

11.2.5 Retainer Practices

Physicians are free to enter into contracts to provide special non-medical services and amenities with individual patients who are willing and able to pay additional costs out of pocket for such services. While such retainer contracts are one among many diverse models for delivering and paying for health care, they can also raise ethical concerns about access, quality, and continuity of care.

Regardless of the model within which they practice, physicians must uphold their primary professional obligation of fidelity and their responsibility to treat all patients with courtesy and respect for patients' rights and dignity, and ensure that all patients in the physician's practice receive the same quality of medical care, regardless of contractual arrangements for special, non-medical services and amenities.

Physicians who enter into retainer contracts with patients must:

- (a) Present the terms of the retainer arrangement clearly to patients, including implications for the patient's current health care insurance, if known, and take care not to imply that more or better medical services will be provided under a retainer contract.
- (b) Ensure that patient decisions to accept retainer contracts are voluntary and that patients are free to opt-out of entering into a retainer agreement.
- (c) Facilitate transfer of care for any patient who chooses not to participate in a retainer practice. If it is not feasible to transfer a patient's care to another local physician, the physician should continue to provide care under the terms of the patient's existing health care insurance until other appropriate arrangements for ongoing care can be made.
- (d) Ensure that treatment recommendations for all patients are based on scientific evidence, relevant professional guidelines, sound professional judgment, and prudent stewardship.
- (e) Uphold standards of honesty and transparency in billing and clearly distinguish charges for special services or amenities provided under a retainer contract from medical services reimbursable by the patient's health care insurance or third-party payer.
- (f) Uphold professional obligations to promote access to health care and to provide care to those in need regardless of ability to pay, in keeping with ethics guidance.

AMA Principles of Medical Ethics: I,II,VI,VIII,IX

Background report(s):

CEJA Report 3-A-03 Retainer practices

REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS[□]

CEJA Report 3 - A-03

Subject: Retainer Practices

Presented by: Leonard J. Morse, MD, Chair

Referred to: Reference Committee on Amendments to Constitution
and Bylaws
(Donna A. Woodson, MD, Chair)

1 At the 2001 Interim Meeting, the House of Delegates adopted Resolution 6, which called for the
2 AMA to examine special physician-patient contracts for “non-medical services.” This study was
3 completed by the Council on Medical Service (CMS), which reported its findings at the 2002
4 Annual Meeting of the HOD. In its report, CMS referred to these special contracts as “retainer
5 practices” and reviewed some of their characteristics, particularly in relation to economic, practical,
6 and legal implications, and discussed relevant AMA policies. The CMS report concluded that
7 retainer practices were consistent with long-standing AMA support of pluralism in the delivery and
8 financing of healthcare. The CMS report also stated that “To the degree that an exploration of the
9 ethical implications of retainer practices becomes warranted, the Council believes that the Council
10 on Ethical and Judicial Affairs is better suited to undertake such a study.”

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12 Although “executive health programs,” and “cash only” practices are not new, the special contracts
13 whereby physicians offer additional special services and amenities to patients who pay additional
14 fees as retainers has received considerable legislative and public interest. Given that they raise
15 fundamental questions in terms of the nature of the patient-physician relationship, including issues
16 of access and continuity of care, this CEJA report builds on the work of the Council on Medical
17 Service in analyzing the professional and ethical implications of contracting for special services
18 and amenities, such as longer visits, guaranteed availability by phone or pager, counseling for
19 healthy lifestyles, and various other customized services.

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21 ESTABLISHING A PATIENT-PHYSICIAN RELATIONSHIP

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23 The AMA’s *Principles of Medical Ethics* advocate that physicians are free to choose the
24 environment in which to provide medical care and, except in emergencies, whom to serve. This
25 principle is further reiterated in other AMA policies identified in the CMS Report (See policies H-
26 165.960(5), H-165.916, H-385.985, AMA Policy Database). There is also AMA policy in support
27 of plurality in the financing and delivery of health care (See policies H-165.960(7), H-165.913(2)).
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[□] Reports of the Council on Ethical and Judicial Affairs are assigned to the reference committee on Constitution and Bylaws. They may be adopted, not adopted, or referred. A report may not be amended, except to clarify the meaning of the report and only with the concurrence of the Council.

