REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS*

CEJA Report 3-A-07

Subject: Opinion E-8.132, "Referral of Patients: Disclosure of Limitations," *Amendment*

Presented by: Robert M. Sade, MD, Chair

Referred to: Reference Committee on Amendments to Constitution and Bylaws (Richert E. Quinn, Jr., MD, Chair)

INTRODUCTION

At the 2006 Annual Meeting of the AMA House of Delegates, Board of Trustee Report 38, "Possible Anti-Competitive and Ethical Implications of Integrated Hospital System Referral Expectations" was adopted. The report requested "that our AMA ask the Council on Ethical and Judicial Affairs to consider revising E-8.132 to address all health care delivery settings."

BACKGROUND

Opinion E-8.132, "Referral of Patients: Disclosure of Limitations," (AMA Policy Database) was originally written in response to provisions in managed care plans, specifically HMOs and PPOs, that could limit access to care by expressly restricting patient referrals or providing financial incentives to control referrals.

In 2002, the Opinion was amended to expand its applicability beyond these entities to all health care plans, not just managed care plans. The CEJA report from the 2002 Annual Meeting, "Referral of Patients: Disclosure of Limitations, *Amendment*," specifically stated this intent: "CEJA proposes that…other Opinions on managed care in the *Code of Medical Ethics* be extended in scope to cover health care plans in general rather than managed care organizations only…." While the amendment to the Opinion was meant to expand its application beyond a limited number of managed care entities, it did not clearly express an expansion to all methods of health care delivery.

Board of Trustees Report 38 asks CEJA to consider expanding the Opinion E-8.132 because of a concern that the terminology it uses does not include all possible types of health care delivery mechanisms. Arguably, "health care plan" includes only insurance plans, and not integrated hospital systems or similar organizations that may have an influence on how health care is delivered. Furthermore, transformation in our health care system will continue to occur, and a

* 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.

broader application of this Opinion is appropriate to address current as well as future circumstances.

CONCLUSION

Opinion E-8.132 uses the term "health care plans," without defining it. Therefore, the Council proposes amending the Opinion to require disclosures of limitations on referrals, irrespective of the financing and delivery mechanisms or contractual arrangements.

RECOMMENDATION

The Council recommends that Opinion E-8.132, "Referral of Patients: Disclosure of Limitations," be amended as follows and the remainder of the Report be filed.

E-8.132 Referral of Patients: Disclosure of Limitations

Physicians should always make referral decisions based on the best interests of their patients, regardless of the financing and delivery mechanisms or contractual agreements between patients, health care practitioners and institutions, and third party payers. When ~~a~~ physician~~s~~ agree~~s~~ to provide treatment, they~~he or she thereby enters into a contractual relationship and~~ assume~~s~~ an ethical obligation to treat their ~~the~~ patient~~s~~ to the best of ~~his or her~~their ability. ~~Some health care plans contracts generally restrict the participating physician's scope of referral to medical specialists, diagnostic laboratories, and hospitals that have contractual arrangements with the health plan. Some plans also restrict the circumstances under which referrals may be made to contracting medical specialists.~~ If ~~the~~ a physician knows that a patient's health care plan or other agreement does not cover referral to a non-contracting medical specialist or to a ~~diagnostic or treatment~~ facility ~~when~~ that the physician believes ~~that the~~to be in the patient's best interest ~~patient's condition requires such services~~, the physician should so inform the patient ~~so that~~to permit the patient ~~may~~ to decide whether to accept the outside referral. ~~at his or her own expense or confine herself or himself to services available within the health care plan. In determining whether treatment or diagnosis requires referral to outside specialty services, the physician should be guided by standards of good medical practice.~~

Physicians must not deny their patients access to appropriate medical services based upon the promise of personal financial reward, or the avoidance of financial penalties. Because patients must have the necessary information to make informed decisions about their care, physicians have an obligation to ~~assure the disclosure of~~ disclose medically appropriate treatment alternatives~~, regardless of cost~~. Physicians should also promote an effective program to monitor and improve the quality of the patient care services within their practice settings.

Physicians must ~~assure~~ ensure disclosure of any financial ~~inducements~~ incentives that may ~~tend to~~ limit ~~the~~ appropriate diagnostic and therapeutic alternatives that are offered to

patients or that may ~~tend to~~ limit patients' overall access to care. ~~Physicians may~~This obligation may be satisfied ~~satisfy this obligation by~~ if ~~assuring that~~ the health care plan or other agreement makes adequate disclosure to enrolled patients. ~~Physicians should also promote an effective program of peer review to monitor and evaluate the quality of the patient care services within their practice setting.~~ (II, IV)

Issued June 1986; Updated June 1994 based on the report "Financial Incentives to Limit Care: Ethical Implications for HMOs and IPAs," adopted June 1990; updated June 2002.
(Modify HOD/CEJA Policy)

Fiscal Note: Staff cost estimated at less than $500 to implement.

APPENDIX- PROPOSED OPINION AMENDMENTS (CLEAN)

E-8.132 Referral of Patients: Disclosure of Limitations

Physicians should always make referral decisions based on the best interests of their patients, regardless of the financing and delivery mechanisms or contractual agreements between patients, health care practitioners and institutions, and third party payers. When physicians agree to provide treatment, they assume an ethical obligation to treat their patients to the best of their ability. If a physician knows that a patient's health care plan or other agreement does not cover referral to a non-contracting medical specialist or to a facility that the physician believes to be in the patient's best interest, the physician should so inform the patient to permit the patient to decide whether to accept the outside referral.

Physicians must not deny their patients access to appropriate medical services based upon the promise of personal financial reward, or the avoidance of financial penalties. Because patients must have the necessary information to make informed decisions about their care, physicians have an obligation to disclose medically appropriate treatment alternatives. Physicians should also promote an effective program to monitor and improve the quality of the patient care services within their practice settings.

Physicians must ensure disclosure of any financial incentives that may limit appropriate diagnostic and therapeutic alternatives that are offered to patients or that may limit patients' overall access to care. This obligation may be satisfied if the health care plan or other agreement makes adequate disclosure to enrolled patients. (II, IV)

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