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CMS Disclosure Requirement of Physician Ownership Interests before Procedures Effective May 18, 2009

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Physicians who own an interest in an Ambulatory Surgery Center ("ASC") must post an ownership disclosure in their office and make written disclosure to patients at the time the patient makes a decision to have the procedure done at the ASC (as well as whether reimbursement will be on an out-of-network basis, as applicable).

Effective May 18, 2009, the Centers for Medicare & Medicaid Services ("CMS") has placed the ownership/financial interest disclosure obligation squarely placed on the shoulders of ASCs. Pursuant to 42 C.F.R. 416.50, the new CMS regulations on patient rights require the disclosure of physician ownership or financial interest in ASCs in writing "prior

to the first visit." The disclosure must be in such a format that patients are able to clearly understand that the physician who will be providing treatment has a financial relationship with the ASC.

Note that the "prior to the first visit" requirement of section 416.50 requires that the ownership/financial interest disclosure be sent to the patient in writing before the day of the procedure. A word of caution: remember to document your ASC's written policies and procedures to reflect that it is standard operating procedure of your ASC to send the disclosure to the patient prior to the procedure. Also, have the patient return the signed disclosure or bring it with them on the day of

treatment for your records. Presenting the disclosure to the patient when they arrive at the ASC for a procedure does not satisfy the strict reading of this CMS requirement.

For additional information regarding the ownership/financial interest disclosure obligation, please contact:

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The entire text of the CMS standard may be found at: <http://www.cms.hhs.gov/CFCsAndCoPs/downloads/amburgreg.pdf>

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