REPORT OF THE COUNCIL ON MEDICAL SERVICE

CMS Report 5-A-15

Subject: Hospital Incentives for Admission, Testing and Procedures

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At the 2014 Annual Meeting, the House of Delegates adopted Policy D-215.989, which states:

> That our American Medical Association (AMA) will study the extent to which US hospitals interfere in physicians' independent exercise of medical judgment, including but not limited to the use of incentives for admissions, testing and procedures.

This report, which is presented for the information of the House, provides background on physicians' concerns about hospital interference in their independent exercise of medical judgment, emphasizes the importance of hospital-employed physician satisfaction and quality care, reviews hospital practices, identifies AMA resources and advocacy efforts, and summarizes AMA policy.

BACKGROUND

As more physicians become employed by large corporate health systems there are concerns that they may be pressured to admit patients to their health system's affiliated hospital and order more tests and procedures than necessary to avoid disciplinary actions or termination.

The media has presented examples in which hospital-employed physicians were encouraged to adopt practices to meet the hospital's financial goals. Some physicians reported being pressured to admit patients to the hospital if they could in any way justify the admission even if they did not deem inpatient care necessary. Other physicians described situations in which they had been told not to discharge patients until the time at which the maximum allowed Medicare payment had been reached. Some physicians stated that they had been monitored on how much revenue they brought into their hospital through the ordering of tests and procedures. These examples, if accurate, indicate potentially fraudulent practices. But it is difficult to determine how widespread the problem is.

HOSPITAL-EMPLOYED PHYSICIAN SATISFACTION AND QUALITY CARE

According to the AMA 2014 Physician Practice Benchmark Survey, 26 percent of physicians work in practices that are at least partially owned by a hospital, and another 7 percent are direct hospital employees.[1] Hospital-employed physicians are expected to adhere to the policies of their employer, which potentially may be in direct opposition to their clinical expertise, ethical standards and commitment to their patients' well-being. According to a 2013 RAND Corporation study sponsored by the AMA (AMA-RAND study), being able to provide high-quality health care is a key component of job satisfaction among physicians, and obstacles to quality patient care are sources of dissatisfaction. The AMA-RAND study concluded that aligning values between physicians and practice leadership is an important contributor to physicians' professional satisfaction and a lack of control over operational, business, or managerial decisions affecting patient care can cause dissatisfaction. Including hospital-employed physicians in organizational

decisions and leadership roles can help align priorities and goals, and is an important aspect of physician satisfaction and quality patient care.

HOSPITAL PRACTICES

The Centers for Medicare & Medicaid Services reported that hospital care represented about 30 percent of the $2.9 trillion in total expenditures for 2013, accounting for the largest share of health care spending.[2] The majority of hospitals and their employed physicians work in a fee-for-service environment that incentivizes volume of care, which can influence the frequency of hospital admissions and the ordering of tests and procedures. Recent studies have determined that hospital admission rates vary considerably across individual providers and emergency departments.[3,4] It is uncertain if the variations in admission rates represent inappropriate admissions or underutilization of hospital services. A study conducted by researchers at Beth Israel Deaconess Medical Center and Harvard Medical School found that approximately 30 percent of the most commonly performed hospital tests are unnecessary.[5]

Because physicians are increasingly entering into employment and other contractual relationships with hospitals, group practices, and other entities, the AMA offers a variety of resources to help meet the unique needs of physicians in this practice environment.

AMA RESOURCES

The AMA Office of General Counsel and Organized Medical Staff Section (OMSS) have developed the Annotated Model Physician-Hospital Employment Agreement as a resource to help prepare physicians to negotiate an employment contract with a hospital or related entity. This manual is not intended to be a substitute for legal advice from qualified, health care counsel experienced in representing physician clients. Instead, it provides a thorough description of basic contract terms typically found in employment agreements, as well as in-depth explanations of contract language that benefit physician employees and language that could be problematic.

The AMA has also developed educational webinars to assist physicians with employment arrangements. The 90-minute webinar, Negotiating Your Employment Contract, was developed by the OMSS and is available for continuing medical education (CME) credits. It describes how to negotiate with potential employers to develop an optimum employment agreement, addresses key areas to consider when reviewing a contract, and provides insight on negotiation details such as the provisions of an employment agreement that are most likely to be negotiable.

Another 90-minute webinar, AMA Principles for Physician Employment, was produced jointly by the AMA and the American Bar Association and is also available for CME credits. It provides an overview of AMA principles and their application to real-world situations in which the interests of the employer may differ from those of physicians and patients.

The Resident and Fellow Section also offers a webinar, Physician Employment Contracts, as part of a series of webinars to help medical students, residents, fellows and young physicians confront the nonclinical demands in a medical practice environment.

AMA ADVOCACY

Advocacy Resource Center

The corporate practice of medicine doctrine prohibits corporations from practicing medicine or employing a physician to provide professional medical services. While most states prohibit the corporate practice of medicine, almost every state has broad exceptions, such as for employment of physicians by certain health care entities.

