

## Private Duty Home Care Services and Patients' Right to Freedom of Choice of Providers

Elizabeth E. Hogue, Esq.

Office: 877-871-4062

Fax: 877-871-9739

[ElizabethHogue@ElizabethHogue.net](mailto:ElizabethHogue@ElizabethHogue.net)

In order to be appropriate for home health or hospice services paid for by any payor, including the Medicare Program, patients must either be able to care for themselves or they must have a primary caregiver. Patients' family members or others may be willing to fulfill this role on a voluntary basis. If not, discharge planners/case managers should offer patients and/or their family members the option to pay privately for a primary caregiver who can meet patients' needs between visits from professional staff from home health agencies and hospices. Patients and their families may also wish to pay for skilled care themselves, such as nursing or therapy services. These types of services are often referred to as "private duty home care services."

The option to pay for private duty home care services should be offered to all patients who cannot care for themselves and who have no voluntary primary caregivers. Patients who can care for themselves or have voluntary primary caregivers may also wish to contract for additional assistance, including skilled care. Discharge planners/case managers should, therefore, offer this option to all patients who may benefit from these services.

Discharge planners/case managers may be reluctant to offer these services to patients and their families because of the cost of such services. They may erroneously conclude that patients and their families cannot afford them. Discharge planners/case managers should not make assumptions about who can afford these services. Instead, private duty home care services should be offered to every patient and family who may benefit from them. This conclusion is consistent with legal and ethical requirements that govern the practice of case management.

From a legal point of view, discharge planners/case managers must comply with Conditions of Participation (COP's) that govern hospitals. Specifically, discharge planners/case managers are required to develop appropriate discharge plans, if necessary, for all patients. Development of appropriate discharge plans undoubtedly includes private duty home care services for patients who may benefit from them.

In addition, the Case Management Society of America (CMSA) has published national standards of care for case managers. They are likely to apply to all discharge planners, regardless of whether they are certified as case managers, because they are practicing as case managers. These standards make it clear that case managers have a duty to advocate on behalf of patients. As advocates for patients, discharge planners/case managers have an obligation to make sure that patients understand all of the options available to them, including the option to pay privately for home care services.

Case managers/discharge planners also have an ethical obligation to inform patients about the availability of private duty services. Autonomy is an important ethical principle applicable to the

practice of case management/discharge planning. This ethical principle generally requires case managers to provide information to patients so that they can make informed choices.

Patients cannot make choices about the care they wish to receive unless they have information about all services available, including private duty services. Discharge planners/case managers, therefore, have a clear ethical obligation to provide information about private duty home care services to all patients who may benefit from them.

Discharge planners in hospitals are required to present a list of Medicare-certified home health agencies to patients who meet the requirements of COP's of the Medicare Program. The requirement to present a list does not apply to private duty home care services. Unless patients/family members voluntarily express a preference for a particular agency, discharge planners/case managers may refer patients to private duty agencies that discharge planners/case managers believe can meet patients' needs consistent with the above requirements.

Discharge planners/case managers must make specific recommendations of private duty agencies in order to fulfill their responsibilities, under applicable national standards of care described above. It is unacceptable for discharge planners/case managers to hand patients and families the yellow pages and tell them that they must pick an agency themselves. Discharge planners must include specific arrangements for care, including private duty care, if needed, in the discharge plans they develop and implement.

Most discharge planners/case managers are licensed as either nurses or social workers. When they fail to fulfill the obligations described above with regard to private duty care, they may risk discipline by state licensure boards.

Patients are in the driver's seat when it comes to decisions about their care, but they cannot make appropriate choices unless they have information about all of the types of available care. Consequently, discharge planners/case managers have legal and ethical obligations to make sure that patients have information about specific private duty home care providers.