

## **Part I: Marketing Hospice Services**

### **Use of Preferred Provider Agreements with Physicians**

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Many hospices receive more referrals from physicians than from any other source. In addition, physicians routinely supervise the care that hospices render to patients they refer. Consequently, positive relationships with physicians who are willing to make referrals to hospices are essential to the success of hospice providers.

Hospices may wish to use Preferred Provider Agreements in order to enhance their relationships with physicians. That is, physicians may agree in writing to make referrals exclusively or on a preferential basis to specified hospices, based solely upon quality of care. Physicians may be willing to sign Preferred Provider Agreements for a number of reasons.

#### **Reasons Why Physicians May Be Willing to Sign Preferred Provider Agreements**

First, it is important to note that since physicians supervise services, they may be liable for substandard care along with hospice providers. Consequently, physicians may be unwilling to make referrals to providers with which they are unfamiliar, based upon concerns about quality of care.

In addition, physicians may decide to limit the number of hospices to which they are willing to refer on the basis that dealing with many hospices may compromise their ability to evaluate and/or monitor the quality of care provided. Working with a number of hospices may also complicate communications between physicians and providers in ways that have the potential to compromise quality of care.

Some hospice managers may object to physicians' decisions about quality of care. They may take the position that their hospices, in fact, offer care that is just as good as hospices to which physicians refer based on quality of care concerns. It is permissible, however, for physicians to only make referrals to hospices with which physicians are familiar or for which they can vouch for the quality of care. Physicians are not required to survey providers in their geographic area to find every entity that provides care of a quality that is satisfactory to them.

#### **Key Provisions of Preferred Provider Agreements**

Preferred Provider Agreements should explicitly obligate physicians to refer patients to specified hospices. These Agreements should not, however, include a specific number of

patients that physicians are expected or required to refer. In fact, they should explicitly indicate that physicians make no promises about the number or types of patients who will be referred.

In order to accomplish this result, hospice managers may wish to include the following language in Preferred Provider Agreements:

"Physician hereby agrees to write orders that specify that patients must receive services from \_\_\_\_\_ hospice as follows: 'Hospice services to be provided by \_\_\_\_\_.'"

Hospices may wish to supply physicians with a stamp with this language so that physicians only need to locate it and stamp patients' charts.

Managers have indicated, however, that discharge planners may ignore or even alter specific orders from physicians that services must be provided by certain providers. Discharge planners must bear in mind that orders from physicians for hospice services for specified providers are as valid as any other orders from physicians. Just as personnel in hospitals and longterm care facilities are not permitted to alter or ignore other physicians' orders on their own volition, they are not permitted to alter or ignore orders to services by specific companies either. If discharge planners alter or ignore these orders and are licensed registered nurses (RN's) or social workers, they may be disciplined by their state licensure boards.

#### Freedom of Choice of Providers and Preferred Provider Agreements

Federal statutes guarantee the right to freedom of choice of providers for both fee-for-service Medicare and Medicaid patients only. In addition to these federal statutes, patients generally have the right, both legally and ethically, to receive care from providers of their choice. Are designations of preferred providers by physicians consistent with these patients' rights?

It is clear that patients' choices override or "trump" physicians' orders for services from preferred providers. When patients indicate that they would like to receive services from a specific hospice, this choice must be honored by both physicians and discharge planners in hospitals. In short, patients must receive services from providers that they choose.

#### Violations of Fraud and Abuse Prohibitions and So-Called "Stark Laws"

Generally speaking, Preferred Provider Agreements do not raise issues of potential violations of fraud and abuse prohibitions, such as kickbacks or rebates, because no monies, goods, or services are provided by hospices to physicians under such Agreements. Even though hospices do not pay any money to physicians with whom they have Preferred Provider Agreements, they *do* need to be scrupulous about avoiding kickbacks or rebates in the form of free goods and services.

The so-called Stark laws do not apply only to designated health services (DHS) as defined in the Stark statute and regulations. The definition of DHS does not include hospice services.

Sound relationships with physicians are crucial to operation of hospices. Compliance with the guidance provided above may help to ensure that relationships begin and continue on an appropriate basis.

(To obtain more information about fraud and abuse issues in a book entitled Preventing Fraud and Abuse, send a check for \$30.00 made out to Elizabeth E. Hogue, Esq. to Fulfillment, 107 Guilford, Summerville, SC 29483. To obtain an 80-minute presentation by Elizabeth Hogue on either DVD or VHS tape, send a check for \$105.00 to the above address.)

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