ETHICS in Medicine

Ethical Dilemmas from Physician Ownership Interests in Ancillary Services

In the movie *Field of Dreams*, an Iowa farmer hears a voice that whispers, "If you build it, [a baseball diamond], he [Shoeless Joe Jackson] will come." Government regulators have concluded that it

Paul J. Giancola, JD

is no different with ancillary services. Studies show that if equipment is purchased or a new service line is added, it is going to be used by physicians who own them at a higher rate than by those who do not have such services. This article discusses the ethical dilemma posed by physician ownership interests in ancillary services.

An ethical dilemma is defined as a complex situation that involves a mental conflict between competing imperatives. Ethical dilemmas typically arise in medicine in the context of foregoing life-sustaining treatment, refusal of treatment, conflicts with caregivers, and advance directives. However, they also frequently arise in the context of "defensive medicine" and the ordering of ancillary services when the physician has a financial interest in the ancillary services.

Ancillary services are typically physician-owned or family-owned medical products and services including imaging, laboratory, equipment, physical therapy and infusion centers. If the physician is not a potential referral source for the product or service, there is no ethical dilemma or conflict of interest in the having such an ownership interest in an ancillary service. Common reasons given for having ancillary services is for patient convenience but also to increase practice revenue for the physicians who are both referral sources and owners.

The physician self-referral or Stark law is focused on decreasing physician referrals that are paid for by federal healthcare programs by prohibiting referrals for certain designated health services, which include laboratory, physical therapy, occupational therapy, imaging, radiation therapy and durable medical equipment, unless the ordering physician's financial arrangement fits within a legal exception. Arizona has its own form of Stark law which requires that for such a referral to a physician owned ancillary service, patients must acknowledge in writing that the physician has a financial interest in the ancillary services or products being prescribed, and whether they are available on a competitive basis.

The most commonly used Stark exception for physician self-referrals for ancillary services is the Stark in-office ancillary services exception. This exception allows physicians who are members of a group practice, as defined by the law, to refer a patient for designated health services that are provided by the group practice.

Those in favor of physician ownership of ancillary services contend that it benefits patients by, in addition to being convenient, allowing their physicians to supervise the quality and the coordination of care they prescribe. Those against physician ownership of ancillary services contend that it corrupts medical judgment by providing undue financial incentives for physicians to increase the use or volume of such services. Similar arguments are made about physician ownership interests in ambulatory surgery centers or hospitals. Regardless of whether physician ownership of ancillary services legally satisfies the Stark exception and Arizona law, such ownership interests still pose an ethical dilemma due to the presence of a potential conflict of interest for the physician.

According to the Institute of Medicine, conflicts of interest are "circumstances that create a risk that professional judgments or actions regarding a primary interest will be unduly influenced by a secondary interest." With ownership of ancillary services, the physician's primary interest may be patient care, but the physician's secondary interest (whether or not acknowledged) is the revenue generated from the service. Regardless of whether the decision to order the service is actually influenced by the secondary interest, there

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is at the time of decision a potential a conflict of interest. Accordingly, in retrospect, the medical reason for the self-referral for the ancillary services may be viewed by regulators to determine whether it was unduly influenced by the physician's secondary interest.

In most situations, the medical reason for the prescribed ancillary service easily outweighs the secondary interest. For example, there may be clinical guidelines or protocols that clearly establish whether, based on the patient circumstances, an ancillary service is medically and ethically justified. In contrast, resolving the conflict becomes clouded when the medical indication for the ancillary service is subjective and not dictated by objective clinical guidelines or protocols. There are many clinical areas in which physicians may disagree or attribute to judgment whether to prescribe a particular ancillary service. Through data analysis of claims for reimbursement, the government and insurers look for prescribing patterns for ancillary services among physicians. These efforts reveal that some physicians prescribe significantly more routine lab tests and x-rays than their colleagues. Reviewers may ask physicians who are outliers why do all office visits for pediatric patients who present with "cold-like" or "flu-like" symptoms require a complete blood count? Do all office visits for urology patients require a urinalysis? Why do you order significantly more in-office stress tests than others in the same community?

