

**TESTIMONY ON HB 2522
Physician Self-Referral Legislation**

Submitted by

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Secretary and Legislative Chairperson**

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**Pennsylvania House of Representatives
Insurance Committee**

Good Morning Mr. Chairman and Representatives of the House Insurance Committee,

My name is Monica Ziegler. I am the administrator of the Surgery Center of Lebanon, DBA – the Physicians Surgical Center, an ambulatory surgery center in the heart of PA. I am also the secretary of PASA and the chairperson of the Legislative Committee. Thank you for this opportunity to speak with you about Physician Owned Ambulatory Surgery Centers across Pennsylvania and the country and how we can be a part of the solution to cost efficient healthcare.

Due to time constraints, my focus will be on how ASCs have demonstrated their contributions to the Healthcare of the people of PA and the US in 3 very distinct areas.

Intro: Ambulatory surgery centers (ASCs) are health care facilities which offer patients the opportunity to have selected surgical and procedural services performed outside the hospital setting. Since their inception more than three decades ago, ASCs have demonstrated an exceptional ability to improve quality and customer service while simultaneously reducing costs. At a time when most developments in health care services and technology typically come with a higher price tag, ASCs stand out as an exception to the rule.

1. **Quality of Care:** ASCs have a focused business, providing surgery to patients that “walk in and walk out”. We have learned from the lessons of Peter Drucker in his research on “Search for Excellence” – know your specialty and do it well, ask the in put of the professionals involved; employ staff and afford them accountability for their actions. We promote limited wait times for patients, minimal infections, provide flexible scheduling, have minimal complications and have mastered the art and science of outpatient anesthesia with anesthesiologists that specialize in outpatient surgery induction and recovery. We provide care with state of the art technology & equipment and are accredited by: Dept of Health, Medicare, AAAHC or JCAHA or AAAAHC, Dept of Environmental Protection, DEA, and local agencies. Additionally many insurance companies also accredit many facilities prior to contracting with them. In many areas, ASCs are held to more stringent standards than traditional hospital settings.

Research demonstrates: ASCs consistently perform as well as, if not better than, HOPDs (Hospital Outpatient Departments) when quality and safety is examined. A recent study included an examination of the rates of inpatient hospital admission and death in elderly patients following common outpatient surgical procedures in HOPDs and ASCs. Rates of inpatient hospital admission and death were lower in freestanding ASCs as compared to HOPDs. Even after controlling for factors associated with higher-risk patients, ASCs had low adverse outcome rates.

Personal Testimony – “How do I know”:

- In our first year of operation, our ASC had 13 different inspections, passing them all.
- Outcome reporting shows a less than .01% infection rate, with only 2 known infections in nearly 5 years of operation.
- Nausea and Vomiting, a complication of anesthesia, was so low we had nothing statistically significant to measure.
- Patient satisfaction scores consistently run near 90% monthly, with a survey return rate consistently over 50%.
- Nurses, specializing in OR and outpatient care provide care to the patients.

2. **Cost Efficiency:** Not only are ASCs focused on ensuring patients have the best surgical experience possible, the care they provide is also more affordable. [We excel at providing efficacy and efficiency of care – doing the right thing in an cost efficient/timely manner.] One of the reasons ASCs have been so successful is that they offer valuable surgical and procedural services at a lower cost when compared to hospital charges for the same services. Beginning in 2007, Medicare payments to ASCs were lower than or equal to Medicare payments to HOPDs for comparable services for 100 percent of procedures.

Fact: As of 2008, Medicare paid ASCs only 63% of what HOPDs received for providing the exact same services. For 2009, it was estimated that ASC were reimbursed only 59% of HOPD reimbursement for the same services.

Additionally, patients typically pay less coinsurance for procedures performed in an ASC than for comparable procedures in the hospital setting. For example, a Medicare beneficiary could pay as much as \$496 in coinsurance for a cataract extraction procedure performed in a HOPD, whereas that same beneficiary's copayment in the ASC would be only \$195. By having surgery in the ASC the patient may save as much as 61%, or more than \$300, compared to their out-of pocket co-insurance for the same procedure in the hospital.

