

January 19, 2018

Oregon State Legislature
House Committee on Health Care
900 Court St. NE
Salem Oregon 97301

Re: Letter of Agreement: ambulatory surgery center extended stay license policy

Chair Greenlick, Vice Chair Nosse and Members of the House Healthcare Committee,

Previous attempts to extend ambulatory surgery center (ASC) length of stay have been met with active opposition by a broad majority of the hospital industry over the years. Concerns regarding patient safety, care quality and the economic impact these facilities could have on some hospitals in certain communities were dominating themes. At the same time, our collective leaders recognize that the delivery of more complex health care services will shift, in part, to appropriate outpatient settings to continue to transform how we deliver better care at a lower cost. The Oregon Association of Hospitals and Health Systems (OAHHS) and the Oregon Ambulatory Surgical Center Association (OASCA) are committed to seeing this transition through in the best interest of the patient with quality, safety and cost in mind. We will learn from this experience.

After the 2017 Session, the Oregon Association of Hospitals and Health Systems (OAHHS) committed to the Legislature to invest time and resources in convening an executive-level policy conversation around the extended stay center (ESC) concept. Hospitals came together over many hours of meetings through OAHHS to develop a model for a new license that 1) allows ASC's with ESCs to provide a total of 48 hours of post-surgical recovery time, 2) addresses key patient safety and quality of care concerns, and 3) has garnered support of the OAHHS Board of Trustees.

The result is a policy proposal brought to you by both associations which was carefully crafted to garner the support of OAHHS and OASCA. This letter serves as a formal letter of agreement and a commitment between OAHHS and OASCA. Following this letter, are the specific policy elements we plan to submit to Legislative Counsel (LC) for drafting. We commit to work with you and LC to convert this policy language into effective legislation that fully replicates this proposal. Any deviation from this language will risk support of this agreement moving forward.

OAHHS and OASCA recognize the importance of thoughtful implementation of this new delivery model in the interest of our collective patients. Getting it right is critical in this foundational stage. As such, both parties agree to not put forth statutory changes unless mutually agreed upon through the 2023 legislative session modeling the same fashion in which we bring this agreement forward today.

Please contact Andi Easton with OAHHS and Doug Riggs with OASCA if you have questions regarding the proposed legislation.

Thank you,



Carol Bradley, RN, SVR & CNE Legacy Health
Chair, Oregon Association of Hospitals &
Health Systems



Marilynn Daberkow, RN, CASC
President, OR Ambulatory
Surgical Association

2018 Legislative Session

OAHHS Amendments to LC 231

ASC Extended Stay Centers - Gut and Stuff

Relating to: licensing ambulatory surgery center extended stay centers

Definitions

- "Extended stay center" means a facility that is a distinct entity from an ambulatory surgical center that provides extended stay services
- "Extended stay services" means post-surgical and post-diagnostic medical and nursing services provided to a patient recovery from a surgical procedure.
- "Operating room" is defined under OAR 333-076-0185(15)
- "Local hospital" means a hospital as defined by reference to CMS 42 C.F.R. § 416.41(b)

Directive: the Oregon Health Authority shall adopt rules for licensing extended stay centers with the following criteria:

License eligibility, for an ASC to be eligible for an ESC license, the ASC must have the following:

- No less than 24 months of consecutive operational outpatient surgery experience in Oregon
- Oregon Health Authority ASC license, in good standing
- CMS certification and demonstrated participation in the CMS ASC Quality Reporting Program
- Accreditation from a national accrediting organization

Location restrictions

- Only ASCs within 10 miles from the center for the "40,000 centroids" in Oregon are eligible for an ESC license.

Size restrictions

- An ESC may only have two recovery beds per operating room
- An ESC may have no more than ten beds total (regardless of number of operating rooms)
- There is only one ESC license available per ASC that meet the eligibility criteria (i.e., an ASC may not operate more than one ESC)

Length of stay

- ESCs may admit patients following surgery in an ASC for no longer than 48 hours beginning at the time of admission to the ASC (no flex window)

Transfer agreements; ESCs are required to adhere to ASC CMS standards for transfer agreements:

- The ESC must have an effective procedure for the transfer, to a hospital, of patients requiring emergency medical care beyond the capabilities of the ESC.
- This hospital must be a local, Medicare participating hospital (local as defined by reference to CMS interpretive guidelines for 42 C.F.R. § 416.41(b)).
- The ESC must have a written transfer agreement with a local hospital; or ensure that all physicians performing surgery in the ESC's ASC have admitting privileges at a local hospital.



Facility and safety requirements

- ESCs must be physically contiguous to where patients are receiving ambulatory surgical services
- OHA shall adopt rules related to patient safety and facility requirements.

Reporting

- Conforming amendments to include ESCs as part of the voluntary patient safety reporting program with ASCs
- Initial application and ongoing reporting includes the types of procedures performed, average duration of patient stay, acuity of patients served, adverse events/infections, payer mix, and frequency and cause of patient transfers

Patient experience

- ESCs must, orally and in writing, clearly notify patients with Medicare coverage that services provide in the ESC are not covered by Medicare
- OHA is required to mitigate barriers to ESCs accepting Medicaid payment for ESC services
- ESCs are prohibited from denying an individual based on payer status alone if the patient meets the center's medical screening criteria, evidence based surgery guidelines and patient safety standards

Health Evidence Review Commission

- The Health Evidence Review Commission is directed to review medical evidence related to appropriate patients and procedures for ambulatory surgery that requires extended stay and produce a report due to the Legislature by . A report containing a workplan and deliverable timeline is due to the 2019 Legislative Assembly.

Reporting

- OHA shall adopt by rule key data and metrics that must be reported by ESCs annually
- OHA shall submit a licensing implementation report to the committees of the Legislative Assembly related to health no later than December 30, 2022.