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Admissions and Discharges – Care Issues Prior to Hospice Admission

A hospice recently asked: *Is there any way we can care for a patient as some sort of transition service without admitting the patient? We have a discharge planner who sometimes refers patients who are actively dying*.

It is impermissible to provide hospice care to a patient who has not provided all the necessary consents, either directly or through the patient's authorized representative. Some hospices have more than one license or are part of a larger system, (home health agency, skilled nursing facility, hospital, Part B clinic, etc.), and there may be a way to provide services under one or more of those licenses. However, to do so without an admission process and the necessary informed consent, is not only legally impermissible; it raises serious liability issues for the hospice and its licensed professionals. What are the hospice's options when faced with such late referrals and the desire to provide the necessary care?

1. Work with referral sources so that referrals can be made sooner. This, as all hospices know, takes a significant amount of work in educating and re-educating the community. Many sophisticated health care providers still believe that hospice is only for the final few days of life. The Manual, One Patient One Day: Making Your Hospice a Leader in End of Life Care, sets forth a number of key principles and operating imperatives that allow hospices to improve their access to care and increase earlier referrals in order to provide the most advantageous care planning and support for the patient and family. This Manual is available through NHPCO (in the interest of full disclosure, I prepared the legal checklists and other analyses for this publication and collaborated with co-authors Larry Beresford and Jay Mahoney).

2. Contract with the hospital as a consultant. If there is truly no time to admit the patient to hospice, the hospital may be interested in contracting for palliative care consulting services. It is possible to fit such arrangements under the anti-kickback safe harbor by entering into a contract for at least one year, specifying the services and intervals of the services to be provided, setting forth the financial arrangements based on fair market value for the services rendered and meeting the other safe harbor requirements for professional service contracts. Of course, any contract

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with any other provider should be reviewed carefully by legal counsel, particularly when there is a possible inducement to refer.

3. Consider offering a palliative care program. If referrals are consistently late and your hospice has the necessary resources and has completed the analysis necessary to ensure regulatory compliance (see palliative care checklist below), a palliative care program may be an effective avenue to provide necessary care earlier. Once again, the decision to provide a non-hospice program requires careful consideration in terms of regulatory, risk management, financial and human resource issues.

4. Remember that very late referrals may still be very appropriate for hospice services. In fact it may be even more important, if the patient and family are in crisis, to ensure a timely and responsive admission process.

In summary, to provide services without going through an admission process is unacceptable from both a regulatory and a liability standpoint. For hospices that are part of larger systems, there may be easier ways to provide palliative care through the system. If the hospice is experiencing a pattern of very late referrals, it is important to ask what the hospice can do to overcome the problem.

Consider creative solutions and above all, meet the needs of patients and families whenever they are referred, with as much compassion and care as possible, within the framework of the regulations.