

**Operational Procedure: Variance Request Processing, Ambulatory Surgical Facility
Transfer Agreement Requirement**

Purpose

To establish written guidelines for processing requests for variances pursuant to Ohio Administrative Code (OAC) rule 3701-83-14(C) from OAC rule 3701-83-19(E), which requires ambulatory surgical facilities to obtain a written transfer agreement with a hospital. The Bureau of Community Health Care Facilities and Services (BCHCFS) shall receive and process all requests for variances.

Background/Authority

The Director of Health at his discretion may, under the provisions of OAC 3701-83-14(C), and upon the written request of the ASF, grant a variance of the rule if the director determines that the requirement has been met in an alternative manner.

Procedure

1. OAC3701-83-19(E) requires each ambulatory surgical facility (ASF) to have a written transfer agreement with a hospital for transfer of patients in the event of medical complications, emergency situations, and for other needs as may arise. In those instances where an ASF is unable to execute an agreement with a hospital, the ASF may request a variance of the requirement pursuant to OAC 3701-83-14(C).
2. All requests for a variance pursuant to OAC 3701-83-14(C) to the requirement of rule 3701-83-19(E) must be in writing and include assurances, sufficient in the judgment of the Director of Health, from the owner/operator of the ASF that the alternative manner set forth in the request will provide all patients receiving surgical services at the ASF a level of safety and protection that would be provided through a written transfer agreement. For each request for a variance pertaining to the requirements of OAC 3701-83-19(E), BCHFS staff shall ascertain or the ASF shall specify the efforts the facility has made to obtain a written transfer agreement with a local hospital as required by that rule.
3. Where it is proposed that, in lieu of a written transfer agreement between the ASF and a hospital, named physicians with admitting privileges at one or more area hospitals are agreeing to exercise those privileges to provide for the continuity of care and the timely, unimpeded acceptance and admission of the ASF's emergency patients, the following information must be verified or confirmed by the BCHCFS staff in processing the request:

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- a. Verification of a written agreement between the ASF and the physician or physicians who will provide 24/7 emergency backup hospital admission for patients of the facility in the event of surgical complication, emergency situations, or other medical needs that require a level of service beyond the capability of the ASF. Physician coverage for back-up care must be sufficient to meet the 24/7 requirement. This agreement must be in writing as a letter, contract or memorandum of agreement and must be made available to BCHCFS as part of the request from the ASF for the variance. Verification that the facility has a written protocol ensuring 24-hour per day, seven-day per week coverage by physicians who can admit patients to local hospitals in the event that a patient of the facility experiences a complication or emergency. Such protocol shall include a plan for such coverage in the event that the named physicians on the variance are temporarily unavailable.
- b. Verification of the active status of the State of Ohio medical license for each physician named by viewing the licensure status on the State Medical Board website.
- c. Verification that no actions taken or in progress by the State Medical Board.
- d. Verification of the hospital credentialing status in appropriate areas of competency and with no restrictions for each physician named by contacting the appropriate medical staff credentialing office in each hospital named.
- e. Verification that the ASF's written protocol requires each of the named physicians who provides backup services to the ASF to immediately inform the ASF of any circumstance that may impact a backup physician's ability to provide for continuity of care and the timely, unimpeded acceptance and admission of the ASF's emergency patients.
- f. Verification that the request includes a signed statement from each of the named physicians who are undertaking to provide backup emergency hospital admissions for the ASF that the physician is familiar with the ASF and its operations and that the physician agrees to provide notice as required in section 3.e. above.

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- g. Verification that the request states the estimated travel time from the office and/or residence of the named backup physician to the local hospital(s) to which that physician would be able to admit patients experiencing emergencies or complications. The Department of Health shall assess the reasonableness of the estimated travel time(s) against the accepted standards of care in the medical profession.
 - h. Verification that the written protocol demonstrates how the facility, using the services of the named physicians, will provide 24-hour per day, seven-day per week coverage by the doctors who have undertaken to admit patients to local hospital(s) in the event of patient emergencies or complications. Such protocol shall include a plan which ensures that substitute doctor(s) are available to admit patients to local hospitals in the event that the named backup physician(s) are temporarily unavailable and unable to admit patients to local hospitals.
 - i. Verification that the ASF provides a written list of the names, contact information, and area of specialty for those consulting/referral physicians who have agreed with the backup physician(s) to provide specialty coverage to address the range of emergencies that may be encountered in the ASF that the ASF is unable to personally and independently manage.
 - j. Verification that the ASF ensures that any backup physicians maintain written documentation of consulting/referral physicians on file at the local hospital(s) where they have admitting privileges.
 - k. Verification that the ASF's written protocol ensures that a copy of patient's medical record is transmitted contemporaneously with the patient to hospital in the event of surgical complication, emergency situation, or other medical necessity.
4. Should any of the foregoing reveal adverse information relative to any physician's ability to provide for continuity of care and the timely, unimpeded acceptance and admission of the ASF's emergency patients, the BCHCFS chief, assistant chief, or NLTC program manager shall advise the Chief, Division of Quality Assurance of the nature of the adverse information.

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5. Any grant of a variance shall specify that:
 - a. The ASF must notify the Department of Health within one calendar week of any circumstance, including but not limited to any pending disciplinary action, that may affect the physician's medical license(s) or the backup physician's hospital admitting privileges as represented on the request for a variance.
 - b. Each named backup physician in a variance request shall provide notice to the ASF of any planned or unplanned absence from the locale within one business day before such date or as soon as practicable (if the absence is unplanned) or three business days before such date or as soon as practicable (if the absence is planned in advance) to ensure that the facility's protocol for substitute backup coverage is followed.
 - c. The ASF shall notify the Department of Health within forty-eight (48) hours of any change to the written protocol.
 - d. The Director of Health may revisit this variance at any time for reasons, including but not limited to, a change of circumstances or for any reason consistent with patient safety and health concerns. As a condition of this variance, this facility shall at all times provide all patients receiving surgical services a level of safety and protection that would be provided through a written transfer agreement.
6. All proposals for a variance to OAC rule 3701-83-19(E) shall be treated appropriately in keeping with the full extent of Ohio's public records law and the Division of Quality Assurance shall post appropriately public information from each proposal for variance on the ODH website. Comments, if any, submitted regarding the proposed variance shall be maintained by the department.
7. Any variance proposal shall state the duration of the variance sought. A variance shall not exceed the life of the requesting facility's license and shall be requested each applicable license period. Additionally, variances issued pursuant to OAC 3701-83-14(C) may be revisited at any time for reasons, including but not limited to, a change in circumstances or for any reason consistent with patient safety and health concerns as determined by the Director of Health in his discretion. The variance is separate from the license to which it relates; licenses are subject to procedures in R.C. Chapter 119.

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8. The BCHCS chief shall report the results of its review and recommendation to the Assistant Director of Health and the Assistant Director of Health shall communicate his or her recommendation regarding the variance to the Director of Health for the Director's consideration and determination. The factors in this guideline are items to be reviewed and considered in connection with a variance request concerning OAC 3701-83-19(E); however, any determination on whether to grant a variance based on the information submitted in connection with that request, including the sufficiency of the proposed alternative manner for satisfying patient safety and health concerns, shall be in the sole judgment and discretion of the Director of Health.

