

REPORT OF THE COUNCIL ON MEDICAL SERVICE

CMS Report 4 - I-03
(December 2003)

Subject: Limiting Financial Incentives to Withhold Appropriate
Care (Resolution 915, I-02)

Presented by: Ardis D. Hoven, MD, Chair

Referred to: Reference Committee K
(Ruth M. Covell, MD, Chair)

1 At the 2002 Interim Meeting, the House of Delegates referred Resolution 915 to the Board of
2 Trustees. Introduced by the Organized Medical Staff Section (OMSS), the resolution calls for the
3 AMA to “develop model legislation on risk arrangements and financial incentives similar to the
4 provision in Section 10 of Chapter 141 on managed care practices in the insurance industry of the
5 Massachusetts Acts of 2000 that reads as follows:

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7 Section 10. (a) No contract between a carrier and a licensed health care provider group
8 shall contain any incentive plan that includes a specific payment made to a health care
9 professional as an inducement to reduce, delay or limit specific, medically necessary
10 services covered by the health care contract. Health care professionals shall not profit from
11 provision of covered services that are not medically necessary and appropriate. Carriers
12 shall not profit from denial or withholding of covered services that are medically necessary
13 and appropriate. Nothing in this section shall be construed to prohibit contracts that
14 contain incentive plans that involve general payments such as capitation payments or
15 shared risk agreements that are made with respect to physicians or physician groups or
16 which are made with respect to groups of insured if such contracts, which impose risk on
17 such physicians or physician groups for the costs of medical care, services and equipment
18 provided or authorized by another physician or health care provider, comply with
19 subsection (b).

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21 (b) In order that patient care decisions are based on medical need and not on financial
22 incentives, no carrier shall enter into a new contract, revise the risk arrangements in an
23 existing contract, or after July 1, 2001, revise the fee schedule in an existing contract with a
24 physician or physician group which imposes financial risk on such physician or physician
25 group for the costs of medical care, services or equipment provided or authorized by
26 another physician or health care provider unless such contract includes specific provisions
27 with respect to the following: (1) stop loss protection, (2) minimum patient population size
28 for the physician or physician group, and (3) identification of the health care services for
29 which the physician or physician group is at risk.”

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31 The resolution also calls on the AMA to “fund or seek sponsors for a study of the impact of
32 financial incentives offered by insurance program risk arrangements on patient outcomes;
33 discourage any risk contract that includes financial responsibility for health care that is not directly
34 delivered by the provider and/or his/her physician group; and identify managed care contract
35 provisions that are inherently unfair and should be prohibited by legislation.” The Board of

1 Trustees referred Resolution 915 (I-02) to the Council on Medical Service for a report back to the
2 House at the 2003 Interim Meeting.

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4 This report summarizes a review of the proposed model legislation by the Council on Legislation;
5 assesses the feasibility of the proposed study in light of internal resource constraints and competing
6 organizational priorities; summarizes the OMSS Governing Council's review of AMA resources
7 related to the intent of the resolution; highlights relevant AMA policy and previous reports; and
8 recommends proactive directives that will empower physicians to mitigate the tendency for certain
9 types of financial arrangements to potentially incentivize the inappropriate withholding of care.

10 11 REVIEW OF RELATED AMA RESOURCES

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13 At the invitation of the Council, the OMSS provided it with OMSS Governing Council Report A
14 (A-02), which reviewed the substantial body of related AMA policy, ethical opinion, publications,
15 initiatives, and other resources related to the issues raised in Resolution 915 (I-02). In its report,
16 the Governing Council concluded that existing AMA resources were substantially responsive to a
17 similar resolution from its assembly. The report cited the following among the many AMA
18 resources pertaining to the impacts of financial incentives, their fairness, and physicians'
19 responsibilities regarding risk contract arrangements:

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- 21 • "Benchmark Capitation Rates: The Physician's How-To Guide for Calculating Fee-for-Service
22 Equivalents," an AMA publication intended to provide physicians with the tools and data to
23 negotiate with payors on a more "level playing field."
24
 - 25 • "Principles of Managed Care," which provides physicians with a detailed description and
26 explanation of AMA policies related to managed care, including disclosure provisions,
27 financial incentives, physician payment methodologies, and managed care contract provisions.
28 It is accessible online the AMA Health Policy Web site at:
29 <http://www.ama-assn.org/ama/upload/mm/46/principles.pdf>.
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 - 31 • "AMA Model Managed Care Contract," which presents key contract clauses and terms critical
32 to understanding contractual agreements, including provisions associated with physician
33 payment. It is accessible online for AMA members at:
34 <http://www.ama-assn.org/ama/no-index/legislation-advocacy/9559.shtml>
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36 RELEVANT POLICY AND COUNCIL REPORTS

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38 The AMA has developed a multitude of policy supporting fair market competition among
39 alternative health delivery and finance systems (Policy H-385.990, AMA Policy Database) and
40 favoring a pluralistic approach to physician payment methodology in which a specific methodology
41 is not endorsed as a preferred option (Policies H-385.989 and H-165.913).

