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AMBULATORY SURGERY CENTERS

Mitigating Your Exposures as Case Volume Escalates



INTRODUCTION

Over the past decade, the healthcare industry has seen Ambulatory Surgery Centers (“ASC’s”) establish themselves as an efficient, cost-effective substitute for hospitals regarding outpatient procedures. As a result, we have seen a substantial uptick in surgical volume migrating towards ASC’s following the COVID-19 pandemic. This transition of higher acuity procedures into ASC’s presents a multitude of benefits, most notably cost savings. According to a research report released by UnitedHealth Group, shifting outpatient procedures for non-complex commercially insured individuals to ASC’s would reduce spending by **59%** and save consumers **\$684 on average** per outpatient procedure¹. In the United States alone, this trend has the potential to provide over **\$55 billion** in healthcare cost savings per year².

As case volume continues to gravitate toward ASC’s, decision makers are tasked with contemplating various approaches to efficiently capture this uptick in demand:

- Addition of new locations / Expansion of current centers
- Concentration on certain specialties / Addition of new specialties
- Optimization of case-mix to maximize reimbursement

As decision-makers consider each of the proposed scenarios, it is essential that ASC ownership evaluates the vulnerabilities that go hand in hand with increased capacity. To illustrate this, let’s discuss a few examples of how an ASC’s exposures dynamically evolve with additional patient volume.

BUSINESS INTERRUPTION EXPOSURES

As ASC’s continue to scale up operations, their Business Interruption Exposure will naturally increase. If an aspect of your practice is temporarily hindered, a material sum of revenue could be in jeopardy. As physician’s ponder their ability to expand, understanding the dynamics of their Property insurance policy will increase their financial security in the event of a covered loss.

For example, let’s say an ASC has 4 Operating Rooms. If 2 of the 4 are damaged for 90 days as a result of a fire, is it correct to assume that 50% of the ASC’s quarterly revenue is compromised? Is there potential to capture some of that case volume in the remaining OR’s, or was there damage to essential equipment that was vital for your ASC to perform those procedures? On a separate note, a practices’ payor mix and corresponding reimbursement structure materially alters revenue implications in the aftermath of a covered peril. Thoughtfully quantifying your Business Interruption coverage not only ensures your practice is accurately diagnosing your exposure, but also validates the premiums you exchange for the coverage.

The financial implications of a comparable scenario could be detrimental to an ASC's continuity, placing an emphasis on having an insurance broker who is knowledgeable of these dynamics. Thoughtfully selecting a broker with a sound understanding of your assets, current equipment service contracts, service mix, and corresponding reimbursement will provide you with the ability to adequately address your Business Interruption exposures.

PROFESSIONAL EXPOSURES

From a lawsuit standpoint, Medical Malpractice continuously dominates national headlines in the healthcare industry. Although the frequency and severity of malpractice claims vary substantially based on specialty, outpatient settings account for over 50% of medical malpractice claims⁵. Although Tort Reform has provided some protection for physicians in states like Texas, the ownership appeal that attracts physicians toward ASC's also comes with certain vulnerabilities. According to Avanza's "2022 Key ASC Benchmarks and Industry Figures Report", 80% of ASC's in the United States have some portion of Physician ownership³. In fact, 60% of all ASC's are entirely physician-owned. In the event of a medical malpractice claim, it is important to understand how the equity structure of your surgery center affects your practice's professional exposures.

There are numerous ways to mitigate this liability, and thoughtfully structuring your ASC's professional policy is the best place to start. For example, if your center is solely protected by individual physician's policies, non-physician owners, extenders, and administrative staff may be vastly under insured. These personnel are typically named in malpractice claims, which could quickly exhaust the limits of the individual malpractice policies. To avoid this, ensuring that your ASC obtains a professional policy with adequate limits will alleviate this potential exposure. In addition, maintaining a clear understanding of who is an insured on your professional policy is in you and your entity's best interest.

Similarly, the potential for billing errors will always loom over healthcare entities. This is especially true in the current state, as Medicare reimbursement continues to evolve. When combined with the increasing appeal of multi-specialty ASC's, a surgery center's billing errors and omissions exposure can quietly develop into a notable complication. Medicare billing errors are financially unforgiving, regardless of the party's intentions. It is common that attorney and consulting fees will outweigh the financial penalties initially imposed by governing parties.

