The ASC Market

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Surgical Services Continuum

• Hospital
  – Inpatient
  – Outpatient
• Surgical Hospital/ Specialty Hospital
• Ambulatory Surgical Center
• Physician Office
Definitions

Ambulatory Surgery Center (OIG)
An Ambulatory Surgery Center (ASC) is a distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization.
Definitions

Effective May 18, 2009 –

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.
Definitions

Surgical Hospital (GAO):
A Private, short term, acute care hospital where two-thirds or more of its inpatient claims were for surgical diagnosis – related groups.

Specialty Hospital (Breau D-LA)
A hospital primarily or exclusively engaged in the care and treatment of patients with a cardiac or orthopedic condition, patients undergoing a surgical procedure or any other specialized categorization of patients or cases.
ASCs

Usually meet three criteria

1. At least one sterile O.R. dedicated to outpatient surgery
2. State licensure and/or Medicare certification
3. Independent business – separate from hospital
History

“Surgicenter”

Opened February 12, 1970

Phoenix, Arizona
Growth in the number of centers and Medicare payments to ASCs

Payments (in billions): 0.9, 1.0, 1.1, 1.2, 1.4, 1.6, 1.9, 2.2, 2.5, 2.7, 2.8, 2.9, 3.0, 3.887, 4.136, 4.506, 4.707, 4.964, 5.174

Number of Centers: 2,265, 2,462, 2,644, 2,786, 3,028, 3,371, 3,597, 3,887, 4,136, 4,506, 4,707, 4,964, 5,174
ASCs by State

Source: The Centers for Medicare and Medicaid Studies
Five States Account for 42.5% of Certified ASCs

Source: The Centers for Medicare and Medicaid Studies
Rate of growth in number of ASCs has slowed
Variables

- Number of operating rooms
- Type of Center
  - 86% multi-specialty
  - 14% single specialty
- Case mix
- Ownership
Stark Laws and ASCs - History

- OIG examination of shell labs and other abuses of late 1980s

- Stark I (1989) prohibits self-referral for clinical lab services

- Stark II (1993) other Designated Health Services (DHS) added
Stark Law

Prohibits Physicians from ordering 11 Designated Health Services (DHS) for Medicare and Medicaid patients from an entity with which they (or an immediate family member) has a financial relationship, unless an exception applies.
Designated Health Services Include:

- Clinical Lab Services
- Physical Therapy
- Occupational Therapy
- Radiology Services
- DME and Supplies
- Prosthetics and Orthotics
- Outpatient Prescription Drugs
- Parenteral and Enteral Equipment
- Home Health Services
- Inpatient Hospital Services
- Outpatient Hospital Services
Designated Health Services Do Not Include:

- Services reimbursed by Medicare as part of a composite rate
- DHS included in the ASC facility fee (are therefore excluded from Stark)
- ASCs represent one of many “Extension of Practice” exceptions
- Whole hospital exception:
  - Allows physician to have ownership interest in a hospital if the physician is authorized to perform services in the facility
Fraud and Abuse Considerations
[42 USC §1320a -7b(b)]

The Statute prohibits:

Remuneration with intent to induce referrals.

The knowing and willful solicitation, receipt, offer or payment of “any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind” in return for or to induce the referral, arrangement or recommendation of Medicare or Medicaid business.
ASC Safe Harbor (1999)

At least 33% of the surgeon’s medical practice income must be derived from performing ambulatory surgical procedures (ASC or HOPD).

At least 33% of such cases must be performed at the center where the surgeon is an investor.
Several Other Tests

• No lending or guarantees
• Disclosure to patients
• No discrimination
• Distribution based on pro rata ownership interest
• No separately billable ancillaries
Physician Ownership

• **Federal Scrutiny:**
  – Studies
  – Legislation
  – Regulation

• **Local Action:**
  – Expanded CON Review
  – Increased Licensure Requirements
  – Provider Tax
  – Economic Credentialing
Surgical Specialties

- Ophthalmology
- Gastroenterology
- Orthopedic
- General Surgery
- Plastic Surgery
- Podiatry
- ENT
- Gynecology
- Urology
Specialty Distribution

- Ophthalmology: 27%
- Gynecological: 10%
- Orthopedic: 19%
- GI: 10%
- Plastic: 6%
- ENT: 6%
- General: 6%
- Pain Block: 4%
- Urology: 7%
- Other: 5%
# Top Procedures