Administrators, physicians and staff will tell you that efficiency in delivery processes facilitate our ability to provide cost efficient care. We provide flexibility of scheduling and our room turnover averages less than 5 minutes compared to hospital turnovers of 30-45 minutes. Supplies are either necessary or eliminated; prices are negotiated constantly with suppliers. Facility size matches need - to manage overhead costs.

What does this mean to you as legislators?

If hospitals generated \$12,000,000,000 in revenue from HOPD procedures on medicare and medical assistant patients in PA, in a year – performing those same procedures in an ASC would have saved almost \$5,000,000,000.

3. Thus, the last and most critical point – **ACCESS to Care for all patients – including the indigent patients. (Despite the controversy “on the streets”, we/ASCs do take care of Medicare and Medical Assistance patients, those with special low paying or capped insurances; we care for self-pay patients and offer them a significant discount; we write off co-pays of those on the poverty scales and at our center we participate in a program called Mission Cataract, where every year we provide free cataract surgery to those in need in surrounding areas.)**

In this informational era, where patients are informed and given choices and are encouraged to participate in their care, **ASCs are allowing patients to have procedures in a timely manner that are convenient and affordable with quality outcomes.** The self-referral act as written has the opposite affect, it will **DENY** patients access to the best in **QUALITY AND EFFICIENCY, AND AFFORDABILITY** for outpatient services. **I believe that PA should be a leader in promoting access to affordable, quality care for all.**

We should join ranks with the rest of the country in promoting transparency of costs so that informed patients can make individual choices. We should also be leading the efforts to allow more procedures on the Medicare list to be approved for ASCs - recognizing the efficiency of lesser costs to payors and patients by expansion of the approved list. Just as there are **NO OTHER states in the US that prohibit physician ownership/referral to ASCs in which they are invested,** it is time for PA to promote opportunities for all, patients and providers.

It is the goal of every ASC: to provide patients with excellent care at reasonable prices; to create an environment that allows for nearly 100% patient satisfaction each and every visit; to minimize wait times for patients and allow for equal access to care; and, to improve the quality of life of physicians, thus, supporting Pennsylvania's retention and recruitment of quality physicians.

We believe that ASCs are one of the key solutions to healthcare reform, allowing all persons access to quality, affordable healthcare.

Thank you for this opportunity to address your committee.

Respectfully Submitted,

Monica M. Ziegler, RN, BSN, MSN, CASC
Administrator, Physicians Surgical Center

Ambulatory Surgery Centers

A POSITIVE TREND IN HEALTH CARE

Ambulatory surgery centers (ASCs) are health care facilities which offer patients the opportunity to have selected surgical and procedural services performed outside the hospital setting. Since their inception more than three decades ago, ASCs have demonstrated an exceptional ability to improve quality and customer service while simultaneously reducing costs. At a time when most developments in health care services and technology typically come with a higher price tag, ASCs stand out as an exception to the rule.

A PROGRESSIVE MODEL FOR SURGICAL SERVICES

As our nation struggles with how to improve a troubled health care system, the experience of ASCs is a rare example of a successful transformation in health care delivery.

