1.2.3 Consultation, Referral, and Second Opinions

Physicians' fiduciary obligation to promote patients' best interests and welfare can include consulting other physicians for advice in the care of the patient or referring patients to other professionals to provide care.

When physicians seek or provide consultation about a patient's care or refer a patient for health care services, including diagnostic laboratory services, they should:

(a) Base the decision or recommendation on the patient's medical needs, as they would for any treatment recommendation, and consult or refer the patient to only health care professionals who have appropriate knowledge and skills and are licensed to provide the services needed.

(b) Share patients' health information in keeping with ethics guidance on confidentiality.

(c) Assure the patient that he or she may seek a second opinion or choose someone else to provide a recommended consultation or service. Physicians should urge patients to familiarize themselves with any restrictions associated with their individual health plan that may bear on their decision, such as additional out-of-pocket costs to the patient for referrals or care outside a designated panel of providers.

(d) Explain the rationale for the consultation, opinion, or findings and recommendations clearly to the patient.

(e) Respect the terms of any contractual relationships they may have with health care organizations or payers that affect referrals and consultation.

Physicians may not terminate a patient-physician relationship solely because the patient seeks recommendations or care from a health care professional whom the physician has not recommended.

AMA Principles of Medical Ethics: IV,V,VI

Opinion 1.2.3 Consultations, Referral & Second Opinions re-organizes content from existing guidance, much of which was issued prior to 1997 without a background report.

Background report(s):

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

CEJA Report 3-A-96 Negotiating discounts for specialty care

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

1.2.3 Consultation, Referral, and Second Opinions

Physicians' fiduciary obligation to promote patients' best interests and welfare can include consulting other physicians for advice in the care of the patient or referring patients to other professionals to provide care. [new content sets out key ethical values and goals explicitly]

When physicians seek or provide consultation about a patient's care or refer a patient for health care services, including diagnostic laboratory services, they should:

(a) Base the decision or recommendation on the patient's medical needs, as they would for any treatment recommendation, and consult or refer the patient to only health care professionals who have appropriate knowledge and skills and are licensed to provide the services needed.

(b) Share patients' health information in keeping with ethics guidance on confidentiality.

(c) Assure the patient that he or she may seek a second opinion or choose someone else to provide a recommended consultation or service. *Physicians should urge patients to familiarize themselves with any restrictions associated with their individual health plan that may bear on their decision, such as additional out-of-pocket costs to the patient for referrals or care outside a designated panel of providers. [new content addresses gap in current guidance]*

(d) Explain the rationale for the consultation, opinion, or findings and recommendations clearly to the patient.

(e) Respect the terms of any contractual relationships they may have with health care organizations or payers that affect referrals and consultation.

Physicians may not terminate a patient-physician relationship solely because the patient seeks recommendations or care from a health care professional whom the physician has not recommended.

AMA Principles of Medical Ethics: IV,V,VI

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

© 1996 American Medical Association. All Rights Reserved.

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.