11.3.4 Fee Splitting

Patients must be able to trust that their physicians will be honest with them and will make treatment recommendations, including referrals, based on medical need, the skill of other health care professionals or facilities to whom the patient is referred, and the quality of products or services provided.

Payment by or to a physician or health care institution solely for referral of a patient is fee splitting and is unethical.

Physicians may not accept:

(a) Any payment of any kind, from any source for referring a patient other than distributions of a health care organization's revenues as permitted by law.

(b) Any payment of any kind, from any source for prescribing a specific drug, product, or service.

(c) Payment for services relating to the care of a patient from any health care facility/organization to which the physician has referred the patient.

(d) Payment referring a patient to a research study.

Physicians in a capitated primary care practice may not refer patients based on whether the referring physician has negotiated a discount for specialty services.

AMA Principles of Medical Ethics: II

Opinion 11.3.4 Fee Splitting reorganizes guidance from opinions originally issued without background report and the following:

CEJA Report 3-A-96 Ethical issues in negotiating discounts for specialty care

CEJA Report 2-I-94 Finder's fees: payment for the referral of patients to clinical research studies

CEJA Report 3 – A-96
Ethical Issues in Negotiating Discounts for Specialty Care

INTRODUCTION

Resolution 9 was introduced by the New England delegation and referred through the Board of Trustees to the Council on Ethical and Judicial Affairs at the 1994 Interim Meeting. This resolution questioned the ethical nature of negotiating discounts between individual specialists and primary care physicians within a system of global capitation. Resolution 9 was motivated by accounts of certain primary care physicians who were abusing their position as a source of referrals to secure discounts from individual specialists. Specifically, these primary care physicians were attempting to secure discounts from individual specialists for their globally capitated patients by making such discounts a condition for referring any patients, including those not in the capitated plan. In response to these reports, the Council presents the following ethical analysis of the behavior that served as the impetus for this resolution.

BACKGROUND

One practice that many managed care organizations have relied upon to reduce costs is restricting referrals for specialist care to a limited panel of specialty physicians who have agreed to a fee schedule established by the plan. This offers potential subscribers the option of accepting restrictions on choice of specialists in exchange for other coverage benefits of lower premiums. These restrictions are acceptable if the patient is informed and agrees to the terms of the plan. It is important to note, however, that many patients and employers have chosen to avoid the restrictions imposed by a closed panel of physicians by selecting coverage that applies to the services of any physician.

NEGOTIATION OF DISCOUNTS

The proliferation of managed care has placed many primary care physicians in the role of case manager for enormous numbers of patients. These physicians are responsible for recognizing which referral restrictions apply to which patients according to the benefits of different insurance plans. Because of the rigid system of referrals found in many managed care organizations, they are also the source of many referrals for the specialists involved in the plan. This role affords the primary care physician a degree of leverage corresponding to his or her control over the direction of patient referrals. While the vast majority of primary care physicians would never abuse their position as the coordinators of specialist care, episodes such as those described at the outset of this report indicate that certain physicians have chosen to exploit their influence on patient referrals to exact a discount for specialty care.

The intent of primary care physicians who use their ability to refer as a tool for lowering the cost of specialist care may be to benefit capitated patients by providing more services on the same budget. However, regardless of the motivation for such restrictions, primary care physicians who threaten to withhold all referrals for financial reasons inappropriately restrict the choices of their non-capitated patients, in effect forcing them to accept precisely those limitations they chose to avoid in subscribing to an alternative insurance plan. Patients who purchased coverage on the understanding that their choices would not be further limited cannot be denied access to a particular specialist because of financial negotiations between contracting physicians.

CONCLUSION

Patients are entitled to all the benefits outlined in their insurance plan. Therefore, it is unethical for a referring physician to restrict the referral options of patients who have chosen a plan that provides for

access to an unlimited or broad selection of specialist physicians. It is also unethical to base the referral of these patients on a discount for the capitated patients in a primary care physician's practice.

Negotiating discounts for specialty care within a globally capitated plan may raise additional ethical questions which can be answered sufficiently only within the context of a larger report examining global capitation in general. The Council intends to provide such a report in the future.

CEJA Report 2 – I-94
Finder's Fees: Payment for the Referral of Patients to Clinical Research Studies

INTRODUCTION

The Council on Ethical and Judicial Affairs has recently received a number of requests, from individual physicians as well as the Massachusetts Medical Society, for its opinion on the practice of physicians being paid fees for referring patients to clinical research studies. In response, the Council wishes to clarify the applicability of Opinion 6.03. Fee Splitting: Referrals to Health Care Facilities to the practice of accepting "finder's fees" or similar forms of compensation for the referral of a patient to a research protocol.

FEE SPLITTING: REFERRAL TO HEALTH CARE FACILITIES

Opinion 6.03: Fee Splitting: Referrals to Health Care Facilities.

Clinics, laboratories, hospitals, or other health care facilities that compensate physicians for referral of patients are engaged in fee splitting which is unethical.

Health care facilities should not compensate a physician who refers patients there for a physician's cognitive services in prescribing, monitoring or revising the patient's course of treatment. Payment for these cognitive services is acceptable when it comes from patients, who are the beneficiaries of the physician's services, or from the patient's designated third party payer.[1]

According to Opinion 6.03, it is unethical for physicians to receive any kind of compensation in return for the referral of patients to health care facilities. By prohibiting referral fees paid to physicians by "clinics, laboratories, hospitals or other health care facilities", the opinion covers referral fees for research studies as well, since such studies must be conducted in a health care facility.

CONCLUSIONS

For the forgoing reasons, the acceptance of compensation for the referral of patients to a research study (a finder's fee) is unethical according to Opinion 6.03.

REFERENCES

1. Council on Ethical and Judicial Affairs. *Code of Medical Ethics: Current Opinions with Annotations*. Chicago, IL: American Medical Association; 1994.