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Medicare ASC Payments (percent of total)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cataract removal and lens insertion</td>
<td>47.5%</td>
</tr>
<tr>
<td>Colonoscopy</td>
<td>14.8</td>
</tr>
<tr>
<td>Other eye procedures</td>
<td>9.3</td>
</tr>
<tr>
<td>Upper gastrointestinal endoscopy</td>
<td>6.7</td>
</tr>
<tr>
<td>Minor procedures – musculoskeletal</td>
<td>5.8</td>
</tr>
<tr>
<td>Other ambulatory procedures</td>
<td>3.0</td>
</tr>
<tr>
<td>Ambulatory procedures – musculoskeletal</td>
<td>2.6</td>
</tr>
<tr>
<td>Cystoscopy</td>
<td>1.9</td>
</tr>
<tr>
<td>Arthroscopy</td>
<td>1.5</td>
</tr>
<tr>
<td>Ambulatory procedures – skin</td>
<td>1.2</td>
</tr>
<tr>
<td>Other services</td>
<td>5.6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Source: MedPac
Payer Mix by Financial Class

- Medicare: 29.83%
- Medicaid: 6.85%
- BC/BS: 13.91%
- HMO: 7.30%
- PPO: 27.99%
- Commercial: 4.14%
- Champus: 1.23%
- W Comp: 6.51%
- Self Pay: 2.88%
- Auto/LOP: 0.36%
Payment System Overview

Now 3,403 Procedures on the ASC Payment List

Now 809 Different Payment Rates

Rejected arguments in total regarding secondary rescaling

No change in inflation update

Accepted some arguments on procedure list & process
2009 ASC Payment System

• 2009 is the Second Year of the Revised ASC Payment System Implementation

• Rates based on 50% of the New Payment System and 50% on the Former System
## ASC Payment Transition

<table>
<thead>
<tr>
<th>YEAR</th>
<th>% Based on 2007 Rate</th>
<th>% Based on Current Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>75%</td>
<td>25%</td>
</tr>
<tr>
<td>2009</td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td>2010</td>
<td>25%</td>
<td>75%</td>
</tr>
<tr>
<td>2011</td>
<td>0%</td>
<td>100%</td>
</tr>
</tbody>
</table>

*Only Applies to Procedures on the ASC List in 2007*
2009 Medicare Payment Overview

- The Reimbursement Rates for the 10 Highest Volume ASC Procedures DECREASED between 1% and 22%

- The Reimbursement Rates for 73% of ASC Payable Procedures INCREASED over the 2008 Rates

Example: CPT 25259 (Wrist Manipulation with Anesthesia) Increased 996%
<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lowest Payment</td>
<td>$333.00</td>
<td>$4.19</td>
<td>$3.97</td>
</tr>
<tr>
<td>Highest Payment</td>
<td>$1,339.00</td>
<td>$24,815.65</td>
<td>$27,024.22</td>
</tr>
<tr>
<td># of Procedures</td>
<td>2,571</td>
<td>3,390</td>
<td>3,403</td>
</tr>
</tbody>
</table>
Specialty Specific Implications

- Variability in Reimbursement Rates by Procedure Resulted in Significantly Different Impact by Specialty

- 3 Specialties Experienced Overall Decreases:
  - Gastroenterology
  - Pain Management / Neurology
  - Ophthalmology

- Other Specialties realized overall reimbursement increases of up to 19%
## Payment Changes
### Highest Volume ASC Procedures

<table>
<thead>
<tr>
<th>Specialty</th>
<th>CPT CODE</th>
<th>Description</th>
<th>2009 Rate</th>
<th>2008 Rate</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>OP</td>
<td>66984</td>
<td>Cataract surg. w/IOL, 1 stage</td>
<td>$965</td>
<td>$977</td>
<td>-1%</td>
</tr>
<tr>
<td>GI</td>
<td>43239</td>
<td>Upper gi endoscopy, biopsy</td>
<td>$392</td>
<td>$423</td>
<td>-7%</td>
</tr>
<tr>
<td>GI</td>
<td>45378</td>
<td>Diagnostic colonoscopy</td>
<td>$399</td>
<td>$426</td>
<td>-6%</td>
</tr>
<tr>
<td>OP</td>
<td>66821</td>
<td>After cataract laser surgery</td>
<td>$259</td>
<td>$288</td>
<td>-10%</td>
</tr>
<tr>
<td>GI</td>
<td>45380</td>
<td>Colonoscopy and biopsy</td>
<td>$399</td>
<td>$426</td>
<td>-6%</td>
</tr>
<tr>
<td>GI</td>
<td>45385</td>
<td>Lesion removal colonoscopy</td>
<td>$399</td>
<td>$426</td>
<td>-6%</td>
</tr>
<tr>
<td>PM</td>
<td>62311</td>
<td>Inject spine l/s (cd)</td>
<td>$307</td>
<td>$323</td>
<td>-5%</td>
</tr>
<tr>
<td>PM</td>
<td>64483</td>
<td>Inj. foramen epidural l/s</td>
<td>$307</td>
<td>$323</td>
<td>-5%</td>
</tr>
<tr>
<td>PM</td>
<td>64476</td>
<td>Inj. para vertebral l/s add-on</td>
<td>$213</td>
<td>$274</td>
<td>-22%</td>
</tr>
<tr>
<td>GI</td>
<td>45384</td>
<td>Lesion remove colonoscopy</td>
<td>$399</td>
<td>$426</td>
<td>-6%</td>
</tr>
</tbody>
</table>
Impact By Specialty
2009 Rates

