

TAKING THE ASC MESSAGE

Just as the details of national health care reform were beginning to be debated in earnest on Capitol Hill during June, 104 ASC professionals from across the country traveled to Washington, DC, to participate in the ASC Association's 2009 ASC Legislative & Compliance Seminar. They were there to learn more about all the legislative and regulatory challenges facing ASCs and to visit with their members of Congress to urge them to support policies enhancing access to ASCs.

"You are here at exactly the right time," observed US Representative Jay Inslee (D-WA), a member of the House Committee on Energy and Commerce, which has jurisdiction over a variety of health care issues. Sharing his insights into Congressional priorities for health care reform with the seminar participants, Inslee added, "Members' minds are very open on this right now. We are facing huge issues, complex issues, and much is at stake."



US Representative Jay Inslee

ASC Association President Kathy Bryant agreed with Inslee that health care reform is requiring Congress and the administration to tackle some hard questions, and added, "But a lot of how things are perceived to work in Washington depends on where you are coming from." For ASCs facing declining Medicare reimbursement, compliance concerns related to Medicare's recently revised Conditions for Coverage, uncertainty regarding quality reporting requirements and increasing federal scrutiny of their policies and procedures related to everything from billing to infection control, Bryant noted, health care reform is not the only health care issue that Congress and the administration need to address.

Some of the other issues Bryant suggested attendees be ready to address with their legislators include



ASC Association President Kathy Bryant

- Medicare's continued insistence on using the Consumer Price Index for All Urban Consumers (CPI-U) to determine annual inflation updates for ASCs rather than the measure used for hospital outpatient departments (HOPD)
- the secondary rescaling process Medicare uses to determine ASC payments, which further widens the gap between the payments ASCs and HOPDs receive
- a tendency among policy makers to mistakenly believe that fewer Medi-

- care inspections of ASCs have led to a deterioration of quality when, actually, the inspections were fewer because the quality ASCs provide is so great that the Centers for Medicare and Medicaid Services (CMS) decided that ASC surveys were a low priority when a lack of funds prevented surveying of all Medicare facilities
- a lack of awareness of what ASCs are and what they do, including the many ways ASCs contribute to meeting America's surgical needs, providing charity care and sustaining the local communities in which they operate

After a show of hands indicated that about half of those in the audience were participating in a legislative seminar for the first time, Bryant re-emphasized the need for grassroots support saying, "We really need your help, not just today but throughout the year."

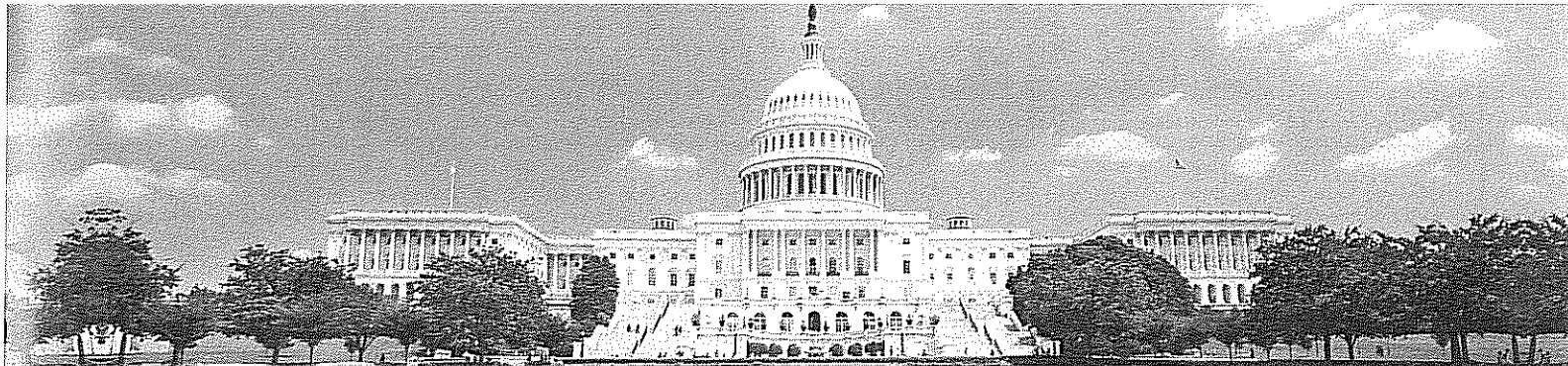
Bryant also encouraged everyone at the seminar to go back to Capitol Hill as many times as necessary following the seminar to make certain their members of Congress learn everything they need to know about ASCs. "Our message, as good as it is," she added, "isn't always intuitive."

