National Hospice & Palliative Care Organization

HOSPICE AND PALLIATIVE CARE: ETHICAL MARKETING PRACTICES

Introduction:

The National Hospice and Palliative Care Organization (NHPCO) recognizes the importance of marketing and developing business opportunities for hospice and palliative care services in communities across the nation. (NHPCO, Ethical Principles, 2006) Ongoing promotion of palliative and end-of-life care services through public education as well as through marketing and business development efforts are essential components necessary to assure access to all eligible individuals who want these services.

This position statement presumes that business and marketing practices of hospice and palliative care services are carried out within the parameters of the legal and regulatory statutes that pertain to our industry. Marketing practices should also be in accord with ethical norms and values set forth in the American Marketing Association's Statement of Ethics (American Marketing Association, 2009).

Ethical hospice and palliative care providers are sensitive to and exemplify the foundational hospice values of service, respect, excellence, collaboration and stewardship (NHPCO Mission and Values Statement, 2010). These values can both inspire and challenge providers as they promote services in the community. They can motivate hospice and palliative care organizations to achieve common goals and be known as reliable and trustworthy healthcare providers. They also establish accountability for sound ethical practice as providers enter the marketplace to provide access to hospice and palliative care. The end-of-life care community has communicated these values to the general public over many years and the public deserves to have them honored by all who provide hospice and palliative care.

The goal of this position statement is to reinforce the need for ethical practices which will in turn ensure trust and support among those being served.

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NHPCO Position Statement

1. Access to Care

NHPCO's goal is to achieve "universal availability of comprehensive hospice and palliative care services, in diverse healthcare settings and with specific emphasis on reaching traditionally underserved populations" (NHPCO, Ethical Principles, 2006) Hospice and palliative care providers seek to remove barriers to people receiving quality palliative and end-of-life care. The foundation of such efforts is broad education. Grounding marketing efforts in education and building relationships with other providers are critical to making hospice and palliative care services available to those who need them. Since Congress enacted the Medicare Hospice Benefit in 1982, education initiatives have had a positive impact—more residents of the United States have access to meaningful palliative and end-of-life services. That progress is notable and should continue.

NHPCO recommends that hospices systematically review potential barriers that prevent individuals or groups of people from accessing quality hospice care.

2. Competition

Competition among hospice and palliative care providers should be viewed by providers in a positive framework and can be a healthy incentive to provide the highest quality service and increase access to care. As organizations develop new services and improve outcomes for effective and efficient patient/family care, they make valuable contributions to the industry as a whole.

Alternatively, if competitive practices strive only to gain an advantage based on promises that go unfulfilled or overextension of services that in essence become inducements for referrals, this leads to inferior quality and reflects poorly on the hospice and palliative care industry. This runs contrary to the goal of upholding "high standards of ethical conduct and advocating for the rights of patients and their family caregivers." (NHPCO, Standards of Practice for Hospice Programs, 2006)

NHPCO believes that hospices must accurately represent the capacity and services of their organization in all marketing, outreach and education.

3. Customer Service Excellence and Boundaries

Many hospice and palliative care organizations have worked diligently to implement qualitative measures that facilitate establishment of standard practices that, in turn, ensure excellent patient and family care. (Family Evaluation of Hospice Care Survey, NHPCO) Most honor their responsibility to uphold the trust that is placed in them by persons at fragile points in life. However, as noted above, when marketing efforts overpromise services, trust and the quality of hospice and palliative care are compromised. Excellent customer service must be provided within the parameters that constitute clinically appropriate hospice and palliative care services which are compliant with all applicable federal and state regulations. Hospice and palliative care organizations, therefore, "assume responsibility for ethical decision-making and behavior related to the provision of hospice care." (NHPCO, Standards of Practice for Hospice Programs, 2006)

4. Hospice and Palliative Care Organizations as Referral Sources

In addition to marketing one's own services to the community, hospice and palliative care providers are the focus and recipients of marketing efforts by other service providers. Because pharmaceutical, durable medical equipment (DME), funeral and cremation, homecare and many other organizations approach hospice and palliative care professionals for business, it is essential to identify prevailing federal and state legal and regulatory requirements and educate all staff regarding them. It is also important for staff to be educated on the ethical norms of marketing and business development. (American Marketing Association, 2009)

NHPCO advocates that organizations have clearly stated policies for contracting with and making referrals to other community providers.

