

ASC PHYSICIAN FOCUS

AN ASCA PUBLICATION >>

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Message from the CEO



Physicians are the backbone of the ASC community. For more than four decades, your leadership has established

surgery centers as a safe, top-quality alternative for outpatient surgery. Your entrepreneurship and innovation have helped patients realize the many benefits ASCs provide.

To sustain this success despite the chaos that exists in the health care marketplace today, your active involvement in the industry is vital. To protect your patients and ASC, you need to voice your concerns and share the news about the outstanding outcomes patients experience in the ASC setting.

There are numerous opportunities for you to be involved in the ASC industry, and ASCA will work to find the right fit and make the experience as easy as possible for you. All we ask of you right now is that you send us an email at physicianfocus@ascassociation.org. Let us know about your particular interests and expertise and how we can best contact you. With your support, we can protect the ASC model of care.

We look forward to working with you.

Bill Prentice
Chief Executive Officer

Beyond Volume: Supporting Your ASC's Growth and Success

Performing procedures is just one way physicians can assist their ASCs. We asked four physician leaders what else they do to help their ASCs thrive.

Michael DiBenedetto, MD, Orthopedic Surgeon and Owner, Pend Oreille Surgery Center, Ponderay, Idaho: On most summer days, I walk from my office across the parking lot to my ASC. I usually pull a few weeds from the flower beds on the way. I am reminded how our significant commitment to the success of the center involves so many different opportunities. Our center is small, so non-clinical duties are unpaid.

This spring, I accompanied our director, Kris Sabo, RN, to our state ASC meeting. Along with the many informative topics, we met with our congressional representatives. We discussed critical issues ranging from highway access to price transparency. Our commitment to our patients reflects in all we do, from pulling weeds to our intense focus on providing the best care possible.

Stephen Hallier, MD, Anesthesiologist and Owner, NorthStar Surgical Center, Lubbock, Texas: I feel my most important contribution, beside bringing cases, is being involved in the center itself—everything that goes into running the facility, which includes attending meetings and reviewing policies.

I also think it is important to support staff. They really make the ASC function. One way we show support is by providing lunch every day. That costs the owners a fair amount of money, but it has helped bond the staff to the physicians. We all eat in the same room and talk about our lives. It creates more of a family-type atmosphere here.

Michael Piazza, MD, Orthopedic Surgeon and Owner, Orthopaedic Surgery Center of Clearwater, Clearwater, Florida: I and my peers lead a hectic life. We juggle

responsibilities that include running a practice, attending hospital meetings and earning continuing education while making time for family and personal health. Adding another meeting to the calendar can seem like the last thing we would want. However, integral to an ASC's success is physician involvement beyond the OR. The best administrator and staff cannot replace the insight and acumen we can bring to the table.

It is paramount to have ongoing communication with the administrator to remain cognizant of the latest developments and opportunities. Being an owner of an independent ASC allows us flexibility with the decision-making process. We are able to adjust plans without a long bureaucratic process. However, doing so necessitates having the latest information at our disposal. Quick updates with administration allow me and my partners to have critical information presented, ask questions and provide direction.

Richard Rosenfield, MD, Gynecologist and Founder, Pearl SurgiCenter, Portland, Oregon: My ASC is focusing on self-funded corporate plans and value-based payment models to maximize fiscal success. We have created and rolled out a proprietary program that combines all benign gynecology CPT codes into a simplified bundled payment system.

Our flagship program in Portland has seen increasing success and interest from self-funded plans as we provide a precise alternative payment model with complication protection. This allows patients and payers to access a high-performance network of surgeons at our flagship location for advanced pelvic surgery in the gynecology vertical. The result is tremendous savings to the health care system and enhanced earnings for the ASC and its surgeons as we transition expensive, DRG-based cases from hospitals into the ASC environment.

The Big Production About ASC Nonproduction

By Michael Schaff, Grace Mack and Alyson Leone



Schaff

Clients often approach us with concerns regarding unproductive owners at their surgery centers. In these instances, ASCs must keep in mind that it is improper under the federal Anti-Kickback Statute (AKS) to base ownership on the volume or value of referrals of Medicare/Medicaid patients. State law may also prohibit tying ownership to referrals.



