

## **AMBULATORY SURGICAL FACILITIES (ASFs, defined in CON law as outpatient surgical centers with two or more operating rooms that are reimbursed by third party payers)**

### **Current scope of CON regulation of ASFs**

1. Projects requiring a CON:

- Establishment\*
- Relocation
- Adding operating rooms\*
- Capital project in excess of \$6.15 million

\*Unless eligible for review as an exemption from CON review

2. Projects eligible for review as a request for exemption from CON review:

- Establishing a two-operating room ASF if the ASF will be owned by one or more health care practitioners or a group practice, as defined in §1-301 of the Health Occupations Article (can be proposed as a new facility or the addition of a second operating room to a “physician outpatient surgery center” with one operating room);
- Establishing a two-operating room ASF if the ASF will be owned by a general hospital with two or more operating rooms and establishment of the ASF is proposed in conjunction with conversion of the hospital to a freestanding medical facility on the same campus as the freestanding medical facility or immediately adjacent to the freestanding medical facility, if it seeks such an exemption: (a) in conjunction with an exemption to convert to a freestanding medical facility; or (b) after the issuance of an exemption to convert a general hospital to a freestanding medical facility and prior to the closure of the general hospital;
- Establishing a two-operating room ASF if the ASF will be owned by a general hospital and establishment of the ASF is proposed in conjunction with the closure of two dedicated outpatient or mixed-use operating rooms of the sponsoring general hospital.
- Merger or consolidation of two or more ASFs;
- Relocation of an ASF owned or controlled by a merged asset system (two or more health care facilities) subject to geographic limitations and only if the type or scope of services offered does not change and the relocation does not require a qualifying capital expenditure that exceeds the capital review threshold;
- A change in the bed capacity of an ASF pursuant to consolidation or merger of two or more ASFs;
- A change in the type or scope of the health care services offered by an ASF if the proposed change is pursuant to the consolidation or merger of two or more ASFs; and
- A capital expenditure that exceeds the review threshold made as part of a consolidation or merger of two or more ASFs

### **KEY policy objectives of current CON regulation of ASFs**

1. Facilitate development of market-priced ASF settings to the maximum extent possible under current law
2. Maintain high capacity use of operating rooms in hospitals and ASFs – OR capacity can be expanded if existing ORs are frequently used

### **Ambulatory Surgery Fact Sheet CON Modernization Task Force April 20, 2018**

#### **Supply of Ambulatory Surgical Facilities (2015):**

- 325 licensed ambulatory surgical facilities (ASFs) with 280 operating rooms and 485 procedure rooms.

- Most of these ASFs are not subject to CON regulation. Only “health care facilities” are subject to CON regulation and, in the CON law, an ASF subject to CON regulation is one that has two or more operating rooms (ORs). There were 41 ASFs of this type in 2015.
- Thus, most licensed ASFs (239 or 85% of all licensed ASFs) are not “health care facilities” subject to CON regulation. These ASFs have only one operating room or no operating rooms. The State Health Plan refers to these ASFs that fall below the threshold of CON regulation as “physician outpatient surgical facilities.”
- The total number of licensed ASFs changed very little between 2011 and 2015.
- The number of ORs at all ASFs (regulated and unregulated) declined 5.7% between 2011 and 2015. The number of procedure rooms at all ASFs increased 6.1% over the same period
- Pain management is the most frequently reported specialty by ASFs (29% of all ASFs), followed by podiatry (26%), GI (22%), plastic surgery (20%), and orthopaedic surgery (18%).

#### Surgery in the ASF and in the hospital setting

- Licensed ASF Payor Mix (2015): Private pay (46%), Medicare (26%), Other (24%), Medicaid (4%)
- 73% of ASFs report a single surgical specialty. 10% of ASFs report two to three surgical specialties. 17% report four or more surgical specialties. All general hospitals are multi-specialty providers of ambulatory surgery.
- 47 general hospitals with 596 operating rooms and 216 procedure rooms.
- One new general hospital was established in Maryland between 2011 and 2015.
- The number of hospital-based ORs increased 1.5% between 2011 and 2015. The number of hospital-based procedure rooms declined 4.4% during the same period.
- For all cases (operating room and procedure room), ASFs performed 664,009 cases or 59% of the Maryland total. Hospitals reported 463,120 cases (41% of total cases).
- Overall case volume (ORs and procedure rooms) at all ASFs (regulated and unregulated) increased 9.9% between 2011 and 2015. Overall case volume (ORs and procedure rooms) at hospitals decreased 0.4% during the same period.

#### Recent regulatory reform:

A new SHP chapter of regulation recently went into effect that allows physician-owned unregulated ASFs to establish themselves as ASFs (by adding a second OR) and allows hospitals to create two-OR ASFs if overall ASF capacity does not increase. (See previous bullet point on page one. In essence, two ORs at the hospital would need to be decommissioned.)

#### Other

- Analysis of ASF supply throughout the U.S. indicates that Maryland would be likely to have fewer ASFs if it regulated all ASFs (i.e., including those with no more than one OR) or did not regulate any ASF development.
- The current state of the art in development of quality measures for ASF performance is underdeveloped when compared with most other types of health care facilities regulated under CON.