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DATE: February 1, 2002

FROM: Director
Survey and Certification
Center for Medicaid and State Operations

SUBJECT: Clarification of CMS Policies Regarding Ambulatory Surgical Centers –
Effective Immediately

TO: Associate Regional Administrators, DMSO
State Survey Agency Directors

The purpose of this memorandum is to provide policy guidance for three ambulatory surgery center (ASC) issues: (1) requirements for ASCs for a separate waiting area and recovery room; (2) length of stay (LOS) in an ASC for Medicare beneficiaries and non-beneficiaries; and (3) certification of an ASC without a sterile operating room.

Waiting Rooms and Recovery Areas

The conditions for coverage at 42 CFR 416.44(a)(2) state that an "ASC must have a separate recovery room and waiting area." We consider a "recovery room" to be an area where patients are brought to recover from procedures and are not yet discharged. A "waiting area" is considered to be the area set aside for patients and families outside of the areas used to prepare patients for their procedure, the procedure area itself, or recovery from their procedure. Each ASC must have a distinct "waiting area" and distinct "recovery room" that are not used by patients for other purposes. Medicare regulations do not address specific requirements for a pre-op area.

Length of Stay (LOS)

Participation as a Medicare certified ASC is limited to any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization (i.e., an inpatient stay in a hospital). ASC covered procedures (See 42 CFR 416.65) are those that generally do not require extended lengths of stay or extensive recovery or convalescent time.

Such procedures are generally limited to surgery on Medicare patients that require the use of dedicated operating room (or suite), post-operative recovery room, or short-term (not overnight) convalescent room. Regulations do not allow for the regular practice of planned overnight recovery from ASC procedures performed on Medicare patients. Overnight stays should be infrequent and only occur in cases where an unanticipated medical emergency requires medical care beyond the capabilities of the ASC. In these situations, it is expected that an ASC would transfer the patient to an appropriate facility. ASC rules do not permit the performance of surgical procedures on Medicare patients that would require transfer to a hospital.

Under current regulations, Medicare certified ASCs may transfer non-Medicare patients to overnight care facilities such as skilled nursing facilities, recovery care centers, and other non-hospital, post-operative care facilities (on a routine or non-routine basis) without jeopardizing their Medicare certification.

Certification Without a Sterile Operating Room

We have been asked by surveyors whether an ASC that does not have a sterile operating room (that is, the facility has only a "procedure room" or "treatment room") can receive Medicare certification. 42 CFR 416.44 states that every Medicare certified ASC must have a functional and sanitary environment for providing surgical services and each operating room must be designed and equipped so that the type of surgery conducted can be performed in a manner that protects the lives and assures the physical safety of individuals in the area. In addition, 42 CFR 416.65 refers to the type of surgical procedures that the Medicare program will cover (pay for) if they are provided to a Medicare beneficiary in a certified ASC. Clearly, some of these procedures (such as pain management procedures) do not require a sterile operating room. Therefore, we do not believe the current ASC regulations prohibit certification of an ASC that does not have a sterile operating room, as long as the ASC meets the requirements in 42 CFR 416.44.

Effective Date: The information contained in this memorandum is current policy and is in effect.

Training: This clarification should be shared with all survey and certification staff, surveyors, their managers, and the state/regional office training coordinator.

If you have further questions regarding this matter please contact Mary Hayes of my staff at (410) 786-3507 or e-mail, Mhayes@cms.hhs.gov.

/s/

Steven A. Pelovitz