Respecting Patient Choice and the Rights of Medicare Patients

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Among other rights, the Medicare program guarantees a beneficiary his or her right to a choice of providers of services. The Medicare statute specifically states that any individual who is entitled to benefits under Part A or Part B may obtain health services from any institution, agency, or person that is qualified to participate as a provider of services in Medicare Part A or Part B. See 42 U.S.C. § 1395a(a). A beneficiary’s choices may be limited under Part C, but this is because when a beneficiary chooses to enroll in the managed care benefit, the beneficiary voluntarily relinquishes his or her right to choose a provider.

A patient’s right to freely choose his/her provider of services is also guaranteed in the Medicaid program. A state’s Medicaid program state plan must provide that any individual that is eligible for assistance under the state’s Medicaid program may obtain Medicaid services from any “institution, agency or person” that is qualified to provide the service or services needed. See 42 U.S.C. § 1396a(a)(23).

The beneficiary’s fundamental right to choose the provider of services is incorporated into many facets of the Medicare and Medicaid programs. For example, the right to choose is found in the Hospital Conditions of Participation. The Hospital Conditions of Participation require:

- The patient to be specifically informed of their right to choose a post-hospitalization provider
- The hospital must provide the patient with a list from which the patient may choose that provider.
- The hospital must disclose any agency in which a hospital has a financial interest.
- See 42 C.F.R. § 482.43(c)(3),(7).

A hospital that fails to provide this list or provides a less than complete list will be found in violation of the COPs. A hospital may also violate the COPs if the discharge planners specify or otherwise limit the providers that are available to the patient.

Because patients in the Medicare and Medicaid programs have a guaranteed right to choose their provider of services, the patient’s choice must be honored. Providers who substitute their preference for their patient’s choice also subvert patient consent. A patient that is “encouraged” to choose a provider with threats of being dropped by their physician or with statement such as “that provider is not allowed in this facility” is being coerced to choose a provider instead of having their statutorily guaranteed rights upheld.

Federal fraud and abuse laws also provide protection for a patient’s right to choose.

- The fraud and abuse laws aim to eliminate certain influences on patient choices by making it illegal for providers to be incentivized in any way to steer patients to particular providers.
- These laws also prevent providers from offering remuneration to patients to get them to choose a particular provider.
Physicians, hospitals, skilled nursing facilities and assisted living facilities must recognize and respect a patient’s freedom to choose their provider of services under Medicare and Medicaid or risk being found in violation of federal and state law.

The member agencies of the Home Care Alliance of Massachusetts have a zero tolerance policy for fraudulent Medicare activity whether it occurs via incompetence or criminal intent. Home care agencies or other providers that encounter or are approached to participate in activities that circumvent patient choice are encouraged to report it to the Compliance Officer of the involved hospital or nursing home and/or to one of the following:

For Violations of Fraud or Kickback Rules

**US DEPARTMENT OF HEALTH AND HUMAN SERVICES**
**PHONE:** 1-800-HHS-TIPS (1-800-447-8477)
**FAX:** 1-800-223-2164 (no more than 10 pages)
**EMAIL:** HHSTips@OIG.HHS.gov

**MAIL:**
Office of Inspector General
Department of Health and Human Services
ATTN: HOTLINE
PO Box 23489
Washington, DC 20026

**ONLINE:** [http://oig.hhs.gov/fraud/hotline/](http://oig.hhs.gov/fraud/hotline/)

For Violations of Kickback Rules or Patient Choice

**THE CENTER FOR MEDICARE AND MEDICAID Services**
Certification and Enforcement Branch
John F Kennedy Federal Building
Boston MA 02203-003
Attn: Richard Shaw

Email: Richard.shaw@cms.hhs.gov
Phone: 617-565-4487

**MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH**
Division of Health Care Quality
Office of Survey and Certification
99 Chauncy Street
Boston. MA 02111
Phone: 1-617-753-8222

Prepared for the Home Care Alliance of Massachusetts
[www.thinkhomecare.org](http://www.thinkhomecare.org)