

Part IV: Marketing Hospice Services – Hospices Are Not Vendors

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Some hospitals and skilled nursing facilities (SNF's) refer to hospices as "vendors" and require them to follow the policies and procedures related to "vendors." These may include, for example, a requirement for representatives of hospices to sign in when they arrive at hospitals and SNF's to coordinate services in Purchasing Departments.

On the contrary, post-acute providers, such as hospices, are not "vendors" and should not be treated like "vendors." They are, instead, fellow providers. Vendors are manufacturers and distributors of supplies and equipment that are utilized by hospitals and SNF's on the premises of institutions. Hospices do not sell equipment and supplies that are used by facilities on the premises. In fact, the users of hospice services are patients, not hospitals and SNF's.

When hospitals and SNF's lump hospices in with equipment and supply vendors they are, at the least, being disrespectful of these types of providers. Such treatment may be demeaning to hospice staff.

Some hospitals ask post-acute providers who are categorized as vendors to pay fees to hospitals in order to appear on a vendor list. Such payments are likely to constitute illegal kickbacks in exchange for referrals and cannot be required.

In addition, restrictions that hospitals and SNF's may appropriately put on the activities of vendors while on the premises are inapplicable to hospices. Vendors may, for example, be prohibited from going to areas of institutions besides Purchasing Departments unless they are accompanied by staff of facilities.

No such restrictions should be applied to hospices. In fact, it is inappropriate to restrict the activities of hospices who:

- Have received referrals of patients; or
- Cared for patients immediately prior to their admission to institutions

Under these circumstances, hospices should be permitted access to patients, their families, and information about them as part of the discharge planning process.

It is important to note that referrals for hospice services do not have to come from physicians. They may come from patients, their families, physicians, case managers/discharge planners, or other sources. Referrals may also be received by hospices either verbally or in writing. When

hospices are acting on verbal referrals, they should, however, document the name of the person who made the referral and the date and time at which it was received.

Of course, patients have the right to freedom of choice of providers. This right to freedom of choice of providers includes the right to self-refer to any type of post-acute provider. 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. 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. (Medicaid recipients may have waived this right if they participate in a waiver program.) Consequently, when Medicare patients and non-waiver Medicaid patients voluntarily express a preference for a home health agency, these choices must be honored.
- 3) Court decisions, such as the opinion in Assured Home Health, Inc. v. Providence Health System, also support patients' right to freedom of choice of providers. In this case, Assured claimed that the hospitals in the System regularly violated patients' right to freedom of choice and "steered" patients to agencies owned by the System. This case was settled when the System agreed to institute additional safeguards to protect patients' rights, including monitoring of the hospital's practices by outside third parties.

Many patients and their families greatly value hospice services. Hospitals and SNF's should not treat them like "vendors."