9.6.3 Incentives to Patients for Referrals

Endorsement by current patients can be a strong incentive to direct new patients to a medical practice and physicians often rely on word of mouth as a source of referrals. However, to be ethically appropriate, word-of-mouth referrals must be voluntary on the part of current patients and should reflect honestly on the practice.

Physicians must not offer financial incentives or other valuable incentives to current patients in exchange for recruitment of other patients. Such incentives can distort the information patients provide and skew the expectations of prospective patients, thus compromising the trust that is the foundation of patient-physician relationships.

AMA Principles of Medical Ethics: I,II,VIII

Background report(s):

CEJA Report 3-A-16 Modernized *Code of Medical Ethics*

CEJA Report 4-A-04 Financial incentives to patients for referrals

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AMA Principles of Medical Ethics: I,II,VIII

When there is evidence of the patient's preferences and values, decisions concerning the patient's care should be made by substituted judgment. This entails considering the patient's advance directive (if any), the patient's views ~~values~~ about life and how it should be lived, how the patient has constructed his or her identity or life story, and the patient's attitudes towards sickness, suffering, and certain medical procedures.

~~In some instances, a patient with diminished or impaired decision-making capacity can participate in various aspects of health care decision-making. The attending physician should promote the autonomy of such individuals by involving them to a degree commensurate with their capabilities.~~

If there is no reasonable basis on which to interpret how a patient would have decided, the decision should be based on the best interests of the patient, or the outcome that would best promote the patient's well-being. Factors that should be considered when weighing the harms and benefits of various treatment options include the pain and suffering associated with treatment, the degree of and potential for benefit, and any impairments that may result from treatment. Any quality of life considerations should be measured as the worth to the individual whose course of treatment is in question, and not as a measure of social worth. One way to ensure that a decision using the best interest standard is not inappropriately influenced by the surrogate's own values is to determine the course of treatment that most reasonable persons would choose for themselves in similar circumstances.

Physicians should recognize the proxy or surrogate as an extension of the patient, entitled to the same respect as the competent patient. Physicians should provide advice, guidance, and support; explain that decisions should be based on substituted judgment when possible and otherwise on the best interest principle; and offer relevant medical information as well as medical opinions in a timely manner. In addition to the physician, other hospital staff or ethics committees are often helpful to providing support for the decision-makers.

In general, physicians should respect decisions that are made by the appropriately designated surrogate and based on the standard ~~basis~~ of ~~sound~~ substituted judgment ~~reasoning~~ or ~~the~~ best interest ~~standard~~. In cases where there is a dispute among family members, physicians should work to resolve the conflict through mediation. Physicians or an ethics committee should try to uncover the reasons that underlie the disagreement and present information that will facilitate decision-making. When a physician believes that a decision is clearly not what the patient would have decided, ~~or~~ could not be reasonably judged to be within the patient's best interests, or primarily serves the interest of a surrogate or a third party, ~~the dispute should be referred to~~ an ethics committee should be consulted before requesting court intervention ~~resorting to the courts~~.

Physicians should encourage their patients to document their treatment preferences or to appoint a health care proxy with whom they can discuss their values regarding health care and treatment in advance. Because documented advance directives are often not available in emergency situations, physicians should emphasize to patients the importance of discussing treatment preferences with individuals who are likely to act as their surrogates. (I, III, VIII) Issued December 2001 based on the report "Surrogate Decision-Making," adopted June 2001; updated December 2004.

4. FINANCIAL INCENTIVES TO PATIENTS FOR REFERRALS (RESOLUTION 10, A-03)

HOUSE ACTION: RECOMMENDATION ADOPTED IN LIEU OF RESOLUTION 10 (A-03) AND REMAINDER OF REPORT FILED

At the 2003 Annual Meeting, the Oklahoma Delegation introduced Resolution 10, "Patient Referral Incentives," which was referred to the Board of Trustees, and assigned to the Council on Ethical and Judicial Affairs. It asked CEJA to review Opinion E-6.02 "Fee Splitting" in light of recent trends whereby physicians offer patients incentives for the referral of new patients. Opinion E-6.02, "Fee Splitting" is unwavering in its statement that: "*Payment by* or to a physician *solely for the referral of a patient* is fee splitting and *is unethical*" (emphasis added). Still, the Council concurs that the ethical implications of offering incentives to patients for referrals require further analysis, which is presented in this report. Of note, physicians must be cognizant of federal and state laws that may govern incentives for patient referrals. Although these legal aspects are not discussed further in this report, physicians are encouraged to seek legal guidance from their state medical societies or qualified legal counsel.

BACKGROUND ON REFERRALS

Over 85 percent of patients deem information regarding physicians in their health plans to be essential or very useful; yet, patients spend relatively little time researching physicians before they decide to enroll in a plan or choose to receive care from a physician. That few reliable sources offer data on various aspects of the care physicians provide may be a factor, although the situation is improving. When choosing a physician, particularly when seeking care from specialists, patients often rely on referrals by a trusted physician, such as their primary care physician. Patients also give significant consideration to other patients' recommendations (i.e. patient referrals).

Likewise, physicians often rely on referrals from patients to recruit new patients and maintain an economically viable practice. In fact, some health care professionals encourage these referrals by offering their patients various rewards such as free office visits or discounts on medical services for every new patient actually referred to the practice.

