# PATIENT FREEDOM OF CHOICE & DISCHARGE PLANNING

**Both the Balanced Budget Act of 1997 and the Conditions of Participation (COPs) for hospitals guarantees a patient's right to freedom of choice which all providers are required to abide by.**

### The Balanced Budget Act of 1997 (BBA) requires hospitals to develop a list of home health agencies and skilled nursing facilities (SNF), not hospices. The list of home health providers must include agencies that:

- Are Medicare certified
- Provide services in the geographic areas where patients reside
- Ask to be on the list
- If hospitals have a financial interest in any agency that appears on the list, it must be disclosed on the list

Except for SNFs, the providers must make a request to the hospital to be listed and must be located in the geographic area where the patient resides. SNFs are not required to contact the hospital to be on the list. The Center for Medicare & Medicaid Services (CMS) recommends that SNFs can be identified from CMS's website at the Nursing Home Compare link or by calling 1-800-MEDICARE (800-633-4227). SNFs should be kept on the list even if they do not have available beds.

### Discharge planners/case managers are required to always give a "neutral presentation" of the list to patients without "prejudicing the case."

Case managers/discharge planners may not try to dissuade them or make negative comments about their choices. (However, there is a clear difference between choosing for patients, which case managers/discharge planners cannot do, and assisting patients with making informed choices.)

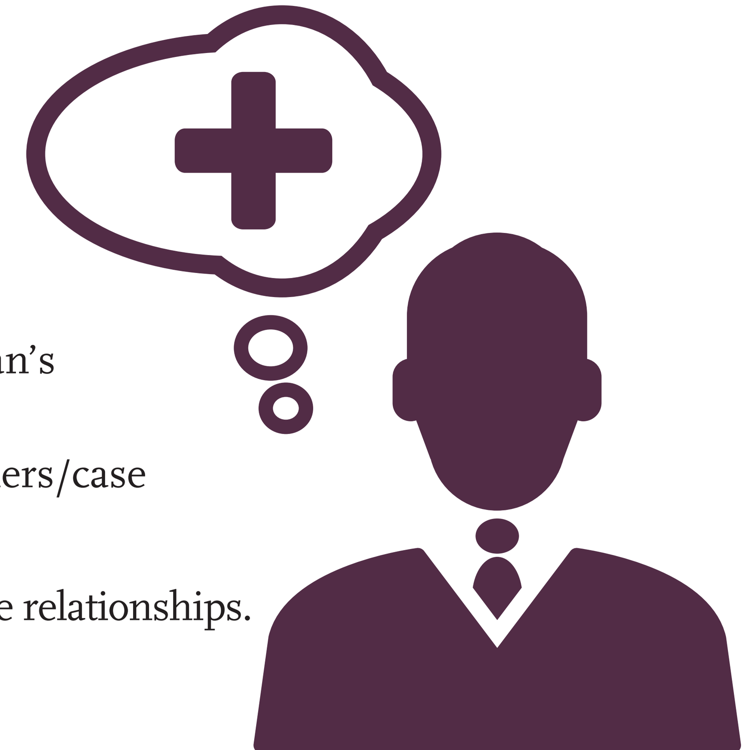
Hospitals are required to document in the patient's medical record that a list of home health or SNFs was presented to the patient or their representative. However, the hospital is not required to duplicate the list in the patient's medical record. The hospital also has the flexibility to determine how to document in the medical record that the list was presented.

## BBA'97 Amendments Impacting Discharge Planning

Hospitals must identify patients who will need post-hospital extended care, home health, or hospice services at an early stage in their hospital stay. This requirement applies to all patients in Medicare and Medicaid participating hospitals even if they are covered by Medicare, Medicaid, managed care, private insurance or private pay. The hospital must evaluate patients that they have identified will need post-hospital services and patients for whom an evaluation has been requested by the patient, their representative, or physician. The evaluation must be performed by a registered professional nurse, social worker, or other qualified personnel on an ongoing basis and in a timely manner to avoid delay in discharge and ensure that post-hospital care is in place. The discharge evaluation must be included in the patient's medical record and its results discussed with the patient and/or their representative.

## Preferred Provider Agreements by Discharge Planners/Case Manager

Preferred Provider Agreements may be verbal or written. They should obligate case managers to refer patients to specified post-acute providers. However, these agreements should not include a specific number of patients that case managers are expected or required to refer. They should explicitly indicate that case managers make no promises about the number or types of patients who will be referred.



## Physician Orders for a Specific Agency

- When attending physicians indicate that they prefer certain post-acute providers and patients do not choose other providers instead then the physician's preferences/orders must be honored.
- When patients cannot choose and their attending physicians have not indicated preferences for a particular post-acute provider then discharge planners/case managers may wish to encourage patients to choose a preferred provider.

Sound relationships with post-acute providers are crucial to the practice of case management and the use of Preferred Provider Agreements may help foster those relationships.

## Private Duty Referrals

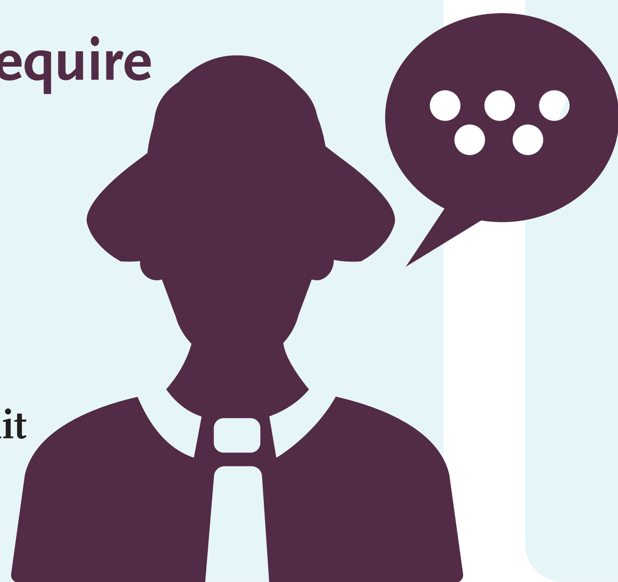
As advocates for patients, discharge planners/case managers have an obligation to make sure that patients understand all of the options available to them including the option to pay privately for home care services.

Case managers/discharge planners also have an ethical obligation to inform patients about the availability of private duty services. 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 have a clear ethical obligation to provide information about private duty home care services to all patients who may benefit from them.

Patients will make the choice on type of care and provider, but they cannot make appropriate choices unless they have information about all of the types of available care.

### Hospital CoPs Require that Providers:

- Inform patient of freedom of choice
- Respect patient preference
- May not specify/limit qualified providers



### Hospital CoPs – Compliance Review Checklist

- Was list furnished?
- Was patient's choice respected?
- Was choice of home health or hospice limited?
- Was patient inappropriately steered?
- Was the patient informed of any financial interest?

### Actions to Enforce Patient Freedom of Choice

- HHA Medical Director to contact Hospital or SNF Medical Director
- Complaint to State Survey Office
- Letter to CMS Survey and Certification
- Hospital CoPs or SNF Discharge Planning
- Letter to Joint Commission
- Report to http://oig.hhs.gov/

**If violations are at the condition level of deficiencies, hospitals could lose their right to participate in the Medicare/Medicaid Programs.**

**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.**