

CHAPTER 11: OPINIONS ON FINANCING & DELIVERY OF HEALTH CARE

The Opinions in this chapter are offered as ethics guidance for physicians and are not intended to establish standards of clinical practice or rules of law.

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11.1.1 Defining Basic Health Care

Health care is a fundamental human good because it affects our opportunity to pursue life goals, reduces our pain and suffering, helps prevent premature loss of life, and provides information needed to plan for our lives. Society has an obligation to make access to an adequate level of care available to all its members, regardless of ability to pay.

Physicians regularly confront the effects of lack of access to adequate care and have a corresponding responsibility to contribute their expertise to societal decisions about what health care services should be included in a minimum package of care for all.

Individually and collectively as a profession, physicians should advocate for fair, informed decision making about basic health care that:

- (a) Is transparent.
- (b) Strives to include input from all stakeholders, including the public, throughout the process.
- (c) Protects the most vulnerable patients and populations, with special attention to historically disadvantaged groups.
- (d) Considers best available scientific data about the efficacy and safety of health care services.
- (e) Seeks to improve health outcomes to the greatest extent possible, in keeping with principles of wise stewardship.

- (f) Monitors for variations in care that cannot be explained on medical grounds to ensure that the defined threshold of basic care does not have discriminatory impact.
- (g) Provides for ongoing review and adjustment in consideration of innovation in medical science and practice to ensure continued, broad public support for the defined threshold of basic care.

AMA Principles of Medical Ethics: VII

11.1.2 Physician Stewardship of Health Care Resources

Physicians' primary ethical obligation is to promote the well-being of individual patients. Physicians also have a long-recognized obligation to patients in general to promote public health and access to care. This obligation requires physicians to be prudent stewards of the shared societal resources with which they are entrusted. Managing health care resources responsibly for the benefit of all patients is compatible with physicians' primary obligation to serve the interests of individual patients.

To fulfill their obligation to be prudent stewards of health care resources, physicians should:

- (a) Base recommendations and decisions on patients' medical needs.
- (b) Use scientifically grounded evidence to inform professional decisions when available.
- (c) Help patients articulate their health care goals and help patients and their families form realistic expectations about whether a particular intervention is likely to achieve those goals.
- (d) Endorse recommendations that offer reasonable likelihood of achieving the patient's health care goals.
- (e) Choose the course of action that requires fewer resources when alternative courses of action offer similar likelihood and degree of anticipated benefit compared to anticipated harm for the individual patient but require different levels of resources.
- (f) Be transparent about alternatives, including disclosing when resource constraints play a role in decision making.
- (g) Participate in efforts to resolve persistent disagreement about whether a costly intervention is worthwhile, which may include consulting other physicians, an ethics committee, or other appropriate resource.

Physicians are in a unique position to affect health care spending. But individual physicians alone cannot and should not be expected to address the systemic challenges of wisely managing health care resources. Medicine as a profession must create conditions for practice that make it feasible for individual physicians to be prudent stewards by:

- (h) Encouraging health care administrators and organizations to make cost data transparent (including cost accounting methodologies) so that physicians can exercise well-informed stewardship.
- (i) Ensuring that physicians have the training they need to be informed about health care costs and how their decisions affect overall health care spending.

- (j) Advocating for policy changes, such as medical liability reform, that promote professional judgment and address systemic barriers that impede responsible stewardship.

AMA Principles of Medical Ethics: I,V,VII,VIII,IX

11.1.3 Allocating Limited Health Care Resources

Physicians' primary ethical obligation is to promote the well-being of their patients. Policies for allocating scarce health care resources can impede their ability to fulfill that obligation, whether those policies address situations of chronically limited resources, such as ICU (intensive care unit) beds, medications, or solid organs for transplantation, or "triage" situations in times of scarcity, such as access to ventilators during an influenza pandemic.

As professionals dedicated to protecting the interests of their patients, physicians thus have a responsibility to contribute their expertise to developing allocation policies that are fair and safeguard the welfare of patients.

