March 2006
Vol. 2006 No. 2

BECKER'S ASC Review

AMBULATORY SURGERY CENTERS BUSINESS AND LEGAL UPDATE

Survey by Healthcare Appraisers

Statistics.

Healthcare Appraisers (Contact Todd Mello 561-330-3488) just released its 4th ASC Annual Valuation Survey. This is titled "How Do the ASC Companies Assess Value." Todd Mello of Healthcare Appraisers will discuss the study at our June ASC Conference. Here are seven of the most interesting statistics (also visit www.HealthcareAppraisers.com):

Favorite specialties	Orthopedics, ophthalmology, GI, ENT, pain management and podiatry
Preferred number of physician owners	11 to 20
Preferred ownership percentage	Less than 10% (1) 11% to 29% (4) 30 to 51% (7) More than 51% (3)
Typical management fee charge	5% to 5.9%
Multiple paid for transactions	5 to 5.9x7% of transactions 6 to 6.9x79% of transactions 7 or higher 14% of transactions
Premiums paid in CON states	92% say yes
Does out of network business detract from value	64% say yes

Specialty Hospitals.

A potential definition of a surgical hospital appears to be being utilized by CMS.

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Nine Warning Signs That Your ASC Needs a Management Makeover

ASCs lacking effective management or those being mismanaged often cannot financially sustain themselves and, in some cases, are forced to close. To prevent that from happening at your ASC, you should regularly evaluate your ASC to ensure that it is being adequately managed. However, assessing the health of your ASC is not always easy. To help, here are some warning signs that ASC experts say may signal that you have management problems so that you can fix them before they become insurmountable.

1. No Monthly Profit Distribution

Evaluating monthly profits paid out to your investors after your costs are covered is one way to evaluate your ASC's financial health. If you are not distributing monthly profits to your investors, then something may be grossly wrong with your ASC's finances and management, says ASC consultant Brent Lambert. Your problems can lie in many of the below mentioned areas: high staffing and supply costs, mismanaged receivable and payable cycles, and annual losses in revenue and case load.

2. Staffing Costs Greater than Twenty Percent of Revenue

If your staffing costs are more than twenty percent of your total revenue, your staffing costs are not being managed properly. "A higher than twenty percent number is a warning sign that your ASC is not operating efficiently," Lambert explains. High staffing costs may be the result of: paying for unnecessary overtime hours, improper scheduling, or having costly gaps in your operating schedule. A well managed ASC will ensure that the ASC is utilizing staff effectively and scheduling space and surgeons properly, adds ASC consultant Caryl A. Serbin.

3. Supply Costs Greater than Twenty Percent of Revenue

If your supply costs are greater than twenty percent of your revenue, your supply costs are likely being mismanaged and you are spending too much on them, says Lambert. High supply costs could be due to a number of management factors including: not taking advantage of group purchasing organizations, negotiating poor contracts with vendors, and/or not regularly costing your surgeons cases, he says. Higher costs can also be due to an ASC's failure to standardize its supplies and implants resulting in higher inventory and higher costs per case, says Serbin. A well managed ASC will appropriately contain its supply costs.

4. Accounts Receivable Over Forty Five Days

Accounts receivable that are over forty days due should be a red light that your accounts receivable are not being properly managed and are hurting your bottom line, says Lambert. A well managed ASC will reduce the

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INSIDE

SEE PAGE 3 FOR INFORMATION ON 2006 CONFERENCES.

Letter from the Editor

This is shaping up to be an exciting year for ambulatory surgical centers. Several different things seem to be occurring at nearly the same time. These include:

1. Payor ASC Tensions. The tensions between payors and surgery centers are becoming more intense. Providers and surgery centers are increasingly looking at opportunities to serve payors out of network. At the same time, payors are using new tools to fight providers that are trying to serve patients out of network.

2. Higher Fees in Some Markets. In several markets, payors seem to be paying surgery centers higher fees. In some situations, this seems to be due to payors becoming increasingly irritated with high prices from hospitals and hospital out patient departments.

3. Out of Network. Certain national chains seem to be increasingly trying to reduce their reliance on out of network patient business.

