines for medical professionals performing surgical procedures to ensure that patients receive the highest quality of care when undergoing complex and risky procedures.

Please take a moment to contact your Representative/Senator to ask them to support BILL NUMBER and share with them the importance of clear standards for surgery to protect the safety and well-being of patients.

### Message to Legislators

I am writing you today to ask you to support BILL NUMBER sponsored by LEGISLATOR that will establish a definition of surgery in STATE.

Adopting a definition of surgery ensures that patients are protected and treated with the highest level of care when undergoing complex and high risk surgical procedures. STATE has established high standards for licensed surgeons to attain advanced education, continued training and achieve quality outcomes to maintain a safe surgical setting and process for performing surgical procedures. Patients expect such standards of care. Any and all medical professionals performing a surgical procedure that transforms living tissue in an irreversible way should be held to the same standards for training and quality. A clear and concise definition of surgery will establish guidelines for the safe practice of medicine and surgery in STATE.

I urge you to support BILL NUMBER.

Thank you.

### Phone Talking Points

1. My name is <NAME>, I am a surgeon practicing in <LOCATION> and I'm calling today to ask Representative/Senator <NAME> to support BILL NUMBER to protect patient safety by establishing a definition of surgery in STATE.
2. STATE should have a clear and concise definition for surgery to ensure that all medical professionals performing complex surgical procedures have the same high level of education and training that licensed surgeons are required to have in STATE.



3. A definition of surgery in STATE will set clear guidelines for safety and quality for patients undergoing surgical procedures.
4. I urge to support BILL NUMBER when it comes up for a vote.
5. Thank you.

## Definition of Surgery – Talking Points

### Patient Safety and Quality

- Patients expect high standards of care for surgical procedures
  - The states have established through legislation and regulation the expectations for the practice of medical professionals providing surgical procedures on patients.
  - These laws are intended to ensure that surgical procedures are performed by highly trained and knowledgeable professionals to ensure successful outcomes of the procedure.
  - The surgical profession has been leading an effort to advance quality improvements through a program of training, tools and data collection to improve quality outcomes, reduce complications, save lives and at the same time reduce costs to the health system by millions of dollars.
- Surgeons have 5 years of residency with consistently increasing responsibility and in many cases will complete a 1 or 2 year Fellowship before practice
  - Surgeons undergo many years of training before they may perform surgery. After an undergraduate college degree, they must complete 4 years of medical school. Then they undergo a residency training program which usually lasts between 5-8 years depending on the specialty. During these years they are taught to perform surgical procedures by experienced and credentialed surgeons, with graduated responsibilities over the duration of their training.
  - The complexity of living human tissue and organs requires advanced knowledge and continuous training. The profession, the law, and especially patients expect this level of training for surgeons to perform surgical procedures.
  - Not only do surgeons learn the breadth of their profession and the skills needed to provide quality surgical care, but they also learn how to respond to emergent situations where complications arise during surgical procedures.

### Defining Surgery

- Surgery consists of irreversible tissue transformation
  - “Surgery” is an action, by a specially trained professional, which ***transforms living tissue in an irreversible way.***
- Surgical patients can require care before, during and after surgery
  - Surgery is not just the act of tissue transformation, but the care provided before, during, and after the procedure. The goal is a successful patient outcome, not just a successful operation.



- A definition of surgery is necessary to set a standard that can provide clarity as technology and methods advance
  - The ancient forms of surgery were done with knives and hot irons and were performed by generalists including barbers. Since then, the surgical profession has become specialized.
  - Today, advanced technology uses many forms of devices and energies to transform tissue. These include tools (scalpels, saws, drills, etc), high temperature cautery, high energy ultrasound waves, high energy light (lasers) and even high pressure streams of water.
- Currently, 23 states have a definition of surgery established within their statutes.
  - These laws provide guidance to the scopes of practice within the medical system.
  - No data has been shown that quality and access to care has diminished.
- A definition of surgery will not prevent health care professionals from providing services that they can currently perform under existing scope of practices; rather this will provide clarity for the future.