Individually and collectively through the profession, physicians should advocate for policies and procedures that allocate scarce health care resources fairly among patients, in keeping with the following criteria:

- (a) Base allocation policies on criteria relating to medical need, including urgency of need, likelihood and anticipated duration of benefit, and change in quality of life. In limited circumstances, it may be appropriate to take into consideration the amount of resources required for successful treatment. It is not appropriate to base allocation policies on social worth, perceived obstacles to treatment, patient contribution to illness, past use of resources, or other non-medical characteristics.
- (b) Give first priority to those patients for whom treatment will avoid premature death or extremely poor outcomes, then to patients who will experience the greatest change in quality of life, when there are very substantial differences among patients who need access to the scarce resource(s).
- (c) Use an objective, flexible, transparent mechanism to determine which patients will receive the resource(s) when there are not substantial differences among patients who need access to the scarce resource(s).
- (d) Explain the applicable allocation policies or procedures to patients who are denied access to the scarce resource(s) and to the public.

AMA Principles of Medical Ethics: I,VII

11.1.4 Financial Barriers to Health Care Access

Health care is a fundamental human good because it affects our opportunity to pursue life goals, reduces our pain and suffering, helps prevent premature loss of life, and provides information needed to plan for our lives. As professionals, physicians individually and collectively have an ethical responsibility to ensure that all persons have access to needed care regardless of their economic means.

In view of this obligation,

- (a) Individual physicians should:
 - (i) take steps to promote access to care for individual patients, such as providing pro bono care in their office or through freestanding facilities or government programs that provide health care for the poor, or, when permissible, waiving insurance copayments in individual cases of hardship. Physicians in the poorest communities should be able to turn for assistance to colleagues in more prosperous communities.
 - (ii) help patients obtain needed care through public or charitable programs when patients cannot do so themselves.
- (b) Physicians, individually and collectively through their professional organizations and institutions, should participate in the political process as advocates for patients (or support those who do) so as to diminish financial obstacles to access health care.
- (c) The medical profession must work to ensure that societal decisions about the distribution of health resources safeguard the interests of all patients and promote access to health services.
- (d) All stakeholders in health care, including physicians, health facilities, health insurers, professional medical societies, and public policymakers must work together to ensure sufficient access to appropriate health care for all people.

AMA Principles of Medical Ethics: I,II,VI,VII,IX

11.2.1 Professionalism in Health Care Systems

Containing costs, promoting high-quality care for all patients, and sustaining physician professionalism are important goals. Models for financing and organizing the delivery of health care services often aim to promote patient safety and to improve quality and efficiency. However, they can also pose ethical challenges for physicians that could undermine the trust essential to patient-physician relationships.

Payment models and financial incentives can create conflicts of interest among patients, health care organizations, and physicians. They can encourage undertreatment and overtreatment, as well as dictate goals that are not individualized for the particular patient.

Structures that influence where and by whom care is delivered—such as accountable care organizations, group practices, health maintenance organizations, and other entities that may emerge in the future—can affect patients’ choices, the patient-physician relationship, and physicians’ relationships with fellow health care professionals.

Formularies, clinical practice guidelines, and other tools intended to influence decision making, may impinge on physicians’ exercise of professional judgment and ability to advocate effectively for their patients, depending on how they are designed and implemented.

Physicians in leadership positions within health care organizations should ensure that practices for financing and organizing the delivery of care:

- (a) Are transparent.
- (b) Reflect input from key stakeholders, including physicians and patients.

