REPORT OF THE COUNCIL ON MEDICAL SERVICE

CMS Report 4-A-18

Subject: Health Plans' Medical Advice (Resolution 705-A-17)

Presented by: Paul A. Wertsch, MD, Chair

Referred to: Reference Committee G (Theodore A. Calianos, II, MD, Chair)

At the 2017 Annual Meeting, the House of Delegates referred Resolution 705, "Regulating Health Plans Medical Advice," which was introduced by the Washington Delegation. The Board of Trustees assigned this resolution to the Council on Medical Service for a report back to the House of Delegates. Resolution 705-A-17 asked:

> That our American Medical Association (AMA) define when medical advice is the practice of medicine, and study options for regulating medical advice given by health plans.

This report provides background on medical advice services provided by health plans, discusses California's regulation of telephone medical advice services, summarizes relevant AMA policy, and makes policy recommendations.

BACKGROUND

Health plans have been offering medical advice services (eg, "nurse lines," "ask a nurse," or "telephone triage") since at least the 1980s, when managed care organizations began using health professionals (predominantly nurses) to manage demand and also prevent unnecessary physician office and emergency department visits. Although Resolution 705-A-17 pertains to medical advice services provided by health plans, some hospitals and large physician practices also operate telephone and/or online medical advice services. The "advice" is usually provided by nurses using detailed screening protocols to answer questions, provide basic health information, or determine when enrollees should be urged to go to a hospital emergency department or make an appointment with a physician. Although these services may be provided directly by a health plan or care provider, most large health plans contract with vendors to operate their medical advice services.

Many health plans advertise medical advice services as a no-cost benefit for enrollees who can call nurse lines, or fill out online "e-visit" questionnaires, to ask basic health questions at any hour of the day or night. Assessments of users' health care needs are obviously limited, however, because enrollees are not physically observed. Many health plans also offer condition-specific programs—such as those for pregnant women or chronic disease patients—that provide text messages to enrollees in addition to online or telephone access. Patient navigator and nurse advocate programs are also offered by health plans to enrollees with complex medical conditions.

Health plans include an assortment of legal disclaimers when advertising medical information and advice services. Most clarify that call center or online staff (typically nurses) cannot diagnose conditions or prescribe or recommend treatment, and further state that the information provided is

not a substitute for care by physicians. Some services specify that staff cannot give medical advice, while others advertise themselves as medical advice lines. Although these services are likely to produce some cost savings by reducing unnecessary physician and emergency department visits, there have been questions and concerns over the years regarding how they are managed, whether staff are qualified to evaluate enrollees' medical needs and make appropriate referrals, and how care is coordinated with enrollees' medical homes or treating physicians. Additionally, there have been allegations that medical call centers, in particular, have engaged in the unauthorized practice of medicine.[1] Call centers operated by health plans and hospitals can voluntarily seek accreditation by meeting a set of "health call center" standards developed by the Utilization Review Accreditation Committee, a nonprofit accrediting organization.[2]

Resolution 705-A-17 posits that medical advice given by health plans may be considered the practice of medicine when it is specific to a person's illness or injury. It is the policy of the AMA that the diagnosis of disease and diagnostic interpretation of studies for specific patients constitutes the practice of medicine. Because states are responsible for providing medical licenses, each state regulates the practice of medicine and defines conduct that constitutes the practice of medicine within its jurisdiction. States may define the practice of medicine slightly differently. Each state could similarly define "medical advice" in statute or regulation. However, a Lexis search for state regulations defining "medical advice" or "telephone medical advice" turned up just a single result—California's regulation of telephone medical advice services, which was cited in Resolution 705-A-17.

California regulation of telephone medical advice services

California enacted legislation in 2003 to protect consumers receiving telephone medical advice services. California Health and Safety Code §1348 requires that telephone medical advice must be provided by appropriately licensed health professionals, and prohibits other staff from misrepresenting themselves as licensed, certified or registered professionals.[3] "Telephone medical advice" is defined in the Code as a "telephonic communication between a patient and health care professional in which the health care professional's primary function is to provide the patient a telephonic response to the patient's questions regarding his or her or a family member's medical care or treatment."[4] It includes assessment, evaluation, or advice provided to patients and their families. Health care service plans providing telephone medical advice are required to make physicians and surgeons available on an on-call basis, and must maintain records—including transcripts of conversations and complaints—for five years.[5] Until 2017, when the Telephone Medical Advice Services Bureau was repealed, businesses engaged in telephone medical advice were required to register with the state.[6]

Neither "medical advice" nor "telephone medical advice" is defined in AMA policy, in part because these terms do not have universally accepted legal definitions and could vary by state. However, it is important to ensure that medical advice services—which do not allow users to be physically examined—are not engaged in the practice of medicine, which generally involves the diagnosis and treatment of disease or injury. Health plans' medical advice services are not usually used for these purposes. If they were, the services could be considered telemedicine in those states that do not exclude telephone calls from their definition of telemedicine.