5. New Trends in Marketing and Communication

Technological advances have created an entirely new venue where marketing and public relations for healthcare services can take place. Social media opportunities are evolving at a very

fast pace. Therefore, the legal and ethical considerations should reflect the rapidly changing social media environment.

"Ethical guidelines in social media are crucial for keeping us safe while keeping the Internet open for both communication and commerce…. Honesty, transparency, respect, privacy, relevance and responsibility" are foundational elements for these guidelines. (Ethics Blog, retrieved February 9, 2010) As hospice and palliative care organizations use podcasts, blogs, and social networks (e.g., Twitter, Facebook, MySpace, LinkedIn, YouTube), they must do so responsibly.

Hospice and palliative care organizations must also be aware of privacy regulations and procedures as set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules. (U.S. Department of Health and Human Services, Health Information Privacy, 1996)

Some of the social media tools allow for the rating of individual or organizational quality. These too must be managed responsibly to avoid ethical concerns for those using them. Privacy, liability, regulation and flexibility are critical elements that must be considered in developing one's policy for use of social media. (Healthblawg, David Harlow, retrieved February 19. 2010)

NHPCO encourages member organizations to implement clearly stated policies that support ethical use of these electronic forums.

6. Traditional Media Marketing

The use of print and broadcast media, such as newspaper advertisements, billboards and radio, have also been valuable and effective ways of communicating with the public about hospice and palliative care services. They help educate and inform the community at large and can lead to greater access to palliative and end-of-life services.

In this realm too, however, organizations must act responsibly to ensure that statements regarding services and outcomes are based on evidence that supports any claims made in these

communications and in alignment with regulatory and legal standards. In addition, if patient/family stories and images are used, one must carefully monitor the process to ensure patient/family choice and respect for confidentiality and privacy. Providers should be sure they are not violating HIPAA regulations. It is essential that organizations provide clearly stated consent forms; obtain valid, signed patient/family agreement; and keep the documentation current if such stories and images are used in media marketing.

NHPCO promotes the ethical and responsible use of patient/family testimonials in media outreach, respecting confidentiality, privacy and the physical and emotional well being of those being served.

Conclusion

NHPCO's stated position provides guidance on ethical practices as providers market end-of-life care services and respond to the marketing efforts of other providers. It is also intended to be a catalyst for dialogue within and among organizations that provide hospice and palliative care—a dialogue that will support ethical standards of practice for those who market hospice and palliative care services.

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NHPCO Supporting Commentary

As hospice and palliative care make inroads into the broader healthcare industry, the risk of becoming a quota system to measure effectiveness could become the norm. Marketing practices among hospice and palliative care providers should be evaluated and monitored frequently to avoid unethical decisions and behaviors.

An example of one of these practices is the placement of liaisons in hospitals. This practice in and of itself is not objectionable; however, the liaison's actions and functions and the way he or she manages the relationship between hospital and hospice provider could be. Hospital liaisons

provide exceptional service to patients and families as well as hospital providers when grounded in clinical assessment and intake coordination.

Collaboration should be the foundation of the hospice/hospital relationship. A collaborative relationship that focuses on meeting the needs of the patient and family becomes the vehicle for informing other providers of the expansive services hospice and palliative care has to offer. If the sole purpose is to "catch" the referral before it is made to another provider, the relationship becomes defined by business versus meeting the needs of the patient/family. If patients are referred to a provider before the discharge plan is developed, it might indicate that the referral decision is not based on the clinical needs of the patient, rather solely on a business need of the hospital and/or the hospice and palliative care provider.

Additionally, marketing practices that do not build a collaborative clinical practice on behalf of the patients and families served miss the mark. The liaison role without education, sound clinical assessment and presentation of options could lead down the wrong path, i.e., inappropriate census increases, and decreased understanding of and efficacy in end-of-life care.

Prompt, responsive admissions systems and personnel that meet the needs of patients and referral sources are hallmarks of organizational service excellence. All hospice and palliative care providers should aspire to establish and sustain such services. Admission staff who are well informed and can promote the services that best meet patient/family needs are invaluable assets. Admission processes, however, also need to be reviewed closely in order to adhere to ethical practice.

