April 1, 2020

The Honorable Steven Mnuchin                The Honorable Jovita Carranza
Secretary                                    Administrator
U.S. Department of Treasury                 Small Business Administration
1500 Pennsylvania Avenue, N.W.             409 3rd Street SW
Washington, DC 20220                       Washington, DC 20416

Dear Secretary Mnuchin and Administrator Carranza:

On behalf of the 5,800 ambulatory surgery centers (ASC) represented by the Ambulatory Surgery Center Association (ASCA), I ask that you take swift action to provide clarity that health care providers who bill Medicare and that have equity investors and business partners are eligible for the programs created by Section 1102 and 1110 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. As you may know, ASCs were quick to follow guidance from the Centers for Medicare & Medicaid Services (CMS) and state leaders to postpone most elective surgeries to increase social distancing and preserve medical supplies. Many of our centers were also the first to donate critical personal protective equipment and ventilators to aid our local hospitals in this fight. These postponements have resulted in serious economic harm, with many facilities suspending operations and others having to reduce the days they are open.

Ensuring that all ASCs have access to these Small Business Administration (SBA) program loans will achieve the critical goals of providing needed liquidity to facilities that have lost revenue by following elective surgery guidance, ensure that nurses and other clinical staff remain employed and maintain our nation’s healthcare infrastructure so that we can respond to the pandemic and provide cost-effective care after the crisis subsides.

Many ASCs partner with other health care providers or entities that specialize in administrative duties necessary to run a small business. Even though these ASCs are independently owned and operated, the SBA’s current affiliation rules may link what are otherwise unrelated ASCs together through common ownership, even minority ownership (e.g. 25 percent), or by a management agreement with the same management company and therefore exclude them from relief under the Paycheck Protection Program. In fact, many independent surgery centers that may have partial ownership with a local hospital are not eligible due to the “affiliation” language and yet don’t qualify for any of the hospital specific stimulus through the Paycheck Protection Program. Without a regulatory change, many of these ASCs would be deemed to exceed the 500-employee threshold of the legislation and be ineligible for necessary relief that these programs would provide.

We suggest two possible pathways for our shared goal of ensuring the outpatient sector of the health care infrastructure remains intact:

1. Designate that a 500-employee threshold for ASCs (Code 621493) applies to only employees employed at a single ASC location; or
2. Exempt health care providers that are enrolled in Medicare from affiliation rules during the covered period of the COVID crisis.

Clarification around the payroll and tax information necessary to apply for the Paycheck Protection Program loans is also needed. ASCs and other health care providers rely on other partners for administrative and management services, which can take the form of certain employee wages and taxes being paid by that business partner. Independently operated ASCs pay these specific costs indirectly through employee lease agreements or management fees. It is imperative that lenders and borrowers have a clear indication that payroll and tax information from a business partner can be submitted as part of an ASC’s application.

Communities across the country rely on ASCs for safe surgical and preventative care and will need them more than ever as we assist hospitals in managing the coming surge of patients as a result of the pandemic. I urge you to provide the flexibilities described above so that ASCs can continue to serve patients and their families.

Sincerely,

[Signature]

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