Apart from medical advice services, many health plans offer their own telemedicine services whereby enrollees can access physicians virtually via computer or mobile device, usually for a fee. Some health plans also contract with vendors offering home visits and other care management services that constitute the practice of medicine and are provided outside of established patient-physician relationships. While the Council has concerns regarding the expansion of care

management services—including telemedicine—that are increasingly provided by health plans, and the coordination of these services with patients' treating physicians, the scope of this report is limited to health plan medical advice services.

AMA POLICY

Policy H-140.919 affirms that the physician-patient relationship should be reinforced and not disrupted by direct communications from health plans to patients regarding clinical matters. This policy further states that health plan communications to patients promoting improved outcomes through evidence-based approaches (eg, promotion of preventive measures or disease management programs) should reinforce the primacy of the patient-physician relationship, and also be sensitive to confidentiality as well as patients' concerns about their health status. If a health plan directly communicates with a patient, Policy H-140.919 asserts that a copy of that communication should be sent to the patient's primary physician.

Disease management and demand management, through the use of telephone triage by health plans, is addressed by Policy H-285.944. Principles outlined in this policy specify that referral algorithms or protocols used in telephone triage should be developed by knowledgeable physicians, and should be updated regularly; telephone triage centers should routinely inform primary or principal care physicians of the disposition of all calls received from their patients; telephone counseling and triage should be performed by health professionals with a level of knowledge and training no less than that of a registered nurse; and qualified physicians should be readily accessible for consultation and second-level triage to the nurses or other health professionals providing telephone counseling or triage. Additional policy on "phone counseling" (Policy H-160.935) maintains that medical phone counseling services must appoint a physician director, and that the director is ultimately responsible for telephone triaging patients, updating the protocols and algorithms used by non-physicians, and maintaining accountability for patients until referrals have been effected by accepting physicians.

Guidelines for patient navigator and patient advocacy programs, including those offered by health plans, are outlined in Policy H-373.994. This policy states that these programs should establish procedures to ensure direct communication between patient navigators and the patient's medical team, and that navigators should refrain from activity that could be construed as clinical in nature.

Policy H-35.971 affirms that the diagnosis of disease and diagnostic interpretation of studies for specific patients constitutes the practice of medicine. Policy H-285.998[5] states that physicians who make judgments or recommendations regarding the necessity or appropriateness of services or site of services should be licensed to practice medicine and actively practicing in the same jurisdiction as the practitioner who is proposing or providing the reviewed service and should be professionally and individually accountable for his or her decisions. Policy H-285.995[7] reaffirms that the portion of AMA model state legislation that calls for certain elements of utilization review to be defined as the practice of medicine.

The practice of medicine by non-physicians is the focus of Policy H-160.949. This policy actively opposes legislation allowing non-physicians to engage in the practice of medicine without physician training or physician supervision. The AMA also opposes regulations and legislation that would interfere with and/or redefine the practice of medicine (Policy H-390.994). Policy H-285.954 states that certain professional decisions critical to high quality patient care should always be the ultimate responsibility of the physician regardless of the practice setting (eg, health plan, physician practice, hospital or integrated delivery system).

The AMA has substantial policy on telemedicine, including Policy H-480.946, which outlines principles guiding appropriate coverage of and payment for telemedicine services, and also how to establish a valid patient-physician relationship via telemedicine. This policy also maintains that physicians and other health practitioners delivering telemedicine services must abide by state licensure laws and state medical practice laws and requirements in the state in which the patient receives services, and be licensed in the state where the patient receives services, or be providing services as authorized by that state's medical board. Additional principles affirm that telemedicine services must be consistent with state scope of practice laws, and that the provision of telemedicine services must include care coordination with the patient's medical home and treating physicians, who should be provided with a copy of the medical record. Principles for the supervision of non-physician providers when telemedicine is used are outlined in Policy H-160.937, which asserts that in all settings and circumstances, physician supervision is required when non-physician providers deliver services via telemedicine. A compilation of AMA policy on telemedicine can be found at https://www.ama-assn.org/sites/default/files/media-browser/public/arc-public/telemed-policy.pdf.

DISCUSSION

The Council's deliberations distinguished between health plans' medical advice services, which are the subject of referred Resolution 705-A-17, and medical management and telemedicine services offered by plans that explicitly constitute the practice of medicine. Policies H-35.971, H-285.998 and H-285.995, which delineate the practice of medicine, are recommended for reaffirmation.

Medical advice services are typically provided by health plans via telephone or online questionnaire, and are offered to enrollees free of charge. Nurses usually provide the service, with industry disclaimers clarifying that medical advice service staff cannot diagnose conditions or recommend specific treatments, and that the information provided is not a substitute for physician care. AMA policy on health plan disease management programs and demand management through telephone triage (Policy H-285.944), as well as phone counseling (H-160.935), remain relevant to the Council's discussion and are recommended for reaffirmation. The Council further recommends reaffirmation of Policy H-140.919, which maintains that the physician-patient relationship should be reinforced and not disrupted by direct communications from health plans to patients regarding clinical matters, and that in cases where a health plan directly communicates with a patient, a copy of that communication should be sent to the patient's primary physician.

