



December 7, 2020

Honorable Gavin Newsom
Governor, State of California
1303 10th Street, Suite 1173
Sacramento, CA 95814

Dear Governor Newsom:

As the state experiences a devastating surge in COVID-19 infections, we wish to alert you to ways that the 794 Medicare-certified ambulatory surgery centers (ASCs) across California can and should be used to assist our hospital partners in managing this crisis and providing much-needed care to patients. Specifically, we encourage you to:

- Ensure that ASCs can remain open and continue to provide patients with necessary procedures and treatments during the weeks ahead;
- Adopt waivers to enable ASCs to provide further support to hospitals;
- Include ASC staff as part of healthcare workforce that you are prioritizing for the initial phase of vaccinations for COVID-19.

As California struggled with the novel coronavirus in the early months of the pandemic, ASCs along with hospitals understood the need at that time to restrict elective surgeries due to concerns surrounding equipment and supply shortages. While this decision was the correct one at the time, it resulted in a pent-up demand of patients who have deferred needed care and are at increased risk of experiencing a negative clinical outcome. By June 30, 2020, because of concerns about COVID-19, an estimated 41% of U.S. adults had delayed or avoided medical care including urgent or emergency care (12%) and routine care (32%).¹ The healthcare community is still working to address this backlog now. Experience with the previous restrictions on elective surgeries at ASCs has shown that such restrictions failed to have a meaningful positive impact on hospital bed capacity or patient safety, and ultimately contributed to increased patient suffering due to serious delays in much-needed surgical care.

There will be long term harm if the care backlog is exacerbated, so we encourage smart and strategic use of ASCs to ensure that the appropriate surgical needs of California patients are met while we also focus hospital resources on addressing the COVID-19 surge. With certain waivers in place, ASCs could do even more to provide a relief valve for California hospitals by taking on additional outpatient surgeries during this time. We have attached an overview of suggested approaches and necessary waivers that would safely and appropriately expand ASC services to temporarily allow more surgical patients to be treated in an ASC setting rather than a hospital setting. For example, a temporary waiver on enforcement of length-of-stay restrictions in an ASC would allow ASCs to care for patients who may need to stay more than 24 hours. Additionally, California ASCs are awaiting guidance from the California Department of Public Health on implementation of the Center for Medicare and Medicaid Services (CMS) Hospitals Without Walls Program.

¹ Czeisler MÉ, Marynak K, Clarke KE, et al. Delay or Avoidance of Medical Care Because of COVID-19–Related Concerns — United States, June 2020. *MMWR Morb Mortal Wkly Rep* 2020;69:1250–1257. DOI: <http://dx.doi.org/10.15585/mmwr.mm6936a4external.icon>.

ASCs are a critical component of the California healthcare infrastructure, and during this crisis they provide an even more important option for surgical care. We encourage you to position them to be as helpful as possible at this time not only through the steps highlighted above, but also by protecting their workforce with vaccines for COVID-19. The three tiers of healthcare workers addressed in the initial vaccine distribution plan did not mention ambulatory surgery center staff, but they must be included in this early phase of distribution as well.

While our state works to get the COVID-19 surge under control in the weeks ahead, we cannot allow patients' healthcare needs to go unmet – medical care delay or avoidance could increase morbidity and mortality risk associated with treatable and preventable health conditions. ASCs will remain in constant communication with local, regional and state officials as well as hospital partners to track capacity, ensure continued availability of PPE, and monitor COVID-case counts. They will continue to efficiently and effectively provide needed patient care, while upholding the highest safety standards.

Please feel free to contact CASA's Executive Director Beth LaBouyer at blabouyer@casurgery.org if there is anything that the California Ambulatory Surgery Association or our members can do to assist you as we work together to face the enormous health and economic challenges of the COVID-19 pandemic.

Sincerely,



Michelle George
President
California Ambulatory Surgery Association

CC: Richard Figueroa, Deputy Cabinet Secretary, Office of Governor Gavin Newsom
Dustin Corcoran, Chief Executive Officer, California Medical Association
Carmela Coyle, President & CEO, California Hospital Association
Sandra Shewry, Acting Director, California Department of Public Health
Honorable Richard Pan, M.D.
Honorable Jim Wood, D.D.S.

Potential ASC Waivers and Opportunities for ASCs to Assist with COVID-19 Surge

1. **Waive enforcement of Health and Safety Code 1204.1, 1248.1 (a)(g) regarding length of stay restrictions in a surgical clinic, an ambulatory surgery center or outpatient surgery setting throughout the duration of this emergency.** Listed below are alternative services ASCs can provide to support the statewide response to COVID-19. However, to fully execute, they will need the ability to provide care for patients outside the current mandate of providing patient care up to 24 hours.

2. **Waive enforcement of Health and Safety Code 1248.15 (1)(2,C, i,ii) as pertaining to provider licensing and admitting privileges at a local accredited or licensed acute care hospitals throughout the duration of this emergency.** This will align with other state waivers to allow physicians and health care personnel stepping out of retirement, crossing state lines or working between health facilities to provide patient care as these alternative patient care options and responses evolve in ASCs and outpatient surgery settings.

The options listed below are tiered in order of the ability to expedite their implementation and provide quicker service to the community and COVID-19 response.

Option 1: ASCs can take outpatient urgent elective procedures now as we are best positioned to do so based on our existing capabilities. This is the quickest option as it is in line with our core competencies and business model and could be quickly implemented within 24 hours.

Proposed Service	Requirements	Regulatory Engagement Required
Take on <u>urgent</u> surgeries for the community at an ASC	<ul style="list-style-type: none"> Coordination with hospital system of urgent elective surgeries. Common community adoption of urgent surgeries Facility medical director involved in determining medical necessity and patient risk Temporary privileges; accelerated credentialing Consider increasing ASA Class to include “4s” Consider expanded hours of operation, including weekends 	<ul style="list-style-type: none"> CMS defines ASC max ASA Class as 3 CMS/AO notification Eliminate length of stay restrictions- <i>waiver to H&S 1204.1, 1248.1 (a)(g)</i>
Take on emergency fracture surgeries <i>*excluding hip fracture</i>	<ul style="list-style-type: none"> Extend hours of operations and eliminate time limit of length of stay Temporary privileges If transferring from hospital, coordination with hospital system needed 	<ul style="list-style-type: none"> Eliminate length of stay restrictions- <i>waiver to H&S 1204.1, 1248.1 (a)(g)</i> Allow transfers from hospital to ASC

Option 2: ASCs can transition to accommodate complex surgical cases. This option is in line with our core competencies and business model but could take additional time for implementation due to expanded equipment and surgical instrumentation needs. Time for implementation between 24-48 hours.

Proposed Service	Requirements	Regulatory Engagement Required
Migrate overflow surgical case volume; inpatient and outpatient	<ul style="list-style-type: none"> Temporary privileges Consider expanded hours of operation including weekends Fits within the center’s current specialty offering Expand our CPT list based on current specialties offered at the center Hospital to potentially assist in providing necessary equipment, staff and supplies 	<ul style="list-style-type: none"> Expanded list of reimbursed codes -<i>In addition to CMS need waiver requiring health plans to accept payment of procedures at an ASC</i> Eliminate length of stay restrictions- <i>waiver to H&S 1204.1, 1248.1 (a)(g)</i>