As she listed several key points about ASCs that the seminar participants could make during their conversations on Capitol Hill (see the box below), Bryant also reminded everyone that in Washington, DC, even a small victory can lead to big change. Some examples of policy changes made recently as a result of outreach efforts mounted by the ASC Association and its members include

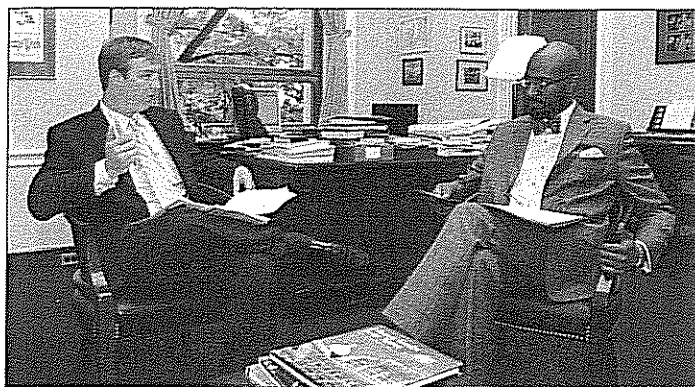
- Medicare allowing ASCs to continue offering overnight care to patients

What Policy Makers Need to Know

- ASCs provide top quality patient and surgical care less expensively than hospitals
- ASCs contribute to lowering the cost of health care
- Medicare is penalizing ASCs by payment policies that erode payments
- ASCs are small businesses that contribute to their communities in many ways, including employing members of their local community, taking part in community events and paying taxes
- ASCs routinely provide charity care
- ASCs routinely report infection rates of less than 1%



TO WASHINGTON, DC



Neil Pennington of Freeway Surgery Center in Little Rock, Arkansas, meets with James Savage, III, legislative director for US Representative Vic Snyder (D-AR).

their home states and districts rather than a Washington lobbyist.”

Compliance and Regulatory Concerns

In addition to getting the help they needed to prepare to meet with members of Congress, seminar participants heard from and interacted with Medicare officials, ASC legal and advocacy experts, an infection control expert, health information technology experts and others.

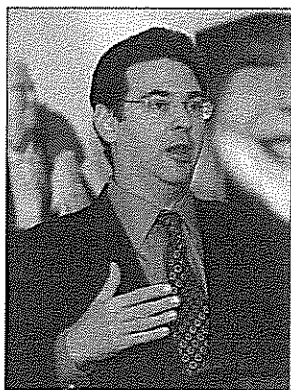


Dave Fitzgerald of Prolance Surgeons in Seattle, Washington

- Medicare recently reversing its decision that would have eliminated same-day scheduling and surgery for patients when medically necessary

- the Medicare Payment Advisory Commission’s (MedPAC) recent recommendation for an inflation update rather than a freeze for ASCs

Bryant suggested that when discussions of health care reform arise, ASCs should stay focused on arguments that support appropriate Medicare payment rates and policies, quality reporting that allows consumers to make meaningful comparisons among providers without imposing significant new burdens on ASCs, staving off reductions in ASC reimbursements in order to pay the other costs of reform and protecting physician ownership of ASCs.



