

## Patients' Right to Freedom of Choice of Hospices in Hospitals

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

All providers are required to abide by patients' right to freedom of choice. 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 voluntarily express preferences for providers, their choices must be honored, regardless of payor source, level of care, or type of treatment.
- 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 preferences for post-acute providers of all types, these choices must be honored.
- 3) The Balanced Budget Act of 1997 (BBA) requires hospitals to develop a list of home health agencies and SNF's, *not hospices*. The list of home health providers must include agencies that:
  - a. Are Medicare certified;
  - b. Provide services in the 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 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 so that they can choose agencies they wish to provide services to them.

- 4) Hospital Conditions of Participation (COP's) include the basic requirements of the BBA described above.

Based upon the above, hospitals are required to honor patients' choices of hospices if they voluntarily express them. Hospitals are not required to offer patients choices of hospices, including lists of hospices. Some hospitals, however, voluntarily use lists of hospices even though they are not required to do so. If hospitals do so, hospices should make certain that their names appear on such lists.

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Practitioners who have reviewed survey guidelines published by the Centers for Medicare and Medicaid Services (CMS) may note the following language:

...we expect hospitals to provide a list of *Hospice* [emphasis added], HHA's or SNF's that are available to patients, that participate in the Medicare program, and that serve the geographic area that the patient requests.

Survey guidelines, however, cannot be enforced by CMS like the statutes and regulations describe above. Hospitals are not legally required, therefore, to present lists of hospices to patients as they are required to do for both home health agencies and SNF's. But hospitals may be wise to do so in order to avoid Statements of Deficiency if they are surveyed by state survey agencies.

The hospice industry has changed dramatically. The competition for patients is fierce. Hospices should use all of the tools available to them in order to compete. Hospital discharge planners/case managers have an obligation to protect patients' rights regardless of legal requirements.

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