

Legal

What Legal Parameters Establish Patient Choice? What Action Can Patients and Providers Take to Enforce?

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THE RIGHT OF PATIENTS TO CHOOSE PROVIDERS WHO WILL RENDER CARE TO THEM IS CURRENTLY BASED ON FOUR KEY SOURCES:

1. Court decisions that establish the right of all patients, regardless of payor source and the setting in which services are rendered, to control treatment, including who provides it.

2. Federal statutes for both the Medicare and Medicaid Programs that establish the right of patients whose care is paid for by these programs to choose providers who render care.

3. The Balanced Budget Act of 1997 (BBA), which currently requires hospitals to provide a list of home health agencies to patients. According to the BBA, the list must meet the following criteria:

(A) agencies that provide services in the geographic area in which patients reside, are Medicare-certified, and request to be included must appear on the list given to patients; and (B) if hospitals have a financial interest in any agency that appears on the list, this interest must be disclosed on the list.

4. Conditions of Participation (COP's) of the Medicare Program that are the same as the provisions of the BBA described above.

The Centers for Medicare and Medicaid Services (CMS) has also made it clear that hospitals must present lists of hospices to patients to assist them to choose providers.

Despite the existence of these requirements that are intended to protect the right of patients to choose providers, there is a lingering perception, however unfair it may be, that hospitals give "lip service" to patients' right to freedom of choice but still operate based upon a culture that emphasizes ownership of patients and the need, perhaps even the right, to go to great lengths to keep patients "within the system."

ACTIONS TO ENFORCE RIGHTS

Surveyors may take action to enforce these rights. Patients and providers can file complaints with state survey agencies about violations of patients' right to freedom of choice. A provider in Indiana, for example, documented instances of alleged violations and reported them to the state survey agency. Surveyors treated the reports like a complaint and conducted a complaint survey of the hospital's practices. Surveyors concluded that the hospital violated its own policies

DON'T MISS ADDITIONAL EASY-TO-ACCESS LINKS TO LEGAL RESOURCE



Legal Use of Consulting Physicians/Medical Directors: Practical Issues

Post-acute organizations need consulting physicians' services. The OIG continues to scrutinize these relationships. What are the three things providers should know before signing agreements?

Legal: Managing the Risks of Wound Care

Wound care is a risky business these days. Providers who render wound care services are at risk for many things, including liability for negligent wound care, violation of fraud and abuse prohibitions

COVID 19: Key Legal Issues

It's an important time to review legal questions and issues related to COVID-19. There is a lot of misinformation flying around and

it's easy for providers to get tripped up. But providers must ensure that they are doing it right in order to avoid a day of legal reckoning that could threaten their businesses in the future.

Fraud and Abuse Enforcers Target Discharge Planners Again

Recent federal cases make it quite clear that marketers for home health companies and discharge planners/case managers must just say, "NO!" The "jig is up."

Hospitals Can Provide Free In-Home Services to Discharged Patients: OIG Advisory

The OIG posted Advisory Opinion No. 10-03 on March 6, 2019, which permits hospitals to provide free, in-home follow-up care to discharged patients.

and procedures and the provisions of the Balanced Budget Act in the process of making referrals for home health services. The hospital received a statement of deficiencies and was required to submit and follow a plan of correction (POC).

Such actions open the door for clear enforcement action against hospitals and other providers who violate patients' right to freedom of choice. If violations are at the condition level of deficiencies, providers could lose their right to participate in the Medicare/Medicaid Programs if they do not achieve compliance.

The right of patients to choose providers has generated considerable conflict within the provider community. This right is likely to be tested and reinforced. Both post-acute providers and case managers/discharge planners need a thorough understanding of the issues in order to stay out of the fray. ■

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