

HEALTH LAW

Update

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

And Your ASC Survey Says....

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On July 30, 2009, the Department of Health and Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS) announced their plans to utilize funds made available by the American Recovery and Reinvestment Act of 2009 (ARRA) to expand and improve oversight of ambulatory surgical centers (ASC). The increased oversight is part of an effort to reduce healthcare-associated infections acquired by patients receiving care in healthcare settings.¹

The number of ASCs enrolled in Medicare increased by more than thirty-eight percent (38%) between 2002 and 2007 and, currently, forty-three percent (43%) of all same-day surgery in the United States occurs in ASCs.² Prompted in part by this increase in volume of Medicare services occurring in ASCs and by the Nevada 2008 outbreak of Hepatitis C that was traced to poor infection control practices in two ASCs, infection control caught CMS' attention.

As a result, CMS undertook in 2008, in collaboration with three states (Maryland, Oklahoma, and North Carolina) and the Centers for Disease Control and Prevention (CDC), a pilot program for a new infection control survey instrument and the use of tracer methodology.³ In these states, a sample consisting of sixty-eight (68) ASCs was surveyed. Of those ASCs, approximately nineteen percent (19%) were found to have condition-level deficiencies and eighty-five (85%) were found to have standard-level deficiencies. Common among the deficiencies found by the surveyors were use of single-dose vials of medication for multiple patients, improper sterilization practices, general disinfection and sanitation problems and insufficient systems for reporting reportable diseases. The results of this pilot program, in combination with the recent changes made to the Medicare ASC Conditions for Coverage,⁴ created the foundation for the new survey process.

In CMS's view, the new survey process greatly improves the ability of the state agencies (SA) to recognize deficient practices in infection control. In addition, CMS believes that more frequent surveys will focus management's attention on infection control issues, identify evidence of insufficient infection control practices, instigate prompt remedies, educate ASCs through receiving objective, trained observation of actual practice, and deter relaxation of infection control practices.

¹ CMS News: Recovery Act to Fund 12 State Efforts to Improve Care in Ambulatory Surgical Centers (July 30, 2009)

² CMS Operations/Survey and Certification Group, Memorandum, Ref: S&C-09-43 (June 12, 2009) available at www.cms.hhs.gov/SurveyCertificationGenInfo/downloads/SCLetter09_43.pdf

³ Tracer methodology involves following at least one patient through the entire course of his or her ASC experience.

⁴ See 73 Fed. Reg. 68502, 68712 (Nov. 18, 2008).

The ARRA made a total of ten million dollars available to implement healthcare-associated infection reduction strategies within ASCs. Under the first phase of this initiative, twelve states – Maine, New Jersey, Maryland, North Carolina, Florida, Michigan, Indiana, Arkansas, Kansas, Wyoming, Utah, and Oregon – will survey more than 125 ASCs before September 30, 2009. CMS expects to allocate the remainder of the ASC survey-directed ARRA funds, approximately nine million dollars, in October 2009 for additional ASC surveys in all states utilizing the new survey tool.

Under the ARRA, CMS will also make an additional forty million dollars available to state public health departments for the promotion of state-based healthcare-associated infection prevention and surveillance efforts. If you have any questions about this Health Law Update, please contact any of the attorneys our Healthcare Practice Group listed below.

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