

February 16, 2010

By Hand Delivery and Electronic Transmission

Marsha Hopkins
Director, Division of Health Planning
Department of Community Health
5th Floor
2 Peachtree Street
Atlanta, GA 30303

Re: 2009 Freestanding Ambulatory Surgery Center Survey for
Single Specialty, Physician Owned Office Based Centers

2009 Freestanding Ambulatory Surgery Center Survey for
Multispecialty, Limited Purpose, and CON-Regulated Single-
Specialty Ambulatory Surgery Centers

Dear Ms. Hopkins:

We are writing on behalf of the Georgia Society of Ambulatory Surgery Centers (GSASC) regarding the 2009 Survey for Single Specialty Physician Owned Office Based Centers (the "LNR ASC Survey") and 2009 Freestanding Ambulatory Surgery Center Survey for Multispecialty, Limited Purpose, and CON-Regulated Single Specialty Ambulatory Surgery Centers ("CON Survey") (collectively "Surveys"). We recognize that the Department of Community Health ("DCH") has modified the LNR ASC Survey to address some of the concerns expressed by GSASC last year about the information being requested. The 2009 version, however, still contains requests for information that are not authorized by the applicable statute, O.C.G.A. § 31-6-70 (the "Survey Statute"). Likewise, the CON Survey has a lot of the objectionable information requests from last year.

The Statute

The Survey Statute requires that the annual surveys contain the following information:

- (1) Total gross revenues;

- (2) Bad debts;
- (3) Amounts of free care extended, excluding bad debts;
- (4) Contractual Adjustments;
- (5) Amounts of care under the Hill-Burton commitment;
- (6) Amounts of charity care provided to indigent persons;
- (7) Amounts of outside funding from governments, charities etc,
- (8) For cases involving indigent persons:
 - (A) The number of persons treated;
 - (B) The number of inpatients and outpatients;
 - (C) Total patient days;
 - (D) The number of patients categorized by county of residence; and
 - (E) The indigent care costs incurred by the facility by county of residence.

O.C.G.A. § 31-6-70.

DCH does not have any authority to ask for information not included in the statute. It may ask for "further categorical divisions of the information listed in subsection (b)" but that is the extent of DCH's authority. As you know, DCH does not have the authority to take any actions not authorized by the applicable governing statutes. See North Fulton Medical Ctr. v. Stephenson, 269 Ga. 540, 543-544, 501 S.E.2d 798 (1998)

2009 Surveys

The 2009 Surveys requests ASCs to supply information that is not included in any of the items specified in the statute. The items at issue are as follows:

Part C: Ownership, Operation and Management (CON Survey Only)

E. and F: These sections request the ASC for the management contractor and management's parent organization". None of those items are specified in the Survey Statute. In fact, the ownership and operator is not mentioned at all. We understand the need to have sufficient identifying information but the requests ask for not just the owner

and operator but information that goes beyond just the information needed for identification. The management companies should not be required to identify themselves and their parents.

Part D: Ambulatory Surgery Rooms, Procedures and Patients (Both Surveys)

1A. Rooms, Procedures and Patients in Licensed Operating Procedure Rooms

This section requests the number of rooms, number of procedures and number of patients of the ASC. The Survey Statute does not authorize DCH to request the number of procedures or number of patients treated by the ASC in its general population. The Survey Statute allows DCH to ask the number of patients treated only for the indigent population. If the Statute meant that the same information could be asked for the general population it would not have specified in subsection (8) that it was just for the indigent population. As a result, we do not believe that the ASCs are required to provide either the number of procedures or number of patients for anything other than its indigent population.

In light of the foregoing, please confirm that the ASCs are not required to provide any of the information requested in 1A. except for the number of rooms. If you would like the ASCs to provide the number of indigent patients in this section please let us know.

2. Ambulatory Surgery Patients Admitted to Hospital

The Survey Statute does not identify any category that allows DCH to ask for the number of patients that were admitted to a hospital before completion of or immediately following surgery. Again, please confirm that the ASCs are not required to provide this information.

3. Ambulatory Patients by Race/Ethnicity

DCH has stated that ASCs are not required to provide this if it is unavailable. We believe that even if it is available the ASCs are not required to provide it under the Survey Statute. We would appreciate it if DCH would clarify that the information may be provided voluntarily but it is not required.

4. Ambulatory Patients by Gender

DCH has stated that it will treat this category the same as race/ethnicity. Again, the Survey Statute does not authorize DCH to request this data. As a result, DCH should state that the provision of this information is voluntary.

Part E: Ambulatory Surgical Procedures, Licensed Specialty and Services (Both Surveys)

1. Top Ten Procedures

This section of the Survey asks for the top ten procedures by CPT Code, Procedure name, Number of Procedures and Average Charge. The Statute does not allow DCH to ask for any of that information. The only item that DCH may be able to ask for is the average charge for indigent patients because it allows for DCH to ask for the "indigent costs incurred" by the facility.

The information relating to data about charges, procedures and CPT Codes is generally confidential proprietary information. It is not public or disseminated in any way that would make it available to the public. The Survey Statute does not say in any way that confidential information may be requested by DCH. As a result, not only does the State Survey Statute not authorize DCH to request the data, the data is protected as propriety confidential information. O.C.G.A. § 10-1-760 et. seq.

We request that DCH clarify that the information requested in this section does not have to be provided.

Part F: Utilization & Revenue by Payer Source for Ambulatory Surgery Services

1. Utilization by Payer Source

The Survey Statute allows DCH to ask for "Gross Revenue" and categories of "Gross Revenue". It does not allow DCH to require the production of patients and procedures by payer for the general population. DCH is authorized to require the ASC to report the number of indigent patients.

2. Indigent/Charity

The number of indigent patients is authorized by the Survey Statute but it does not address procedures. Also, although the Statute does not address "charity", GSASC does not object to the provision of the number of charity patients as well.

Part G: Financial Summary and Indigent and Charity Care Information (Both Surveys)

4. Financial Table

The Financial Table is generally not objectionable except for the "Total Expenses" line item on the both Surveys. The Survey Statute does not allow DCH to require the expenses of the ASC. By providing the expenses of the ASC, it is a simple math calculation for somebody to determine the profit of the ASC. Again, that is not

February 16, 2010

Page 5

covered by the Statute and is proprietary confidential information. We request that DCH remove the line item for "Total Expenses" from the table.

Part I: Patient Origin of Ambulatory Surgery Patients in the Surgical Center (Both Surveys)

1. Patient Origin

The Survey provides a chart for the ASC to identify all of its patients by county. That is not authorized by the Survey Statute except for indigent patients. Also, this type of information is proprietary in nature. We request that DCH clarify that the table for county of origin is only for indigent/charity patients.

Conclusion

The deadline for the 2009 survey is March 12, 2010. We would like to notify the GSASC members as soon as possible that they are not required to provide the information addressed in this letter. If it would be helpful to meet or talk over the phone, we are available at your convenience.

Very truly yours,

Victor L. Moldovan

cc: GSASC Board and Officers
Clyde Reese, Esq.
Matt Jarrard