- (c) Recognize that over reliance on financial incentives may undermine physician professionalism.
- (d) Ensure ethically acceptable incentives that:
 - (i) are designed in keeping with sound principles and solid scientific evidence. Financial incentives should be based on appropriate comparison groups and cost data and adjusted to reflect complexity, case mix, and other factors that affect physician practice profiles. Practice guidelines, formularies, and other tools should be based on best available evidence and developed in keeping with ethics guidance;
 - (ii) are implemented fairly and do not disadvantage identifiable populations of patients or physicians or exacerbate health care disparities;
 - (iii) are implemented in conjunction with the infrastructure and resources needed to support high-value care and physician professionalism;
 - (iv) mitigate possible conflicts between physicians' financial interests and patient interests by minimizing the financial impact of patient care decisions and the overall financial risk for individual physicians.
- (e) Encourage, rather than discourage, physicians (and others) to:
 - (i) provide care for patients with difficult to manage medical conditions;
 - (ii) practice at their full capacity, but not beyond.
- (f) Recognize physicians' primary obligation to their patients by enabling physicians to respond to the unique needs of individual patients and providing avenues for meaningful appeal and advocacy on behalf of patients.
- (g) Are routinely monitored to:
 - (i) identify and address adverse consequences;
 - (ii) identify and encourage dissemination of positive outcomes.

All physicians should:

- (h) Hold physician-leaders accountable to meeting conditions for professionalism in health care systems.
- (i) Advocate for changes in health care payment and delivery models to promote access to high-quality care for all patients.

AMA Principles of Medical Ethics: I,II III,V

11.2.2 Conflicts of Interest in Patient Care

The primary objective of the medical profession is to render service to humanity; reward or financial gain is a subordinate consideration. Under no circumstances may physicians place their own financial interests above the welfare of their patients.

Treatment or hospitalization that is willfully excessive or inadequate constitutes unethical practice. Physicians should not provide wasteful and unnecessary treatment that may cause needless expense solely for the physician's financial benefit or for the benefit of a hospital or other health care organization with which the physician is affiliated.

Where the economic interests of the hospital, health care organization, or other entity are in conflict with patient welfare, patient welfare takes priority.

AMA Principles of Medical Ethics: II

11.2.3 Contracts to Deliver Health Care Services

Physicians have a fundamental ethical obligation to put the welfare of patients ahead of other considerations, including personal financial interests. This obligation requires them to consider carefully the terms and conditions of contracts to deliver health care services before entering into such contracts to ensure that those contracts do not create untenable conflicts of interests.

Ongoing evolution in the health care system continues to bring changes to medicine, including changes in reimbursement mechanisms, models for health care delivery, restrictions on referral and use of services, clinical practice guidelines, and limitations on benefits packages. While these changes are intended to enhance quality, efficiency, and safety in health care, they can also put at risk physicians' ability to uphold professional ethical standards of informed consent and fidelity to patients and can impede physicians' freedom to exercise independent professional judgment and tailor care to meet the needs of individual patients.

As physicians enter into various differently structured contracts to deliver health care services—with group practices, hospitals, health plans, or other entities—they should be mindful that while many arrangements have the potential to promote desired improvements in care, some arrangements also have the potential to impede patients' interests.

When contracting to provide health care services, physicians should:

- (a) Carefully review the terms of proposed contracts or have a representative do so on their behalf to assure themselves that the arrangement:
 - (i) minimizes conflict of interest with respect to proposed reimbursement mechanisms, financial or performance incentives, restrictions on care, or other mechanisms intended to influence physicians' treatment recommendations or direct what care patients receive, in keeping with ethics guidance;
 - (ii) does not compromise the physician's own financial well-being or ability to provide high-quality care through unrealistic expectations regarding utilization of services or terms that expose the physician to excessive financial risk;
 - (iii) allows the physician to appropriately exercise professional judgment;
 - (iv) includes a mechanism to address grievances and supports advocacy on behalf of individual patients;
 - (v) permits disclosure to patients.

- (b) Negotiate modification or removal of any terms that unduly compromise physicians' ability to uphold ethical standards.

AMA Principles of Medical Ethics: I,II,III,V,VI,VIII,IX

11.2.3.1 Restrictive Covenants

Competition among physicians is ethically justifiable when it is based on such factors as quality of services, skill, experience, conveniences offered to patients, fees, or credit terms.

Covenants-not-to-compete restrict competition, can disrupt continuity of care, and may limit access to care.

