

Standards of the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO)  
Unlikely to Support Practices of Hospitals That Treat Post-Acute Providers as “Vendors”

Post-acute providers continue to be “plagued” by hospitals that claim that post-acute providers cannot enter hospitals and/or gain access to patients to coordinate post-acute services because they are “vendors.” Some hospitals claim that access by “vendors” is prohibited by JCAHO standards. Other hospitals may permit access by post-acute providers only if they comply with complex, inapplicable restrictions that hospitals claim are based on JCAHO standards. Still other hospitals require post-acute providers to pay fees in order to gain access to patients for the purpose of coordinating post-acute services, which is likely to be an impermissible kickback or rebate in violation of the federal anti-kickback statute.

On the contrary, post-acute providers; such as home health agencies, home medical equipment (HME) companies, hospices, 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 on their premises. Further, a review of JCAHO standards does not support claims by hospitals that their actions are appropriately based on these standards.

Element of Performance for EC.02.02.01, for example, says that hospitals are required to identify individuals entering its facilities. In an accompanying “Note,” however, JCAHO states that hospitals have the flexibility to determine which individuals entering its facilities require identification and how to do so. Consequently, this standard does not support the practices of hospitals identified above. In other words, contrary to the claims of hospitals, JCAHO standards do not require hospitals to treat post-acute providers as vendors or to limit or restrict their access as such.

JCAHO standards do, however, require hospitals to control access to and from areas it identifies as “security sensitive,” which may reasonably include patient care areas. Consequently, it may be appropriate to require post-acute providers to identify themselves to hospital staff upon their arrival at and departure from hospitals. No additional restrictions, however, should be placed on the activities or movements of post-acute providers who:

- have received referrals of patients; or
- cared for patients immediately prior to their admission to hospitals.

With regard to receipt of referrals, 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 when it was received.

Patients who received services from post-acute providers immediately prior to admission to an institutional setting may, of course, choose to receive services from different providers upon discharge. If patients do not choose different providers, care should be continued by the same providers with which the patient is likely to have a continuing provider-patient relationship.

Under both of the above circumstances, post acute providers should be permitted access to patients, their families, and information about them as part of the discharge planning process immediately upon admission, consistent with Conditions of Participation (COP's) of the Medicare Program for hospitals that govern discharge planning. JCAHO standards do not appear to support practices of hospitals that treat post-acute providers as vendors. To the extent that such inappropriate practices interfere with the ability of post-acute providers to effectively coordinate services, post-acute providers should work with hospitals to change unnecessarily restrictive practices.