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NEW CONDITIONS OF COVERAGE FOR AMBULATORY SURGICAL CENTERS

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The Medicare conditions of coverage for ambulatory surgical centers (“ASCs”) have been changed. See 42 CFR § 416. The new regulations become effective May 18, 2009. The new regulations affect governance, quality of care, patient privacy, patient rights and patient assessment and discharge. All participating ASCs should review and update policies and procedures accordingly.

Definition of Ambulatory Surgical Center: The definition of an ASC has been modified to limit services except to those “in which the expected duration of services would not exceed 24 hours following an admission.”

Governance: The ASC’s governing body has additional responsibilities to oversee quality and performance. The governing body “has oversight and accountability for the quality assessment and performance improvement program, ensures that the facility, policies and programs are administered so as to provide quality health care in a safe environment, and develops and maintains a disaster preparedness plan.” Thus, all participating ASCs in New Hampshire should have a compliant quality assurance committee that is maintained consistent with New Hampshire law to ensure confidentiality, a plan to improve quality and safety (see below) and a disaster preparedness plan. The disaster preparedness plan must specifically address the provision of emergency care to patients and staff in the event of fire, natural disaster, failure of equipment or other safety events. The disaster plan must be coordinated with the state and local authorities and the ASC must conduct periodic drills to test the plan’s effectiveness. Written evaluations of the drills must be maintained.

Discharge Planning: Upon discharge, the patient now must be evaluated by a physician “or by an anesthetist.”

Quality Assessment and Performance Improvement: There is a new standard which requires an ASC to develop, implement and maintain an “ongoing, data driven, quality assessment and performance improvement (“QAPI”) program.” The program must actually demonstrate measurable improvement in patient health outcomes and improvements in patient safety. The ASC has to measure and track quality indicators, adverse events, infection control and other aspects of performance. The most important aspect of this rule is its reliance on the creation, maintenance and analysis of data. Plus, the

ASC's governing body, pursuant to a plan, must collect the data, review the data and implement appropriate procedures as a result of the data indicators. See 42 CFR § 416.43.

Radiology Services: Section 416.49 has been revised to require that when an ASC obtains necessary radiological services to meet the needs of its patients, such services must meet the hospital conditions of participation for radiologic services as specified in 42 CFR § 482.26.

Patient Rights: Section 416.50 sets forth extensive new standards for protecting patient rights. These include providing notice to patients regarding patient rights, physician financial ownership interests, advance directives, grievance procedures, and policies against discrimination. More specifically, the ASC must provide the patient with information governing advance directives, including forms that the state might maintain for such directives. In New Hampshire, advance directive forms can be found at this website: <http://www.gencourt.state.nh.us/rsa/html/X/137-J/137-J-20.htm>. The ASC must also develop grievance procedures for dealing with patients' written or verbal complaints. The new regulations clarify an ASC's obligation to comply with HIPAA regulations and protect patient privacy.

Infection Control: ASCs must now maintain an infection control program that seeks to minimize infections and communicable diseases. The program must include documentation that the ASC has considered, selected and implemented nationally recognized infection control guidelines.

Patient Admission, Assessment and Discharge: The revised 42 CFR § 416.50 includes detailed requirements for a patient's admission and pre-surgical assessment, post-surgical assessment and discharge.

Each ASC must carefully review the changes in 42 CFR § 416 governing the ASC's conditions for participation in Medicare. There are a number of policies and procedures that must be considered, reviewed and adopted. The rules not only require certain new quality assurance and patient rights programs, but also require that such programs be monitored and implemented consistent with data obtained by the ASC.

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