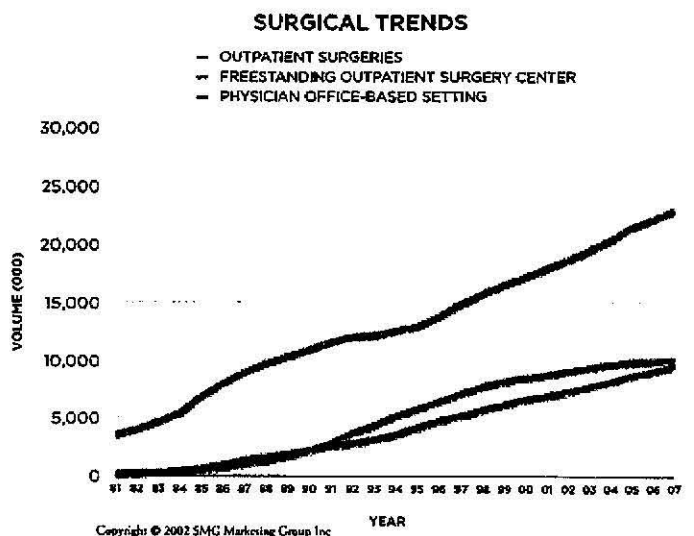
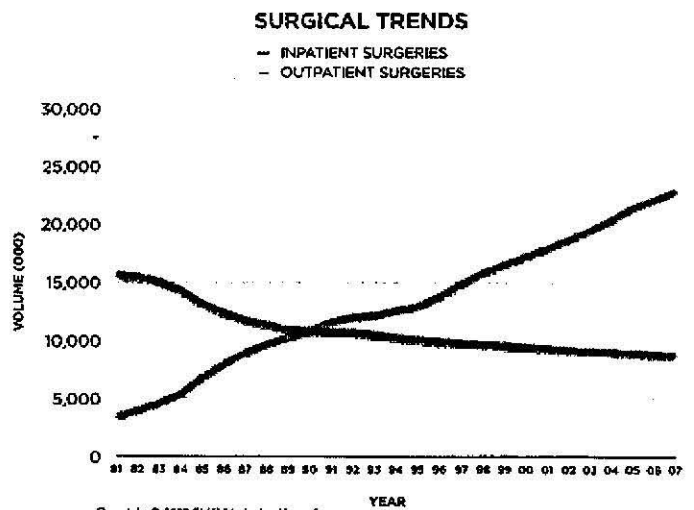
Thirty years ago, virtually all surgery was performed in hospitals. Waits of weeks or months for an appointment were not uncommon, and patients typically spent several days in the hospital and several weeks out of work in recovery. In many countries, surgery is still like this today, but not in the United States.

Physicians have led the development of ASCs. The first facility was opened in 1970 by two physicians who saw an opportunity to establish a high-quality, cost-effective alternative to inpatient hospital care for surgical services. Faced with frustrations like scheduling delays, limited operating room availability, and challenges in obtaining new equipment due to hospital budgets and policies, physicians were looking for a better way - and developed it in ASCs.

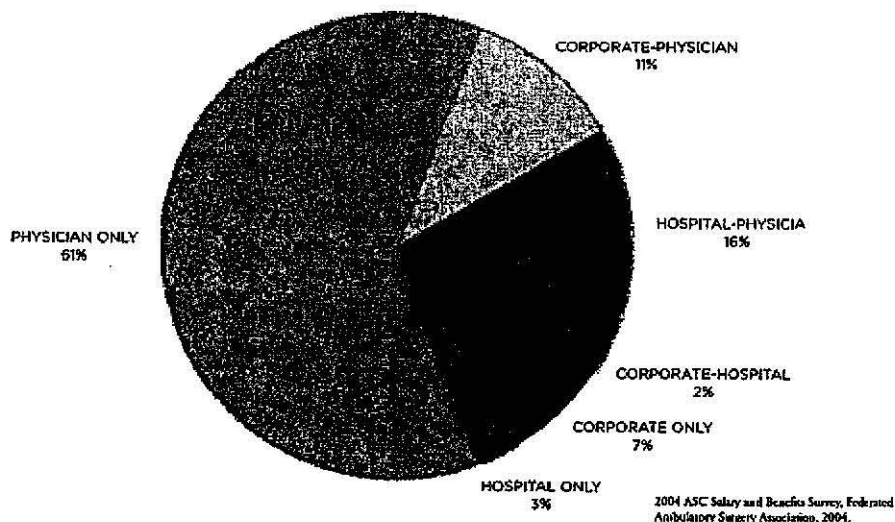
Physicians continue to provide the impetus for the development of new ASCs. By operating in ASCs instead of hospitals, physicians gain the opportunity to have more direct control over their surgical practices.¹ In the ASC setting, physicians are able to schedule procedures more conveniently, assemble teams of specially-trained and highly skilled staff, ensure the equipment and supplies being used are best suited to their technique, and design facilities tailored to their specialties. Simply stated, physicians are striving for, and have found in ASCs, the professional autonomy over their work environment and over the quality of care that has not been available to them in hospitals. These benefits explain why physicians who do not have ownership interest in ASCs (and therefore do not benefit financially from performing procedures in an ASC) choose to work in ASCs in such high numbers.

