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HealthCare Appraisers' Industry Insight

THE ROLE OF AMBULATORY SURGERY CENTERS IN THE COVID-19 PANDEMIC

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As hospitals and health systems prepare for all possibilities during the novel coronavirus (“COVID-19”) pandemic, a key recurring issue is preparation for an influx of patients that will require critical care, including ventilators. The Society of Critical Care Medicine has acknowledged that there may be a serious shortage of mechanical ventilators in hospitals given the projected volume of hospitalizations.¹ Of note, the New Orleans area is on track to run out of ventilators and hospital beds by April 4 and April 10, respectively, according to Louisiana Governor John Bel Edwards.² One of the solutions being pursued by the industry is the use of ambulatory surgical centers (“ASCs”) and hospital outpatient surgery centers to help handle the overflow caused by the pandemic.

Due to CMS guidelines recommending the cancellation of surgical procedures,³ as well as outright mandated cancellations,⁴ ASCs are facing a reduction in utilization. Nevertheless, ASCs possess three valuable resources that can contribute to combating the COVID-19 pandemic – space, staff, and equipment. Below are three potential ways in which these resources can be repurposed:⁵

- 1) Pursuant to CMS’ “hospital without walls” initiative announced March 30, 2020, “surgery centers can contract with local healthcare systems to provide hospital services, or they can enroll and bill as hospitals during the emergency declaration as long as they are not inconsistent with their State’s Emergency Preparedness or Pandemic Plan.”⁶ With this regulatory flexibility, hospitals can partner with ASCs to perform essential surgeries in order to free up hospital capacity for COVID-19 patients.
- 2) ASCs can be converted into triage sites for less critical treatment of COVID-19 patients, with the pre-op and post-op areas used for hospital beds. A hospital and ASC may enter into a lease agreement for the use of the space, staff, and/or equipment of the ASC.

¹ Boyles, Salynn. “SCCM: Too Few Ventilators, ICU Beds Available for Worst-Case COVID-19 Scenario.” MedPage Today: March 17, 2020; last accessed March 29, 2020 from: <https://www.medpagetoday.com/infectiousdisease/covid19/85462>

² Karlin, Sam. “Louisiana Has Only 1.6% of Ventilators Requested for Coronavirus Patients. What’s Next? Sharing Vents.” The Advocate: March 29, 2020; last accessed March 29, 2020 from: https://www.theadvocate.com/baton_rouge/news/coronavirus/article_368520c0-71c4-11ea-b3a3-bbe4aa1963f8.html

³ Centers for Medicare and Medicaid Services. “CMS Adult Elective Surgery and Procedures Recommendations.” March 18, 2020; last accessed March 29, 2020: <https://www.cms.gov/newsroom/press-releases/cms-releases-recommendations-adult-elective-surgeries-non-essential-medical-surgical-and-dental>

⁴ C.f., Joseph, Bob. “Cuomo: All Elective Surgeries in New York State to Be Canceled.” WNBC News Radio 1290: March 22, 2020; last accessed March 29, 2020 from: <https://wnbf.com/cuomo-all-elective-surgeries-in-new-york-state-to-be-canceled/>

⁵ Adapted from: Campbell, Dave, MD. “Ambulatory surgery centers can expand surge capacity.” MSNBC.com: March 18, 2020; last accessed March 29, 2020 from: <http://www.msnbc.com/morning-joe/ambulatory-surgery-centers-can-expand-surge-capacity>

⁶ Centers for Medicare and Medicaid Services. “Trump Administration Makes Sweeping Regulatory Changes to Help U.S. Healthcare System Address COVID-19 Patient Surge.” March 30, 2020; last accessed March 31, 2020 from: <https://www.cms.gov/newsroom/press-releases/trump-administration-makes-sweeping-regulatory-changes-help-us-healthcare-system-address-covid-19>



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- 3) A shortage of ventilators to fill demand across the US is projected to the end of April, as Ford, General Motors, and other companies are ramping up production of ventilators under the Defense Production Act. As a short-term solution to fill demand, portable anesthesia machines can be converted into ventilators. According to Vice President Mike Pence, "...devices that anesthesiologists use for outpatient surgery can be converted with the change of a single vent to a very useful ventilator;" and "...there are tens of thousands of [anesthesia machines] that can be converted now."⁷ These converted anesthesia machines can be leased from ASCs to hospitals or used at ASCs in the aforementioned triage situation.

Despite the financial hardships likely to be faced by ASCs in the coming months, ASCs offer a rare opportunity to greatly assist patients with recovery, hospitals with obtaining access to much-needed resources, and ASC providers who might otherwise go unutilized.

