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# Staying Well Within the Law

A newsletter on the current legal issues facing today's health care industry

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## When an ASC Dials 911: The Basics of Hospital Transfer Agreements

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From economics to efficiency to ownership, there are many reasons why a surgeon might opt to perform cases in an ambulatory surgery center's OR. But not every ASC is prepared in terms of staffing and equipment to handle every emergency situation that might arise. Hospital transfer agreements serve as a safety net, enabling an ASC's patients to be transported to and treated at a hospital in the event of unanticipated medical complications. Here is a review of what you should know about arranging, evaluating and reviewing a hospital transfer agreement.

### Federal and State Regulations

Any ASC that treats Medicare beneficiaries must be certified by the Medicare program and, accordingly, comply with the federal government's requirements for ASCs. One of these requirements dictates that ASCs must have a written transfer agreement with a local, Medicare-participating hospital or a non-participating hospital that meets the Medicare program's requirements for emergency service payments. If the ASC does not have a transfer agreement in place, every physician performing surgery in the ASC must have admitting privileges at a designated, CMS-compliant hospital.

While 43 states require ASCs to be licensed, only 30 require them to plan for the possibility of obtaining external emergency care. Fifteen of them demand that they have a hospital transfer agreement in place. The others require either an agreement or hospital admitting privileges for the ASC's surgeons. (See sidebar "State Situations.")

Ohio's regulation is representative of the first group, stating that an ASC "shall have a written transfer agreement with a hospital for transfer of patients in the event of medical complications, emergency situations, and for other needs as they arise." Under the Texas regulation, on the other hand, an ASC "shall have a written transfer agreement with a hospital or all physicians performing surgery at the ASC shall have admitting privileges at a local hospital."

Florida addresses the issue from the standpoint of physician qualifications. If a physician does not hold staff privileges to perform his ASC procedures at a hospital within a reasonable distance, a transfer agreement must be arranged in advance. And Georgia notes that hospitals "shall not unreasonably deny a transfer agreement to the [ASC]."

Certain states require that the hospital with which the ASC arranges transfers be within a certain travel time of the ASC. Illinois and Mississippi, for instance, specify 15 minutes, while Oklahoma specifies 20 minutes and Florida 30 minutes.

### Transfer Agreement in Action

An effective emergency transfer depends upon the existence of an established procedure, which is why the creation of a written agreement between the ASC and its designated local hospital is strongly advised even when it is not mandated by government regulations or accrediting agencies.

A hospital transfer agreement should address the circumstances under which an emergency transfer should take place, specify who is authorized to make the decision to transfer a patient and list the

documentation that must accompany the patient to the hospital. The agreement should describe the procedure for accomplishing the transfer, including the assignment of roles and responsibilities to surgical facility staff and pre-arrangements for the method of transportation by which patients will be conveyed to the hospital.

In addition, the policy should include provisions for emergency care and stabilizing treatment at the ASC, within the bounds of the ASC staff's capabilities, until the patient is transferred. The staff must be trained to implement this policy in the event that a medical emergency occurs, so periodic in-service education sessions and mock drills might prove valuable in a moment of crisis.

### ASC and Hospital Roles

Transfer agreements must clearly establish the respective responsibilities of the ASC and the hospital in a number of areas, including the transfer of patient information; the provision of transportation; the sharing of services, equipment and personnel; the provision of care in relation to the facility and agency capability; and the confidentiality of patient records.

In a typical agreement, the ASC will agree to:

- Supply the hospital with copies of all pertinent medical histories, results of examinations, treatment records and powers of attorney concerning any patient transferred from its care into that of the hospital.
- Supply the hospital with all available insurance and payment information for any transferred patient in order to assist it in billing for services.

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- Assume responsibility for the delivery of transferred patients' personal effects, money and any other items brought with them into the ASC.
- Assume responsibility for notifying and explaining to patients, patients' families or other guardians or responsible parties the need for the transfer prior to its occurrence. (In extreme emergencies, however, notification may be given as soon as possible following the transfer.)
- Provide the hospital with notice of a transfer as far in advance as reasonably possible.

Typically, a hospital will agree to:

- Provide emergency medical assessments, examinations, treatments and testing for transferred patients for a specified length of time (typically 24 hours).
- Admit patients as promptly as possible, provided they meet the hospital's admission standards, the hospital has adequate bed capacity and the hospital's medical staff deems such hospitalization appropriate.
- Give patients who have been identified as emergency cases by their attending physicians from the ASC priority status.
- Provide copies of any treatment reports or test results to the ASC.

### Ground Rules

The active terms of a hospital transfer agreement vary from case to case and must be set forth in the written document. A transfer agreement may have an expiration date, or it may state that it will remain in effect until such time as one party terminates the agreement.

For billing, collections and insurance obligations, the specifics are typically, in essence, protect yourself and each to his own. A solid hospital transfer agreement should require each party to maintain professional liability insurance or comparable self-insurance to cover their facilities and their employees against claims made during and after the termination of the agreement. Additionally, each party should be responsible for collecting its own charges for services rendered and should not be held responsible for collecting for services performed by the other party.

Lastly, this emergency policy should include an indemnity clause, which allows either party to seek reimbursement from the other in order to cover any liability, claim, action, loss, cost, damage or expense that arises from one of their actions or omissions in the carrying out of the agreement.

### State Situations

30 states have legislation requiring ASCs to prepare plans for external emergency care.

15 states require a hospital transfer agreement:

Alabama  
Alaska  
Arkansas  
Connecticut  
Illinois  
Kentucky  
Mississippi  
Nevada  
New York  
North Carolina  
Ohio  
South Dakota  
Tennessee  
Washington  
Wyoming

15 states require either a hospital transfer agreement or surgeons to have admitting privileges at a designated hospital:

Colorado  
Florida  
Georgia  
Indiana  
Kansas  
Maine  
Maryland  
Massachusetts  
Missouri  
Oklahoma  
Pennsylvania  
Rhode Island  
South Carolina  
Texas  
Utah

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Fox Rothschild's Health Law Practice has earned its reputation as a leading national and regional health law practice. Our multioffice, multidisciplinary approach allows us to offer practical, cost-effective solutions to issues faced by longstanding stakeholders, as well as a variety of industry newcomers.

For more information about any of the articles in **Staying Well Within the Law**, please contact any member of the Fox Rothschild Health Law Practice. Visit us on the web at [www.foxrothschild.com](http://www.foxrothschild.com).

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