



November 20, 2020

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue SW
Washington, DC 20201

Dear Administrator Verma:

Thank you for taking the time to speak with ASCA leadership today. On behalf of the entire ASC community, we are grateful for your tireless work during the pandemic to use your authority to seek solutions to the innumerable problems of providing health care for both those suffering from COVID-19 and other patients in need. As part of our discussion, you asked if there were actions CMS could take that would enable ASCs to provide even more care as hospitals struggle in many communities to address both the pandemic and patients' access to critical outpatient services.

To that end, we respectfully provide the following waiver requests for your consideration:

Expand the ASC Covered Procedures List (ASC-CPL). As you heard on our call, there are many procedures that are clinically similar to those already on the ASC-CPL that ASCs routinely perform on non-Medicare beneficiaries. By allowing ASCs to perform those surgical codes currently covered in hospital outpatient departments (HOPDs), CMS would greatly enhance access to Medicare beneficiaries, and allow them to have medically necessary procedures performed in non-COVID care sites of service.

Such a revision would not be expected to revise the level of acuity of our patients beyond the unique (and highly variable) capacities of individual facilities. As part of our patient safety protocols, all patients would continue to be subject to the rigorous pre-operative screening to ensure their suitability for services offered in any outpatient site of service.

Relax current length of stay restrictions. Under 42 CFR §416.2, an ASC is defined as a facility at which the "expected duration of services would not exceed 24 hours following an admission." Our facilities would be able to take on more outpatient surgical volume if we had the flexibility to keep patients longer than 24 hours. As mentioned on our call, this would certainly not be the norm, and *we would expect that* most patients would still be discharged within 24 hours. However, by relaxing this requirement, which is applicable to all patient populations – not just Medicare beneficiaries - CMS would ensure ASC clinicians can observe patients as long as necessary. Such a waiver would preclude transfer of medically stable beneficiaries for observation only, and thusly avoid any increase in the burden already being experienced by many hospitals.

The CMS Conditions for Coverage that ASCs must meet regarding emergency personnel will ensure that patients are taken care of no matter how long they remain on premises. The nursing requirements found in 42 CFR §416.46 state that “there must be a registered nurse available for emergency treatment whenever there is a patient in the ASC.” In addition, 42 CFR §416.44 (e) requires “personnel trained in the use of emergency equipment and in cardiopulmonary resuscitation must be available whenever there is a patient in the ASC.” Relaxing the length of stay restriction provides ASCs the ability to treat more patients without compromising safety, while reducing demands at neighboring hospitals.

Issue guidance to states to similarly relax length of stay restrictions. States have a variety of different restrictions on patient length of stay in ASCs, some significantly more restrictive than the current CMS requirement, and a recommendation from CMS to state policymakers could lead to changes that would allow ASCs to treat more patients and relieve neighboring hospitals that are at or above capacity due to the pandemic.

For Hospitals without Walls (HWOW) participants, require nursing only when a patient is present. As noted above, ASCs are already appropriately staffed when patients are present. However, the current verbiage to which ASCs must attest in order to enroll as a hospital under the HWOW program requires 24-hour nursing regardless of if a patient is present. Staffing of all practitioners should be tailored to the patient census combined with additional personnel levels necessary to facilitate good medical care independent of the calendar or clock. A compromise would be to require nursing at all times that patients are present, along with a physician and nurse who are available handle any additional needs.

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 because of the pandemic. We respectfully request that you consider the flexibilities described above so that ASCs can better serve patients and their families.

Sincerely,



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