Studies have shown that the in-office exception has resulted in many physicians purchasing expensive imaging equipment for their offices. Physicians who have such imaging equipment are generally 60% more likely to self-refer for imaging as compared to physicians with no ownership interest in in-office imaging. The revenue from imaging exams comes from two sources: the facility fee and the professional fee. Physicians who own imaging equipment can obtain revenues by collecting both fees. Equipment vendors are well aware of this fact when marketing to physicians, and usually focus on the additional revenue stream. This finding does not come as a surprise to the U.S. Department of Health, Office of Inspector General (OIG) and researchers who follow healthcare spending trends. The government is aggressively investigating whether physicians with ancillary services available in their offices are exploiting the exceptions to the Stark law as

Continued on page 27

I find the best way to prevent the negative consequences of bottom line tunnel vision is to engage your employees. Constantly talk to them and reinforce behavior that puts the patient first, but also explain that the clinic needs to have a positive bottom line. Show them the numbers. When employees understand both the objectives and the constraints, they often come up with brilliant solutions the Administrator never thought about. The employees are at the front line and see the issues clearly, so they're generally the best at finding a solution. They'll tell you where the inefficiencies are and how to revamp processes to improve productivity, safely. They'll also be more likely to implement that change faster and better since they created it.

As someone who runs a medical practice, I understand the importance of watching the bottom line. Keeping financial controls in check are paramount, but patient safety can never be overlooked. When you focus on patients first, promote an open and honest culture, and reward for innovation you can have a profitable bottom line without risking patient safety. **AM**

Erica Boehle is President of Neuro-Diagnostic Laboratories, a neurology diagnostic company. She graduated from Arizona State University with a degree in Finance in 1999 and degrees in Management and Marketing in 2001 from the W.P. Carey School of Business. In addition, she serves on the board of directors for the Arizona Medical Group Management Association, and Beatitudes, a non-profit continuing care retirement community.

Ancillary Services

Continued from page 25

an area of potential Medicare abuse.

Group practices, like any other business, have overhead expenses that must be met every month, and physician owners like to make a profit. It may be self-evident that a financial interest in ancillary services creates financial pressure to use it, pay for it, and profit from it. Some physicians report the uncomfortable experience of being encouraged by colleagues and practice managers to fully utilize the practice's ancillary services. Such pressure may subtly encourage physicians to allow the secondary financial interest to override a primary patient care interest when the decision to prescribe the service may be a close judgment call or provide only borderline benefit for the patient.

Another area of potential conflict of interest is when there is a significant cost differential among ancillary treatment modalities. In July 2013, the United States Government Accountability Office (GAO) published a study "Higher Use of Costly Prostate Cancer Treatment by Providers who Self-Refer Warrants Scrutiny." The study found that if a physician group has an ownership interest in radiation therapy ancillary services, there is a greater likelihood of a self-referral for radiation as compared to a less costly treatment – such as surgery – that is, according to the GAO, equally appropriate a treatment modality.

The GAO study was strongly criticized, particularly by physicians who believe that radiation is a superior treatment modality to surgery for prostate cancer. Nevertheless, the study provides a valuable lesson for physicians who have ownership interests in ancillary services. When there are multiple appropriate methods of treatment – and the physician has a financial interest in one or more – care should be taken to discuss with the patient the risks and benefits of all available clinically appropriate treatment options, including the cost of treatment.

With many health plans having high deductibles, cost is increasingly becoming a factor in treatment choice for many patients with insurance. Since the government (through Medicare and AHCCCS) and patients (through high deductibles and limited coverages) are increasingly interested in the cost of treatment, there is an obligation to consider the most cost-effective treatment as part of the risk-benefit discussion of available ancillary services. When considering the "conflict" posed by ownership of ancillary services and the scrutiny of the government, the safest approach is to have the patient, after being fully informed of the potential benefits, risks, costs, and alternatives, to select the treatment of choice.

Ethics and medicine have been companions for hundreds of years. Consumers are often suspicious of service providers – who recommend ancillary services that they also happen to provide. Such suspicions may now also apply to physicians. The AMA has for years recognized the "tension" between a patient's medical interests and a physician's financial interests. With the downward push against physician reimbursement continuing, the urge to add ancillary services will only escalate. At the same time, physicians need to navigate these challenges ethically and legally. The best way is to adhere to clinical guidelines, and to always place the patient's interest first. **AM**

Paul J. Giancola, JD, is a partner in the Healthcare Practice Group, Snell & Wilmer, LLP, Phoenix, Arizona.