Center for Medicare Management Director Jonathan Blum

Other presenters well-versed in national policy making echoed some of Bryant and Inslee’s insights and concerns as they shared additional information and advice with the audience. As ASC Association lobbyist Sarah Walter put it, “This is a time of change without precedent. . . . Some painful choices and really tough decisions are going to be made in the months ahead.” She added, “You are better lobbyists than we are. [Members of Congress] would much prefer to hear from constituents from

Jonathan Blum, director of the Center for Medicare Management, discussed Medicare’s plans to use its payment system to improve quality, elevate performance and reduce unnecessary hospitalizations by focusing on accountability and patient follow-up. He also projected more shared responsibility for paying the costs of the program, such as requiring high-income seniors to pay more for their prescription drug benefits. Blum also recommitted to reducing fraud and abuse in the program, improving Medicare’s survey and certification processes and investing more in research and demonstration projects designed to further the Medicare program’s goals.

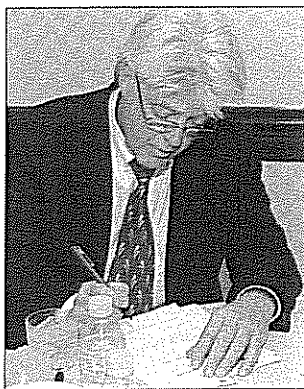
Angela Mason-Elbert of CMS’s ASC survey department discussed some of the implications for ASCs of Medicare’s recently released *Guidance for Surveyors* issued following the release of Medicare’s revised Conditions for Coverage. Staff from Maryland’s Office of Health Care Quality, which helped Medicare pilot test its new survey process and tracer methodology, followed with a discussion of some of the specific ways Medicare’s new standards and ways of evaluating compliance would affect ASCs. Many in the audience raised difficulties in interpreting the new standards while others pointed to difficulties they expected to encounter as they attempt to comply. “At the end of the day,”



Angela Mason-Elbert of CMS

Member Benefit Reminder

Any ASC Association member that receives a citation following a Medicare survey and believes that citation has been issued in error is invited to send a copy of the citation to the ASC Association. We'll help you sort out the facts and talk with Medicare officials if follow-up is warranted. You *must* include a copy of the citation (fax to 703.549.0976) to receive assistance.



Gary Bue director of clinical operations at Wichita Clinic in Kansas

advised Barbara Fagan of Maryland's Department of Health and Mental Hygiene, "the patient is what it's all about. If you can demonstrate that the patient is doing well and you can demonstrate that they come first, you'll be okay."

On the topic of health information technology, seminar participants heard from Hogan & Hartson LLP Partner Melissa Bianchi about what ASCs need to do to remain in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) after Congress amended it early in 2009. Along with the other new regulatory guidelines she discussed, Bianchi noted that ASCs



Top: Christine Slattery of the St. Louis Spine & Orthopedic Surgery Center, Cindy Young, RN, CASC, of the Surgery Center of Farmington and Scott Allen of National Medical Billing Services meet with Jacqueline K. Stewart, legislative correspondent for US Senator Claire McCaskill (D-MO)

Bottom: Capitol Hill reception

will need to notify affected patients and the US Department of Health and Human Services any time a breach in the ASC's health information occurs unless the ASC has secured the data involved. To be considered secured, the data must be either encrypted according to Medicare guidelines or destroyed. Bianchi also noted that ASCs could notice an increased concern with HIPAA compliance from their business associates who will now be required to be in full compliance with the HIPAA regulations for the first time.

Priscilla P. Arnold, MD, FACS, with the American Society of Cataract and Refractive Surgery provided some unique insights into the topic of quality reporting during the seminar. Arnold was a member of the original team involved in developing and implementing the Physician Quality Reporting Initiative—a quality reporting program developed with CMS and implemented in 2007 to improve the care physicians provide to Medicare beneficiaries. She talked frankly about some of the pitfalls and successes the program encountered in its earliest days, including a lack of participation from physicians and difficulties involved in creating meaningful quality measures that could apply across all settings and in all specialties.