### Sample Testimony\*

Good morning/afternoon. My name is NAME, I am a board certified surgeon practicing in STATE. I am here today to support BILL NUMBER on behalf of the members of the STATE Chapter of the American College of Surgeons.

“Surgery” is an action, performed by a licensed and specially trained professional, which **transforms living tissue in an irreversible way.**

Tissues are changed in predictable, but irreversible ways, with the goal of making a diagnosis, treating a disease, removing diseased or damaged parts, reconstructing the body, adding prosthetics/implants, or alleviating pain.

Forms of surgery have evolved from ancient methods utilizing knives and hot irons to rapidly changing technology that uses many forms of devices and energies to transform tissue. These include tools such as scalpels, saws, and drills, high temperature cautery, high energy ultrasound waves, high energy light lasers and even high pressure streams of water.

#### ***Education Requirements:***

A surgeon is a highly trained health care provider undergoing many years of training before they may perform surgery independent of supervision. After completing an undergraduate education, an aspiring surgeon must complete four years of medical school. After medical school they enter a residency training program that can last between 5-8 years depending on the specialty, as many complete Fellowships in an area of specialization. During these years they are taught to perform surgical procedures by experienced and credentialed surgeons, with graduated responsibilities over the duration of their training.

Surgical training involves the ability to recognize when tissue transformation is the appropriate course of treatment, as well as the mechanical skills to perform those transformations. Outcomes are reviewed by those performing the surgeries and their peers. Unusual cases are discussed for the education of others, and unexpected outcomes are analyzed at regular intervals to assure patient safety and the highest quality of care and technique.

After the completion of training, examining boards assess the competency of a surgeon to go on to practice. They review the surgeon’s use of his/her learned knowledge as well as his/her operative experience and outcomes. If they feel the quality of a surgeon’s work is unacceptable, they are authorized to prevent that surgeon from practicing surgery. Additionally, surgeons are required to complete significant continuing education to maintain licensure, Board Certification and society memberships.



***Patient Care and the Definition of Surgery:***

By enacting a definition of surgery into the state’s statutes, we believe that the quality of care for surgical patients will be improved for the citizens in our state. The definition does not seek to prevent any health care practitioners from performing any procedures that they can do today under their current scope. Instead, it seeks to establish a standardized definition to allow the medical boards in the state to evaluate future technological development in a consistent manner that will assure maximal patient safety.

Currently, 23 states have adopted some form of a definition of surgery. Our state does not have a legal definition of surgery despite the term “surgery” being used though out the state’s laws and regulations.

The American College of Surgeons and the STATE Chapter believe that it is the professional and ethical responsibility of its members to assure that patients receive safe, appropriate surgical care of the highest quality from those physicians who possess the proper training within their scope to perform surgery in a defined manner. We believe the citizens of this state deserve the same as well.

***\*Adapted from testimony delivered by the Connecticut Chapter of the American College of Surgeons.***



### **Sample Arguments Used by Opponents Against a Definition**

- The definition would prohibit non-physician practitioners from executing current professional responsibilities for which they have already been fully educated, board certified and authorized to perform based on well-established and recognized qualifications.
- The term “surgery” is currently used in multiple parts of the state’s law. To define surgery, it is essential that each and every use of the word be reviewed.
- The definition will impact various licensed practitioners as well as the delivery of care to patients.
- The intent of enacting a definition of surgery is simply to limit those who can perform surgery as it is defined.
- There is no need for a definition of surgery because patient safety has not been adversely affected by not having one in the state previously.
- A definition of surgery could have the unintended consequence of causing harm to patients by restricting access to care and increase health care costs.



### Example of State Definitions of Surgery

The following is the statutory language for the Definitions of Surgery in the states of Virginia, Florida, and New Hampshire.