Physicians should not enter into covenants that:

- (a) Unreasonably restrict the right of a physician to practice medicine for a specified period of time or in a specified geographic area on termination of a contractual relationship; and
- (b) Do not make reasonable accommodation for patients' choice of physician.

Physicians in training should not be asked to sign covenants not to compete as a condition of entry into any residency or fellowship program.

AMA Principles of Medical Ethics: III,IV,VI,VII

11.2.4 Transparency in Health Care

Respect for patients' autonomy is a cornerstone of medical ethics. Patients must rely on their physicians to provide information that patients would reasonably want to know to make informed, well-considered decisions about their health care. Thus, physicians have an obligation to inform patients about all appropriate treatment options, the risks and benefits of alternatives, and other information that may be pertinent, including the existence of payment models, financial incentives; and formularies, guidelines or other tools that influence treatment recommendations and care. Restrictions on disclosure can impede communication between patient and physician and undermine trust, patient choice, and quality of care.

Although health plans and other entities may have primary responsibility to inform patient-members about plan provisions that will affect the availability of care, physicians share in this responsibility.

Individually, physicians should:

- (a) Disclose any financial and other factors that could affect the patient's care.
- (b) Disclose relevant treatment alternatives, including those that may not be covered under the patient's health plan.
- (c) Encourage patients to be aware of the provisions of their health plan.

Collectively, physicians should advocate that health plans with which they contract disclose to patient-members:

- (d) Plan provisions that limit care, such as formularies or constraints on referrals.
- (e) Plan provisions for obtaining desired care that would otherwise not be provided, such as provision for off-formulary prescribing.
- (f) Plan relationships with pharmacy benefit management organizations and other commercial entities that have an interest in physicians' treatment recommendations.

AMA Principles of Medical Ethics: I,II,III,V,VI

11.2.5 Retainer Practices

Physicians are free to enter into contracts to provide special non-medical services and amenities with individual patients who are willing and able to pay additional costs out of pocket for such services. While such retainer contracts are one among many diverse models for delivering and paying for health care, they can also raise ethical concerns about access, quality, and continuity of care.

Regardless of the model within which they practice, physicians must uphold their primary professional obligation of fidelity and their responsibility to treat all patients with courtesy and respect for patients' rights and dignity, and ensure that all patients in the physician's practice receive the same quality of medical care, regardless of contractual arrangements for special, non-medical services and amenities.

Physicians who enter into retainer contracts with patients must:

- (a) Present the terms of the retainer arrangement clearly to patients, including implications for the patient's current health care insurance, if known, and take care not to imply that more or better medical services will be provided under a retainer contract.
- (b) Ensure that patient decisions to accept retainer contracts are voluntary and that patients are free to opt-out of entering into a retainer agreement.
- (c) Facilitate transfer of care for any patient who chooses not to participate in a retainer practice. If it is not feasible to transfer a patient's care to another local physician, the physician should continue to provide care under the terms of the patient's existing health care insurance until other appropriate arrangements for ongoing care can be made.
- (d) Ensure that treatment recommendations for all patients are based on scientific evidence, relevant professional guidelines, sound professional judgment, and prudent stewardship.
- (e) Uphold standards of honesty and transparency in billing and clearly distinguish charges for special services or amenities provided under a retainer contract from medical services reimbursable by the patient's health care insurance or third-party payer.
- (f) Uphold professional obligations to promote access to health care and to provide care to those in need regardless of ability to pay, in keeping with ethics guidance.

AMA Principles of Medical Ethics: I,II,VI,VIII,IX

11.3.1 Fees for Medical Services

Physicians are expected to conduct themselves as honest, responsible professionals. They should be knowledgeable about and conform to relevant laws and should adhere to professional ethical standards and sound business practice. Physicians should not recommend, provide, or charge for unnecessary medical services. Nor should they make intentional misrepresentations to increase the level of payment they receive or to secure noncovered health benefits for their patients.