Mack

The AKS prohibits the payment or receipt of anything of value in exchange for Medicare/Medicaid patient referrals. Under the AKS safe harbor for surgery centers (42 CFR 1001.952(r)(1)-(4)), distributions made to a physician-owner do not violate the AKS so long as all of the applicable standards are met. Compliance with the ASC safe harbor is not required. However, if it is met, then payments to a physician for his/her ownership interest would not be deemed prohibited remuneration.



Leone

The ASC safe harbor requirements include the following:

- For all ASCs, at least one-third of each physician investor's medical practice income from all sources for the previous 12-month period must be derived from the physician investor's performance of ASC procedures.
- For multi-specialty ASCs, at least one-third of the ASC procedures performed by a physician investor for the previous 12-month period must be performed at the ASC.
- The terms on which an investment interest is offered to an investor must not be related to the previous or expected volume of referrals, services furnished or the amount of business otherwise generated from that investor to the entity.

Review governing documents. In most instances, the process for addressing an unproductive owner is in the governing documents of the surgery center. These agreements often contain a condition that owners comply with the ASC safe harbor. The center must determine whether the owner's actions/inactions are a breach of these requirements.

The governing documents sometimes also include the ability to terminate an owner without cause, which would allow the redemption of an ownership interest upon the vote of the board or an agreed upon percentage of the owners. However, even if the governing documents contain a "without cause" termination provision, the ousted physician may elect to seek recourse for being terminated if it is conditioned on the lack of a certain volume or value of referrals. Thus, ASCs and their owners must be careful in discussing an owner's lack of productivity, even if they are relying on the without cause termination provision in the governing documents.

Review bylaws, policies and procedures. Separate from the governing documents, the center's medical staff bylaws or policies and procedures may require physicians to perform

a minimum number of procedures. An owner's failure to perform a minimum caseload may be a breach of such documents and could potentially result in the termination of his or her staff privileges at the center.

Be sure rules are consistently enforced. ASCs that obligate their physician-owners to comply with the ASC safe harbor must not selectively enforce the requirements, but rather apply them consistently for all physicians. If the surgery center permits exceptions to the ASC safe harbor requirements, it is important to document the rationale for any deviation and be as uniform as possible.

Under the AKS, if (i) the surgery center's governing documents have a provision whereby failure to meet the appropriate ASC safe harbor requirement has been triggered and (ii) other physician-owners who do not meet the same criteria are treated similarly, the ASC may be able to redeem an unproductive physician's ownership interest. Any termination must be for non-compliance of these requirements and not for failure to refer cases to the center.

Surgery centers should be sure to consult with their health care attorneys before deciding how to proceed in these circumstances.

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MIPS Update: How Might the Latest Proposal Affect You?

Under a proposed rule issued June 2017, Medicare's Merit-Based Incentive Payment System (MIPS) program would include all physicians that bill more than \$90,000 in Part B charges or provide care for more than 200 unique Medicare patients per year.

Previously, the threshold for including physicians in that program was \$30,000 in revenue or 100 unique patients.

All physicians included in the MIPS program are required to submit 2017 performance data by March 31, 2018, to avoid a negative payment adjustment.

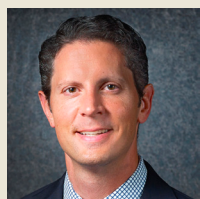
Access a press release on the proposed rule here. Check to see if the MIPS program applies to you by entering your NPI number here.

The MIPS program is a component of *The Medicare Access and CHIP Reauthorization Act of 2015*. That act replaces the Sustainable Growth Rate (SGR) formula as the standard for physician's Medicare payment determinations

Note: The MIPS program affects Medicare reimbursement rates for physician services, not ASC facility services.

Lead Your ASC's Governing Board to Success

By Matt Pate



Physicians frequently serve on their ASC's governing board. Here are ways they can be more effective in this role.

1. Understand health care challenges and drivers.

Becoming involved in governance does not mean being an expert in all areas, but board members need to stay abreast of industry news and the changes that are rapidly redefining the health care marketplace. Attend educational conferences, network with your peers and read broadly to stay on top of issues like managing care delivery under new incentive payment models and the implementation and effects of Medicare's Quality Reporting Program. Acquire a working knowledge of the roles of the various board committees.