ASC Association Analysis of 2009 Medicare ASC Payment Rates
Comparison to HOPD Rates

• Under Medicare’s Payment System, ASCs are paid a facility fee intended to cover the costs associated with providing surgical procedures.

• In general, ASCs are paid a portion of what HOPDs receive for the exact same services.

• For 2008, ASCs were paid only 63% of the amount HOPDs received.

• For 2009, ASCs will be paid only 59% of the comparable HOPD rate.
% of HOPD By Specialty
2009 Rates

ASC Association Analysis of 2008 & 2009 Medicare ASC Payment Rates
Annual Changes in Rates

Mandated by statute
Mechanism established by CMS
Unable to forecast actual amounts

Subject to 4 drivers of annual changes:

1. Transition rates
2. Annual inflation update (Begin 2010)
3. Relative weights
4. Due to changes in MD payment
Payment Calculation

**HOPD**

HOPD RELATIVE WEIGHT x
HOPD CONVERSION FACTOR = HOPD RATE

**ASC**

HOPD RELATIVE WEIGHT x
SECONDARY RESCALING FACTOR x
ASC CONVERSION FACTOR = ASC RATE
2010 Medicare ASC Payment

Timeline

• July 1, 2009: Rule Released
• July 20, 2009: Rule Published
• August 31, 2009: Comments Due
• November 2009: Final Rule Released
ASC Legislation

Ambulatory Surgical Center Access Act of 2009

Introduced in the US House of Representatives

HR 2049

by

Congressman Kendrick Meek

17th Congressional District of Florida
ASC Access Act

Stop Payment Cuts

• Would otherwise lower ASC payments to 52% the next two years

• Fix ASC Payments at 59% of HOPD

• Eliminate Secondary Rescaling

• Apply Hospital Market Basket Update
  – Equivalent to every other Medicare provider
ASC Access Act

Quality Reporting and Comparison

• Quality Data
  – Reporting data on same measures as HOPD
  – Web-based availability of data

• Cost Data
  – Comparisons of Medicare Payment and Beneficiary Co-payment
  – Web-based availability of data
ASC Access Act

• APC Panel Representation
  – Include at least one ASC Representative

• Ensuring Access To Same Day Services
  – CfC shall not prohibit ASCs from providing notice and providing services on the same day
Recommendations

• Shifting ASCs to the OPPS market basket, reflecting true inflation
• Eliminating second application of scaling to ASC relative weights
• Provide incentives for continued migration of services into ASCs to increase Medicare savings
  – For example, providing consumers comparable information on ASC and HOPD price & quality
CPI-U and Rescaler Will Further Erode ASC Rates

Appropriate relationship of ASC and HOPD payments

ASC Rate as % of HOPD Rate

2008  2009  2010  2011

54%  56%  58%  60%  62%  64%  66%

CPI-U

CPI-U + Rescaler
Shifting Cases to ASCs Saves 41%

2009 ASC Rates as % of HOPD Rates

Avg. = 59%

Source: ASC Association Analysis of 2009 Medicare ASC Payment Rates.
ASCs Have Same Drivers of Cost Inflation As Providers Paid Under “Market Basket”

CPI-U Is Inappropriate Measure Of Cost Inflation for ASCs

• ASCs are only facility providers that receive payment updates based on CPI-U rather than a market basket
  – CPI-U is measure of cost inflation for the overall US economy
  – ASC cost inflation is based on healthcare costs (eg, nurse wages, medical supply costs)
  – Hospital Market basket is much better proxy for ASC cost inflation
  – CPI-U is highly volatile

• CMS has statutory authority to use OPPS market basket instead of CPI-U to update ASC payment rates
“Rescaler” Further Exacerbates Rate Issue for ASCs

• Scaling ASC relative weights is not required by the statute
• Scaling ASC relative weights widens the gap between ASC and OPPS payments and reduces payments to ASCs without justification
• OPPS weights should be applied directly to ASC payments
Widening Rate Discrepancy Leading Some ASCs to Convert to HOPD

• Conversion to HOPD results in significant increase in Medicare’s payments for the same procedures
  – From 59% to 100% of HOPD rates (a 69% increase)