4. Changes in Flux. An interesting paradox, certain national chains are being funded by private equity venture capital. At the same time, certain other chains seem to be folding up their tents and attempting to cash out.

5. Turn Around Efforts. There are increased efforts being made to resuscitate individual ambulatory surgical centers. Increasingly, the growth in the ASC business appears to be coming from such centers as opposed to de novo start up centers.

6. Hospital Systems as Buyers. Several hospital systems, including individual hospitals as well as chains, are increasing developing ASC joint venture strategies.

7. Purchase and Sale Transactions: There are currently more purchase and sale transactions related to surgery centers and small hospitals than we have seen in years. Further, the pricing of such transaction seems to be at higher levels than we have seen in some time. The amount of sale transactions seems to be driven in part by on one hand, the uncertainty of physician owners as to the continued strength and upside of their ambulatory surgical centers, and on the other hand, substantial and sustained growing public market interest in ambulatory surgical center and hospital investments. In short, physicians are looking for the opportunity to take a part of their investment capital off the table. At the same time, there are an increasing number of companies that are actively bidding to help them to do just that. Further, increasingly, local hospitals are active and substantial bidders for the ambulatory surgical centers.

8. Statistics. This purchase and sale activity comes in the wake of a nearly 40% increase in the number of ambulatory surgical centers over the last four to five years. For a number of interesting statistics related to ambulatory surgical centers, including such items as compensation for medical directors, administrators, anesthesiologists, directors of nursing, and statistics by center, please see the FASA survey relative to ASCs. FASA can be reached at 703-836-8808. This is truly a

fascinating study in terms of information that is both useful and can lead to terrific arguments amongst different parties. Please also read the March ASC Review.

9. Giant Buys Behemoth. United Surgical Partners ("USPI") recently announced the acquisition of Surgis. USPI is one of the nations leading ASC companies with nearly 100 ASCs. Surgis, while privately owned, operates approximately 24 ASCs.

10. Website Update. We have also updated our website at www.beckersasc.com. Given the cost of the significant update, I am not sure if it is as quite as "improved" as I hoped for. In any event, I would greatly appreciate your feedback on the website. Please email me at sbecker@mcguirewoods.com to provide it.

11. ASC Review. Finally, in the last ASC Review, we thanked the sponsors and advertisers for the ASC Review for this year. Since that issue was released, we have added American Medical Buildings, call Jack Amormino at 414-291-4430 and Z-Chart call Tom Felstad, M.D. at 860-924-2787, as well as Surgical Specialty Centre, visit www.sscbr.com. In addition, MarCap has raised its sponsorship of the ASC Review to the Gold Level. Thank you!

We have tried to cover in this issue several interesting issues. In addition to publishing a number of statistics, the issue discusses rules for developing imaging ventures, provides a question and answer section and several other industry notes. ■

Should you have questions you would like answered in the ASC Review, please contact me either by telephone at 312-750-6016 or by email at sbecker@mcguirewoods.com. Please also visit www.BeckersASC.com.

We hope you enjoy this issue!

Very truly yours,
Scott Becker

The ASC Review is published 6 times per year. It is distributed to approximately 12,000 persons per issue with distribution of 20,000 issues for each the May–June issue and the September–October issue. For information regarding advertising or subscribing, please contact Ken or Michelle Freeland at 858-565-9921 or by email at ken@pcmisandiego.com and michelle@pcmisandiego.com.

Survey by Healthcare Appraisers continued from page 1

There, CMS seems to assess a specialty surgical hospital as one in which more than 45% of the inpatient cases are orthopedic, cardiac or surgical care. Here, the definition appears somewhat preliminary and remains subject to change. It has particular input as to both (1) the new extension on the suspension of certification of new specialty hospitals, and (2) the new rules which may be imposed on specialty hospitals. ■

SAVE THESE DATES FOR 2006 CONFERENCES—

June 22–24, 2006
Chicago Illinois

The 4th Annual Ambulatory Surgery Centers Orthopedics, Neurosurgery and Pain Management Driven ASC Conference.

