

MEDICARE PART A BULLETIN

December 22, 1997

Hospital Medicare Bulletin H-86

TO: All Medicare Hospital Providers

FROM: Program Relations

SUBJECT: **NON-DISCRIMINATION IN POST-HOSPITAL REFERRAL TO HOME HEALTH AGENCIES AND OTHER ENTITIES (BALANCED BUDGET ACT OF 1997, P.L. 105-33)**

ATTENTION MEDICARE BUSINESS OFFICE: Please distribute to all appropriate health care facility personnel.

The Health Care Financing Administration (HCFA) has instructed all fiscal intermediaries to inform hospital providers that Congress recently enacted, in section 4321 (a) of the Balanced Budget Act of 1997, an amendment to section 1861 (ee) of the Social Security Act (the Act). This change requires **Medicare participating hospitals**, as part of their discharge planning evaluations, to provide Medicare beneficiaries a list of Medicare-certified home health agencies (HHAs) that serve a patient's geographic area. In addition, a hospital's discharge plan shall not specify or limit access to qualified HHAs and it must identify any provider or supplier in which the hospital has a disclosable financial interest, if the patient is referred to that entity.

The amendment reads as follows:

“Section [1861] (ee)(2)(42U.S.C.1395x(ee)(2)) is amended—

(1) in subparagraph (D), by inserting before the period the following: “, including the availability of home health services through individuals and entities that participate in the program under this title and that serve the area in which the patient resides and that request to be listed by the hospital as available” and

(2) by adding at the end the following new subparagraph:

“(H) Consistent with section 1802, the discharge plan shall—(I) not specify or otherwise limit the qualified provider which may provide post-hospital home health services, and (ii) identify (in a form and manner specified by the Secretary) any entity to whom the individual is referred in which the hospital has a disclosable financial interest (as specified by the Secretary consistent with section 1866 (a)(1)(S) or which has such an interest in the hospital.”

According to the HCFA, these requirements will eventually be incorporated into the Medicare hospital conditions of participation, which are being revised (see 42 CFR Part 482).

In addition, these requirements will be added to the Form HCFA-1537, Hospital Survey Report Form, and the Hospital Interpretive Guidelines and Survey Procedures the next time they are revised. Until then, please be aware of these provisions. Further, in accordance with the statute, the provisions apply to *discharges occurring on or after November 3, 1997.*

To summarize, section 1861 (ee) now requires a hospital's discharge planning evaluation to include a list of the available Medicare certified HHAs in the patient's geographic area that request to be listed. In addition, the discharge plan shall not specify or limit qualified HHAs and must identify those entities to whom the patient is referred in which the hospital has a disclosable financial interest or which has such an interest in the hospital. "Disclosable financial interest" will be defined in the rule-making process which implements section 1866 (a)(1)(S) of the Act. In the interim, HCFA suggests that hospitals reference the Disclosure of Ownership and Control provisions of 42 CFR 420 subpart C.

Therefore, HCFA expects hospitals to prepare a list of HHAs which (1) are Medicare certified, (2) serve the area in which the hospital's patients reside, and (3) request to be placed on the hospital's list. If HHAs do not meet all three criteria, hospitals are under no obligation to place that HHA on the discharge plan list. The list should be legible and should not be used to specify or limit the choice of a HHA. The list shall not be considered a recommendation nor endorsement by the hospital of any particular HHA's quality of care.

HCFA is transmitting a copy of their memorandum to the State survey agencies, but please share additional copies of this bulletin as necessary.

Questions regarding this bulletin may be addressed to the Medicare Part A Customer Service Department by calling 904/355-8899.