

The banner for the 2022 SAMBA Annual Meeting features a city skyline at night with illuminated buildings in the background. In the foreground, there is a professional portrait of Dr. Arnaldo Valedón, a man with dark hair and a beard, wearing a dark suit, white shirt, and patterned tie. The text on the banner includes the SAMBA logo, the meeting title '2022 SAMBA ANNUAL MEETING', the dates 'MAY 11 - 14, 2022', and the subtitle 'Here to Stay or Here for the Day? Important Considerations for Overnight Stay in Ambulatory Surgicenters: Administrative, Financial, and Regulatory'.

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## DISCLOSURES

- Past Chair of the AAAHC Board of Directors, serves on the AAAHC governance, and is a current surveyor
- ARC Medical: Literature review consultation



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# OBJECTIVES

**Regulatory**

- Review of national, state, and local regulations to be considered when patients are scheduled for overnight stay at an ambulatory surgery center (ASC)

**Administrative**

- Discuss salient standards that must be met in order to provide safe and efficient care at an ASC for overnight care

**Financial**

- Discuss key aspects of reimbursement when considering programs for overnight stay at an ASC

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**REGULATORY**

**CMS: Conditions for Coverage (CfCs)**

- Important Sources of information**
  - General: <https://www.cms.gov/Regulations-and-G>
  - Conditions for coverage: <https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=38af2161b33de70fc35286fbdee57ca6&rgn=div5&view=text&node=42:3.0.1.1.3&idno=42#PartTop>
- Definitions**
  - 1982: 42 CFR 416.2 Definition for: Ambulatory surgical center, covered surgical procedures, and Facility services.
    - 42 CFR 416.40-49 (CfCs): Health/safety standards all ASCs must meet. Covered topics include: requirements for the ASC's governing body and management, provision of surgical services, and keeping of medical records.
  - 2009: 42 CFR 416.2 Definition for: Ambulatory surgical center
    - 42 CFR 416.2; 42 CFR 416.41-43; 416.49-52: Health and safety standards all ASCs must meet. Covered topics include: requirements for the ASC's governing body and management; provision of surgical services; patient rights; infection control; patient admission, assessment and discharge.
  - 2011: 42 CFR 416: Contains the patients' rights requirements for ASCs. Covered topics include: timing of patients' rights information, grievance procedures, and disclosure of physician financial interest or ownership in the ASC facility.

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## REGULATORY

- Federal Regulations-cont'd
  - There should be no planned overnight stays in an ASC for Medicare patients. Any overnight stay for a Medicare patient should only result from unanticipated conditions requiring continued observation or care within the capability of the ASC and should be neither a planned nor routine occurrence<sup>1</sup>
  - Two-Midnight Rule
    - CMS identified high rates of error for hospital services rendered in a medically-unnecessary setting (i.e., inpatient rather than outpatient) in recent years.
    - CMS also observed a higher frequency of beneficiaries being treated as hospital outpatients and receiving extended "observation" services.
    - Inpatient admissions would generally be payable under Part A if the admitting practitioner expected the patient to require a hospital stay that crossed two midnights and the medical record supported that reasonable expectation.
    - Medicare Part A payment was generally not appropriate for hospital stays expected to last less than two midnights.

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REGULATORY					
STATE REGULATIONS: 23 HR AND 59 MIN EXCEPTION/APPLICATION?					
STATES WITH 24 HOURS STAY <sup>5</sup>			STATES WITH EXTENDED RECOVERY		
Florida	Nebraska	Pennsylvania			
Wisconsin	Wyoming	California			
Utah ( <u>&lt;3 pts. 10pm-6am</u> )	Missouri	Washington			
	Kansas				

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## ADMINISTRATIVE

- Regulations
  - Accreditation Standards<sup>3</sup>
    - License to operate if required by the state
    - Governing body appoints a qualified physician in charge, and patient admitted under the care of a physician with privileges granted for such
    - RNs and other providers appropriately trained (at least one RN present)
    - Physician available (by phone or physically) whenever patients present
    - Scope and limitations of services delineated
    - Policies and procedures

