



Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-09-51

DATE: August 14, 2009

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Clarification of Ambulatory Surgical Center (ASC) Interpretive Guidelines

Memorandum Summary

We are clarifying the ASC interpretive guidelines to indicate that an ASC and an Independent Diagnostic Testing Facility (IDTF) may not share space, even when temporally separated.

S&C-09-37, dated May 15, 2009, released an advance copy of revised State Operations Manual (SOM) Appendix L, interpretive guidelines for ASCs. We are taking this opportunity to clarify one element of the guidance.

ASCs and IDTFs may not share space under any circumstances. In the guidance for the ASC definition found at 42 CFR 416.2 we discussed the fact that some facilities are equipped to perform both ambulatory surgeries and diagnostic imaging. We also indicated that the ASC definition requires an ASC to operate exclusively for the purpose of providing surgical services. We then indicated, consistent with guidance previously issued in S&C-03-22, dated June 12, 2003, that an ASC and a Medicare-participating Independent Diagnostic Testing Facility (IDTF) could share the same space, so long as their operations were temporally separated. However, IDTF regulations at 42 CFR 410.33(g)(15), adopted on November 27, 2007 and effective January 1, 2008, prohibit IDTFs that are not hospital-based or mobile from sharing a practice location with another Medicare-enrolled individual or organization. In the preamble to this final rule CMS stated, “In this final rule with comment period, we are prohibiting the leasing or subleasing of an IDTF practice location, as well as diagnostic equipment that are used in taking the initial diagnostic test. In addition, we are prohibiting leasing and subleasing to a third party.” (72 FR 66290, November, 27, 2007) As a result, ASCs may *not* share space, even when temporally separated, with a Medicare-participating IDTF. A corrected version of the interpretive guidelines will appear in both the on-line SOM and in ASPEN as follows:

- ***“Facilities with Diagnostic Imaging and Surgery Capability:*** *Some facilities are equipped to perform both ambulatory surgeries and diagnostic imaging. However, Medicare regulations do not recognize a non-hospital institutional healthcare entity that performs both types of services, and actually requires an ASC to operate exclusively for the purpose of providing surgical services. Further, the Medicare Independent Diagnostic Testing Facility (IDTF) payment regulations at 42 CFR 410.33(g) prohibit IDTFs that are not hospital-based or mobile from sharing a practice location with another Medicare-enrolled individual or organization. As a result, ASCs may not share space, even when temporally separated, with a Medicare-participating IDTF.*

NOTE: Certain radiology services that are reasonable and necessary and integral to surgical procedures may be provided by an ASC.”

ASPEN Organization/Enforcement: The ASC tags are organized within ASPEN such that the definition at 42 CFR 416.2 is categorized as a standard (Q-0002), and 42 CFR 416.25, Basic Requirements, is the associated “condition” (Q-0001). In accordance with §416.25, a facility may not participate in Medicare as an ASC unless it meets the definition of an ASC and has in effect a (supplier) agreement. Generally a failure to satisfy all elements of the definition of an ASC warrants citation at the condition level, but this is not always the case. For example, if an ASC complies with all other elements of the ASC definition but has permitted concurrent use by an adjacent physician’s office or clinic of common administrative space, such as a waiting room, this would constitute a standard-level violation.

IDTF Enforcement: IDTFs are not subject to review or enforcement by SAs. If an SA identifies through survey of an ASC an IDTF that is co-located with an ASC, the name and location of that IDTF and any pertinent information from the survey is to be forwarded to the CMS Regional Office. Regional Offices will share this information with CMS Central Office, which will route it to the proper component for follow-up.

Effective Date: Immediately. Please ensure that all appropriate staff are fully informed within 30 days of the date of this memorandum.

Training: This policy should be shared with all survey and certification staff, and their managers.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management