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43 Over the years, the Council on Medical Service has extensively studied the use of financial
44 incentives. Council Report 6 (I-96) "Financial Incentives Utilized in the Management of Medical
45 Care" articulated thirteen principles to guide the use of financial incentives in the management of
46 medical care (Policy H-285.951). Council Report 8 (I-99) "Impact of Physician Assumption of
47 Financial Risk" discussed the prevalence and impacts of various types of financial incentives,
48 including stop-loss provisions and reinsurance contracts. Most recently, Council Report 1 (A-01)

1 “Contact Capitation of Specialists,” explained how different payment models balance the
2 competing interests of those who lay claim to a share of the health care dollar.

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4 DISCUSSION

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6 At the request of the Council on Medical Service, the Council on Legislation (COL) reviewed and
7 evaluated the first resolve of Resolution 915 (I-02). Specifically, COL reviewed the key provisions
8 of the Massachusetts law and determined that each key provision is consistent with AMA policy.
9 In addition, it was the view of COL that the best use of AMA resources, relative to the proposed
10 development of alternative AMA model legislation, would be to recommend that interested state
11 medical associations utilize the Massachusetts statute as a model for their own legislative efforts.
12 The Council on Medical Service agrees fully with this approach.

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14 The Council recognizes the obvious worthiness of studying the connection between financial
15 incentives and clinical patient outcomes. At the same time, the Council also recognizes the higher
16 priority assigned by the House of Delegates to competing activities, including tort reform, fixing
17 the Medicare physician payment formula, and reducing the uninsured population by advocating the
18 AMA health insurance reform proposal. In striking a balance between these competing resource
19 requests, the Council believes the most appropriate course is to encourage and support the
20 undertaking of such a study by appropriately qualified organizations outside the AMA, such as the
21 Rand Corporation or the Agency for Healthcare Research and Quality, while focusing internal
22 resources on the AMA’s top priorities.

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24 The Council concurs with the finding of the OMSS Governing Council that existing AMA
25 resources are substantially responsive to the third and fourth resolves of Resolution 915 (I-02). Of
26 particular relevance is the AMA Private Sector Advocacy booklet titled “The AMA Model
27 Managed Care Contract” (third edition). The main provisions of the Massachusetts statute that
28 pertain to mechanisms for limiting providers’ financial risk and, therefore, the financial incentive to
29 withhold appropriate care (i.e., stop loss protection; minimum patient population size for the
30 physician or physician group; and identification of the health care services for which the physician
31 or physician group is at risk), are also indicated in the AMA’s model contract. Moreover, ten key
32 issues that need to be considered before accepting a capitation agreement are explicitly included in
33 the publication, as is a checklist of issues to be identified and resolved in negotiating alternatives to
34 a simple fee schedule.

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36 With respect to the actions called for in the last two resolves of the referred Resolution 915 (I-02),
37 the Council believes a more positive, proactive recommendation can achieve greater effect while
38 retaining the intent of the resolves. For example, the Council believes it would be more beneficial
39 to recommend that physicians make increased use of the AMA Model Managed Care Contract, to
40 guide them in taking the appropriate steps to ensure that their clinical decisions are not unduly
41 influenced by financial incentives.

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43 RECOMMENDATIONS

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45 The Council on Medical Service recommends that the following be adopted in lieu of Resolution
46 915 (I-02) and the remainder of this report be filed:
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- 1 1. That the American Medical Association advise state medical associations that Section 10 of
2 Chapter 141 on managed care practices in the insurance industry of the Massachusetts Acts of
3 2000 is consistent with AMA policy, and is an appropriate model for state legislation on risk
4 arrangements and financial incentives. (Directive to Take Action)
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- 6 2. That the AMA urge physicians to make use of existing resources, particularly the AMA Model
7 Managed Care Contract, to ensure that they are not unduly pressured by financial incentives to
8 withhold appropriate care. (Directive to Take Action)

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