October 26–28, 2006
Chicago Illinois

The 13th Annual Ambulatory Surgery Centers Business and Legal Issues Conference—Improving, Establishing and Joint Venturing ASCs.

For information, please contact Scott Becker at 312-750-6016, sbecker@mcguirewoods.com; or Ken Freeland at 858-565-9921, ken@pcmisandiego.com.

Nine Warning Signs That Your ASC Needs a Management Makeover
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accounts receivables days by ensuring that: bills are rendered on the day of service; collections start fifteen days after the first bill is issued; when possible, bills are remitted electronically; and patients pay their co-pays and/or deductibles at the center on the day of surgery. ASC consultant Joe Zasa would allow forty five days for the receivables and says that a well managed ASC would bill claims within two days of the surgery date. Serbin adds that an ASC should ensure that its billing staff follows up on denials in a timely fashion to prevent further delays to its receivables.

5. Accounts Payable Over Thirty Days Due

Accounts payable that are over thirty days due can indicate several conditions—that your ASC does not have enough cash flow to pay the bills, staff is being careless or even in some cases, staff is stealing from you--all of which can be a clear sign of mismanagement, says Lambert. A well managed ASC will ensure that the bills are paid timely and that cash is available to pay the bills. Rather than simply relying on the financials for an accurate portrayal of accounts payable, a well managed ASC will also guard against theft by randomly contacting vendors on a monthly basis to ensure they are receiving timely payment. "If an administrator or another incentivized employee is attempting to defer payment in order to pad their own pocket, he or she simply may not list the deferred accounts payable on the financials," Lambert explains.

6. Less Than Ten Percent Annual Gain in Revenue and Profits

A sure sign that your ASC is being mismanaged is if your financial records

post less than a ten percent annual gain in revenue and profits. A well managed ASC will ensure this annual gain by continually improving the efficiency of their operating model, improving reimbursement and payor contracts, and increasing the number of patients and cases that come to the ASC annually. "Nine out of ten ASCs have inadequate fee schedules and get paid less than they should. An ASC that manages its contracts and reimbursements well is the one out of the ten that gets it right," Serbin says. For example, a well managed ASC will know its costs, negotiate hard for their reimbursement goals, demand carve-outs for implants, prosthetics and high-ticket procedures and, if necessary, walk away from unprofitable contracts, she adds.

7. No Steady Annual Growth in Cases

If your case numbers remain flat from year to year, your case load is likely not being managed properly. "A center should see a steady annual growth of about fifteen percent in the number of cases at the ASC," says Lambert. Generally, a well managed ASC will continually recruit new surgeons—who in turn bring in more cases and types of cases—to keep the ASC viable, says Zasa.

8. Patient and Staff Complaints

Complaints by patients or staff can be additional red lights that your ASC is being mismanaged. An unhappy staff can lead to sloppy work, missed days, and general operating inefficiencies, says Serbin. A well managed ASC will ensure staff is responded to promptly and receiving adequate direction, training and support, she adds. Patient satisfaction will result from a happy, well-managed staff.

9. No Compliance Plan

Lacking a compliance plan can be a sure sign that an ASC is misdirected and not well managed, says Zasa. A compliance plan that includes regular coding audits, performance improvement markers, in-house compliance checks, legal check-ups, and other safeguards, is vital to keep an ASC in regulatory and operational compliance, he adds. A well managed ASC will make sure to have a regularly updated compliance plan and follow it.

[SOURCES]

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Joe Zasa, Esq.: Partner, Woodrum Ambulatory Systems Development, 7326 Wentwood Drive, Dallas, TX 75225; (214) 369-2996 joezasa@woodrumasd.com. ■

Do A Quick Management Check-Up on Your ASC

Here is a table that you can use to quickly evaluate whether your ASC needs a management makeover. Six different criteria are listed with a corresponding performance metric for each one.

Criteria	Performance Metric
Staffing Costs	less than 20% of revenue
Supply Costs	less than 20% of revenue
Accounts Receivable	less than 45 days
Accounts Payable	less than 30 days
Profitability	about a 10% annual increase
Case Load Growth	about a 10–15% annual increase

Question and Answer

1. Our group is considering a joint venture with the local hospital to develop our ASC. What are some of the legal considerations and guidelines we should be aware of in developing the documents for our business relationship together?

