Meeting the Definition of an ASC

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Participation in the Medicare program as an Ambulatory Surgery Center (ASC) provider is contingent upon meeting the definition of an ASC. CMS requires that an ASC satisfy all the elements of the definition and have a provider agreement in place with CMS.

Definition and Characteristics

Item 416.2 of the CMS Conditions for Coverage defines an ASC as

> *any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization and in which the expected duration of services would not exceed 24 hours following an admission.*

The interpretive guidelines (surveyor instructions) state:

> *According to the definition of an Ambulatory Surgical Center, or ASC, its key characteristics are that it*
>
> - *is a distinct entity;*
> - *operates exclusively for the provision of surgical services to patients not requiring hospitalization, with the ASC's services expected not to exceed 24 hours in duration following an admission;*
> - *has an agreement with Medicare to participate as an ASC; and*
> - *complies with the Conditions for Coverage (CfCs) in Subparts B and C, i.e., 42 CFR 416.25-52.*

What raises questions

It is the "distinct entity" element that raises questions for some providers, particularly practice-owned ASCs. It is very common for practice-owned facilities to benefit from economy of scale based on established practice infrastructure. For instance, business operations such as claims, coding, billing, and contracting functions are frequently absorbed by the practice business office rather than duplicating the business operation in the ASC. This saves on development costs as well as labor costs. Another example is the utilization of clinical staff members from the practice to work in the ASC on surgery days. So the question arises, what degree of separation is necessary to meet the definition of an ASC?

The Interpretive Guidelines provide further clarification:

> *An ASC satisfies the criterion of being a "distinct" entity when it is wholly separate and clearly distinguishable from any other healthcare facility or office-based physician practice. [It] … must be separated from other facilities or operations within the same building by walls with at least a one-hour separation.*

One of the more frequent survey citations we see involves a waiting room shared between the practice and the ASC. CMS actually permits this sharing of "non-clinical" space so long as the common space is not used concurrently by the ASC and the practice. The litmus test has historically been "no overlapping functions in shared space." Therefore, if the practice waiting room is also the ASC waiting room, the ASC and the practice cannot operate concurrently. If one is operating, the other must be closed for business. The necessary separation is accomplished through scheduling and utilization.

The ASC must meet the "distinct entity" requirement operationally as well as physically. The ASC must have its own medical staff and governance structure and documentation attendant to that. It must have a registered nurse in a management role, to direct the nursing services of the clinical operation. It is not uncommon for the practice administrator to appear on the ASC organizational chart and participate in the ASC governance meetings. However, when the business operations are delegated to the practice, the administrator does not typically play an active role in the daily operation of the ASC.

Does your ASC qualify?

It is a good policy to evaluate your practice-owned ASC operation to identify points of "overlap" and "integration." These are potential problems for meeting the "distinct entity" provision.

Frequently, these problems can be addressed through a management services agreement (MSA) between the ASC and the practice. As absurd as it may seem to contract with yourself, this type of documentation is precisely what the surveyors are looking for to provide the necessary degree of separation and to meet governance requirements.

The CMS CfCs allow the ASC Governing Body to delegate the provision

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of ASC services to an outside entity. However, in so doing, the Governing Body does not abdicate its authority over and responsibility for those services. The arrangement must be documented through a service agreement and those agreements and the services rendered to the ASC must be assessed annually by the Governing Body to "*assure those services are provided in a safe and effective manner*" (416.41(a). Here is a list of functions to consider including in a management services agreement (MSA) between your ASC and your practice:

- Third-party payer contracting
- Claims, coding, billing, and collections
- A/R and A/P
- Accounting
- HR administration (payroll, compensation, and benefit administration)
- Pest control
- Building maintenance
- Transcription
- IT

There may be more or fewer functions to consider, depending on your particular organization. Yet this list is a good starting point to make sure your ASC meets the CMS definition of an ASC. **AE**

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