2. Master a new style of leadership.

Practicing medicine and the duties and responsibilities of board leadership are much different. Practicing medicine involves episodes of care, while board leadership involves managing complex issues and processes over time. A physician is the "expert" in his/her field at the clinic and carries the responsibility for the result. A leader on a governing body is one of many experts at the table and must share responsibility with the group. A physician practice has an individual or small team focus, while board leadership involves dealing with a larger group and using an integrated approach.

Even physicians who have had years of medical training often find when they join a board that they are surrounded with people who have been practicing committee leadership and developing management skills for decades. That can lead to a disconnect in communication. While medical education usually assures success in a challenging surgery, it may not have trained a doctor on the corporate finance and technical issues that are part of the complexity of running a large organization. The different skills required are not a matter of right or wrong but rather an example of both disciplines operating in different ways.

3. Focus on the big picture, be prepared and follow through.

Participating in a leadership role on your ASC's governing body involves much more than simply representing your individual agenda or department at the table. Representative roles are fleeting and do not carry the weight of leadership in many circumstances. The current environment requires physician leaders to demonstrate commitment, understand performance and be ready to evaluate multiple situations simultaneously.

To be an effective part of an ASC's leadership, the physician must understand the organization and believe in the mission (what the organization wants to accomplish), the vision (where the organization wants to be in the future) and the goals (how the organization will accomplish the mission) of the board.

Understanding the basic legal responsibilities of a board member will help physicians navigate the potentially rough waters. The three primary legal duties are the "duty of care" to prudently use the assets, facilities and people of the organization to advance the organization's effectiveness; the "duty of loyalty" to make decisions in the best interest of the organization; and the "duty of obedience" to make sure that all applicable laws are ethical and appropriate for the organization to drive its mission.

The board does its work in board and committee meetings, so plan to attend them all, arrive on time and be prepared. Read materials provided in advance so you can make intelligent and thoughtful comments. To make the most of your board experience, be there, contribute and follow through on assignments.

A successful experience as a board member is the result of applying key industry knowledge wisely, desiring to become a leader and champion for your organization and being available and accessible to the board. The physician knowledge base is a prime starting point from which to grow and develop a governance leader.

Matt Pate is a senior vice president of United Surgical Partners International (USPI), an owner, operator and developer of ASCs and short-stay surgical hospitals nationwide based in Addison, Texas. Write him at mpate@uspi.com.

Ransomware on the Rise: Facts, Figures and Guidance

The use of ransomware—a type of malware that encrypts (locks) digital files and demands a ransom to release them—is the tool of choice for cybercriminals. A June 2017 report released by cybersecurity firm Barkly noted that six in 10 "malware payloads" were ransomware in the first quarter of 2017. The report also noted that a company is hit with ransomware every 40 seconds and 71 percent of companies targeted by ransomware were infected.

Data encrypted by ransomware can cause great harm to ASCs: disruption of operations, loss of information, expenses associated with restoring files and damage to reputation.

Advice from the Federal Bureau of Investigation on how to deal with ransomware includes the following:

- Educate employees on their role in protecting data.
- Keep operating systems, software and firmware updated.
- Provide administrative access only

to staff members who need it.

- Only provide read-access to files unless writing to files is necessary.
- Keep antivirus and anti-malware solutions current. Run regular scans.
- Perform regular data backups and secure backups.

There is more that goes into keeping your ASC safe from ransomware. Ensure your in-house IT specialist and/or IT vendor partner have made protecting and backing up your data a top priority.

Understanding the Cash Flow and Risk Factors That Drive ASC Value

By Colin Park



Whether working to improve an ASC's bottom line for increased distributions, marketing to new physicians, comparing year-over-year performance or considering selling a controlling interest in your center, it is important for ASC management and owners to know what drives the value in their centers.

A common misconception held amongst ASC participants is that there is consistency in value from one ASC to the next—the belief that the ASC across town sold for \$X, so that must mean that my ASC is worth \$Y. We have said it before and will say it again: All ASCs are not created equal with respect to value. The definition of value, put simply, is the expected earnings-generating capacity of an entity and the risk associated with achieving those earnings.