A: A hospital generally has two or three key concerns in developing a joint venture. First, they must have sufficient control of the joint venture to help assure that the venture does not negatively impact its tax exempt status or the ability to treat the income it derives as exempt income. This generally means that they need to have a certain amount of ownership, and a certain amount of control. Further, the efforts of the venture must include serving charitable purposes, such as providing services to indigent, Medicare and Medicaid patients. Second, the hospital generally desires to assure that the venture will comply with the Medicare and Medicaid Fraud and Abuse Statute and safe harbors. Third, if the development of the joint venture reflects the transfer of the hospital's business to the venture, the hospital may feel compelled to do legal concerns to treat the venture as a transaction in which it should get paid for its current business.

2. Does the hospital really have to control 51% of the equity in a joint venture?

A: Generally, the hospital can be shown to be serving charitable and community purposes even it has less than 51% ownership. Here, the key point is that the hospital one way or another needs to have sufficient control such as special rights to help assure that it can force the venture to serve charitable purposes. This can include language in the documents that speaks to the venture serving charitable purposes as well as a unilateral right or board control to help assure the hospital that it has the power to force the venture to serve charitable purposes.

3. The primary care physicians in our town are owned by the hospital. We want to develop our own ASC, but the hospital may try to influence the PCPs and reduce the referrals to our practice. Can the hospital really do this?

A: Often, where a hospital really does own the primary care physicians, it has a great deal of latitude to influence and legally direct business. There are several aspects of this type of relationship that may be subject to legal challenge. However, the hospital does have a certain level of autonomy in this regard.

4. We understand the moratorium for specialty surgical hospitals remains in effect. Do you see similar legislation being enacted limiting physician ownership overall?

A: We do not expect to see similar legislation that would relate to the ownership by physicians of surgery centers or endoscopy centers.

5. We understand there are regulatory situations limiting how we can handle an

unproductive physician in our ASC, but recently we've heard of a technique called the "squeeze merger." Do you believe this mechanism is an effective way to get rid of dead wood?

A: In a lot of ways we believe that this is an inappropriate question. The general rule, under the Medicare and Medicaid Fraud and Abuse Statute is that you cannot force a member to perform cases as a means of retaining ownership. You can, of course, require physicians to comply with the ambulatory surgical centers safe harbors. That stated, when people start to use the concept of a squeeze out merger to get rid of dead wood, it strikes me as intended to force people out for not performing cases. While it may be able to be accomplished, it brings with it significant legal risk as to both a lawsuit from the investor being squeezed out as well as from a governmental perspective if they view it as an improper action under the Medicare/Medicaid Anti-Kickback Statute. ■

Medtronic Qui Tam Suit

A qui tam suit is pending relative to Medtronic. There the claims appear to relate to payments and other perks provided to orthopedic physicians who can or do use Medtronic products. The suit was filed on behalf of the United States by a former employee of Medtronic.

Any physician who has accepted payments or gifts of any sort from a manufacturer whose products he or she uses or from a provider he refers to should have counsel review such arrangements. A few of the questions he or she should ask include:

1. Is he or she really providing real services to the company?
2. Is the payment fair market value from an "hourly" perspective?
3. Are the tasks bona fide and needed tasks?
4. Does the company solely target highly productive physicians? ■

ASC Publications Worth Reading

Outpatient Surgery Magazine

FASA Update

AAASC Monitor

Today's SurgiCenters

$21,000,000

Senior Secured Revolving Credit Facility to support working capital

CIT Healthcare
Collateral Agent

Catholic Health System
Mercy Hospital of Buffalo
Medical excellence with a tradition of caring.

$25,000,000

Senior Secured Credit Facility provided to the NES Healthcare Group for recapitalization of existing capital structure and for working capital.

CIT Healthcare

$207,000,000

KEYS Group Holdings, LLC Has Been Acquired by Universal Health Services, Inc.