With all of that said, this exposure is commonly omitted from a standard professional liability policy. To ensure your practice is financially protected from a complex audit, this coverage should either be requested through an endorsement or a separate Billing Errors and Omissions policy. Understanding the specific characteristics of your

coverage will provide security as you assess potential growth strategies. More importantly, having an insurance broker with a comprehensive understanding of your coverages and exposures will ensure your practice is safeguarded from this threat.

CYBERSECURITY EXPOSURES

Like all healthcare entities, ASC's have continuous access to sensitive health and financial information. Combine this with the fact that healthcare entities cannot afford to halt their operations, and you have an ideal cyber-attack target. In fact, 2021 marked the 11th consecutive year that the healthcare industry experienced the highest average cost of a data breach (\$9.23 Million)⁴. There are no indications that the frequency of cyberattacks will decline, tasking providers across the country with implementing cybersecurity.

The importance of gaining a transparent understanding of your Cyber policy is particularly crucial for healthcare entities. As an example, an ASC's leadership may be under the impression that their Cyber insurance limit is \$5 million. What leadership is frequently **not** aware of is that if the cyberattack is Ransomware (one of the most prevalent cyberattacks on the planet), their coverage could be sub-limited to \$100,000. With 2021's average ransomware demand at \$6.1 million⁵, the continuity of your ASC could rely on your awareness of this distinction.

When leadership considers how to address this exposure, **your insurance broker can be an excellent resource**. They can work in concert with your IT Department to 1) establish what controls are in place, 2) recommend additional best practices that will maximize coverage, and 3) aggressively market your ASC to secure the optimal amount of Cyber insurance based on your appetite. As the frequency of cyber-attacks continue to harass healthcare entities, becoming familiar with your Cyber coverage is critical when considering growth opportunities.

CONCLUSION

The migration of case volume toward Ambulatory Surgery Centers offers an abundance of opportunity for providers across the country. As this reallocation of acute volume continues to accelerate, Ambulatory Surgery Centers' exposures will naturally follow suit. This places an emphasis on ensuring you work with an insurance broker who has a robust understanding of your practice's dynamics and aspirations. As a strategic resource, your broker can equip leadership with the peace of mind to confidently grow your practice without compounding its vulnerabilities. More importantly, a knowledgeable broker can allow your providers to get back to focusing on the true value-add of ASC's: **enhancing the patient experience**.



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REFERENCES

- 1) UnitedHealth Group. (2021, September 8). *Shifting common procedures to ambulatory surgery centers can save patients more than \$680*. UnitedHealth Group. Retrieved April 26, 2022, from <https://www.unitedhealthgroup.com/newsroom/research-reports/posts/2021-09-08-site-of-service-1010600.html>
- 2) *Ambulatory surgery center trends continue into 2021*. Kr Wolfe. (2021, January 28). Retrieved April 26, 2022, from <https://www.krwolfe.com/kr-wolfe-news-announcements/ambulatory-surgery-center-trends-continue-into-2021>
- 3) Withers, S. (2018, September 25). *Surgical errors and medical malpractice*. www.nolo.com. Retrieved April 26, 2022, from <https://www.nolo.com/legal-encyclopedia/surgical-errors-medical-malpractice.html>
- 4) Alder, S. (2022, February 18). *2021 saw sharp increase in ransomware data leaks and Ransom demands*. HIPAA Journal. Retrieved April 26, 2022, from <https://www.hipaajournal.com/2021-saw-sharp-increase-in-ransomware-data-leaks-and-ransom-demands/#:~:text=In%202021%2C%20the%20average%20ransom,conduct%20attacks%20on%20healthcare%20organizations.>
- 5) Landi, H. (2022, February 1). *healthcare data breaches hit all-time high in 2021, impacting 45M people*. Fierce healthcare. Retrieved April 26, 2022, from <https://www.fiercehealthcare.com/health-tech/healthcare-data-breaches-hit-all-time-high-2021-impacting-45m-people>