The Council recognizes that health plans' medical advice services offer enrollees convenient, 24/7 access to nurses or other health professionals for general information and advice. The Council further recognizes that these services may be used to manage overall costs to the plan and that safeguards may be needed to ensure that patients receive timely and appropriate care. Because state medical practice laws vary, it would be difficult for the Council to precisely define all of the circumstances in which medical advice crosses over into the practice of medicine. Instead, the Council recommends a more general policy statement: That real-time interactions between health plans and enrollees that are utilized for patient assessments and result in the creation of treatment plans constitute the practice of medicine.

The Council also utilized existing AMA policy and the California regulation to develop guidelines that health plans' medical advice services should adhere to. Accordingly, the Council recommends that AMA policy affirm that medical advice services provided by health plans should adhere to a series of guidelines related to their primary goals, relevant requirements under state law, staff knowledge and training, physician availability, policies and procedures regarding efficiency and responsiveness to treating physicians, assurance that non-clinical staff are not providing medical advice, and disclosure of training and credentials. Finally, the Council recommends that the AMA

work with interested state medical associations to advocate for appropriate policy on health plans' medical advice services.

RECOMMENDATIONS

The Council on Medical Service recommends that the following be adopted in lieu of Resolution 705-A-17, and the remainder of the report be filed:

1. That our American Medical Association (AMA) reaffirm Policy H-35.971, which states that the diagnosis of disease and diagnostic interpretation of studies for specific patients constitutes the practice of medicine; Policy H-285.998, which states that physicians who make judgements or recommendations regarding the necessity or appropriateness of services or site of service should be licensed to practice medicine; and Policy H-285.995, which reaffirms that certain elements of utilization review be defined as the practice of medicine. (Reaffirm HOD Policy)

2. That our AMA reaffirm Policy H-285.944, which outlines principles that should guide health plans' disease management programs and demand management through telephone triage, and Policy H-160.935 on phone counseling. (Reaffirm HOD Policy)

3. That our AMA reaffirm Policy H-140.919, which maintains that the physician-patient relationship should be reinforced and not disrupted by direct communications from health plans to patients regarding clinical matters, and that in cases where a health plan directly communicates with a patient, a copy of that communication should be sent to the patient's primary physician. (Reaffirm HOD Policy)

4. That it be the policy of our AMA that real-time interactions between health plans and enrollees that are utilized for patient assessments and result in the creation of treatment plans constitute the practice of medicine. (New HOD Policy)

5. That our AMA policy affirm that medical advice services provided by health plans should adhere to the following guidelines:

    a) The primary goals of health plans' medical advice services should be to inform, educate and empower patients to make good health care choices and receive timely and appropriate care. These services should not be used to assess patients in order to inform diagnosis or treatment.

    b) Health plans' medical advice services should comply with state licensure laws, state medical, nursing, or other relevant practice acts, state scope of practice laws, and other relevant requirements within the state in which enrollees receive services.

    c) Staff providing health plans' medical advice services should have a level of knowledge and training no less than a registered nurse and be appropriately licensed in the state in which enrollees receive services.

    d) Qualified physicians should be available for consultation to persons offering medical advice services at all times that the medical advice service is advertised as available.

    e) Health plans should have policies and procedures in place that allow medical advice services to quickly and effectively respond to enrollees' health concerns.

f) Health plans should have policies and procedures in place to ensure that medical advice service providers routinely provide feedback to enrollees' treating physicians regarding the nature of the enrollees' contacts.

g) Health plans should ensure that non-clinical staff who may be screening enrollee calls or emails for the medical advice service are neither providing medical advice nor making medical decisions.

h) Health plans' medical advice services staff should fully disclose relevant training and credentials, and not misrepresent themselves to users. (New HOD Policy)

6. That our AMA work with interested state medical associations to advocate for appropriate policy on health plans' medical advice services. (New HOD Policy)

Fiscal Note: Less than $500.

REFERENCES

[1] Katz, SJ. Medical Call Centers Providing Telephone Triage: Is the Doctor In? Liability Issues and the Need for Regulation. *Journal of Law and Policy*. Vol. 8; Issue 2, 2000.
[2] URAC health call center accreditation. Available online at: https://www.urac.org/programs/health-call-center-accreditation
[3] California Health & Safety Code § 1348.8. Requirements for telephone medical advice services. Available online at: http://codes.findlaw.com/ca/health-and-safety-code/hsc-sect-1348-8.html
[4] *Id.*
[5] *Id.*
[6] State of California Telephone Medical Advice Services Website. Available online at: http://www.dca.ca.gov/tmas/