VALUATION ISSUES

Healthcare Appraisers, Inc. ("HAI") has recently been contacted by multiple health systems struggling to understand what, if any, fair market value ("FMV") issues are present when repurposing ASCs, anesthesia machines, and staff, particularly in those instances where the ASCs have physician ownership. While CMS has issued waivers to Section 1877(g) of the Social Security Act (as also known as the physician self-referral law or "Stark" law),⁸ these transactions may still require FMV support. The following sections summarize recent examples of FMV considerations analyzed by HAI in connection with repurposing of ASCs to assist in the fight against COVID-19.

ASC SPACE

Given the current moratorium on elective surgeries, ASCs may either be sitting idle, or performing a limited number of non-elective surgeries. ASCs, similar to hospitals, contain the infrastructure required to treat high acuity (*i.e.*, COVID-19) patients, specifically, the pre- and post-operative bed areas that contain medical gas. Hospitals will likely be looking to transfer patients for a short-term duration (several weeks to several months) to handle the overflow of patients within their facilities. We believe it is reasonable to consider adjustments to the FMV rental rates to account for both the short-term duration of the leases and functional use (or lack of surgical use) of ASCs during this time period.

ASC EQUIPMENT

If a health system or hospital desires to enter into an arrangement with an ASC for triage or overflow space, the parties must determine the precise equipment to be included in the lease arrangement, which could include patient monitors, stretchers, regulators, defibrillators, crash carts, EKG machines, office equipment, computers, and furniture, among others. Typical considerations that may need to be added to a lease payment include maintenance, property tax, and insurance on the equipment.

FMV Considerations unique to this type of arrangement include higher interest rates and higher depreciation rates on the equipment. Interest rates may be higher due to the risk of the patient population, expedited turnaround time, and the short-term duration of the leases. Depreciation rates on the equipment may be higher than usual due to the utilization rate of the equipment, going from a typical utilization rate of 50% to 70% during normal business hours, to a utilization rate of closer to 100% in a triage setting.

⁷ Siegel, Benjamin. "How anesthesia machines can help hospitals with ventilator shortages fight coronavirus." ABC News: March 27, 2020; last accessed March 29, 2020: <https://abcnews.go.com/US/anesthesia-machines-hospitals-ventilator-shortages-fight-coronavirus/story?id=69829495>

⁸ Centers for Medicare and Medicaid Services. "Blanket Waivers of Section 1877(g) of the Social Security Act Due to Declaration of COVID-19 Outbreak in the United States as a National Emergency." March 30, 2020; last accessed March 31, 2020 from: <https://www.cms.gov/files/document/covid-19-blanket-waivers-section-1877g.pdf>



PORTABLE ANESTHESIA MACHINES

The determination of FMV lease rates for the use of portable anesthesia machines as ventilators poses unique challenges. Some considerations that HAI has taken into account in recent analyses include:

- The market cost of anesthesia machines often exceeds that of ventilators. The FMV lease rates should be based on the ultimate use of the device, which may, in some instances, involve deviation from the market rates for both anesthesia machines and ventilators.
- Mobile anesthesia machines used in ASCs are typically utilized during normal business hours. When anesthesia machines are used as ventilators they would be used on a continuous basis at all hours of the day. This revised form of use would impact the useful life and, ultimately, the depreciation of the anesthesia machines over the length of the lease.
- The maintenance costs associated with utilizing an anesthesia machine as a ventilator may differ from the maintenance costs for an anesthesia machine utilized for its intended purpose.
- The lessor may incur costs associated with converting a modified anesthesia machine back to its full anesthesia capabilities upon return of the equipment.

STAFF

The medical and administrative personnel within an ASC can be utilized to assist in the triage of patients, while registered nurses and surgical techs can assist physicians and advanced practice professionals in the treatment of patients. Furthermore, medical assistants can record vital signs and assist in performing medical histories, while front-office staff can be used for recordkeeping, scheduling, and billing activities. As the employer of record, an ASC may apply a “lease rate” to the direct expenses (*i.e.*, salary and benefits) associated with the staff, which will vary depending on how the staff is deployed pursuant to the lease arrangement and the employer’s obligations. Common considerations include: (i) the ASC’s obligations to adjust staffing during periods of low or high volume; (ii) the ASC’s obligations to secure replacement staff in the event of illness; (iii) term of the arrangement; and (iv) the average cash compensation of the staff.

CONCLUSION

In light of the immediate need for increased medical resources as a result of the COVID-19 pandemic, ASCs maintain valuable resources that can be repurposed to increase capacity for medical care across the country. However, repurposing of space, equipment and staff of an ASC presents unique FMV considerations. Although CMS has issued certain waivers to address various Stark law requirements, the need for an FMV opinion may be ever present pursuant to various other federal and state laws and regulations.

