

Summary of
The Ambulatory Surgical Center Payment
Modernization Act

The nation's 4,200 ambulatory surgical centers ("ASCs") are committed to providing Medicare beneficiaries with access to the highest quality surgical care while lowering their cost-sharing obligations and assisting the Medicare program in the containment of health expenditures. *The Medicare Prescription Drug, Improvement, and Modernization Act of 2003* mandated that the Centers for Medicare and Medicaid Services ("CMS") implement by January 1, 2008 a new ASC payment system; however, the legislation provided no guidance to CMS regarding the methodology that should be used to determine the rates that the Medicare program should pay for these services.

The ASC community believes that CMS should be directed to model the new ASC reimbursement program on the methodology and payment rates applicable to surgical services furnished in hospital outpatient departments ("HOPDs"). Under current law, it is estimated that the Medicare program pays, on average, \$320 more per case to HOPDs than to ASCs for the same surgical procedure. With appropriate new payment policies and coverage rules, Medicare and its beneficiaries could save billions of dollars each year.

The Ambulatory Surgical Center Payment Modernization Act, S. 1884 and H.R. 4042, would establish a new ASC payment system, effective January 1, 2008.

Coverage of ASC Services

Under regulations developed almost 25 years ago, ASCs receive facility payment for only the limited number of surgical services that HHS has placed on the ASC procedures list, thereby depriving beneficiaries of ASC access for hundreds of surgical procedures that are safely and effectively performed on non-beneficiaries. The proposed legislation adopts the recommendation of the Medicare Payment Advisory Commission ("MedPAC") that the ASC procedures list be modified and that ASCs be permitted to perform and receive Medicare facility payment for *any* surgical service, except for those services: (1) that the HHS Secretary designates, after consultation with specified organizations, as posing a significant risk to beneficiary safety when furnished in an ASC; or (2) that require an overnight stay.

Payment for ASC Services

HOPDs and ASCs should be paid comparable rates for procedures that are appropriately performed in both environments. The proposed legislation mandates that, by January 1, 2008, CMS reimburse ASCs on the basis of a uniform percentage of the rates paid to HOPDs for the same service.

- a. ASCs shall be paid 75% of the HOPD fee schedule amount for each covered service.
- b. ASCs will receive pass-through payments made to HOPDs for the additional costs of innovative medical devices, drugs, and biologicals and other

additional payments HOPDs receive, except outliers, direct medical education payments.

- c. By being paid on the basis of the hospital system, ASCs will receive the same annual updates and other relevant adjustments as HOPDs.
- d. The beneficiary's co-payment for services furnished in the ASCs will be 20% of the Medicare payment amount, as provided under current law. (In contrast, HOPD co-payment obligations vary and can exceed 40%.)

Transition to New ASC Payment System

In order to ensure continuity in the delivery of care by ASCs to Medicare beneficiaries and stability within the ASC industry, the new payment system will be phased in over a four-year period, generally applying a blend of existing ASC and HOPD rates. Special payment rules exist to avoid disruptive cuts in payments.

A Fair and Equitable Payment System

Savings to Medicare Program and Beneficiaries: The Moran Company recently documented that, in 2005, Medicare spent \$1.1 billion less for surgical services furnished in ASCs than had such services been performed in HOPDs. The proposed legislation, incorporating appropriate payment policies and coverage rules, could reduce program and beneficiary costs by millions of dollars per year.

ASC Program Stability: The proposed legislation appropriately provides clear parameters and direction to CMS as it develops a new ASC payment system.

Relative Parity Between HOPD and ASC Payments: Under current law, there is virtually no correlation between the payments made to hospitals and ASCs for the same surgical service. The proposed legislation appropriately links the HOPD and ASC payment systems by providing ASCs a uniform percentage (75%) of the base rates paid to HOPDs, as well as comparable annual updates and adjustments for drugs, devices, and area wage indices.

Improved Beneficiary Access to ASC Services: Under an arbitrary process established a quarter-century ago, Medicare beneficiaries are denied access to care in the ASC for hundreds of procedures otherwise available to non-Medicare patients. As recommended by MedPAC, the proposed legislation would enhance beneficiary access to safe and cost-effective surgical care in the ASC.