CIT Healthcare
Acted As Exclusive
Financial Advisor To
KEYS Group Holdings, LLC

KEYS Group Holdings, LLC

$30,000,000

Senior Secured Revolving Credit and Term Loan Facilities

CIT Healthcare
Sole Lender
Administrative Agent
Collateral Agent

NATIONAL RENAL ALLIANCE
Success Starts with Choosing The Right Partner

$75,000,000

Senior Secured Revolving Credit Facility

CIT Healthcare
Syndication Agent

PPS PACIFIC PULMONARY SERVICES
Home Oxygen & Respiratory Medication
Care to be the Best

$5,500,000

Senior Term Loan Facility for the Acquisition of Diagnostic Imaging Equipment and Related Tenant Improvements

CIT Healthcare
Sole Lender

JERSEY SHORE RADIOLOGY
ASSOCIATES

$300,000,000

Revolving line of credit provided to facilitate One Equity Partners, LLC's acquisition of OTN (Oncology Therapeutics Network) from Bristol-Myers Squibb Company.

CIT Healthcare
Sole Lead Arranger
Administrative Agent
Collateral Agent

OTN

$135,000,000

Senior Secured Credit Facilities provided to Diagnostic Imaging Group, LLC to fund a recapitalization of the company led by Evercore Capital Partners.

CIT Healthcare
Joint Lead Arranger
Syndication Agent

Diagnostic Imaging Group

$9,800,000

Senior Secured Credit Facility provided to recapitalize existing indebtedness and secured real estate loan used to acquire a long-term care facility. Senior Management Services of America operates 15 long-term care facilities located in Texas.

CIT Healthcare

Senior Management Services of America, Inc.

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For more information, call 800.547.7026 or visit CITHealthcare.com

CIT

Ten Core Concepts to Consider—Rules for Block Leasing of MRI and Imaging Services

Practices and companies increasingly examine block and per click ventures as a means to add imaging services.

This article outlines a few of the core considerations to consider when entering into block leasing arrangements.

1. Any practice interested in a block lease should commit, at a minimum, to a two to three hour block of time. The longer the block of time, the more likely the arrangement will be perceived as a legitimate arrangement and one that is not intended to induce referrals from the practice to venture partners or vice versa. The longer period also helps better show the practice as a real provider of the services.

2. The venture should establish that block leasing is a part of the overall business plan. The purpose and intent of the venture should be articulated in the governing documents of the venture and in other discussions.

3. The venture should consider obtaining a valuation to assure that the lease rates are consistent with fair market value. In addition to the set monthly rate, the aggregate lease rate should be set in advance.

4. The venture should offer the opportunity to enter into a block lease on an equal basis to all physicians. In other words, the opportunity to enter into block leases should not be offered solely to high volume physicians.

5. The term of the block leases should be for at least one year.

6. Each block lease should contemplate providing services to a wide range of patients.

7. Each Practice should maintain its office in the same building in which the imaging equipment is located. This is necessary in order to meet the requirements of the applicable Stark Act exception. The practice must also assure that it meets the definition of group as well as the Stark Act, billing, location and supervision tests.

8. Each practice should ensure that at least one of their physicians is appropriately trained in imaging services such that they can legitimately demonstrate that they are capable of, and actually are, supervising the personnel actually providing the service. Supervision is necessary in order to meet the requirements of the applicable Stark Act exception.

9. Each venture should fully review state law requirements regarding the provision of imaging services. Some states are more or less stringent than the Medicare program.

10. A practice should fully consult with legal counsel.

Should you have any questions regarding the above guidance, please contact Scott Becker at (312)750-6016 or Elissa Koch at (312) 750-5756. ■

News and Notes

Tom Yerden returns to ASC Consulting. We welcome back Tom Yerden to the ASC industry. Tom has formed TRY Ventures to provide short term consulting to ASCs, hospitals and physicians. He can be reached at TYerden@aol.com, 208-865-2400 or at 208-303-0173.

We congratulate Prescient Healthcare. Prescient has now reached implementation of its system in more than 100 locations. For a software company, this is both critical and terrific. Prescient can be reached through Al Samaras at 800-246-0875, or asamaras@prescienthealthcare.com.

