October 15, 2020

The Honorable Alex Azar
Secretary
Department of Health and Human Services
200 Independence Avenue
Washington, DC 20201

Dear Secretary Azar:

On behalf of the 5,900 ambulatory surgery centers (ASCs) represented by the Ambulatory Surgery Center Association (ASCA), I first wish to thank you and your staff at the US Department of Health and Human Services (HHS) for your tireless work during the pandemic to use your authority to seek solutions to the challenges of providing health care for both those suffering from COVID-19 and other Americans in need. However, we have serious concerns with the reporting requirements for facilities that accepted funds through the Provider Relief Fund (PRF), and respectfully ask that you clarify aspects of these requirements.

ASCs were quick to follow guidance from CMS and state leaders to postpone most elective surgeries to increase social distancing and preserve medical supplies, specifically personal protective equipment (PPE). Many of our centers were also the first to donate critical personal protective equipment and ventilators to aid our local hospitals in this fight. These postponements resulted in serious economic losses, with many facilities suspending operations and others having to reduce the days they are open.

Relief through the PRF helped ensure that ASCs were able to resume normal operations and remain properly staffed and equipped to handle the significant amount of care that was delayed due to COVID-related closures. However, the Post-Payment Notice of Reporting Requirements (Reporting Requirements) raise significant concerns that some of this funding, even if spent in line with the Terms and Conditions that accompanied the initial distribution, may now need to be returned, causing a significant burden for our facilities.

Reporting threshold of $10,000. A threshold of $10,000 for the outlined reporting requirements places undue burden on the federal government and providers. Most ASCs are small businesses that operate in extremely competitive markets, and as such, must run efficiently to remain viable. Approximately 54 percent of CMS-certified ASCs[1] have only one or two operating rooms. These facilities must purchase the same supplies, equipment, devices and implants as hospitals to perform surgery. ASCs must compete with hospitals and other healthcare providers for the same nurses and other staff, all while complying with similar state and federal regulations. This is an unexpected and undue burden for those facilities that simply accepted funds that were automatically sent to them in the initial $30 billion general distribution but did not proactively request additional funds in future phases.

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While all providers understood that additional reporting requirements could be imposed, it is unrealistic to think a provider accepting funds based on Medicare participation would anticipate the level of reporting outlined in the Reporting Requirements. Nearly 50 percent of all providers that received PRF payments exceeded the $10,000 threshold. As previously noted, this will cause an administrative burden on HHS staff and smaller providers like our members.

Health care related expenses or lost revenue. The Terms and Conditions documents for Phase 1, Phase 2, and Phase 3 general distributions all state that the PRF payments be used for health care related expenses or lost revenues that are attributable to coronavirus. However, the Reporting Requirements seem to indicate that providers must submit data on both, regardless of whether they spent more than they received through the PRF on expenses alone. ASCA recommends that if a provider can show all PRF funds were used on health care related expenses attributable to coronavirus, that provider should not have to submit the financial information in the lost revenue section.

Lost revenue definition. We were surprised to see lost revenue defined as "a negative change in year-over-year net patient care operating income" for the first time in the Reporting Requirements document. Previous references to lost revenue indicated that March and April 2019 revenue would be compared to March and April 2020 revenue, which made sense as that was when our facilities were forced to close their doors or significantly decrease volume. Once allowed to reopen, however, our facilities stepped up in a huge way to address the backlog of necessary outpatient surgery that was delayed due to COVID-19. Many facilities stayed opened longer hours or opened on the weekend to meet demand from patients seeking surgical care in a setting far removed from those being treated for COVID-19. Focusing just on March and April provides the most accurate picture of revenue lost due to COVID-19 and allows facilities to show how that funding was used to ensure they would be financially able to reopen.

Now more than ever, communities across the country rely on ASCs for safe surgical and preventative care. I urge you to consider revising these reporting requirements so that our facilities can focus on their patients at this critical time rather than paperwork and ensure that ASCs can continue to serve patients and their families.

Sincerely,

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