

# Ban the Bags

## Action Ideas

### Government

#### Legislation

☞ State legislation is one route to use for mandating the elimination of commercial discharge bags from the hospital. Write to your state legislators asking that such a bill be introduced

☞ California's Senate Bill 1275 (Ortiz) in 2004 contains model language for state legislation: [http://www.leginfo.ca.gov/cgi-bin/postquery?bill\\_number=sb\\_1275&sess=PREV&house=B&author=ortiz](http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_1275&sess=PREV&house=B&author=ortiz)

#### The Right to Informed Infant Feeding Choices

1. Inclusion of Disclaimer Notice. Requires infant formula companies that market and distribute infant formula in a hospital to include a single, prominent notice on their marketing discharge bags that will state that "the distribution of formula or the marketing materials in a hospital setting does not necessarily mean that the hospital or health care providers endorse the company or the product that is being distributed."
2. A hospital's maternity unit or nursery may not be used for display of products (promotional items), or placards or posters concerning these products, provided by a manufacturer or distributor of infant formula.

[www.breastfeedingtaskforla.org](http://www.breastfeedingtaskforla.org)

#### Policy

☞ State perinatal regulations are operating mandates to hospitals that can be used to specify the elimination of commercial discharge bags. Both New York and Massachusetts have state perinatal regulations that contain statements to curb the hospital distribution of commercial bags. These state that breastfeeding mothers should not be given commercial discharge bags unless prescribed by the physicians or requested by the mother <http://www.massbfc.org/news/perinatalRegs.html>

☞ Contact your state department of public health for a copy of your own state's perinatal regulations

and work with that agency to change hospital policy

### State Breastfeeding Coalitions and Task Forces

☞ The Massachusetts Breastfeeding Coalition worked closely with the state department of public health to revise the state perinatal regulations. While not able to strengthen the prohibition on commercial discharge bags due to interference from the Governor, the regulations have considerably improved what hospitals must provide to breastfeeding mothers

<http://www.massbfc.org/news/perinatalRegs.html>

☞ The New Mexico Breastfeeding Taskforce has a project called The Discharge Pack Initiative that trades a free T-shirt for baby for a commercial discharge bag. The bags are sent back to the formula manufacturer. [www.breastfeedingnewmexico.org](http://www.breastfeedingnewmexico.org)

### Maternity Hospitals

☞ Check your institution or agency's policy on selling or marketing products to patients. Since discharge packs are forms of marketing, employees may be unknowingly violating institutional policy.

☞ Check your job description. Does it mention marketing of products as a requirement of the job? If not, do not do it. Does your job description or any document you signed as a condition of employment prohibit marketing of products? If not, you may wish to add this to it for patient protection. If it does, then avoid giving out discharge packs from commercial interests

☞ Most hospitals have provisions for conscientious objection to performing care that violates your ethical or moral principles. Check your hospital's policy and record your objection to this practice *Waller-Wise R. Conscientious objection: do nurses have the right to refuse to provide care? AWHONN Lifelines 2005; 9:283-286*

☞ HIPAA regulations consider formula discharge bags as a form of marketing. Remind your hospital that distribution of these bags facilitates a marketing opportunity for corporations [www.hhs.gov/ocr/hipaa/guidelines.pdf](http://www.hhs.gov/ocr/hipaa/guidelines.pdf)

☞ Obtain the mission statement of the hospital, agency, or program where you work. Does it mention promotion of health as a goal? If so, ask how marketing formula promotes a health goal. Does it mention marketing commercial products as a means to this goal? If not, avoid using formula company items

☞ If you are a nurse, contact your state nurse's association regarding the marketing of products to patients. Does this fall within the scope of practice of a nurse? Does it fit in with the ethical practice of the nursing profession? If not, ask them for a statement to this effect for your use

☞ The federal anti-kickback statute (The Medicare and Medicaid Patient Protection Act of 1987 as amended, 42 U.S.C. 1320a-7b) is a criminal statute that applies to health care providers, hospitals, clinics, etc. Several common practices may violate this law – giving formula discharge bags to patients, accepting free formula for use in the hospital, soliciting or receiving gifts from formula companies, accepting cash from vendors. Check with your hospital's attorney to see if your institution is in violation of this statute. If so, report this to the Inspector General's Office of the Department of Health and Human Services at: [esec@os.dhhs.gov](mailto:esec@os.dhhs.gov)

☞ Ask your purchasing department if your hospital has a contract with a formula company. Request a written copy of this. Ask if any other units have a contract with a supplier to accept free goods in return for marketing their products. Ask what the cash is used for and who is accountable for it. All other units pass on the cost of food to the insurer. Food trays are part of the room and board charge. Why doesn't the nursery?

☞ Ask your purchasing department if the hospital has an agreement with a service that purchases supplies in bulk quantities for many hospitals. Formula companies often require hospitals to give out formula-containing discharge bags to

breastfeeding mothers as a condition of the discount received on other supplies

☞ Has your unit been approached to change its breastfeeding policy to allow distribution of formula-containing discharge packs? Formula companies have offered cash to maternity units for "educational" purposes in return for changing established unit policy to require giving breastfeeding mothers commercial discharge packs. This type of bribe can set a dangerous precedent whereby formula companies may pressure cash-strapped maternity units to change breastfeeding **management** guidelines to increase the chances that a mother would need or want to supplement her baby with formula

☞ Contact both the ethics committee and your hospital's attorney and ask for a statement on the legality and ethical principles behind the issue of the hospital endorsing products for financial gain, either directly by accepting infant formula at no cost and distributing commercial discharge bags, or indirectly by accepting cash grants and additional services

☞ Form a hospital task force or contact your Quality Improvement department to begin the process of eliminating the distribution of commercial discharge bags from your hospital