1 Trust, which is essential in a patient-physician relationship, is an important consideration in
2 exercising this freedom. When a physician and a patient are unable to establish a trusting
3 relationship, they should not engage in a relationship (see Opinion E-9.06, “Free Choice”).
4 Retainer practices may be a means to facilitate the establishment of trust-based relationships
5 beyond what is perceived to be possible in the usual context of brief and rushed visits. However,
6 patients who do not pay fees for special services and amenities should continue to expect and
7 receive compassionate and respectful care from their physicians, as required by the *Principles of*
8 *Medical Ethics* and Opinion E-10.01, “Fundamental Elements of the Patient-Physician
9 Relationship.” The latter specifically states that all patients have the right to “courtesy, respect,
10 dignity, responsiveness, and timely attention to his or her needs.”

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12 *Voluntariness*

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14 Trust in a relationship can be accomplished when both patient and physician are clear on the terms
15 of the relationship and agree to it. Physicians must present the terms of a retainer contract in an
16 honest manner, being careful not to exert undue pressure on patients to pay additional fees for
17 services they may not want or may not be able to afford. Physicians particularly should recognize
18 that their sickest or most vulnerable patients or those in greatest need of care may feel pressured to
19 pay the fee due to fear of abandonment. Undue pressure may also stem from contractual terms that
20 obligate the patient to pay for future services that might be unwanted if the patient finds another
21 physician before the end of the contract. Confronted with a choice between greater cost and greater
22 inconvenience (such as travelling longer distances to receive medical care), many patients may feel
23 their options are very limited.

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25 Also, if a physician has knowledge that a patient’s health care insurance coverage will be
26 compromised by the retainer contract, the information must be discussed with the patient before
27 reaching an agreement on the terms of the retainer contract.

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29 *Continuity of Care*

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31 Loyalty to the interests of patients is one of the essential characteristics that can be derived from
32 the foundational trust on which the patient-physician relationship is based. It is expressed most
33 clearly through the physician’s obligation not to abandon a patient who continues to require
34 medical care. Opinions E-10.01, “Fundamental Elements of the Patient-Physician Relationship;”
35 E-8.11, “Neglect of Patients;” and E-8.115, “Termination of the Physician-Patient Relationship;”
36 all affirm physicians’ obligation to promote continuity of care, and to arrange for the transfer of
37 care of a patient in a manner that does not compromise the patient’s well-being.

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39 In light of this ethical norm, the conversion of a traditional practice to a retainer practice can place
40 a burden upon patients who must seek another physician and establish a new relationship.

41 Therefore, physicians converting their practices must facilitate the transfer of their patients,
42 particularly those with medical conditions that require ongoing attention. This should include
43 identifying practitioners in the community who are willing to accept patients, and personally
44 communicating the clinical information appropriate to a smooth transition of care. It is
45 inappropriate to charge patients an extra fee for transmission of their medical records.

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1 DIAGNOSTIC AND THERAPEUTIC DECISION MAKING

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3 It is important that a retainer contract for providing special services and amenities not be presented
4 as a promise of more or better diagnostic and therapeutic services. Ethically, the standard of care
5 cannot depend on the patient's ability to pay. It would be particularly condemnable if there were a
6 discrepancy in diagnostic and therapeutic decisions in the context of a mixed practice (a practice
7 consisting of patients with and without retainer contracts). Therefore, it must be clear to patients
8 that retainer practices are not necessary to attain good medical care. However, it remains possible
9 that more personalized attention and greater patient satisfaction may lead to better understanding
10 and compliance with treatment recommendations, and thus improved outcomes for certain aspects
11 of care.