The promise of services before an in-person assessment is conducted is a questionable practice that is not appropriate for hospice providers. Additionally, rewarding admission staff bonuses based on predetermined admission goals is not appropriate and must be discouraged. This practice can lead to rushed admission visits that result in a poor understanding on the part of patient and family members and/or questionable eligibility assessments. Informed consent can also come into question. If admission staff priorities become that of a sales force, critical clinical

information and service will suffer. It is important to insure that patients are not being admitted to achieve a quota with the intent they will be discharged before the first recertification period.

Hospice physicians can also become an obstacle to informed consent if they are telling patients that, if they do not go with the hospice the physician is affiliated with, then the physician will no longer be able to care for them. This does not allow the patient to make a choice about his/her hospice provider and violates the trust and responsibility of that provider to allow patients informed consent when selecting a hospice. It should be noted that one exception would be in the case of a physician working with a hospital-based palliative care program who is following a patient before a hospice referral. This physician may not be able to follow the patient if the patient goes to a non-affiliated hospice program. In this case, the physician should be free to explain these circumstances, but not with the intention of swaying a patient's choice.

Law and regulation support the patient's and his/her family's right to select a particular hospice when they are electing the Medicare Hospice Benefit. There are times when a patient and family have elected the Medicare Hospice Benefit with one hospice and are approached by a different hospice and convinced to transfer. This practice is ethically unacceptable, yet unfortunately occurs in both the hospital and nursing home settings and hits the family when they are vulnerable and easily confused and influenced.

How hospice providers present and utilize the Hospice Benefit's levels of care is also critical to ethical marketing practices in the hospice and palliative care industry. Levels of care were designed to reflect the intensity of clinical services required to manage a patient's symptoms. Higher levels of care should not be used as marketing tools to nursing facilities to add staffing or presence when there is no clinical need. It is also important to consider the careful use of appropriate levels of care for those patients who meet the criteria for that level of care and whose updated comprehensive assessment and plan of care support the change in the level of care.

How hospice and palliative care organizations interface with long term care facilities is another situation that can verge on unethical practice if not monitored closely. The Medicare Hospice Conditions of Participation require a close collaboration between the hospice and the long term

care providers. Education, integration, collaboration and coordination of care planning and interdisciplinary patient care are all expectations that, when done well, set hospice and palliative care providers apart in a positive way. Efforts to go beyond that—such as providing aides to non-hospice patients residing in the same facility; giving away items of value to facility management and staff; providing non-funded care while the patient is on skilled days; and paying higher level-of-care rates for those on routine level of care—are unethical and in most cases illegal practices. Long term care facilities that have their own hospice and/or palliative care programs need to be especially mindful of these concerns.

Hospice and palliative care organizations must also respect the ethical standards that are recognized by each of the professions represented on the interdisciplinary team.

NHPCO is committed to improving end-of-life care and expanding access to hospice and palliative care with the goal of profoundly enhancing quality of life for people dying and their loved ones.

Ethical Decision Making Process for Marketing Strategies

Decision-making models for clinically-based ethical concerns exist. The tool below, based on one of those models (Jonsen, et. al., 2002), might help hospice and palliative care organizations make ethical decisions related to marketing practices.

• **Consistency with National Standards** 1. Is the marketing strategy compliant with all legal and regulatory requirements? 2. Is the strategy consistent with the American Marketing Association's code of ethics? 3. Is the strategy consistent with the NHPCO position statement on ethical marketing practices?	• **Service Excellence** 1. Does the marketing strategy accurately describe the available services? 2. Does the strategy communicate the parameters and/or limitations of the services provided? 3. Does the strategy include qualitative data to support claims made?
• **Impact on Patient Care** 1. Does the marketing strategy positively affect patient care? 2. Does the strategy improve access to care? 3. Does the strategy increase understanding of hospice and palliative care? 4. Does the strategy provide accurate information upon which consumers can base their decisions about treatment?	• **Contextual Elements** 1. Does the marketing strategy reflect positively on one's own organization and the hospice and palliative care industry? 2. Does the strategy reflect one's own organization's mission and values? 3. Can all levels of the organization support the strategy? 4. Is this marketing strategy consistent with the values for patient care services proclaimed by the hospice's state association and by NHPCO?

Based on Jonsen, AR, Seiglerm, Winslade, WJ. Clinical Practical Approach to Ethical Decisions in Clinical Medicine. 5th ed. New York, NY: McGraw-Hill 2002.

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