



Center for Clinical Standards and Quality/Quality, Safety & Oversight Group

Ref: QSO-21-09-ASC

DATE: December 30, 2020

TO: State Survey Agency Directors

FROM: Director
Quality, Safety & Oversight Group

SUBJECT: Providing flexibility for exceeding the 24-hour time frame for patients in Ambulatory Surgical Centers (ASCs) during the COVID-19 Public Health Emergency

Memorandum Summary

- ***CMS is committed*** to taking critical steps to ensure America's health care facilities continue to be prepared to respond to the COVID-19 Public Health Emergency (PHE).
- ***Providing flexibility for exceeding the 24-hour timeframe in ASCs:*** As COVID-19 cases continue to surge, CMS will temporarily exercise survey enforcement discretion regarding the 24-hour time frame to allow patients to remain in the ASC longer, if needed, during the COVID-19 PHE. This applies to ASCs that have ***not*** converted to a hospital during the PHE.

Background

Since the beginning of the COVID-19 PHE, CMS has issued several flexibilities to help ASCs and hospitals address the urgent need to decrease exposure to and the spread of COVID-19 as well as increase facility capacity for care of patients. CMS issued a process to allow enrolled ASCs to temporarily enroll as hospitals and to provide hospital services in April 2020. On November 25, 2020, CMS revised [QSO-20-20-ASC](#) to include information on policies that expanded the temporary enrollment process by waiving the particular requirement at 42 CFR §482.23(b)(1), which requires hospitals to have a licensed practical nurse or registered nurse on duty at all times. This [waiver](#) requires ASCs enrolled as hospitals to provide 24-hour nursing services only when there is a patient in the facility, allowing facilities to provide nursing services on demand through the use of a 24-7 on call service in the event a surgeon requests to admit a patient for a required surgical procedure. As COVID-19 cases continue to surge, CMS remains committed to adapting program requirements to expand capacity and to treat patients during this unprecedented time.

Guidance

As described above, CMS has provided guidance to ASCs on how to convert to a hospital during the COVID-19 PHE. However, we also believe it is important to provide additional flexibility for

ASCs that have *not* converted to a hospital but are still acting to support their community's pandemic response.

Under 42 CFR §416.2, an ASC is defined in part as a facility at which the “expected duration of services would not exceed 24 hours following an admission.” As addressed in the 2008 ASC Final Rule ([73 FR 68502, 68714](#)) and stated in [Appendix L](#) of the State Operations Manual for ASCs, “exceeding the 24-hour time frame is expected to be a rare occurrence, and each rare occurrence is expected to be demonstrated to have been something which ordinarily could not have been foreseen.” For the remainder of the PHE, CMS plans to exercise discretion in enforcing of the 24-hour limit described by 42 CFR §416.2, to provide flexibility and allow ASCs to keep medically stable patients not requiring hospitalization for observation in the ASC past the 24-hour period following their admission. This flexibility is provided to decrease additional demand on hospitals and lessen the chance of patients being exposed to COVID-19 through transfer by allowing for additional recovery time, in the ASC if needed, when issues arise such as the need for post-surgical pain control or hydration. We note that this enforcement discretion does not alter whether a procedure is included on the ASC Covered Procedures List (CPL). Rather, it provides flexibility during the PHE for ASCs to keep medically stable patients for longer than 24 hours following the completion of a procedure if doing so is clinically appropriate based upon the patient's medical condition and time of day for surgery and in the patient's best interest. ASCs that have not converted to being a hospital would continue to furnish and bill for ASC covered surgical procedures, but would not receive payment for any service that is not on the ASC CPL or is not a covered ancillary service.

We also note that on December 4, 2020, CMS released the Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems final rule with comment period, which includes an expansion of the services on the ASC CPL starting January 1, 2021. For additional information regarding the OPSS/ASC final rule and the services that ASCs may begin furnishing please visit: <https://www.cms.gov/files/document/12220-opss-final-rule-cms-1736-fc.pdf>.

The flexibility to allow ASCs to keep medically stable patients for observation will help ASCs divert patients they are able to treat from hospitals, preserving hospital capacity for more acute patients and ensuring efficient use of healthcare resources. This temporary survey enforcement discretion does not preclude an ASC from transferring patients to a hospital when patients need care beyond the capability of the ASC in accordance with [42 CFR §416.41\(b\)\(1\)](#). Additionally, this discretion applies only to Federal requirements and does not supersede State requirements for licensure.

Contact

Questions about this memorandum should be addressed to QSOG_ASC@cms.hhs.gov.

Effective Date

Effective immediately. This policy should be communicated with all survey and certification staff, their managers and the State/Regional Office training coordinators immediately. This guidance will cease to be in effect when the Secretary determines there is no longer a Public Health Emergency due to COVID-19. At that time, CMS will send public notice that this guidance has ceased to be effective via its website.

/s/

David R. Wright

cc: Survey and Operations Group Management