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13 *Appropriateness of Care*

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15 In all settings, concern for the quality of care the patient receives should be a physician's first
16 consideration (See Opinion E-2.09, "Costs"). However, this concern should be further guided by
17 Opinion E-2.19, "Unnecessary Services," which addresses the appropriateness of services that are
18 offered, stating that "Physicians should not provide, prescribe, or seek compensation for services
19 they know are unnecessary." It is important to note that a determination of necessity under this
20 Opinion applies to diagnostic and therapeutic care and not to special services and amenities of the
21 kind provided under retainer contracts. Nevertheless, physicians proposing retainer contracts to
22 their patients should ensure that no unnecessary medical treatment or procedure is provided.
23 Specifically, medical services should not be provided only to appease a patient who wants them
24 and is willing to pay for them; rather, they should always be based on scientific evidence, sound
25 medical judgment, relevant professional guidelines, and due concern for economic prudence.

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27 COMPENSATION FOR SERVICES

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29 Retainer contracts are a means for physicians to offer special services and amenities with the
30 expectation of appropriate compensation. These contracts fall under a general contractual view of
31 the patient-physician relationship, in which both parties agree on appropriate fees to be charged for
32 pre-defined services.

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34 Also, Opinion 9.132, "Health Care Fraud and Abuse," speaks of the danger of misrepresentation to
35 increase the level of payment or to secure non-covered health benefits. However, physicians are
36 ethically required to be honest when billing for reimbursement. Therefore, after entering into
37 retainer contracts, it remains paramount that physicians continue to observe relevant laws, rules,
38 and contracts regarding reimbursement received from their patients' health care plans. Since no
39 bright line separates special services and amenities from reimbursable medical services, it is
40 desirable that the terms of retainer contracts separate clearly special services and amenities from
41 reimbursable medical services. In the absence of such clarification, identification of reimbursable
42 services will need to be determined carefully on a case-by-case basis.

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1 ACCESS TO CARE IN A COMMUNITY

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3 The principal concern voiced regarding retainer practices relates to access to medical care within a
4 community. It is perceived that if these practices become widespread, the number of physicians
5 not engaging in such contracts would be insufficient to provide medical care to all patients who are
6 unable or unwilling to pay the additional fees. Although there have been no reports of this actually
7 occurring, this possibility threatens medicine's professional ethos to ensure the provision of
8 medical care to all those in need. Principle IX of the AMA's *Principles of Medical Ethics* states,
9 "Physicians shall support access to medical care for all people." This fundamental precept is
10 further elaborated in Opinion E-9.065, "Caring for the Poor."

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12 Recently, the Council examined the need of individual physicians to balance the obligation to
13 facilitate access for all patients in need of medical care with the responsibility to provide for their
14 existing patients. Opinion E-10.05, "Potential Patients," states:

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16 Physicians, as professionals and members of society, should work to assure access to
17 adequate health care. Accordingly, physicians have an obligation to share in providing
18 charity care but not to the degree that would seriously compromise the care provided to
19 existing patients. When deciding whether to take on a new patient, physicians should
20 consider the individual's need for medical service along with the needs of their current
21 patients. Treatments range along a continuum from necessary to sustain life, to
22 necessary to sustain functioning health, to useful to sustain functioning health, to
23 discretionary. Clearly, greater individual need for a service corresponds with a stronger
24 obligation to treat.

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26 Therefore, it should be recognized that when physicians convert their practices to provide care
27 solely to a small panel of patients able and willing to pay for special services and amenities, overall
28 patient care in a community may be compromised. Prior to converting their practices, physicians
29 should attempt to ascertain that other physicians not engaging in such contracts are available to
30 provide medical care to patients who do not enter into retainer contracts. If it is apparent that the
31 conversion of a practice would result in patients losing access to care that had been available to
32 them until that time, the physician's decision to convert a practice could undermine the ethical
33 obligation set forth in the *Principles of Medical Ethics* that a physician shall support access to
34 medical care. If no other physicians are available to care for non-retainer patients in the local
35 community, the physician may be ethically obligated to continue caring for such patients.
36 Physicians who establish retainer practices should remain attentive to their professional obligation
37 to attend to those in urgent need of care, regardless of ability to pay.