• Examples to be shared at meeting
Shift From Inpatient to Outpatient Has Slowed

Sources: AHA 2008 Trends Affecting Hospitals and Health Systems, Verispan Profiling Data.
ASC Growth Driven by Shift From HOPD

Recent KNG Health study: 70% of growth in ASCs from 2000 to 2007 is the result of moving procedures from HOPDs into the less expensive ASC setting

% of ASC Volume Growth Attributable to Shift from HOPD to ASC
~3% Growth 07-08 in Major Procedures is Consistent With Deceleration Trend

- Most of the 2008 increase in number of services came from addition of low- or no-cost codes on ASC claims
- Rate of growth among procedures on the 2007 list was 2.7% (spending growth for the same services was 3.5%)
* - In July 2001, Medicare expanded coverage for screening colonoscopies

Sources: AHA 2008 Trends Affecting Hospitals and Health Systems, Verispan Profiling Data.
ASCs and the HMMC

• ASC Supply Chain Overview
  – Unique Drivers
  – Procurement
  – Contracting
  – Purchasing
ASC Supply Chain Overview

• ASCs operate in a JIT “Just in Time” environment
  – Supplies in stock at an ASC are minimal due to lack of storage space
  – No large warehouse or central supply
  – Orders are placed frequently
  – JIT model requires suppliers to be quick and efficient in delivery of supplies
  – Suppliers must be able to sell in low units of measure
ASC Supply Chain Overview

• Variable procurement and supply contracting methods
  
  – Most do not have a dedicated materials manager
  – Many stand-alone surgery centers are not members of a GPO (or are unaware)
  – Almost all managed and /or hospital partnered surgery centers are members of a GPO
ASC Supply Chain Overview

– Purchasing systems at ASCs are rare

  – Low prevalence of electronic systems
  – Scheduling systems often do not interface with inventory management
  – The majority of ASCs are still calling and faxing orders into their suppliers
  – Integrated Delivery Network affiliated surgery centers (like AmSurg) are implementing web-based procurement systems that promote “one-stop shopping” of contracted items at their centers
ASC Advocacy Committee

• New super-charged representation of ASC industry
  – 6 Board members from the ASC Association
  – 6 Board members from the ASC Coalition

• Additional financial resources for Washington representation
  – Added lobbying strength
  – PR campaign
  – Additional analysis for individualized messaging
ASC Provisions in H.R. 3962
Affordable Health Care for America Act

• Merged version of 3 bills previously approved by:
  – House Energy and Commerce
  – Ways and Means
  – Education and Labor

• Cost estimates (CBO):
  – 894 Billion over 10 years
H.R. 3962 Global Provisions

• Public Insurance Option
  – Government would negotiate rates with health care providers
• Requirement for individuals to obtain health insurance coverage
• Provides subsidies for those unable to afford insurance
• Requirement for businesses to either offer insurance coverage or pay a fee
H.R. 3962 Global Provisions

• Numerous insurance reforms
  – Prohibitions on rescissions of coverage
  – Rating based on pre-existing conditions or health status
• Financed by surtax on “wealthiest Americans”
• No SGR (Sustainable Growth Rate)reforms
H.R. 3962 ASC Provisions

• Productivity Adjustment
  – Incorporates adjustment into the annual inflation update beginning in 2010
  – CBO has indicated that some annual provider payment updates overstate actual costs to providers, because they do not assume increases in provider productivity that could reduce the actual cost of providing services
  – This provision would reduce the annual ASC inflationary update by an unspecified amount
H.R. ASC Provisions

• Public Reporting of Healthcare-Associated Infections
  – Requirement for hospitals and ASCs to report information on healthcare–associated infections
  – Report to Centers for Disease Control and Prevention
  – Would be posted on HHS website to allow for a comparison among hospitals and ASCs
H.R. 3962 ASC Provisions

- Cost and Quality Reporting
  - Data to be submitted to CMS
  - Requires Secretary to develop a cost report for ASCs and require reporting when such report is developed (2011 or 2012 depending on text)
  - Requirement to submit quality data beginning in 2012 on data specified by Secretary
H.R. 3962 ASC Provisions

• Items excluded:
  1. Legislation drops item from House Energy & Commerce Committee that would have returned payment for specific pain management services to the historical grouper rates at the expense of all other ASC services
  2. The (Meek) “no cost” provisions of H.R. 2049
     1. Quality Reporting implementation
     2. ASC representation on the APC Advisory Panel
     3. Ensure ability of ASCs to provide same day scheduled procedures
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SHINING BRIGHT WITH
ASCs 2010
MAY 19-22, 2010 • ANAHEIM
WWW.ASCASSOCIATION.ORG/ASC2010
The ASC Market

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