Given the history of their involvement with making ASCs a reality, it is not surprising physicians continue to have ownership in virtually all (90%) ASCs. But what is more interesting to

note is how many ASCs are jointly owned by local hospitals that now increasingly recognize and embrace the value of the ASC model. According to the most recent data available, hospitals have ownership interest in 21% of all ASCs; 3% are owned entirely by hospitals.²



ASC OWNERSHIP STRUCTURE



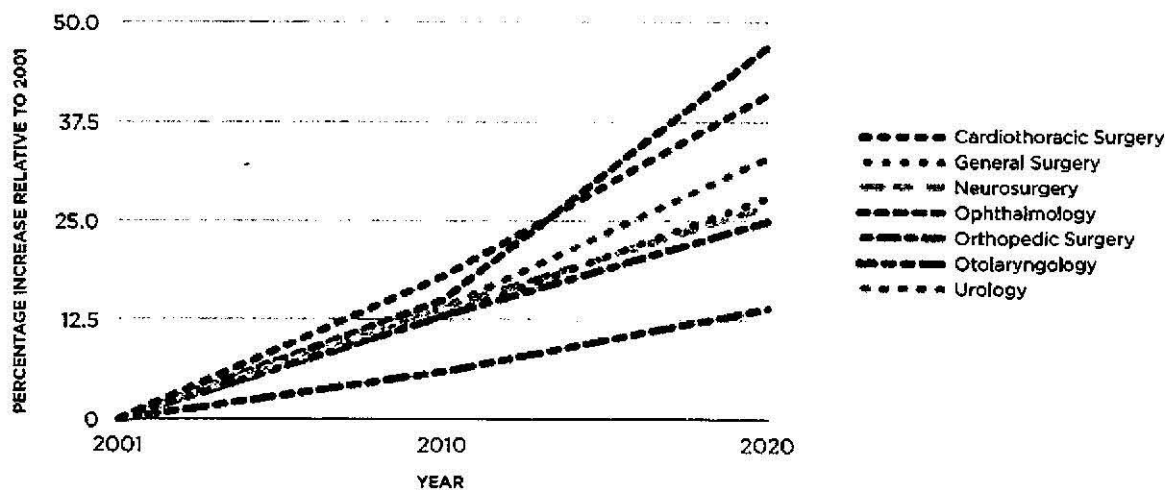
ASCs ALLOW PHYSICIANS TO WORK EFFICIENTLY

A recent analysis examined the impact of the aging population on the demand for surgical procedures and attendant need for surgical subspecialists. This study concluded that the aging population would be a major force in driving significant growth in the demand for surgical services. The forecasted growth in work by the year 2020 varied from 14 percent to 47 percent, depending on specialty.⁷ Meeting these surgical needs will be a challenge. Solutions include increasing the number of surgical

residency positions, increasing the workloads of surgeons in the workforce, and improving the efficiency of surgeons.

Utilizing settings that allow physicians to practice efficiently will help mitigate the impact of the aging population on the anticipated shortage in the surgery workforce. ASCs offer physicians the ability to work more efficiently and are therefore uniquely positioned to play an important role in managing the increased need for surgical services as it arises in the years ahead.

FORECASTED DEMAND GROWTH IN THE NUMBER OF PROCEDURES BY SPECIALTY



Enzoni DA, Liu JH, Miggard MA, Ko CY. The aging population and its impact on the surgery workforce. *Ann Surg.* 2005 Aug;238(2):170-7.

ASCs ARE HIGHLY REGULATED TO ENSURE QUALITY AND SAFETY

Health care facilities in the United States are highly regulated by federal and state entities. ASCs are not excluded from this oversight.

The safety and quality of care offered in ASCs is evaluated by independent observers through three processes: state licensure, Medicare certification and voluntary accreditation.

Most states require ASCs to be licensed in order to operate. Each state determines the specific requirements ASCs must meet for licensure. Most state licensure programs require rigorous initial and ongoing inspection and reporting.