NovaMed, a fast growing and well managed publicly traded ASC company, has appointed Thomas Hall as Chief Executive Officer. Tom has a terrific reputation and is a very likable leader.

A quote I recently enjoyed from a book by Joel Greenblatt, "Choosing individual stocks without any idea of what you're looking for is like running through a dynamic factory with a burning match. You may live, but you're still an idiot."

Three Business Books Worth Reading

1. Improving Profitability by Ram Charan (4)
2. The Number by Lee Eisenberg (2.75)
3. Are you Ready to Succeed?—Unconventional Strategies for Achieving Personal Mastery in Business and in Life by Srikuman S. Rao (4) ■

Advanced Practice—Short Stay Hospitals

Ellen Swan of Advanced Practice has introduced a new service. Here, their company audits the bills of small hospitals to help assure the hospital is properly billing for all services and to review billing appropriateness. This service can help improve both profits and compliance. Ellen can be reached at Swan.Ellen2@e-advancedpractice.com ■

Modern Healthcare—By the Numbers

Modern Healthcare annually publishes an issue entitled "By the Numbers". The issue is full of interesting statistics. Here are a selected few:

Medicare pays 17% of all health care costs.

Hospital Care reflects 31% of Medicare expenditures.

Physician services represent 22% of Medicare expenditures.

Upgrades vs. downgrades of hospitals by bond rating agencies during 2005 was much better than 2004 or 2003.

Hospitals posted record profits in 2004 and likely 2005, 26.3 billion dollars in 2004.

30% of all hospitals have 200 or more beds.

40% have less than 99 beds.

Approximately 833 of nearly 5,000 hospitals are for profit.

2004 saw the most inpatient surgeries performed in the last decade, except for 2002.

The largest healthcare investment bank in 2005 was CitiGroup. CITs healthcare investment banking practice is growing as well.

Venture capital investing in healthcare is substantially lower than in 1999-2001. 1.4 billion dollars in 1999, 416 million dollars in 2004.

Medicare Spending

38% Hospital Inpatient

6% Hospital Outpatient

18% physicians

Anesthesia average compensation ranges by study from $232,000 to $353,000.

Orthopedics is the 9th largest physician specialty—23,796 total orthopedic physicians

Largest For Profit Hospital Systems by number of hospitals

HCA 187
Tenet 94
Community Health Systems 71
Universal Health Services 66 ■

Selling an ASC or Small Hospital—Seventeen Questions to Consider

1. What are the expected benefits to the Seller?
2. Does the ASC ownership represent too much of the owners net worth?
3. Does the ASC need management help?
4. Does the ASC want to sell a majority or minority interest in the ASC?
5. What are the biggest risks the ASC faces?
6. Will a great deal of the owners support a sale?
7. How will a buyer work with the staff and the key employees after the sale?
8. What do other centers say about the Buyer?
9. What price will a buyer pay? Is it a fair price? How much will be sold?
10. Should the local hospitals be approached?
11. Is the buyer easy to work with?
12. What will the voting rules and redemption rules be after the transaction?
13. What is the fee for management services? What is covered by the services? Is there a fee? Is the management agreement forever?
14. How many ASCs does the buyer manage?
15. What will the non compete covenant restrict? Will the buyer be bound by the non compete also?
16. Can the buyer ever be bought out?
17. How can a seller later withdraw from the venture? At what price? ■

Purchase and Sale Transactions

We are in the process of seeking buyers/partners for two small hospitals, each with EBITDA of $5 million–$6 million a year. If you or your company has an interest, please contact me at 312-750-6016 or sbecker@mcguirewoods.com.

McGuireWoods, LLP recently had the privilege of helping to complete the sale of three surgical centers. These included an ASCOA surgical center in Texas (contact Brent Lambert 781-758-1533 or Luke Lambert 781-659-0422) (the buyer was NovaMed contact Bill Kennedy at 312-664-4100); and an acquisition in Nevada by Regent Surgical Health (call Tom Mallon at 708-686-1522). We also helped to sign up the sale of a surgery center in Kansas by Woodrum/ASD (contact Joe Zasa at 214-912-9502). There, Symbion (contact Mike Weaver 615-234-7912) was the principal buyer. ■

FASA Publishes ASC Employee Base Salary and Benefits Survey

The FASA Survey provides extremely interesting information for ASCs. It can be a great help and lead to terrific arguments. Becker's ASC Review recommends that every ASC join FASA. Visit www.fasa.org. Call 703-836-8808.

