The table below outlines the specific provisions in the Centers for Medicare and Medicaid Services’ (CMS’s) Emergency Preparedness Requirements Final Rule on which the Ambulatory Surgery Center Association (ASCA) submitted comments. This document does not necessarily represent the entirety of the proposals or rules from CMS on the different topics but rather, the ones of note based on the comment letters.

**Medicare and Medicaid Programs; Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers (CMS-3178-F)**

*This final rule establishes national emergency preparedness requirements for Medicare and Medicaid participating providers and suppliers to plan for both natural and man-made disasters, and coordinate with federal, state, tribal, regional, and local emergency preparedness systems. The final rule is scheduled to be published in the Federal Register on September 16, 2016. It is effective 60 days after publication and health care providers and suppliers affected by this rule must comply and implement all regulations one year after the effective date.*

| **Proposed Rule** | **ASCA** | **Final Rule** |
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| **ASC Exceptions** | | |
| This rule proposed regulatory standards in emergency preparedness for Medicare and Medicaid participating providers in the areas of emergency plan development, policies and procedures, communication plan development and training/testing programs.  CMS proposed that ASCs meet most of the same proposed emergency preparedness requirements as hospitals, with two exceptions.   * ASCs would not have to provide information regarding their occupancy as CMS proposed for hospitals, since the term "occupancy" usually refers to occupancy in an inpatient facility; and * ASCs would not need to provide for subsistence needs of their patients and staff. | ASCA supported the agency’s proposal to exempt ASCs from these two hospital-specific requirements. | CMS finalized the proposal to except ASCs from the two hospital-specific requirements. |
| **Emergency Plan 42 CFR § 416.54 (a)** | | |
| This proposed rule required that Medicare and Medicaid participating providers develop an emergency plan based on risk assessment using an all-hazards approach focusing on capacities and capabilities that are critical to preparedness for a full spectrum of emergencies or disasters specific to the location of a provider or supplier.  CMS proposed that ASCs develop and update their emergency plan annually. The required emergency plan under the proposed rule must include a process for ensuring cooperation and collaboration with local, tribal, regional, State, and Federal emergency preparedness officials. | ASCA supported the requirement for an ASC to develop and update an emergency plan on an annual basis.  ASCA expressed concern about the community-based aspects of the proposal because many communities do not include ASCs in their emergency preparedness efforts. ASCA also felt that this aspect of the proposal will be burdensome and often unachievable.  ASCA recommended that CMS explicitly state that an ASC is in compliance with all community-based requirements as long as the ASC has written documentation of its attempts to cooperate and collaborate with community organizations, even if the community organizations never respond. | CMS finalized the proposal with the following requirements regarding ASC emergency plans:   * ASCs must include a process for maintaining cooperation and collaboration with local, tribal, regional, state, and federal emergency preparedness officials’ efforts; and * ASCs must document their efforts to contact pertinent emergency preparedness officials and, when applicable, document their participation in any collaborative and cooperative planning efforts   CMS acknowledged that providers cannot control the actions of other entities within their community and they are not expecting providers to hold others accountable for their participation or lack of participation in community emergency preparedness efforts. |
| **Policies and Procedures 42 CFR § 416.54 (b)** | | |
| CMS proposed that Medicare and Medicaid participating providers develop and implement policies and procedures based on the emergency plan and risk assessment.  As part of these policies and procedures, CMS proposed that ASCs develop arrangements with other ASCs and providers to receive patients in the event of limitations or cessation of operations to ensure the continuity of services to ASC patients. | ASCA expressed concern with the proposed requirement that ASCs develop arrangements with other ASCs and providers to receive patients.  ASCA noted in their letter that in the case of an emergency an ASC would cancel upcoming procedures for that day, stabilize any patients already in the facility and transfer to a higher level of care if needed, and ensure that all ASC staff and volunteers are accounted for and can either shelter in place or return home safely.  ASCA recommended that CMS remove this requirement from the finalized policy. | CMS withdrew this proposed requirement.  CMS acknowledged that ASCs are highly specialized facilities that would not necessarily transfer patients to other ASCs during an emergency. Based on this understanding of the nature of ASCs, they believe that ASCs should not be required to establish arrangements with other ASCs to transfer and receive patients during an emergency. |
| **Communication Plan 42 CFR § 416.54 (c)** | | |
| The proposed rule would require that Medicare and Medicaid participating providers develop and maintain a communication plan that complies with both Federal and State law.  As part of this communication plan, CMS proposed to require ASCs to track all staff and patients after an emergency and requiring that if any on-duty staff or patients are in the ASC during an emergency and transferred or relocated, the ASC must document the specific name and location of the receiving facility or other location.  CMS also proposed that ASCs be prepared to disseminate information about a patient’s status, should an unforeseen emergency occur while the ASC is open and in operation. | ASCA agreed that it is reasonable to expect an ASC to develop a communication plan that requires the facility to maintain contact information of those who work in the facility and community emergency preparedness staff who may be called upon to assist, and a means for securing patient information.  ASCA expressed concern with the proposal to require ASCs to keep track of patients once they leave the facility.  ASCA asked that ASCs be exempted from the requirement to disseminate information about a patient’s status during an unforeseen emergency situation while the ASC is open and in operation. | CMS withdrew the proposal that ASCs keep track of patients once they leave the facilities. However, ASCs are still required to track their patients and staff before and during an emergency.  If patients or staff are transferred elsewhere for continued or additional care, the ASC must document the specific name and location of the receiving facility or other location for those patients and on-duty staff who are relocated during and emergency. CMS notes that if the ASC is able to close or cancel appointments, there would be no need to track patients or staff.  CMS is finalizing the policy requiring ASCs to disseminate information about a patient’s status during an unforeseen emergency. |

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| **Training and Testing 42 CFR § 416.54 (d)** | | |
| The proposed rule would require that Medicare and Medicaid participating providers develop and maintain training and testing programs, including initial and annual trainings, and conduct drills and exercises or participate in an actual incident that tests the plan.  As part of the training and testing requirements, CMS proposed that ASCs should participate in a community mock disaster drill at least annually.  CMS also requested comments on whether training exercises should be required annually or semiannually. | ASCA objected to the proposed requirement that ASCs participate in a community mock disaster drill because many communities are not interested in including ASCs in their emergency preparedness efforts.  The proposed rule does allow ASCs to conduct a facility-based mock disaster drill if a community drill is not available, but ASCA believes that this will impose an additional burden on what is already, in most cases, a lean staff.  ASCA recommended annual testing, not semiannual, as the standard, and that the ASC should maintain the option to conduct all of the required trainings and tests at one time. | CMS finalized their policy to require ASCs to participate in an annual mock disaster drill. If a community disaster drill is not available, CMS will require an ASC to conduct an individual facility-based disaster drill.  CMS revised their testing requirements for the second test to allow either a facility-based drill or a tabletop exercise annually, so an ASC may opt to conduct a tabletop exercise over a facility-based drill. Typically, a tabletop exercise involves key personnel discussing simulated scenarios in an informal setting.  CMS is finalizing a policy of annual testing. |