All ASCs serving Medicare beneficiaries must be certified by the Medicare program. In order to be certified, an ASC must comply with standards developed by the federal government for the specific purpose of ensuring the safety of the patient and the quality of the facility, physicians, staff, services and management of the ASC. The ASC must demonstrate compliance with these Medicare standards initially and on an ongoing basis.

In addition to state and federal inspections, many ASCs choose to go through voluntary accreditation by an independent accrediting organization. Accrediting organizations for ASCs include the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Accreditation Association for Ambulatory Health Care (AAAHC), the American Association for the Accreditation of Ambulatory Surgery Facilities (AAAASF) and the American Osteopathic Association (AOA). ASCs must meet specific standards during on-site inspections by these organizations in order to be accredited. All accrediting organizations require an ASC to engage in external benchmarking, which allows the facility to compare its performance to the performance of other ASCs.

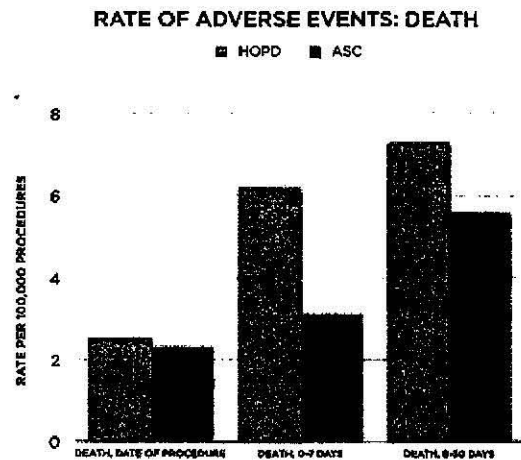
In addition to requiring certification in order to participate in the Medicare program, federal regulations also limit the scope of surgical procedures reimbursed in ASCs.⁵ Generally, services are limited to elective procedures with short anesthesia and operating times not requiring an overnight stay. These limitations do not apply to hospital outpatient departments (HOPDs).⁶

The federal government views ASCs and HOPDs as distinct types of providers. As a result, the federal regulations governing HOPDs and ASCs differ. Another reason for differing regulations is that, in a hospital, the same operating room may be used interchangeably to provide services to both inpatients and outpatients. For example, a procedure room in the HOPD may be used to perform a service for an inpatient and then used to perform the same procedure for

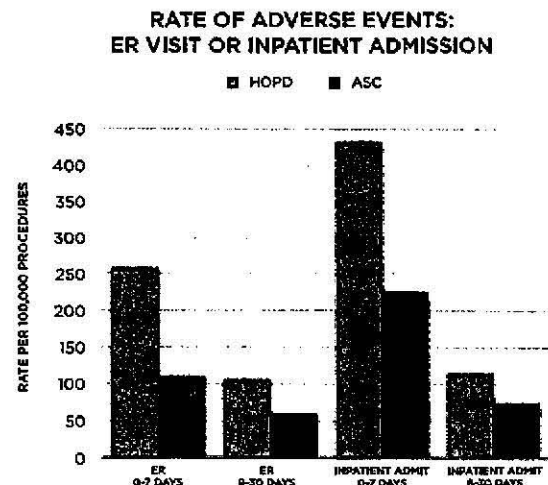
an ambulatory patient who is discharged home immediately thereafter. In other words, ambulatory patients seen on an outpatient basis in an HOPD may utilize exactly the same facilities used to provide services to patients who have been admitted to the hospital. Consequently, the inpatient standards for hospitals are applied to HOPDs.⁷

On the other hand, ASCs provide services in facilities specifically designed to perform selected outpatient surgical services. The different requirements developed by the federal government appropriately reflect the fundamental differences in the hospital setting versus the ASC.⁸

ASCs consistently perform as well as, if not better than, HOPDs when quality and safety is examined. A recent study⁹ included an examination of the rates of inpatient hospital admission and death in elderly patients following common outpatient surgical procedures in HOPDs and ASCs. Rates of inpatient hospital admission and death were lower in freestanding ASCs as compared to HOPDs. Even after controlling for factors associated with higher-risk patients, ASCs had low adverse outcome rates.