#### Virginia (Enacted 2012)

Code of Virginia

Title 54.1. Professions and Occupations

Chapter 24. General Provisions

§ 54.1-2400.01:1. Surgery defined; who may perform surgery

A. For the purposes of this subtitle, except as used in Chapter 38 (§ 54.1-3800 et seq.) related to veterinary medicine, "surgery" means the structural alteration of the human body by the incision or cutting into of tissue for the purpose of diagnostic or therapeutic treatment of conditions or disease processes by any instrument causing localized alteration or transposition of live human tissue, but does not include the following: procedures for the removal of superficial foreign bodies from the human body, punctures, injections, dry needling, acupuncture, or removal of dead tissue. For the purposes of this section, incision shall not mean the scraping or brushing of live tissue.

B. No person shall perform surgery unless he is (i) licensed by the Board of Medicine as a doctor of medicine, osteopathy, or podiatry; (ii) licensed by the Board of Dentistry as a doctor of dentistry; (iii) jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner; (iv) a physician assistant acting under the supervision of a doctor of medicine, osteopathy, or podiatry; (v) a licensed midwife in the performance of episiotomies during childbirth; or (vi) acting pursuant to the orders and under the appropriate supervision of a licensed doctor of medicine, osteopathy, podiatry, or dentistry.

C. Nothing in this section shall be construed to restrict, limit, change, or expand the scope of practice in effect on January 1, 2012, of any profession licensed by any of the health regulatory boards within the Department of Health Professions.

2012, cc. 15, 124.

#### Florida (Enacted 2013)

Florida Statutes

Title XXXII REGULATION OF PROFESSIONS AND OCCUPATIONS

CHAPTER 463 OPTOMETRY

463.002 Definitions.

(6) "Surgery" means a procedure using an instrument, including a laser, scalpel, or needle, in which human tissue is cut, burned, scraped except as provided in s. 463.014(4), or vaporized, by incision, injection, ultrasound, laser, infusion, cryotherapy, or radiation. The term includes a procedure using an instrument which requires the closure of human tissue by suture, clamp, or other such device.



**New Hampshire (Enacted Definition located in two sections of the state statutes)**

TITLE XXX

OCCUPATIONS AND PROFESSIONS

CHAPTER 329 PHYSICIANS AND SURGEONS

Section 329:1

Practice. – Any person shall be regarded as practicing medicine under the meaning of this chapter who shall diagnose, treat, perform surgery, or prescribe any treatment of medicine for any disease or human ailment. "Surgery" means any procedure, including but not limited to laser, in which human tissue is cut, shaped, burned, vaporized, or otherwise structurally altered, except that this section shall not apply to any person to whom authority is given by any other statute to perform acts which might otherwise be deemed the practice of medicine. "Laser" means light amplification by stimulated emission of radiation. Source. 1915, 167:1. PL 204:1. RL 250:1. RSA 329:1. 1959, 144:1. 1981, 396:1. 1997, 214:2, eff. June 18, 1997.

TITLE XXX

OCCUPATIONS AND PROFESSIONS

CHAPTER 327 OPTOMETRY

Section 327:1 Definitions.

VI. "Surgery" means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical means. Surgical procedures shall include the use of lasers for therapeutic and photorefractive purposes, ionizing radiation, therapeutic ultrasound, or medication administered by injection, provided that the removal of superficial foreign bodies from the eye, adnexa or eyelid shall not be considered a surgical procedure prohibited by this chapter. With respect to a foreign body, any part of which is situated within 3 millimeters of the visual axis, "superficial foreign body" means that which has not penetrated deeper than the corneal epithelium.



### **Contact**

For questions, requests for further information or assistance with advocacy initiatives regarding Definition of Surgery legislation, contact Christopher Johnson, State Affairs Associate at (202) 672-1502 or at [CJohnson@FACS.org](mailto:CJohnson@FACS.org).