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February 14, 2011

Sallie Debolt, Esq.
General Counsel
State Medical Board of Ohio
30 E. Broad Street, 3rd Floor
Columbus, Ohio 43215-6127

Re: Fee-splitting arrangements in ED contracts in Ohio

Dear Ms. Debolt,

Dr. Carol Cunningham is a member of the American Academy of Emergency Medicine and a member of Lake Health Emergency Services, Inc., which until recently held the contract for emergency services at Lake Health hospitals. She shared with us your letter of 12/27/2010 regarding the corporate practice of medicine in the State of Ohio wherein you stated the following “moreover, compensation packages must be structured to prevent fee-splitting.” In the case of a for profit corporate entity employing emergency physicians in the State of Ohio the fee-splitting aspect requires examination. The specific areas of concern include:

- 1) Whether emergency physicians are required to give a portion of their fee which is above fair market value for the services the corporation provides to the physician
- 2) Whether the arrangement creates inducements to increase referrals
- 3) Whether the arrangement creates inducements for overutilization
- 4) Whether the arrangement creates/includes financial incentives that increase the risk of abusive billing practices

In the case of an emergency physician working for an entity such as EmCare at Lake Health Hospitals, the ability of that physician to engage in patient care (receive referrals) is predicated upon the signing of an employment contract with EmCare. EmCare holds the exclusive contract for emergency services and a physician cannot see patients in that ED without a contractual relationship with EmCare. The emergency physicians at Lake Health who work for EmCare contractually give up a portion of their fee in return for the right to see patients. The amount of the professional fee that is given to EmCare is solely determined by EmCare and not the physician. Given the profit motive of the company, it is likely that the four items listed above would be of concern.

American Academy of Emergency Medicine

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The US Office of the Inspector General in its Advisory Report OEI-09-89-00330 specifically details the prohibition on hospitals taking a portion of a hospital-based physician's fee beyond fair market value for the services provided to the physician. This report recognizes the hospital's power in controlling the awarding of the exclusive contract for hospital-based physician services. It would seem logical to expect that a for-profit corporation that holds similar power by owning the exclusive contract for emergency services would likewise be held to that standard.

Upon investigation of the financial relationship of EmCare with its employed physicians at Lake Health (and other hospitals in Ohio) we are confident that you will discover that the physicians are not given access to what is billed or remitted in their name. They therefore have no basis on which to gauge whether the services EmCare is providing to them are at fair market value. By analyzing publicly reported data by entities engaged in similar arrangements, it is clear that the cost to the physicians above and beyond the practice expenses (management, coding, billing, malpractice insurance) can be quite high, approximating \$75,000 per year per physician.⁽¹⁾ The services provided in return for this large sum by EmCare do not include much more than a scheduling function. This is, as you have pointed out in your letter to Dr. Cunningham, because a corporation cannot legally direct a physician's care of a patient.

In order to ensure that the relationship between Ohio emergency physicians and an entity such as EmCare do not constitute payments for referrals beyond fair market value one would need to analyze the exchange of dollars in this arrangement. The physicians and regulatory bodies would have to be aware of what amount of the physician fee is being taken by the corporation and the value of the services in return for that. At the very least the State Medical Board of Ohio should ensure that the emergency physicians in these relationships are given access to what is billed and remitted in their name. The American Medical Association believes this is essential (AMA Policy H 190.971).

More concerning is the potential for abuse in an arrangement where the corporation's profits are primarily determined by the corporation. The primary reason prohibitions on fee-splitting exist is to prevent financial abuses in health care. The more patients an emergency physician sees in this arrangement the higher the potential profit for the corporation. The higher the charges generated for a specific patient (ex., overutilization of testing) the higher will be the corporate profits. Emergency physicians in such arrangements are typically tracked using the metric of patients seen per clinical hour as well as relative value units (RVUs) generated per clinical hour. Finally, the profit structure creates a direct incentive for abusive billing practices. It is of note that EmCare paid a large fine for billing fraud in the past. (DOJ CIV press release 97-214)

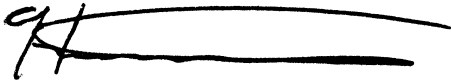
We call to your attention these issues regarding your concern that "compensation packages must be structured to prevent fee-splitting." We believe that an investigation into the structure of the relationship between the emergency physicians at Lake Health and EmCare is warranted including an examination of the actual contracts between the physicians and EmCare and an assessment as to how the physicians are provided information on what is billed and remitted in their name.

Please contact us if we can be of further assistance. Robert McNamara, MD will be the primary contact for the AAEM on this matter. His contact information is on the following page:

Robert M. McNamara, MD FAAEM
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Philadelphia, PA 19140
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Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'H Blumstein', with a long horizontal line extending to the right.

Howard Blumstein, MD, FAAEM
President, AAEM

(1) <http://www.aaem.org/commonsense/commonsense0110.pdf> (page 8)

Enclosures