Fleisher LA, Pasternak LR, Herbert R, Anderson GE. Inpatient hospital admission and death after outpatient surgery in elderly patients: importance of patient and system characteristics and location of care. *Arch Surg.* 2004; Jan;139(1):67-72.



Fleisher LA, Pasternak LR, Herbert R, Anderson GE. Inpatient hospital admission and death after outpatient surgery in elderly patients: importance of patient and system characteristics and location of care. *Arch Surg.* 2004; Jan;139(1):67-72.

SPECIFIC FEDERAL REQUIREMENTS GOVERNING ASCS

In order to participate in the Medicare program, ASCs are required to meet certain conditions set by the federal government designed to ensure the facility is operated in a manner that ensures the safety of patients and the quality of services. Some of these requirements are highlighted in more detail below.

ASCs are required to maintain complete, comprehensive and accurate medical records. The content of these records must include a medical history and physical examination relevant to the reason for the surgery and the type of anesthesia planned. In addition, a physician must examine the patient immediately before surgery to evaluate the risk of anesthesia and the procedure to be performed. Prior to discharge each patient must be evaluated by a physician for proper anesthesia recovery.

CMS requires ASCs to ensure patients do not acquire infections during their care at these facilities. ASCs must establish a program for identifying and preventing infections, maintaining a sanitary environment, and reporting outcomes to appropriate authorities. The program must be one of active surveillance and include specific procedures for prevention, early detection, control, and investigation of infectious and communicable diseases in accordance with the recommendations of the Centers for Disease Control. In fact, ASCs have historically had very low infection rates.¹⁰

A registered nurse trained in the use of emergency equipment and in cardiopulmonary resuscitation must be available whenever a patient is in the ASC. To further protect patient safety, ASCs are also required to have an effective means of transferring patients to a hospital for additional care in the event an emergency occurs. Written guidelines outlining arrangements for ambulance services and transfer of medical information are mandatory. An ASC must have a written transfer agreement with a local hospital, or all physicians performing surgery in the ASC must have admitting privileges at the designated hospital. Although these safeguards are in place, hospital admissions as a result of complications following ambulatory surgery are rare.^{9,11}

Continuous quality improvement is an important means of assuring patients are receiving the best care possible. ASCs are required to implement and monitor policies that ensure the facility provides quality health care in a safe environment. An ASC, with the active participation of the medical staff, is required to conduct an ongoing, comprehensive assessment of the quality of care provided.

The excellent outcomes associated with ambulatory surgery reflect the commitment that the ASC industry has made to quality and safety. One of the many reasons that ASCs continue to be so successful with patients, physicians and insurers is their keen focus on ensuring the quality of the services provided.

Medicare Requirements for ASCs and Hospitals Are The Same Where Services are Comparable

Required Standards	ASC	Hospital
Compliance with state licensure law	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Governing body	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Surgical services	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Evaluation of quality	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Environment	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Medical staff	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Nursing services	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Medical records	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Pharmaceutical services	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Laboratory services	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Radiologic services	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Source: 42 CFR 416, 42 CFR 482

THE ASC INDUSTRY IS COMMITTED TO REPORTING QUALITY MEASURES

A fundamental change in the way the government assures the quality of health care services is well underway. The Department of Health and Human Services has launched its Quality Initiative to assure quality health care through accountability and public disclosure.

The ASC industry is excited to have the opportunity to make its excellent outcomes more widely known to the public through this initiative. Leaders from the ASC industry, along with associations and related organizations with a focus on health care quality and safety, have come together in a collaborative effort to identify specific measures for quality appropriate to ASCs. This group, the ASC Quality Collaboration, strongly endorses the vision that measures of quality which are appropriate to ASCs should be congruent with measures utilized for other outpatient surgery settings. The continued development of these measures will involve a number of different stakeholders including ASC clinical and administrative leaders, health policy researchers, CMS and other key federal and state governmental agencies. The group will also work with the National Quality Forum to achieve consensus on the proposed quality measures.

