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Medicare Certification Survey Series: Admission and Pre-surgical Assessments

In order to receive Medicare payment for surgical services furnished to program beneficiaries, an ambulatory surgical center (ASC) must meet certain requirements referred to as Conditions for Coverage and set forth at 42 C.F.R. 416, Subparts A through C (CfCs). Certification of an ASC's compliance with the CfCs is accomplished through observations, interviews, and document and record reviews during on-site surveys. The survey process focuses on an ASC's delivery of patient care, including its organizational functions and processes for the provision of care.

This alert is the first in a series designed to assist WASCA members to increase compliance with the CfCs and to improve performance on their Medicare certification surveys. This alert addresses the standards set forth at 42 C.F.R. § 416.52(a) regarding admission and pre-surgical assessments.

Comprehensive Medical History and Physical Assessments

The CfCs set forth requirements regarding patient admission and pre-surgical assessments, including comprehensive medical history and physical assessments (H&P). Specifically, 42 C.F.R. § 416.52(a)(1) states:

[N]ot more than 30 days before the date of the scheduled surgery, each patient must have a comprehensive medical history and physical assessment completed by a physician or other qualified practitioner in accordance with applicable State health and safety laws, standards of practice, and ASC policy.

The purpose of an H&P is to determine (1) whether there is anything in a patient's overall condition that would affect the planned surgery, or (2) whether there is a new or existing co-morbid condition that would require additional interventions to reduce risk to the patient or that indicates that an ASC setting might not be appropriate. An H&P must be comprehensive and is required regardless of the type of surgery. The H&P must specifically indicate whether the patient is cleared for surgery in an ASC setting.

The H&P must be completed and documented no more than 30 calendar days prior to the date the patient is scheduled for surgery in the ASC.

- *Two Surgeries within a Short Period of Time.* In cases where the patient is scheduled for two surgeries in the ASC within a short period of time, the same H&P may be used so long as it is completed no more than 30 calendar days before each surgery.
- *Same Day Surgery.* The H&P is still required where the patient is referred to the ASC for surgery on the same day as the referral. The H&P may be performed by the referring physician, if permitted by the ASC's policies, or by other qualified personnel in the ASC.

The H&P may be performed in the ASC, so long as it is comprehensive and conducted by qualified personnel and the results are placed in the patient's medical record prior to the surgical procedure. CMS has indicated that it is not acceptable to conduct the H&P after the patient has been prepped and brought into the operating room.

CMS notes that, in the case of an ASC, the H&P is typically completed by the patient's primary care practitioner rather than a member of the ASC's medical staff. CMS indicates that the ASC's policy on H&Ps should address submission of an H&P prior to the patient's scheduled surgery date by a physician who is not a member of the ASC's medical staff and should indicate whether the ASC will accept H&Ps performed by a qualified licensed individual who does not practice at the ASC but is acting within his or her scope of practice.

Survey Procedures

According to CMS, the survey team will do the following to assess compliance with 42 C.F.R. § 416.52(a)(1):

- Determine whether the ASC has a policy requiring that an H&P be performed for each patient no more than 30 days before each patient's scheduled surgery by a physician or other qualified licensed individual in accordance with state law and the ASC's policy.
- Determine whether the ASC's policy addresses who may perform the H&P (and, if it permits acceptance of H&Ps by qualified licensed individuals who are not physicians, determine whether the policy is consistent with the state's scope of practice laws and regulations).
- Review a sample of open and closed medical records to verify that:
 - There is an H&P that was completed no more than 30 days before the patient's surgery date;
 - For H&Ps performed in the ASC on the day of the surgery, the H&P is comprehensive and performed prior to the patient's being moved into the operating room; and
 - The H&P was performed by a physician or other qualified licensed individual authorized in accordance with state law, standards of practice, and the ASC's policy.

Pre-surgical Assessments

The CfCs set forth requirements regarding pre-surgical assessments. Specifically, 42 C.F.R. § 416.52(a)(2) states:

Upon admission, each patient must have a pre-surgical assessment completed by a physician or other qualified practitioner in accordance

with applicable State health and safety laws, standards of practice, and ASC policy that includes, at a minimum, an updated medical record entry documenting an examination for any changes in the patient's condition since completion of the most recently documented medical history and physical assessment, including documentation of any allergies to drugs and biologicals.

Each patient upon admission to the ASC must have a pre-surgical assessment. The requirement for a physician to examine the patient immediately before surgery to evaluate the risk of the anesthesia and of the procedure for that patient is one component of the requirement at 42 C.F.R. § 416.52(a)(2). This component must be conducted by a physician immediately prior to surgery. Other elements of the assessment may be conducted by a licensed practitioner who is credentialed and privileged by the ASC to perform an H&P. In all cases, the update must take place prior to the surgery.

If the H&P is performed on the day of the surgical procedure in the ASC, some, but not all, elements of the pre-surgical assessment may be incorporated into the H&P. However, the assessment of the patient's risk for anesthesia and the procedure must be conducted separately, by a physician and immediately prior to surgery.

As part of the pre-surgical assessment, the patient must be assessed for any changes in his or her condition since the patient's H&P was performed that might be significant for the planned surgery. In addition, the pre-surgical assessment must identify and document any allergies the patient may have to drugs and biologicals, or indicate that the patient has no known allergies to drugs and biologicals. Further, if the practitioner finds that the H&P done before admission is incomplete, inaccurate or otherwise unacceptable, the practitioner reviewing the H&P, examining the patient, and completing the update may disregard the existing H&P and conduct and document in the medical record a new H&P prior to the surgery.

The patient's medical record must include documentation that the patient was examined prior to the commencement of surgery for changes since the H&P.

If, upon examination, the licensed practitioner finds no change in the patient's condition since the H&P was completed, he or she may indicate in the patient's medical record that the H&P was reviewed, the patient was examined, and that "no change" has occurred in the patient's condition since the H&P

was completed. Likewise, any changes in the patient's condition must be documented by the practitioner in the update note prior to the start of surgery.

Survey Procedures

According to CMS, the survey team will do the following to assess compliance with 42 C.F.R. § 416.52(a)(2):

- Determine whether the ASC's policies require a pre-surgical assessment for all patients to update the findings of the H&P performed prior to the date of surgery.
- In the sample of medical records selected for review, verify that an updated medical record entry documenting an examination for any changes in the patient's condition was completed prior to the surgery.
- Verify that a physician performs those components of the pre-surgical assessment related to evaluation of anesthetic risk and procedural risk.
- Verify that the pre-surgical assessment includes documentation in the medical record of the patient's allergies or lack of known allergies to drugs and biologicals.

Conclusion

In preparation for your ASC's survey, it is important to review your policies related to H&Ps and pre-surgical assessment to ensure these policies are consistent with the standards set forth in 42 C.F.R. § 416.52(a). Similarly, it is important to ensure your ASC medical records, whether written or electronic, reflect compliance with these standards.

This alert has been prepared by Emily R. Studebaker of Garvey Schubert Barer. It is not a substitute for legal advice or individual analysis of a particular legal matter. Transmission and receipt of this alert does not create an attorney-client relationship.