The limited guidelines that address the appropriateness of physicians rewarding patients' recruitment efforts are nuanced. The American Society of Plastic Surgeons, for example, recognizes the importance of patient referrals; however, it prohibits offering incentives for patient referrals as an improper financial dealing. In contrast, the American Academy of Ophthalmology is reluctant to proscribe any commercial or professional arrangement that does not compromise the quality and safety of patient care.

The scope of this report is limited to incentives that are offered to patients for the referral of other patients. These are distinct from incentives that have been relied upon in the public health domain to achieve specific health outcomes, such as rewarding individuals who present to receive indicated medical care, such as immunizations or tuberculosis testing.

ETHICAL CONCERNS

Health care is enhanced when physicians not only serve the medical needs of their patients but also succeed in engaging them in a meaningful patient-physician relationship. Referrals, which can be tailored to address individual patients' conditions and preferences, can be instrumental in this process. To achieve the desired end, however, referrals must be honest.

In the past, CEJA has found that referral incentives, kickbacks, or fee-splitting among physicians are problematic, as they may create a conflict of interest between physicians' responsibility to serve the best interests of their patients and physicians' personal financial gain. Indeed, remuneration could create incentives for unnecessary referrals or referrals on the basis of financial arrangements rather than according to patients' needs and preferences and referred physicians' technical competence and expertise. Similar concerns have been raised in the context of incentives to enroll patients in research trials, as previously discussed in other Opinions included in the Code of Medical Ethics.

Patients, drawing from their personal experience, also can offer a well-informed assessment of their physician's character, professionalism, and bedside manner. While the practice of providing patients with incentives for every successful referral may encourage them to share their positive experiences and recommend their physician(s), it also presents patients with the motivation to *persuade* others to use their physician regardless of their actual opinion. Incentives to patients for referrals, then, can have the undesirable effect of interfering with the truthfulness of a patient's recommendation. Insofar as genuine recommendations are more likely to enhance health care, the profession should discourage incentives for referrals by patients.

Under circumstances in which financial gain appears to compromise values such as integrity, disclosure of the potential conflict often is accepted as a means to mitigate ethical concerns. Indeed, such disclosure at least identifies competing interests to the other party. However, it also may create mistrust on the part of the other party, when in the patient-physician relationship, trust is the prime desideratum. Individuals who receive referrals should not have to worry that a referral was bought--a practice that would make medicine more akin to a business than a profession.

Physician incentives to patients for referrals raise several additional concerns. Existing patients may feel pressured to make referrals, regardless of the quality of their experience, when physicians request the favor. Some patients may be tempted to take advantage of the referral incentive system by encouraging others to seek unnecessary or unwanted care so that the patient might enjoy referral rewards. In addition, the patient not only accesses a reward, but provides an additional reward to the physician, in the form of new opportunity to bill for service.

CONCLUSION

To maintain the economic viability of their practices, physicians rely on a consistent flow of new patients. Offering patients financial incentives for referrals may seem like a promising strategy to increase the size of one's practice. However, it may compromise the truthfulness of information patients share with others seeking the services of a physician. It also may diminish trust of both new and existing patients in the patient-physician relationship. Moreover, referral incentives may undermine professionalism by implying that physicians' financial interests override patients' best interest.

RECOMMENDATION

The Council on Ethical and Judicial Affairs recommends that the following be adopted in lieu of Resolution 10 (A-03) and the remainder of this report be filed:

> Physicians should not offer financial incentives or other valuable consideration to patients in exchange for recruitment of other patients. Such incentives can distort the information that patients provide to potential patients, thus distorting the expectations of potential patients and compromising the trust that is the foundation of the patient-physician relationship.

(References pertaining to Report 4 of the Council on Ethical and Judicial Affairs are available from the Ethics Standards Group.)

5. DISCIPLINE OF IMPAIRED PHYSICIANS BY CEJA (RESOLUTION 2, I-03)

HOUSE ACTION: REFERRED

This report responds to inquiries made to the Council on Ethical and Judicial Affairs regarding its disciplinary policies and procedures affecting American Medical Association members and applicants with a history of impairment. Particularly, Resolution 2 (I-03), introduced by the Oklahoma Delegation, called upon CEJA to give substantial weight to an impaired physician's status with the applicable state medical association and participation in a state-sponsored physicians health program (PHP). The resolution also called upon CEJA to adopt certain procedures into its rules whereby a case would be held in abeyance if a recovering physician was in good standing with the state medical association and successfully participating in such a PHP. Absent other circumstances, a conclusion to the case would be provided that would not result in a sanction reportable to the National Practitioner Data Bank (NPDB).

Resolution 2 (I-03) was referred to the Board of Trustees and assigned to CEJA to respond directly. This report describes relevant AMA policies and CEJA's rules and practices regarding the discipline of impaired physicians.

BACKGROUND

AMA Bylaws

The following sections of the AMA Bylaws are most relevant to this report:

> **1.111 Admission.** A person eligible for active constituent membership in the American Medical Association becomes a member of the AMA upon certification by the secretary of the constituent association to the Executive Vice President of the AMA, provided there is no disapproval by the Council on Ethical and Judicial Affairs. The Council may consider information pertaining to the character, ethics, professional status and professional activities of the applicant. The Council shall provide by rule for an appropriate hearing procedure to be provided to the applicant.