



WSC BRIEF October 5, 2018

Proposed Rule Would Eliminate ASC Transfer Agreement, Admitting Privileges Requirements

Overview

On September 20, 2018, CMS issued a [proposed rule](#) that, if implemented, would no longer require that ambulatory surgical centers (ASCs) have a written transfer agreement with a hospital or ensure that all physicians performing surgery in the facility have admitting privileges in a hospital that meets certain Medicare requirements.

CMS is soliciting comments on any burden that may result from the absence of a transfer agreement between ASCs and hospitals. **Comments on the proposed rule are due no later than 5:00 p.m. on November 19, 2018.**

Current Rules

Under current rules at 42 CFR 416.41(b)(1), ASCs must have an effective procedure for the immediate transfer, to a hospital, of patients requiring emergency medical care that surpass the capabilities of the ASC.

Additionally, there are two requirements that also pertain to ASC patient hospital transfers. Section 416.41(b)(3)(i) and (ii) requires ASCs to have a written transfer agreement with a hospital that meets certain Medicare requirements or ensure all physicians performing surgery in the ASC have admitting privileges in a hospital that meets certain Medicare requirements.

A written transfer agreement and physician admitting privileges is intended to make sure there is a relationship between the ASC and local hospital that would serve the patient in the event of a medical emergency.



Proposed Rule

The proposed rule, entitled *Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction*, would eliminate some of the Medicare program's Conditions of Participation (CoPs) and Conditions for Coverage (CfCs) for ASCs. CoPs and CfCs are specific minimum standards that health care providers must meet to participate in, and be reimbursed by, the Medicare Program.

The proposal would remove the CoP provision requiring ASCs to have a written transfer agreement with a hospital that meets certain Medicare requirements or ensuring that all physicians performing surgery in the ASC have admitting privileges in a hospital that meets certain Medicare requirements.

The requirements in Sec. 416.41(b)(1) and (2) continue to require the ASC to have an effective procedure for the immediate transfer, to a hospital, of patients requiring emergency medical care beyond the capabilities of the ASC and that the hospital must be a local hospital that meets the requirements for payment for emergency services under § 482.2. As part of this effective procedure, ASCs are not precluded from obtaining hospital transfer agreements or hospital physician admitting privileges when possible.

Justification

With this proposed rule, CMS takes a major step forward in its efforts to modernize the Medicare program by removing regulations that are outdated and burdensome," said CMS Administrator Seema Verma [in a statement](#). "The changes we're proposing will dramatically reduce the amount of time and resources that healthcare facilities have to spend on CMS-mandated compliance activities that do not improve the quality of care, so that hospitals and healthcare professionals can focus on their primary mission: treating patients."

CMS' [fact sheet](#) positions the removal of these requirements as deleting duplicative patient protection measures. However, in the preamble to the proposed rule, CMS cited complaints it has received from the "largest ASC trade association" and multiple individual ASCs that a



growing number of hospitals are declining to sign transfer agreements with ASCs or declining to allow admitting privileges to the hospital by physicians who work in those ASCs. According to CMS, this is due to competition between hospital outpatient surgery departments and ASCs.

CMS states that it has attempted to work with hospitals and ASCs to resolve this issue but that several facilities were unable to reach a positive outcome. The agency further states that it does not believe removing these provisions would impact patient safety because ASCs are already required to have emergency response staff and that an ASC is expected to provide initial stabilizing treatment until the patient is transferred. Finally, CMS notes that the current requirement dates back to 1982, when ASCs were a newly emerging medical care option and there was reasonable concern as to needed emergency care being available.

CMS also notes that EMTALA was enacted in 1986 and as its enforcement evolved over time this effectively has rendered such transfer agreements unnecessary, since EMTALA imposed requirements on all hospitals to provide emergency care without regard to prior arrangements until a patient could be stabilized. Therefore, the agency has concluded that the transfer agreement and admitting privilege requirements are creating an administrative barrier to efficient ASC operations without any improvement in patient care or safety.
