The right of patients to choose providers who will render care to them is currently based upon three key sources:

- 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.
- 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 in the absence of a waiver.
- The Balanced Budget Act of 1997 (BBA), which currently requires hospitals only to provide a list of home health agencies to patients. According to the BBA, the list must meet the following criteria:
  - 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.
  - If hospitals have a financial interest in any agency that appears on the list, this interest must be disclosed on the list.
- Conditions of Participation (COP's) of the Medicare Program that are the same as the provisions of the BBA described above.

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, and perhaps even the right, to go to great lengths to keep patients “within the system.” Case managers/discharge planners are likely to see more enforcement actions by state survey agencies with regard to the rights of patients to choose their providers.

Action taken by a provider in Indiana is instructive. Specifically, the provider 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 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).

This action opens 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, at least in theory, lose their right to participate in the Medicare/Medicaid Programs.

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

(To obtain more information about the fraud issues discussed above in a book entitled *Medicare/Medicaid Fraud and Abuse: A Practical Guide for Providers*, send a check to Elizabeth Hogue for $30.00 including shipping and handling to: Fulfillment, 107 Guilford, Summerville, SC 29483.)