Many states that allow hospitals to employ physicians specifically prohibit hospitals from interfering with the independent medical judgment of physicians in order to protect clinical decision-making. At the request of state medical associations, the AMA will provide guidance, consultation, and model legislation regarding the corporate practice of medicine, to ensure the autonomy of hospital medical staffs.

AMA Litigation Center

The AMA supports the self-governance of organized medical staffs and the enforceability of medical staff bylaws. In a recent Minnesota case, *Avera Marshall Medical Staff* v. *Avera Marshall Regional Medical Center*, the AMA Litigation Center filed friend-of-the-court briefs before the Minnesota Supreme Court and the Minnesota Court of Appeals on behalf of the medical staff of Avera Marshall Regional Medical Center. In addition, the Litigation Center provided financial and legal support to the medical staff, which had been seeking to re-establish its autonomy after the hospital governing board unilaterally amended the medical staff bylaws. The move threatened to prevent the medical staff from fulfilling its responsibility to oversee patient safety within the hospital.

Ultimately, the Minnesota Supreme Court overturned earlier rulings in this case in which the lower courts had said the medical staff lacked the capacity to sue the hospital for inappropriate actions and the medical staff bylaws did not constitute an enforceable contract between the hospital and medical staff. There are other cases in which the AMA Litigation Center has supported hospital medical staffs.

RELEVANT AMA POLICY

AMA policy emphasizes that the essential components of a contractual or financial arrangement between hospitals and hospital-associated physicians should be fair to all parties, promote the interests of patients, adhere to the ethical principles of medicine and support the provision of high quality health care and services (Policies H-225.997 and H-225.950).

When entering into a contract with health systems or hospitals, physicians should be aware of the potential for these entities to create conflicts of interest due to the use of financial incentives in the management of medical care (Policies H-285.951 and H-225.950). AMA policy opposes physician economic incentives that conflict with patients' welfare and believes the physician must remain the patient's advocate in the patient's relationship with the hospital (Policy H-225.986). AMA policy states that the use of financial incentives in the management of medical care should not be based on the performance of physicians over short periods of time, nor should they be linked with individual treatment decisions over periods of time insufficient to identify patterns of care (Policy H-85.951).

Pay-for-performance programs must not financially penalize physicians based on factors outside of the physician's control (Policy H-450.947). The AMA believes that physicians should be able to advocate for their patients' best interest without retaliation from their employer (Policies H-225.950 and H-225.952).

AMA Policy H-225.952 and Ethical Opinion E-10.015 support protecting a physician's right to freely exercise independent medical judgment, holding the best interests of the patient as paramount. The following professional decisions critical to high quality patient care should always be the ultimate responsibility of the physician: the diagnostic tests that are appropriate, when and to whom physician referral and consultation is indicated, when hospitalization is necessary and the length of stay, and when surgery and invasive procedures are needed (Policies H-285.954, H-225.997 and H-320.965). As expressed in Policy H-315.995 it is the physician's responsibility to specify all diagnoses and procedures in the hospital records and no alterations should be made without his or her consent. A physician should not provide, prescribe or seek compensation for services he or she knows to be medically unnecessary, as treatment or hospitalization that is willfully excessive constitutes unethical practice (AMA Ethical Opinions E-2.19, E-4.04 and E-6.05).

Council on Ethical and Judicial Affairs Report 3-A-15, "Modernizing the *Code of Medical Ethics*," also before the House at this meeting, proposes consolidating and streamlining ethical opinions, including areas relevant to contracts, transparency and professionalism in the health care system.

DISCUSSION

The AMA is continuing to study the extent to which hospitals interfere in physicians' independent exercise of medical judgment. The Council believes that ensuring patient safety and professional satisfaction require hospital-employed physicians to preserve their clinical judgment.

The Council encourages physicians to use AMA resources when considering hospital employment. It is important that a physician consider all aspects of a contract before accepting an offer of employment. State medical associations and the AMA are useful resources if hospital-employed physicians want to seek advice on clinical practices requested of them by their hospital employer. The Council believes the AMA has sufficient resources and policy to help physicians prepare for hospital employment and to advocate on their behalf.

REFERENCES

[1] Kane, C, Emmons, D. AMA 2014 Physician Practice Benchmark Survey.

[2] U.S. Department of Health and Human Services: Centers for Medicare and Medicaid Services. National Health Expenditures: 2013 Highlights. 2013. http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/downloads/highlights.pdf

[3] Abualenain J, Frohna WJ, Shesser R, Ding R, Smith M, Pines JM. Emergency Department Physician-Level and Hospital-Level Variation in Admission Rates. Annals of Emergency Medicine. 2013;61(6):638–43. http://www.ncbi.nlm.nih.gov/pubmed/23415741

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