

REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS*

CEJA Report 4 - A-04

Subject: Financial Incentives to Patients for Referrals
(Resolution 10, A-03)

Presented by: Michael S. Goldrich, MD, Chair

Referred to: Reference Committee on Amendments to Constitution and Bylaws
(Mary W. Geda, MD, Chair)

1 At the June 2003 Annual Meeting, the Oklahoma Delegation introduced Resolution 10 (A-03),
2 “Patient Referral Incentives,” which was referred to the Board of Trustees, and assigned to the
3 Council on Ethical and Judicial Affairs. It asked the Council on Ethical and Judicial Affairs to
4 review Opinion E-6.02 “Fee Splitting” in light of recent trends whereby physicians offer patients
5 incentives for the referral of new patients. Opinion E-6.02, “Fee Splitting” is unwavering in its
6 statement that: “*Payment by or to a physician solely for the referral of a patient is fee splitting and*
7 *is unethical* (emphasis added).” Still, the Council concurs that the ethical implications of offering
8 incentives to patients for referrals require further analysis, which is presented in this report. Of
9 note, physicians must be cognizant of federal and state laws that may govern incentives for patient
10 referrals.¹ Although these legal aspects are not discussed further in this report, physicians are
11 encouraged to seek legal guidance from their state medical societies or qualified legal counsel.

12 13 BACKGROUND ON REFERRALS

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15 Over 85 percent of patients deem information regarding physicians in their health plans to be
16 essential or very useful;² yet, patients spend relatively little time researching physicians before they
17 decide to enroll in a plan or choose to receive care from a physician. That few reliable sources
18 offer data on various aspects of the care physicians provide may be a factor, although the situation
19 is improving.³ When choosing a physician, particularly when seeking care from specialists,
20 patients often rely on referrals by a trusted physician, such as their primary care physician. Patients
21 also give significant consideration to other patients’ recommendations (i.e. patient referrals).⁴

22
23 Likewise, physicians often rely on referrals from patients to recruit new patients and maintain an
24 economically viable practice. In fact, some health care professionals encourage these referrals by
25 offering their patients various rewards such as free office visits or discounts on medical services for
26 every new patient actually referred to the practice.⁵

* 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 The limited guidelines that address the appropriateness of physicians rewarding patients’
2 recruitment efforts are nuanced. The American Society of Plastic Surgeons, for example,
3 recognizes the importance of patient referrals; however, it prohibits offering incentives for patient
4 referrals as an improper financial dealing.⁶ In contrast, the American Academy of Ophthalmology
5 is reluctant to proscribe any commercial or professional arrangement that does not compromise the
6 quality and safety of patient care.⁷

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8 The scope of this report is limited to incentives that are offered to patients for the referral of other
9 patients. These are distinct from incentives that have been relied upon in the public health domain
10 to achieve specific health outcomes, such as rewarding individuals who present to receive indicated
11 medical care, such as immunizations or tuberculosis testing.^{8,9}

12 13 ETHICAL CONCERNS

14
15 Health care is enhanced when physicians not only serve the medical needs of their patients but also
16 succeed in engaging them in a meaningful patient-physician relationship. Referrals, which can be
17 tailored to address individual patients’ conditions and preferences, can be instrumental in this
18 process. To achieve the desired end, however, referrals must be honest.

19
20 In the past, CEJA has found that referral incentives, kickbacks, or fee-splitting among physicians
21 are problematic, as they may create a conflict of interest between physicians’ responsibility to serve
22 the best interests of their patients and physicians’ personal financial gain. Indeed, remuneration
23 could create incentives for unnecessary referrals or referrals on the basis of financial arrangements
24 rather than according to patients’ needs and preferences and referred physicians’ technical
25 competence and expertise. Similar concerns have been raised in the context of incentives to enroll
26 patients in research trials, as previously discussed in other Opinions included in the Code of
27 Medical Ethics.¹⁰

28
29 Patients, drawing from their personal experience, also can offer a well-informed assessment of their
30 physician’s character, professionalism, and bedside manner. While the practice of providing
31 patients with incentives for every successful referral may encourage them to share their positive
32 experiences and recommend their physician(s), it also presents patients with the motivation to
33 *persuade* others to use their physician regardless of their actual opinion. Incentives to patients for
34 referrals, then, can have the undesirable effect of interfering with the truthfulness of a patient’s
35 recommendation. Insofar as genuine recommendations are more likely to enhance health care, the
36 profession should discourage incentives for referrals by patients.

37
38 Under circumstances in which financial gain appears to compromise values such as integrity,
39 disclosure of the potential conflict often is accepted as a means to mitigate ethical concerns.
40 Indeed, such disclosure at least identifies competing interests to the other party. However, it also
41 may create mistrust on the part of the other party, when in the patient-physician relationship, trust
42 is the prime desideratum. Individuals who receive referrals should not have to worry that a referral
43 was bought – a practice that would make medicine more akin to a business than a profession.

44
45 Physician incentives to patients for referrals raise several additional concerns. Existing patients
46 may feel pressured to make referrals, regardless of the quality of their experience, when physicians
47 request the favor. Some patients may be tempted to take advantage of the referral incentive system
48 by encouraging others to seek unnecessary or unwanted care so that the patient might enjoy referral
49 rewards. In addition, the patient not only accesses a reward, but provides an additional reward to
50 the physician, in the form of new opportunity to bill for service.

1 CONCLUSION

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

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11 RECOMMENDATIONS

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

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

(New HOD/CEJA Policy)

References are available from the Ethics Standards Group.

Fiscal Note: Less than \$500.00

REFERENCES

- ¹ Darling, Willam D. and Kevin M. Wood. "Achieving Compliance with Medical Call Centers." *Healthcare Financial Management*. September 2002.
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- ² A Tumlinson, et al. Choosing a Health Plan: What Information Will Consumers Use? *Health Affairs* 16 (May/June 1997): 229-238.
- ³ Midwest Business Group on Health. "How We Choose Doctors: What Is and What Could Be." 2000.
- ⁴ The Commonwealth Fund. "Accessing Physician Information on the Internet."
http://www.cmwf.org/programs/quality/stone_mdinternet_503.pdf. (Accessed March, 15, 2004)
- ⁵ Misner, Ivan. "Incentive Programs that Really Work." Entrepreneur.com.
<http://www.entrepreneur.com/article/0,4621,310666,00.html> (Accessed January 15, 2003).
- ⁶ American Society of Plastic Surgery. *Code of Ethics*. October 1999 (Accessed October 2003).
- ⁷ American Academy of Ophthalmology. *Code of Ethics: Fees for Ophthalmologic Services*. (Accessed October 2003).
- ⁸ The World Bank Group. "Can Incentives Improve Public Health Performance?"
http://www.worldbank.org/wbi/B-SPAN/sub_incentives.htm (Accessed January 16, 2004).
- ⁹ Institute of Medicine. *Promoting Health*. National Academy of Sciences; 2000.
- ¹⁰ See Opinions E-8.0315 "Managing Conflicts of Interest in the Conduct of Clinical Trial," E-8.013 "Conflicts of Interest: Biomedical Research," E-2.071 "Subject Selection for Clinical Trials," and E-6.03 "Fee Splitting: Referrals to Health Care Facilities."