PATIENT SATISFACTION

Patient satisfaction is a hallmark of the ASC industry. This year, more than eight million Americans will undergo surgery in an ASC. Virtually all of those patients will return home the same day and will resume most normal activities within a matter of days. Talk to these patients and you will hear how overwhelmingly satisfied they are with their ASC experience. Recent surveys show average patient satisfaction levels in ASCs exceeding 90 percent.⁴ Safe and high quality services, ease of scheduling, greater personal attention and lower costs are among the main reasons cited for the growing popularity of ASCs as a place for having surgery.

ASCs PROVIDE CARE AT SIGNIFICANT COST SAVINGS

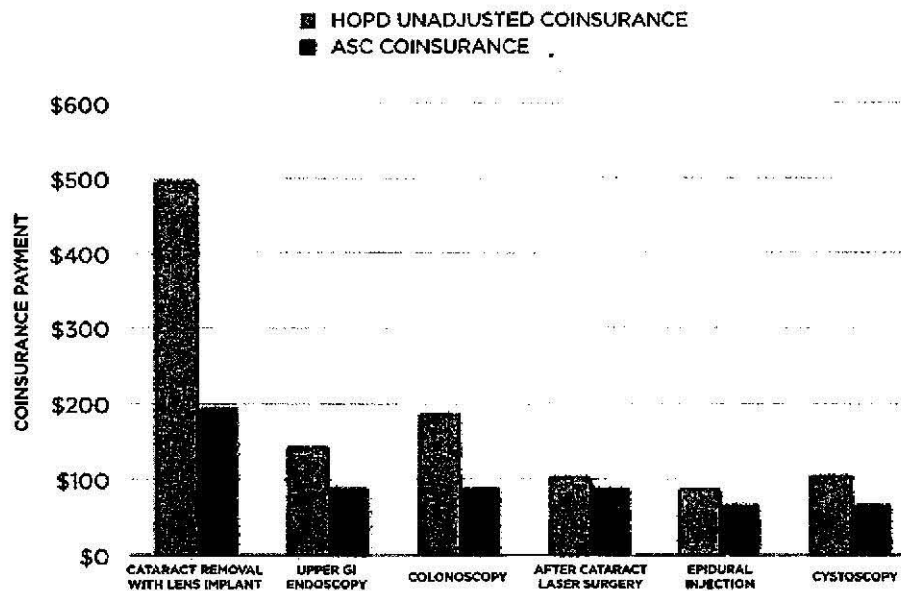
Not only are ASCs focused on ensuring patients have the best surgical experience possible, the care they provide is also more affordable. One of the reasons ASCs have been so successful is they offer valuable surgical and procedural services at a lower cost when compared to hospital charges for the same services. Beginning in 2007, Medicare payments to ASCs will be lower than or equal to Medicare payments to HOPDs for comparable services for 100 percent of procedures.¹²

In addition, patients typically pay less coinsurance for procedures performed in the ASC than for comparable procedures in the hospital setting. For example, a Medicare beneficiary could pay as much as \$496 in coinsurance for a cataract extraction procedure performed in a HOPD, whereas that same beneficiary's copayment in the ASC would be only \$195; a Medicare beneficiary could pay as much as \$186 in coinsurance for a colonoscopy performed in a HOPD, whereas that same beneficiary's copayment for the same procedure performed in an ASC would be only

\$89. By having surgery in the ASC the patient may save as much as 61%, or more than \$300, compared to their out-of-pocket coinsurance for the same procedure in the hospital.

Without the emergence of ASCs as an option for care, health care expenditures would have been billions of dollars higher over the past three decades. Studies have shown the Medicare program would pay approximately \$464 million more per year if all procedures performed in an ASC were instead furnished at a hospital.¹³ Private insurance companies tend to save similarly, which means employers also incur lower health care costs by utilizing ASC services. Employers and insurers, particularly managed care entities, are driving ASC growth in many areas, because they recognize ASCs are able to deliver consistent, high quality outcomes at a significant savings. As the number of surgical procedures performed in ASCs grows, the Medicare program may realize even greater savings - and of course Medicare beneficiaries will realize additional out-of-pocket savings as well.¹³

MEDICARE COINSURANCE RATES ARE LOWER IN ASCS



MedPAC, Report to the Congress: Medicare Payment Policy, March 2004.