Figure 1 below shows the primary factors that impact future cash flow/earnings of an ASC in ascending order of importance and impact.

As Figure 1 indicates, a number of different factors can have a direct impact on future earnings, including the following:

- Strong service line mix—performing surgical cases from various specialties that have strong reimbursement and healthy margins.
- Capacity to grow and increase volume. If an ASC is currently at full capacity and can no longer perform

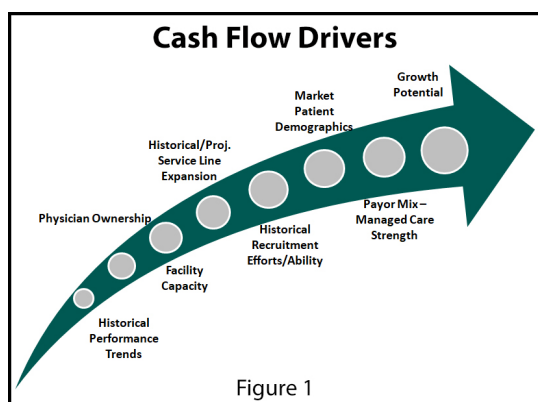


Figure 1

additional cases, future growth will be limited.

- Positioned in a market that has patient demographics that support volume growth.
- Physician ownership, which helps to align the financial incentives of the ASC with the physicians performing the cases.
- Diversified payer mix with strong managed care contracts; this will further improve the future earnings of a center.
- Not necessarily a driver of future growth, but a history of positive growth and strong performance trends at an ASC is an indication of a well-run facility with future growth potential.

Shown in Figure 2 above are the primary factors that impact the risk associated with the future earnings potential for an ASC that were mentioned previously.

As Figure 2 shows, an ASC can minimize the risk associated with future earnings in many different ways, including the following:

- Physician owners. This is imperative as it aligns their financial incentives with the performance of the center. Additionally, decreasing the level of reliance on volume produced by non-owner physicians helps to reduce the risk associated with volume departure.
- Putting non-competes in place with the physician owners will help reduce the risk of volume being shifted to competing facilities in the immediate market.
 - For multi-specialty centers, a healthy mix of specialties helps reduce risk. A significant level of reliance on one specialty presents a greater risk of revenue being impacted by changes in reimbursement.
 - Not relying upon a single or a few physicians for volume. If a single physician who brings a lot of patients to the ASC is in the twilight years of his or her career, the center runs the risk of losing a large amount of volume upon

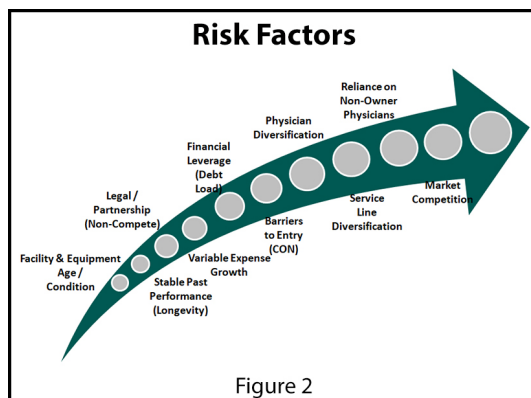


Figure 2

that physician's retirement. This risk can be mitigated substantially by having many different physicians that perform cases at the ASC in addition to putting in place succession plans for physicians nearing retirement.

- Not having a heavy reliance on a single payer source or out-of-network exposure. By having revenue sourced from many payers, the risk associated with managed care contract changes is minimized.
- From an expense perspective, the goal for improving value is cost containment. Typically, the largest expense components are staffing and supplies, which are mostly variable. By actively managing supply costs and implant expenses, a direct impact can be made to value. Additionally, keeping staff lean and having as little down time as possible for clinical staff will aid in improving margins.

In the world of health care, provider entities typically have two primary missions: 1) provide an environment that enables the delivery of quality patient care and 2) provide a positive economic opportunity for the equity owners. Whatever the reason might be for working to improve the value of your ASC, the members of your ASC's management team should understand what drives that value. Doing so will help you become a more effective owner or operator of an ASC and better drive growth.

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