

Legal and Business Already Affecting ASCs in 2011

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From the continued battle over out-of-network reimbursement, to the increased demand for work-centric, skilled physicians, the new year is already off to a tumultuous start for New Jersey's ambulatory surgery centers (ASCs).

Attacks on the out-of-network option

In the past year, ASCs witnessed continued attacks by the insurance industry on the out-of-network option. This trend has already continued into the new year and will require active ASC involvement to thwart.

Last year, the insurance industry heavily lobbied the state legislature to regulate the out-of-network health insurance market in New Jersey. Most notably, Assemblyman Gary Schaer, Chairman of the Assembly Financial Institutions and Insurance Committee, introduced legislation that sought to restrict a provider's ability to waive co-payments, co-insurance or any other financial obligation of the patient and requires providers to make at least three good faith efforts to collect such obligations from patients. By January of this year, the insurance lobby partially succeeded as Assemblyman Schaer passed the Assembly, and a counterpart bill, introduced by Senator Joseph F. Vitale, was referred to the Senate Commerce Committee for a vote. ASCs will need to work together to educate the Senate and patients as to how this legislation threatens patient choice and undermines competition.

Another important development already impacting ASCs in 2011 is the proposed settlement agreement between Horizon Blue Cross Blue Shield of New Jersey and the approximately 130 New Jersey ASCs. As part of the proposed settlement agreement, ASCs that do not affirmatively opt-out of the settlement agreement agree to be reimbursed by Horizon for out-of-network services at 225% of the Medicare rate for patients covered by Horizon large employer



Senator Vitale's bill could threaten the continued success of the out-of-network option for many ASCs. Instead of advocating for their patients, under the proposed legislation, out-of-network ASCs would be forced to take an adversarial position against them. Such actions would likely strain physician-patient relationships and drive away patients from out-of-network ASCs altogether.

Without the out-of-network option, carriers such as Horizon would have complete control over ASC reimbursement rates. In-network ASCs need to recognize that attacks on the out-of-network option are a threat to the entire ASC industry.

Competition for work-centric physicians to heat up

Yet for individual physicians, now is the time to form a relationship with a successful ASC.

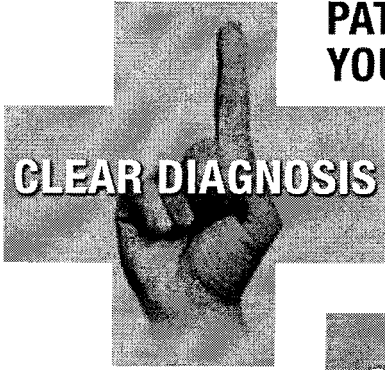
benefit plans. ASCs would no longer be permitted to arbitrate insufficiently reimbursed claims through Maximus, Inc., the organization contracted by the New Jersey Department of Banking and Insurance to arbitrate health benefit claims. ASCs that do not opt-out may be required to return any overpayments made by Horizon for services rendered in 2009, with such overpayments offset against any monies due to the ASC for services rendered in 2011.

If out-of-network rates are reduced, in-network ASCs will be unable to negotiate favorable in-network rates because the threat of going out-of-network will cease to exist.

At the same time, Horizon has already begun reimbursing ASCs at 160% of the Medicare rate, as permitted in a rider approved on June 21, 2010 by the New Jersey Department of Banking and Insurance. Without any other viable options, ASCs are being forced to opt-in to the settlement or face lower reimbursement for their Horizon patients.

Why in-network centers should be concerned


The ASC industry must work together to preserve the out-of-network option for ASCs. The viability of the in-network model is heavily dependent upon the existence and health of the out-of-network option.




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Recall that in 2009, an amendment to the New Jersey Codey law placed a moratorium on the development of any new ASCs that had not submitted architectural plans to the New Jersey Division of Consumer Affairs by September of that year. This moratorium should continue to stay in effect through 2011.

One option for physicians looking to join a competing ASC is to buy themselves out of their restrictive covenant. Because an outgoing physician would cease referring his or her patients to the ASC in any event (i.e. whether the restrictive covenant is in place or not), an ASC would likely prefer to leverage its restrictive covenant to reach

case volume to request that the new ASC contribute to this buy-out amount. An ASC looking to add a work-centric physician to its ranks may find the price worth it to attract a physician with a strong referral base. Of course any such agreements must be carefully structured so as to not imply any sort of kickback arrangement.

In the past year, ASCs witnessed continued attacks by the insurance industry on the out-of-network option. This trend has already continued into the new year and will require active ASC involvement to thwart.

Until now, the effects of the moratorium have not entirely surfaced, but in 2011, they should become evident. Due to the barriers to entry for new ASCs, and with contrition looming because of continued attacks on the ASC industry, there is an increased demand for productive physicians. Work-centric physicians, more than ever before, are in a position of strength to negotiate favorable ownership terms with hungry ASCs.

Among the many issues surrounding joining a competing ASC, physicians may find themselves running afoul of their existing employment and/or membership agreements. Specifically, most such agreements contain restrictive covenant clauses that prevent physicians from competing in the same geographic region for a set period of time (usually in the range of 2-5 years within a 10-15 mile radius of the ASC). Because successful ASC-physician relationships are formed between parties located within one geographic area, physicians leaving to competing ASCs risk violating their restrictive covenants as their current ASCs are likely located within the same locale.

an agreement with the physician, whereby the ASC will waive the restrictive covenant in exchange for compensation to the ASC. At the same time, an outgoing physician may be able to leverage his or her own

ASC market is positive and exciting

Despite the battles fought on the reimbursement front, there is much to be excited about in the new year. The market is improving and productive physicians are in high demand. So long as the ASC industry is able to work together, the ASC model will continue to be successful in 2011 and beyond.

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