THE ASC INDUSTRY SUPPORTS DISCLOSURE OF PRICING INFORMATION

It is the general practice of ASCs to make pricing information available to the patient in advance of surgery. The industry is eager to make price transparency a reality, not only for Medicare beneficiaries, but for all patients. To offer maximum benefit to the consumer, these disclosures

should outline the total price of the planned surgical procedure and the specific portion for which the patient would be responsible. This will empower health care consumers as they evaluate and compare costs for the same service amongst various health care providers.

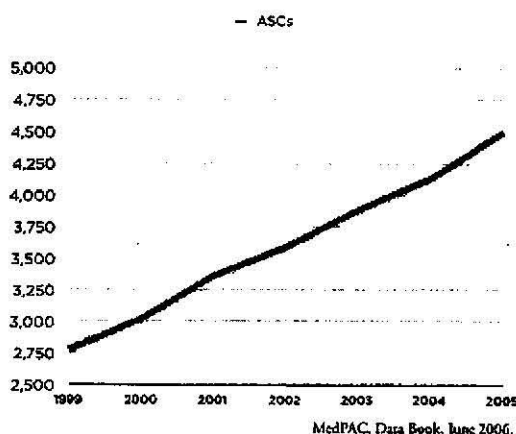
ASCs IMPROVE PATIENT CHOICE, DEMAND FOR ASCs GROWS

Technological advancement has allowed a growing range of procedures to be performed safely on an outpatient basis. Faster acting and more effective anesthetics and less invasive techniques, such as arthroscopy, have driven this outpatient migration. Procedures that only a few years ago required major incisions, long-acting anesthetics and extended convalescence can now be performed through closed techniques utilizing short-acting anesthetics, and with minimal recovery time. As medical innovation continues to advance, more and more procedures will be able to be performed safely in the outpatient setting.

The number of ASCs continues to grow in response to demand from the key participants in surgical care – patients, physicians and insurers. This demand has been made possible by technology, but has been driven by high levels of patient satisfaction, efficient physician practice, high levels of quality and the cost savings that have benefited all. The number of Medicare certified ASCs has grown from 2786 in 1999 to 4506 in 2005, with an average annual growth rate of 8.3%.¹⁴

Further impetus to future ASC growth has been given by MedPAC, which has recommended that the CMS list of approved ASC procedures be expanded. This would

NUMBER OF MEDICARE-CERTIFIED ASCs



allow a broader range of choice for patients and surgeons. Specifically, MedPAC has recommended the procedures approved for the ASC setting be revised so that ASCs can receive payment for any surgical procedure, with the exception of those surgeries requiring an overnight stay or which pose a significant safety risk when furnished in an ASC.⁸ Adoption of these recommendations would allow Medicare beneficiaries to access an extended range of surgical services – a range of surgical services which is already available to patients with private insurance.¹⁵

ASCs WILL CONTINUE TO LEAD INNOVATION IN OUTPATIENT SURGICAL CARE

As leaders of the revolution in surgical care who led to the establishment of affordable and safe outpatient surgery, the ASC industry has shown itself to be ahead of the curve in identifying promising avenues for improving the delivery of health care.

With a solid track record of performance in stakeholder satisfaction, safety, quality and cost management, the ASC industry is already embracing the changes that will allow it to continue to play a leading role in raising the standards of performance in the delivery of outpatient surgical services.

As always, the ASC industry welcomes any opportunity to clarify the services it offers, the regulations and standards governing its operations, and the ways in which it ensures safe, high-quality care for patients.

POLICY CONSIDERATIONS

Given the continued fiscal challenges posed by administering health care programs, policy makers and regulators should continue to focus on fostering innovative methods of health care delivery that offer safe, high-quality care so progressive changes in the nation's health care system can be implemented.

Support should be reserved for those policies that promote the utilization of sites of service providing more affordable care while maintaining high quality and safety standards. In light of the many benefits ASCs have brought to the nation's health care system, it will be important for future payment and coverage policies to continue to strengthen access to and utilization of ASCs.