With regard to fees for medical services, physicians should:

- (a) Charge reasonable fees based on the:
 - (i) kind of service(s);
 - (ii) difficulty or uniqueness of the service(s) performed;
 - (iii) time required to perform the service(s);
 - (iv) skill required to perform the service(s);
 - (v) experience of the physician;
 - (vi) quality of the physician's performance.
- (b) Charge only for the service(s) that are personally rendered or for services performed under the physician's direct personal observation, direction, or supervision. If possible, when services are provided by more than one physician, each physician should submit his or her own bill to the patient and be compensated separately. When physicians have professional colleagues assist in the performance of a service, the physician may pay a reasonable amount for such assistance and recoup that amount through fees charged to the patient, provided the patient is notified in advance of the financial arrangement.
- (c) Itemize separately charges for diagnostic, laboratory, or clinical services provided by other health care professionals and indicate who provided the service when fees for others' services cannot be billed directly to the patient, in addition to charges for the physician's own professional services.
- (d) Not charge excessive fees, contingent fees, or fees solely to facilitate hospital admission. Physicians must not charge a markup or commission, or profit on services rendered by other health care professionals.
- (e) Extend professional courtesy at their discretion, recognizing that it is not an ethical requirement and is prohibited in many jurisdictions.

AMA Principles of Medical Ethics: II,VI

11.3.2 Fees for Nonclinical & Administrative Services

Physicians individually and collectively should promote access to care for individual patients, in part through being prudent stewards of resources. Thus physicians have a responsibility to balance patients' needs and expectations with responsible business practices.

With respect to fees for nonclinical or administrative services provided in conjunction with patient care, physicians should:

- (a) Clearly notify patients in advance of fees charged by the practice (if any) for nonclinical or administrative services.
- (b) Base fees (if any) on reasonable costs to the practice for:
 - (i) providing special documentation on patient request for such purposes as insurance reimbursement to the patient, certification of immunization or fitness, or similar nonclinical services;
 - (ii) missed appointments or appointments not cancelled in advance in keeping with the published policy of the practice;
 - (iii) acquisition or processing charges in relation to diagnostic, laboratory, or clinical services, copies of medical records, or similar nonclinical services.

AMA Principles of Medical Ethics: II,VI

11.3.3 Interest & Finance Charges

Financial obstacles to medical care can directly affect patients' well-being and may diminish physicians' ability to use their knowledge and skills on patients' behalf. Physicians should not be expected to risk the viability of their practices or compromise quality of care by routinely providing care without compensation. Patients should make reasonable efforts to meet their financial responsibilities or to discuss financial hardships with their physicians.

To preserve patients' dignity and help sustain the patient-physician relationship, physicians should be candid about financial matters and:

- (a) Clearly notify patients in advance about policy and practice with respect to delinquent accounts, including under what circumstances:
 - (i) payment will be requested at the time of service;
 - (ii) interest or finance charges may be levied;
 - (iii) a past due account will be sent to a collection agency.
- (b) Ensure that no bills are sent to collection without the physician's knowledge.

- (c) Use discretion and compassion in hardship cases, in keeping with ethics guidance regarding financial barriers to health care access.

AMA Principles of Medical Ethics: II,VI,IX

11.3.4 Fee Splitting

Patients must be able to trust that their physicians will be honest with them and will make treatment recommendations, including referrals, based on medical need, the skill of other health care professionals or facilities to whom the patient is referred, and the quality of products or services provided.

Payment by or to a physician or health care institution solely for referral of a patient is fee splitting and is unethical.

Physicians may not accept:

- (a) Any payment of any kind, from any source for referring a patient other than distributions of a health care organization's revenues as permitted by law.
- (b) Any payment of any kind, from any source for prescribing a specific drug, product, or service.
- (c) Payment for services relating to the care of a patient from any health care facility/organization to which the physician has referred the patient.
- (d) Payment referring a patient to a research study.

Physicians in a capitated primary care practice may not refer patients based on whether the referring physician has negotiated a discount for specialty services.

AMA Principles of Medical Ethics: II