

Post-Acute Providers are Not Vendors

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

On the contrary, post-acute providers; such as home health agencies, home medical equipment (HME) companies, and private duty home care agencies; 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. Post-acute providers rarely sell equipment and supplies that are used by facilities on the premises. In fact, the users of post-acute providers are patients, not hospitals and SNF's.

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

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

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

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

Under these circumstances, post acute providers 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 post-acute 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 post-acute providers, either verbally or in writing. When post-acute providers 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. 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. (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) The Balanced Budget Act of 1997 (BBA) requires hospitals to develop a list of home health agencies that are:
 - a) Medicare certified;
 - b) Provide services in the geographic areas where patients reside, and;
 - c) Ask to be on the list.

In addition, if a hospital places the name of an agency on the list in which it has discloseable financial interests, the relationship between the hospital and the agency must be disclosed on the list.

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

- 4) Hospital Conditions of Participation (COP's) that became effective on October 1, 2004, include the basic requirements of the BBA described above.
- 5) 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.

A patient who received services from an agency immediately prior to admission to an institutional setting may, of course, choose to receive services from a different agency upon discharge. If a patient does not choose another agency, his or her care should be continued by the same agency with which the patient is likely to have a continuing provider-patient relationship.

Likewise, patients who are referred to post-acute providers may, of course, choose different post-acute providers any time they wish to do so.

Patients greatly value the services that post-acute providers offer. Hospitals and SNF's, therefore, should not treat them like "vendors."