3 government trends keeping ASC leaders up at night

Marcus Robertson - Updated Wednesday, September 29th, 2021

The past two years have featured rapidly changing government directives and temporary regulations, and many of these have had a profound effect on the healthcare industry.

Eleven ASC leaders spoke with *Becker's ASC Review* on the regulations, executive actions and upcoming legislations they're most concerned with. Some deal with issues caused or exacerbated by the COVID-19 pandemic, and some deal with trends much longer in the making.

Editor's note: These answers have been edited lightly for clarity and brevity.

Question: What ASC-related government moves are you most focused on, and why?

CMS-approved procedures & reimbursement

Dotty Bollinger, RN, founder of Integrity Healthcare Advisors (Caryville, Tenn.): I'm focused on the modification of the CMS reimbursement list and moving key procedures back to hospital-only status. Looks like the hospital lobby won.

Beth Dillon, COO of IYA Medical (Scottsdale, Ariz.): I am most concerned with the proposal to remove 258 procedures from the CMS list of outpatient procedures permitted in an ASC in 2022. ASCs can safely and effectively perform these procedures in the outpatient setting. We also provide high levels of satisfaction and lower costs to patients.

This policy change, plus the planned wage increase for clinical labor staffers, could lead to ASC closures, decreased pay for physicians and further retirements.

Scott Hayworth, MD, president of Optum Tri-State Region; CEO of CareMount Health Solutions (Westchester, N.Y.): I'm concerned with the possible resurgence of state and federal guidelines which would inhibit ambulatory procedures in favor of hospital-based procedures. An example is that for a number of

weeks, the state of New York allowed screening colonoscopy to be done only in hospitals.

Raghu Reddy, chief administrative officer, SurgCenter of Western Maryland (Cumberland): The legislation I'm most interested in at the federal level promotes reimbursement parity between ASCs and hospital-based outpatient departments. Freestanding ASCs are historically paid significantly lower than HOPDs for providing the same service at a low cost, and ASCs still deliver the highest quality of care. I believe in pay-for-performance, and the ASCs should be rewarded by the payers appropriately for exceeding the quality of care and providing superior patient outcomes.

Jordon Leger, CFO and COO of Arise Vascular (Dripping Springs, Texas): I'm most concerned about the 2022 proposed rates.

Staffing and the COVID-19 vaccine mandate

Tina Piotrowski, CEO of Copper Ridge Surgery Center (Traverse City, Mich.): For me, it's the Biden-Harris administration's announcement expanding the COVID-19 vaccination mandate to other health care facilities, including ASCs. Our industry is already facing a staffing shortage, and this may further increase staffing vacancies.

Francoise Singh, MD, COO of Spine Pain Diagnostics Associates (Niagara, Wis.): Right now, President Joe Biden's COVID-19 Action Plan and the vaccine mandate for ASCs receiving Medicare and Medicaid reimbursement is our main concern, as it might affect our ability to retain staff.

Certificate of need/Corporate practice of medicine laws

Jeffrey Mandume Kerina, MD, CMO of UNOVA Hip & Knee Center (Lady Lake, Fla.): We're closely watching the multiple challenges to the CON laws present in 36 states. Enacted in the 1970s to help battle increasing healthcare costs, these laws have actually accomplished the opposite by limiting competition and stifling patient choice. The pandemic brought these issues to the forefront. During this time, 24 states were forced to relax their CON laws to better deliver care to their residents.

A recent paper out of the University of Cincinnati, Auburn University and Southern Illinois University found that states with restrictive CON laws suffered higher mortality rates — not only for COVID-19 patients, but for people suffering from chronic disease as well. Changes in the CON laws would promote competition — forcing large, entrenched healthcare systems to compete with new, innovative providers in their markets — increasing patient choice and improving the quality of patient care.

Patrick Magallanes, president and CEO of Steindler Orthopedic Clinic (Iowa City, Iowa): The issue I'm most concerned with is the CON requirement in Iowa. Hospitals use the CON law to prevent projects that are market-appropriate and less

costly [than what they can offer]. Our local community hospital is in severe distress and the state-funded institution is cash flush; we are faced with the prospect of competing with a hospital partner that is shuttering service lines while an academic research institution here moves into community care outside of tertiary care and research. We filed a CON application and will be heard in October.

Chas Sanders, CEO of Margin (New York City): The trends from Medicare suggest that in the next few years there will be a big push for endovascular facilities to move from an office-based lab to an ASC site of service. Given this, the two biggest pieces of legislation for which I have the most interest are the CON and Corporate Practice of Medicine laws going forward.

Each state has different standards for CON. At last glance, I believe half of the states had restrictions on opening an ASC. In some of these states, the restrictions may be too arduous to overcome, while others are less rigorous and have nuances that allow a path, albeit costly, to open a new ASC. This lack of consistency makes it extremely challenging for organizations to operate with multi-state footprints.

CPOM law is also a concern. When I last researched these laws, more than half of the states had CPOM in effect. As more corporate or private equity investors enter this space, there appears to be a lack of consistency as to whether CPOM laws can impact the ownership structures of ASCs as they do their physician office counterparts. Given the ambiguity here, the risk profile in many states to open an ASC with non-physician investment is increased.

Robin Meter, chief administrative officer of St. Charles Healthcare (Bend, Ore.): The state of Oregon has passed SB 889, which goes into effect January 2023. The bill calls for a cap of 3 percent on health care spending growth per year statewide. In my opinion, this will drive increasingly larger numbers of surgeries, procedures, infusions, etc. into freestanding facilities in an effort to avoid costs associated with hospital-based outpatient facilities. However, I am concerned that state CON laws may not allow the ASC growth needed to facilitate this expansion. Disparate state laws may end up being in significant conflict internally.

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