A few examples include:

Salary for Administrators:

Median	Mean
$82,000	$85, 773
High	**Low**
$275,000	$10,159

Salary for Medical Director:

Median	Mean
$25,000	$45,000
High	**Low**
$468,750	$500

53% of ASCs do not pay any Medical Director salaries.

An average Medical Director spends 18.2% of his or her time as a Medical Director.

Salary for Director of Nursing

Median	Mean
$67,374	$65,853

37% of ASCs have opened in the last 5 years

23% of ASCs perform less than 1,000 cases

ASCs may dislike HMO patients but they seem not to mind using them for their employees. ■

Essential Elements of an Operating Agreement

By Scott Becker and Alison Vratil Mikula

A limited liability company operating agreement for an ambulatory surgery center (ASC) is usually a long and detailed document. The most important elements of such an agreement, however, are typically found in only a handful of the key provisions. This article provides a brief overview of the issues those provisions should address. An operating agreement or a partnership agreement which addresses these issues well should provide a strong framework for the structure and governance.

1. Eligibility for Membership; Types of Members. The operating agreement should specify the investors or types of investors that will be permitted to invest in the company, whether the company will issue a single class of units or multiple classes, and who will be permitted to acquire each of the various classes of units. For example, operating agreements often establish separate membership categories for physician investors and non-physician investors. It is typical to require physician members to satisfy certain conditions not applicable to hospitals and other non-physician investors. The operating agreement may also set forth requirements for physician investors' continued ownership, including compliance with the ASC Anti-kickback safe harbor, maintenance of medical staff privileges, and other requirements related to the practice of medicine and compliance with fraud and abuse laws. A sample provision setting forth these requirements follows.

> Membership. No Person shall be eligible to become a Class A Member (or remain a Class A Member, as applicable) unless the following eligibility requirements are satisfied: (1) such Class A Member shall be a physician, licensed and registered, in good standing, to practice medicine in the State where the Center is located; (2) such Class A Member abides by the Safe Harbor Requirements of this Section; (3) such Class A Member shall maintain an active practice of medicine in the greater [city of Center] metropolitan area and, if permitted by the Stark Act and the Safe Harbor Requirements to refer patients to the Center for services, shall be able to perform surgical services at the Center (such physician shall maintain active privileges at the Center and privileges at least one hospital within thirty (30) miles of the Center); and (4) under applicable law, such Class A Member's ownership shall not disqualify (and, without further action, would not disqualify) the Company or the Center from engaging in operations as a Medicare certified ambulatory surgical center for any reason or from having such physician perform cases at the Center. A physician who meets such requirements may be referred to herein as an "Eligible Physician." The requirements of this Section shall not apply to the Class B Member(s).

To be continued in May/June Issue.

January 11, 2006

Mr. Scott Becker
Beckers ASC Review
ASC Communications

Dear Mr. Becker,

Thank you for giving us the opportunity to continue to advertise in Becker's **ASC Review**.

We have advertised our services (finding corporate partners for ASCs and assisting physicians in the sale of their ASCs) in the **ASC Review** for 4 years now. We find the ASC Review to be by far our most effective advertising vehicle, both in terms of reaching the decision makers at the ASCs that are our target market, and developing high quality leads at an economical cost.

Most importantly, our ads are seen by the people we want exposure to because the editorial content in the **ASC Review** is consistently important information for the ASC leadership and our ads are seen by more physicians who are interested in our services. Most of our prospects come to us because they have seen our ad in the **ASC Review**.

Thank you for producing a quality publication that is distributed to ASC physician-leadership.

Best regards,

Jon Vick
President, **ASCs Inc.**
www.ascs-inc.com

ASC BECKER'S Review
AMBULATORY SURGERY CENTERS BUSINESS AND LEGAL UPDATE

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