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39 CONCLUSION

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41 Individuals are free to select and supplement insurance for their health care on the basis of what
42 appears to them to be an acceptable tradeoff between quality and cost. Retainer fees for special
43 services and amenities, therefore, appear to be consistent with a system based on pluralistic means
44 of financing and delivery of medical care. Whether this trend should be promoted is a question to
45 which there is not yet a definite answer. However, the following observations should help orient
46 this inquiry. First, when a physician significantly reduces a panel of patients, other physicians in a

1 community should be able to absorb those patients now seeking to receive care from someone else.
2 Beyond concerns at the community level, contracting for special services and amenities must
3 comply with the ethical concept of voluntary action on the part of patients and minimize
4 discontinuity of care. Finally, these practices must respect existing guidelines on the medical
5 appropriateness of treatments or procedures, as well as reimbursement rules.

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7 RECOMMENDATIONS

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9 The Council recommends that the following be adopted and the remainder of the report be filed:

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11 Individuals are free to select and supplement insurance for their health care on the basis of
12 what appears to them to be an acceptable tradeoff between quality and cost. Retainer
13 contracts, whereby physicians offer special services and amenities (such as longer visits,
14 guaranteed availability by phone or pager, counseling for healthy lifestyles, and various
15 other customized services) to patients who pay additional fees distinct from the cost of
16 medical care, are consistent with pluralism in the delivery and financing of healthcare.
17 However, they also raise ethical concerns that warrant careful attention, particularly if
18 retainer practices become so widespread as to threaten access to care.

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20 1. When entering into a retainer contract, both parties must be clear about the terms of the
21 relationship and must agree to them. Physicians must present the terms of the contract
22 in an honest manner, and must not exert undue pressure on patients to agree to the
23 arrangement. If a physician has knowledge that the patient's health care insurance
24 coverage will be compromised by the retainer contract, the information must be
25 discussed with the patient before reaching an agreement on the terms of the retainer
26 contract. Also, patients must be able to opt out of a retainer contract without undue
27 inconveniences or financial penalties.
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29 2. Concern for quality of care the patient receives should be the physician's first
30 consideration. However, it is important that a retainer contract not be promoted as a
31 promise for more or better diagnostic and therapeutic services. Physicians must always
32 ensure that medical care is provided only on the basis of scientific evidence, sound
33 medical judgment, relevant professional guidelines, and concern for economic
34 prudence. Physicians who engage in mixed practices, in which some patients have
35 contracted for special services and amenities and others have not, must be particularly
36 diligent to offer the same standard of diagnostic and therapeutic services to both
37 categories of patients. All patients are entitled to courtesy, respect, dignity,
38 responsiveness, and timely attention to their needs.
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40 3. In accord with medicine's ethical mandate to provide for continuity of care and the
41 ethical imperative that physicians not abandon their patients, physicians converting
42 their traditional practices into retainer practices must facilitate the transfer of their non-
43 participating patients to other physicians, particularly their sickest and most vulnerable
44 ones. If no other physicians are available to care for non-retainer patients in the local
45 community, the physician may be ethically obligated to continue caring for such
46 patients.

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4. Physicians who enter into retainer contracts will usually receive reimbursement from their patients' health care plans for medical services. Physicians are ethically required to be honest in billing for reimbursement, and must observe relevant laws, rules and contracts. It is desirable that retainer contracts separate clearly special services and amenities from reimbursable medical services. In the absence of such clarification, identification of reimbursable services should be determined on a case-by-case basis.
5. Physicians have a professional obligation to provide care to those in need, regardless of ability to pay, particularly to those in need of urgent care. Physicians who engage in retainer practices should seek specific opportunities to fulfill this obligation.

(New House/CEJA Policy)