



Electronic Mail

January 13, 2021

Ms. Susan Miller Dunkin
Department of Health & Social Services
Division of Health Care Services
4501 Business Park Blvd, Building L
Anchorage, AK 99503
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RE: Comment to Proposed Changes to Regulations for Ambulatory Surgical Centers

To Whom It May Concern,

On behalf of Alaska's hospitals, the Alaska State Hospital and Nursing Home Association ("ASHNHA") urges the State of Alaska to not adopt its proposed changes to regulations as they pertain to 7 AAC 12.910. The proposed changes to 7 AAC 12.910 are not necessary to "comply with federal regulations" and they erode a key tool for health, safety, and quality standards—i.e. transfer agreements—that ensure there is a coordinated plan in place between hospitals and ambulatory surgical centers ("ASCs") for emergencies that arise during surgery. This is bad public policy for Alaskans.

Proposed Changes to State Regulations

The Department of Health & Social Services proposes to change regulations for Ambulatory Surgical Center Requirements and Miscellany to "comply with federal regulations." While several changes are proposed, ASHNHA wishes to direct its comments to the revisions in 7 AAC 12.910.

The proposed changes to 7 AAC 12.910 eliminate a longstanding requirement that ambulatory surgical centers ("ASCs") have a "signed agreement with a general acute care hospital for transfer of patients who require medical or emergency care beyond the scope of the ability or license of the facility." 7 AAC 12.910(d). The proposed changes then replace the transfer agreement requirement with general notice about the ASC's operations and patient population served.

The rationale for this change is to "comply with federal regulations." In 2019, the Centers for Medicare and Medicaid Services ("CMS") adopted its final rule concerning requirements for ASCs. Despite certain public objections, CMS removed a federal requirement in 42 CFR 416.41(b) that ASCs must:

(i) Have a written transfer agreement with a hospital that meets the requirements of paragraph (b)(2) of this section; or

(ii) Ensure that all physicians performing surgery in the ASC have admitting privileges at a hospital that meets the requirements of paragraph (b)(2) of this section.

ASHNHA appreciates the State’s intent of following the federal government’s lead, but this is a matter of public policy where it makes sense to keep more stringent health, safety, and quality standards in place at the state level.

Maintaining Transfer Agreements Promotes Safety and Coordination During Emergencies

As we have all learned from the COVID-19 pandemic, proactive emergency planning and coordination are critical when crisis hits. Although rare, complications do occur during ambulatory surgical procedures, and when this happens, the patient’s life can depend on a coordinated transfer to a hospital for appropriate treatment. The transfer agreement is the emergency planning / coordination document for this situation, and the current regulatory framework in place with 7 AAC 12.910 ensures that plan is always in place, ready for crisis.

Some suggest that requirements from the Emergency Medical Treatment and Labor Act (“EMTALA”) render transfer agreements between hospitals and ASCs as unnecessary. This is not so. The requirement under EMTALA that hospitals receive, stabilize, and treat individuals in need of immediate emergency medical treatment is not a replacement for, or duplicative of, a transfer agreement that specifies protocols and coordination for how care teams from the hospital and ASC will work together during a surgical emergency.

Conclusion

On behalf of Alaska’s hospitals, ASHNHA urges the State of Alaska to not adopt its proposed changes to regulations as they pertain to 7 AAC 12.910. The proposed changes to 7 AAC 12.910 are not necessary to “comply with federal regulations” and they erode a key tool for health, safety, and quality standards—i.e. transfer agreements—that ensure there is a coordinated plan in place between hospitals and ASCs for emergencies that arise during surgery. This is bad public policy for Alaskans.

ASHNHA appreciates the State’s intent of following the federal government’s lead, but this is a matter of public policy where it makes sense to keep more stringent health, safety, and quality standards in place at the state level.

Thank you for your consideration.

Sincerely,



Jared C. Kosin, JD, MBA
President & CEO