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## ADMINISTRATIVE

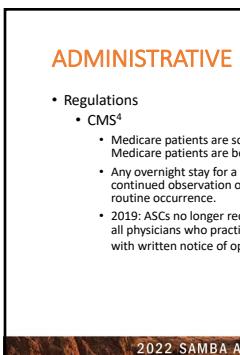
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- Regulations
  - Accreditation Standards Cont'd<sup>3</sup>
    - Eligibility for admission
    - Clinical responsibilities for each patient
    - Provision of emergency services
    - Transfer agreements and arrangements
    - Staffing requirements (in sufficient numbers)
    - Isolation procedures
    - Clinical records indicating overnight care
    - Food services and refreshments
    - Privacy and safety provisions
    - Integral part of QI

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## ADMINISTRATIVE

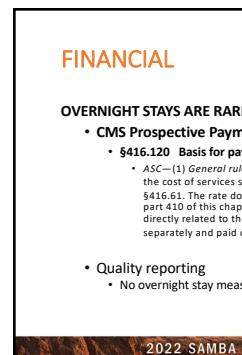
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- Regulations
  - CMS<sup>4</sup>
    - Medicare patients are scheduled only for procedures on the CMS approved list and that no Medicare patients are being scheduled for planned overnight stays
    - Any overnight stay for a Medicare patient is the result of unanticipated conditions requiring continued observation or care within the capability of the ASC and is neither a planned nor routine occurrence.
    - 2019: ASCs no longer require written transfer agreement or hospital admitting privileges for all physicians who practice in the ASC. (ASCs required to periodically provide the local hospital with written notice of operation and patient population served)

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## FINANCIAL

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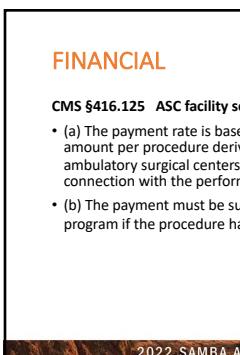
**OVERNIGHT STAYS ARE RARELY COVERED WITH ADDITIONAL REIMBURSEMENT**

- CMS Prospective Payment System for Facility Services
  - **§416.120 Basis for payment**
    - **ASC-(1) General rule.** Payment is based on a prospectively determined rate. This rate covers the cost of services such as supplies, nursing services, equipment, etc., as specified in §416.61. The rate does not cover physician services or other medical services covered under part 410 of this chapter (for example, X-ray services or laboratory services) which are not directly related to the performance of the surgical procedures. Those services may be billed separately and paid on a reasonable charge basis.
  - **Quality reporting**
    - No overnight stay measure to date

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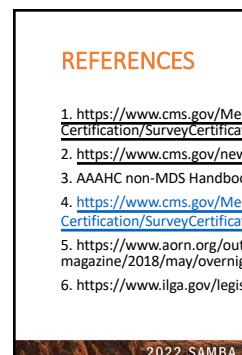
**CMS §416.125 ASC facility services payment rate.**

- (a) The payment rate is based on a prospectively determined standard overhead amount per procedure derived from an estimate of the costs incurred by ambulatory surgical centers generally in providing services furnished in connection with the performance of that procedure.
- (b) The payment must be substantially less than would have been paid under the program if the procedure had been performed on an inpatient basis in a hospital

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## REFERENCES

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1. <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/Survey-CertificationGenInfo/downloads/SCLetter04-22.pdf>
2. <https://www.cms.gov/newsroom/fact-sheets/fact-sheet-two-midnight-rule-0>
3. AAAHC non-MDS Handbook v4.1 FINAL\_rev 2020.08.20\_Word
4. <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/Survey-CertificationGenInfo/downloads/SCLetter04-22.pdf>
5. <https://www.aorn.org/outpatient-surgery/articles/outpatient-surgery-magazine/2018/may/overnight-stays-for-asc>
6. <https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1216&ChapterID=21>

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