

Discharge Planners/Case Managers Must Make Neutral Presentations of Patients' Right to Freedom of Choice of Providers

Elizabeth E. Hogue, Esq.  
Office: 877-871-4062  
Fax: 877-871-9739  
E-Mail: [ElizabethHogue@ElizabethHogue.net](mailto:ElizabethHogue@ElizabethHogue.net)

All patients have the right to freedom of choice of providers. Discharge planners/case managers have legal and ethical obligations to honor this right.

There are a number of sources of this right as follows:

- 1) All patients have a common law right, based upon court decisions, to control the care provided to them, including who renders it. Thus, when patients, regardless of payor source or type of care, voluntarily express preferences for providers, their choices must be honored.
- 2) Federal statutes of the Medicare and Medicaid Programs guarantee Medicare beneficiaries and Medicaid recipients the right to freedom of choice of providers. When Medicare and Medicaid patients voluntarily express a preference for a home health agency, these choices must be honored.
- 3) The Balanced Budget Act of 1997 (BBA) requires hospitals to develop a list of home health agencies that meet the following criteria:
  - a. Are Medicare-certified;
  - b. Provide services in geographic areas where patients reside; *and*
  - c. Ask to be on the list.

In addition, if hospitals place the names of agencies in which they have a discloseable financial interest on the list, the relationship between the hospitals and the agencies must be disclosed on the list.

This list must be presented to all patients who may benefit from home health services so they can choose the home health agency that they wish to provide services to them.

- 4) Hospital Conditions of Participation (COP's) of the Medicare Program for discharge planning include the basic requirements of the BBA described above. Hospitals are subject to possible loss of reimbursement from the Medicare and Medicaid Programs if they do not meet the COP's.

Consequently, discharge planners/case managers are required to present the list described above to patients without "prejudicing the case." Anecdotally, it appears that discharge planners/case managers may say things to patients like the following when they present the list of home health agencies to them:

- "Choose the hospital's home health agency so that we can get orders faster and you can go home sooner."
- "The Hospital's home health agency can provide continuity of care, which other agencies can't."

Or even worse, it appears that discharge planners/case managers may attempt to convince patients to change clearly stated choices by saying things like:

- "Why do you want to choose that agency? They are no good."
- "They're terrible! Just go with our agency."

A "neutral presentation" of the list means that discharge planners/case managers take the list described above to patients' rooms and say something like the following (*and nothing else that may persuade patients to choose particular agencies*):

"You have the absolute right to choose the home health agency that you would like to provide services to you. Here is a list of agencies that provide services in the area in which you reside."

If, in response, patients choose agencies, then case managers/discharge planners may not try to dissuade them or make negative comments about their choices. The only response to patients who make choices from case managers/discharge planners must be either "Yes, Ma'am" or "Yes, Sir."

If patients say they cannot choose, case managers/discharge planners must assist them to do so. Case managers/discharge planners, however, do not ever make choices for patients. Instead, case managers/discharge planners may help patients to choose by saying something like the following:

- "As you can see from the list, our hospital owns this agency. Perhaps you would like to choose this one."
- "Our hospital has a preferred provider relationship with this agency. Perhaps you would like to choose this one."
- "This agency has a specialty program in orthopedics, which will be the focus of the services you need, so perhaps you would like to choose it."

Patients are likely to adopt the suggestions of case managers/discharge planners under the circumstances. There is a clear difference, however, between choosing for patients, which case managers/discharge planners cannot do, and assisting patients with making informed choices. Discharge planners/case managers must never lose sight of the fact that patients are in the drivers' seats. Patients' choices "trump!"