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PHHPC Considers Revoking Operating Certificate of Ambulatory Surgery Center Over Low Medicaid and Charity Care Cases

A sometimes heated discussion at a recent meeting of New York’s Public Health and Health Planning Council (PHHPC) should be of interest to all ambulatory surgery centers (ASC) that are operating under a so-called “limited life” operating certificate and not providing enough care to Medicaid or Charity Care patients.

Background

Paragraphs (2) and (3) of Subdivision (d) of 10 NYCRR section 709.5 require ASCs, whether freestanding or hospital-based, to provide charity care and services to the underserved, and to have:

(2) written documentation that the proposed service or facility will enhance access to services by patients, including members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low income persons, racial and ethnic minorities, women, and handicapped persons) and/or rural populations;

(3) written documentation that the facility’s hours of operation and admission policies will promote the availability of services to those in need of such services, regardless of their ability to pay. This shall include, but not be limited to, a written policy to provide charity care, and to promote access to services regardless of an individual’s ability to pay. *Charity care* shall mean care provided at no charge or reduced charge for the services the facility is certified to provide to patients who are unable to pay full charges, are not eligible for covered benefits under Title XVIII, or are not covered by private insurance;

Although these regulations require ASCs to provide care to Medicaid and Charity Care patients, they do not specify a percentage or volume. When applications to establish new ASCs are submitted, the Department of Health (DOH) requires the application to include estimated percentages of Medicaid and Charity Care cases for which the ASC intends to provide care. According to a 2014 Report of the PHHPC's Ad Hoc Advisory Committee on Freestanding ASCs and Charity Care:

In administering this regulation over the years, the Department and the PHHPC have in general sought a minimum charity care level of (2%) two percent of projected cases and a Medicaid level of (5%) five percent from proposed operators of freestanding (i.e., not hospital based) ASCs. While we have found that few applicants propose more than two percent for charity care, it is not uncommon for some freestanding ASCs to propose and eventually attain a higher volume of services to Medicaid clients.

At its regular meeting on Dec. 10, 2015, the PHHPC considered the application of Surgicare of Manhattan LLC, a multispecialty ambulatory surgery center (ASC), for a 2-year extension of its 5-year limited life approval which had been granted by the PHHPC in 2010. When the ASC received its initial approval in 2010, it projected a combined Medicaid and charity care utilization of 4 percent per year. However, according to the DOH, in 2014 the ASC had only 1.5 percent of its procedures attributable to Charity Care, and 0.03 percent attributable to Medicaid. The ASC had an average annual net income of \$8,646,291, from 2013 to 2014.

As part of its application for a two-year extension of its Operating Certificate, the ASC submitted a plan for increasing its Medicaid and Charity Care utilization, and the Department of Health recommended approval of a two-year extension of the ASC's operating certificate, contingent upon the ASC contracting with an independent entity satisfactory to the Department to provide quarterly reports to the Department that would include:

- > Data showing actual utilization including procedures;
- > Data showing breakdown of visits by payor source;
- > Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
- > Data showing number of emergency transfers to a hospital;
- > Data showing percentage of charity care provided; and
- > Number of nosocomial infections recorded during the year in question.

When the application was taken up by the PHHPC, however, a number of members, citing the low Medicaid number, argued for disapproval of the extension and revocation of the ASC's operating certificate. There was a prolonged discussion among PHHPC members about how this and other ASCs had committed to providing certain levels of care for Medicaid and charity care patients, but fell well short of those commitments when it came time for their 5-year limited life approval to be extended. A motion to approve the 2-year limited life extension failed to garner enough votes from the PHHPC members. Then, a motion was made to disapprove the extension – which would effectively have resulted in the revocation of the ASC's operating certificate – but this motion also failed to garner sufficient votes. The application was then put off until the next PHHPC meeting in February.

Take-Away

The prolonged discussion and the failure of the PHHPC to act on this ASC's two-year extension application indicate that the PHHPC means business when it comes to seeing that ASCs abide by the commitments they made to care for Medicaid and Charity Care cases at the time they received their initial 5-year approvals. While the PHHPC has granted one-to-two-year extensions to some ASCs that have missed their quotas, the extremely low number of Medicaid cases handled by this applicant—coupled with its net income figures—appears to have triggered this reaction by some PHHPC members. It remains to be seen how the PHHPC acts on this application, but an ASC with a limited life operating certificate that is

significantly below its Medicaid and Charity Care commitments will likely receive a similar reception from the PHHPC when it is time to apply for its limited life extension.

ASCs that have not been able to meet their Medicaid and Charity Care commitments should consider some of the recommendations of the 2014 report of the PHHPC's Ad Hoc Committee:

- > outreach to Federally Qualified Health Centers and hospital systems to offer ASC services to Medicaid and Charity Care patients;
- > outreach activities and systematic efforts by the ASC to publicize its services to underserved groups;
- > signing up with the larger Medicaid managed care plans;
- > providing services to higher volume of Medicaid managed care clients;
- > incurring a higher percentage of bad debt attributable to services to individuals covered by policies with high co-pays and deductibles under the ACA.

There is no shortage of Medicaid and Charity Care patients who could benefit from medical care in ASCs, particularly given the expansion of Medicaid coverage under the Affordable Care Act. ASCs with "limited life" operating certificates should heed the PHHPC's warning.

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