One other area of ASC operations addressed several times during the meeting was infection control. According to Bryant, although ASCs routinely report less than 1% infection rates, in testing Medicare's new survey process, surveyors said they observed some processes at the ASCs be-

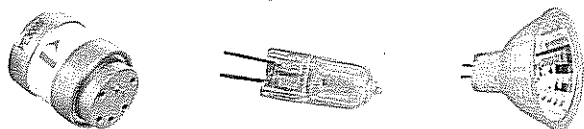


Bill Wessels, MD, of the Bone & Joint Surgery Center in Wausau, Wisconsin

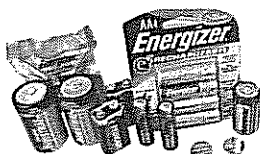


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ASC Association Chair Alsie Sydness-Fitzgerald, CASC

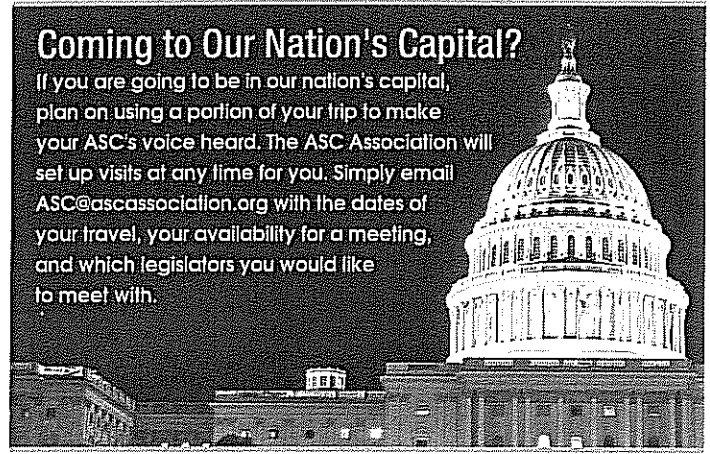
ing surveyed that were not in line with the Centers for Disease Control and Prevention's (CDC) infection control guidelines. "We need to be very vigilant that we are all following the CDC guidelines for infection control and comply with CMS process requirements so we can eliminate infection control concerns in ASCs," said Bryant. "We need to get the CDC in to do the surveys and demonstrate the way things really are." To help the ASC professionals assembled, Catherine Nichol, RN, of Titan Health

Corporation, Inc., offered some tips for improving even the best infection control programs, including regular ongoing assessments of the procedures an ASC follows to maintain sanitary conditions involving everything from air vents and computer keyboards to medications and equipment in the operating room.

Measuring Success

In all, seminar participants made more than 208 Congressional visits during their stay in Washington. At an evening reception on Capitol Hill, seminar participants made even more Congressional connections. Also during that reception, ASC supporter US Repre-

Coming to Our Nation's Capital?
 If you are going to be in our nation's capital, plan on using a portion of your trip to make your ASC's voice heard. The ASC Association will set up visits at any time for you. Simply email ASC@ascassociation.org with the dates of your travel, your availability for a meeting, and which legislators you would like to meet with.



sentative Wally Herger (R-CA) stopped by to offer remarks reaffirming his support for ASCs.

Seminar participants found that the level of awareness of ASCs varied in the Congressional offices they visited. Nevertheless, soon after the ASC Association's 2009 ASC Legislative & Compliance Seminar concluded, 10 additional members of Congress signed on as cosponsors of the Ambulatory Surgical Center Access Act of 2009 (H.R. 2049). Many of them and others received follow-up calls or correspondence from their constituents later.


Eileen Connelly of the Eastern PA Endoscopy Center in Allentown, Pennsylvania, was participating in one of the annual seminars for the

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