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REGULATING SELF-REFERRALS AND OTHER PHYSICIAN CONFLICTS OF INTEREST

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“Regulating Self-Referrals and Other Physician Conflicts of Interest”

15 HEC Forum 134 (2003)

Abstract

For better or worse, the federal government is actively regulating physician conflicts of interest, including referrals of Medicare and Medicaid patients for health services in which physicians have a financial interest. The government’s ever-increasing role in regulating physician conduct is a response to the profession’s own failure to adequately deal with conflict of interest problems, as well as a function of the government’s greater stake in funding clinical practice and research. This article addresses the implications of the growing role of government for the continuing professionalism of physicians, given that professionalism is commonly thought to include the ability of a profession to regulate itself in the public interest. The author describes how professional societies and individual physicians still have a significant role to play in regulating self-referrals and other conflicts of interest, but that physicians must first correct serious deficiencies in their ideological treatment of conflicts of interest. To begin, they must distinguish between the pervasive conflicts of professional practice, which are open, obvious, and unavoidable, and true conflict-of-interest problems, in which the conflicts are hidden and avoidable. The article then articulates a general approach to resolving true conflicts-of-interest problems, borrowing doctrine from the well-developed field of legal ethics. The article ends with an application of the general approach to physician self-referrals, concluding that clients are often capable of informed consent, but that physicians are well-advised to issue their own self-referral guidelines that take into account the legitimate interests of third-party payers like the government, at least when such interests do not clearly conflict with the interests of patients.