Position Statement on Receipt or Provision of Kickbacks or Inducements by Occupational Therapists

Position summary

Kickbacks or inducements refer to the practice of one party providing a payment or other financial incentive to another party in return for a referral, prescription, or sale. The receipt or provision of kickbacks or inducements by occupational therapists is unethical, and this practice should not be engaged in. Internal referrals with organisations are not kickbacks or inducements, however may present ethical issues if clients are not provided with informed choice or control. Where internal referrals occur between services within an organisation (or its related entities), this should be balanced with options provided for clients to be referred to external organisations.

Introduction

Kickbacks or inducements refer to the practice of one party providing a payment or other financial incentive to another party in return for a referral, prescription, or sale. In the context of occupational therapy, this is most likely actualised through referrals to other providers, the prescription of equipment, or receipt of referrals. Three examples are provided below;

1. An occupational therapist has a referral fee agreement with a domestic cleaning company. The occupational therapist assesses people for the need for cleaning and home maintenance supports, which are funded through an insurance/government scheme. For every cleaning referral, the cleaning company providers the occupational therapist with a referral fee (i.e., a sum of money).
2. An occupational therapist has a kickback agreement with an assistive technology supplier. When a client requires an assistive product, they complete a prescription form on behalf of the client and send it to the supplier. Regardless of the payee (e.g., self-funded by the client or funded through a funding scheme), for each prescription received the assistive technology supplier provides the occupational therapist with a gift card (e.g., to the value of $50) that can be used to purchase goods or services (e.g., supermarket gift card).
3. An occupational therapist wishes to increase their referrals from a local general practice. For each referral received, the occupational therapist sends the general practice a gift hamper.

Clients expect that the advice that we offer is made based on the best available information, is free from bias where possible, and is trustworthy. Kickbacks or inducements provide a financial bias for an occupational therapist (or other service provider) to recommend or refer to a particular service provider, when it may not be in the best interests of the client. This may lead to occupational therapists either consciously or unconsciously providing limited or no choice, or biasing their provision of information regarding options.

This may also occur within an organisation between different parts of an organisation. In this instance, it is not technically a kickback, but incorporates many of the ethical conundrums of a kickback. For example, a

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company that provides support coordination or package provider supports may refer to occupational therapists within their organisation or within another organisation that they are financially connected to (e.g., a company that they hold shares in or ownership of). While there may not be inducements for individual referrals, the referrers could consciously or unconsciously be biased towards internal referrals even when the clients' needs may be met better by an external provider. This indirect demand inducement has been explored by Mitchell & Sass (1995), who found evidence for inducement effects with physician owned ancillary services. This should not preclude internal referrals, however the referrer should actively provide the client with informed choice regarding referrals. In many cases, an internal referral may be in the best interests of the clients (through minimising administrative burden or improved communications / multidisciplinary relationships). Client should, however, retain the right and be provided with explicit options to consider other options.

Internationally, kickbacks have been seen as unethical or unprofessional practice. For example, South African Legislation prohibits occupational therapists from receiving kickbacks (Van Der Reyden, 2010). In the United States of America, most states have adopted an Anti-Kickback Statute the prohibits health practitioners from providing remuneration for referrals for services payable by a federal program.

Clauses 136(b) and 136(c) of the superseded Queensland Occupational Therapists Registration Act 2001 specifically prohibited the receipt or provision of payments for referrals (i.e., referred to as kickbacks in the explanatory notes). This legislation was superseded when occupational therapists become nationally registered in 2012. Unfortunately, the national legislation (and state counterparts) under which occupational therapists are registered no longer explicitly refers to kickbacks. However, kickbacks may be considered an occurrence where "the practitioner's professional conduct is, or may be, of a lesser standard than that which might reasonably be expected of the practitioner by the public or the practitioner's professional peers" (Clause 144[1][a], Health Practitioner Regulation National Law [Queensland]) if the practitioner's professional peers' consensus was the kickbacks and inducements were unethical. In this case, it may be considered grounds for voluntary notification. The Australian Health Practitioner Regulation Agency Code of Conduct 2014 for registered health practitioners also explicitly states that health professionals must provide "treatment options based on the best available information and not influenced by financial gain or incentives" (clause 2.2[h]). Further detail is provided in clause 8.12(f) regarding declaration of financial interest and endorsement and sales of products. The Chiropractic Board of Australia provided further advice to its registrants regarding this clause in its July 2016 newsletter such that "practitioners, as detailed in the code… should not accept any inducement, gift or hospitality (for other than minimal value) from companies that are selling products or services to patients that have been referred by you to that company."

Recommendations

It is recommended that occupational therapists do not engage in receipt or provision of kickbacks or inducements. Should a third party (e.g., service provider, assistive technology supplier) initiate a conversation with an occupational therapist regarding a kickback or inducement agreement, the occupational therapist should advise the third party that these agreements are contrary to professional practice and may represent notifiable offences. They should be advised not to offer these agreements to any other registered health professionals.

It may be ethical to accept items or products from a supplier when it is not linked to a referral, prescription or any agreement for the occupational therapist to take a specific action. An example might be when a

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supplier provides an occupational therapist with a sample or trial item. These can be used to inform the occupational therapist's own knowledge about a product or for trial with a client. Another example might be a pen or measuring tape provided by a supplier in a general information pack or at a conference. In this case, the product may act as a visual reminder of the supplier when formulating options for clients. In any case, client should always be provided with informed choice about the referrals or products recommended (where more than one safe and applicable product applies) and in good practice would typically be provided with at least three (3) options. Accompanying information may include clinical information on the effectiveness and suitability of the service or products, as well as details such as the occupational therapist's experience or knowledge of the providers' timeliness of provision, prices, quality of goods/services, expertise, and after-sale service.

In the case of internal referrals, occupational therapists should be cognisant of providing choice where possible (e.g., this may not be possible where there is only one occupational therapist driving assessor in a region, or where there are a limited number of scheme-registered suppliers or builders). For example, an occupational therapist making a referral to a physiotherapist may offer options of internal referral as well as two (2) other referral options (e.g., other local organisations, telehealth providers where feasible). This does not necessarily apply to delegation of tasks to Therapy Assistants (where the occupational therapist is required to hold responsibility for the work of the Therapy Assistant), however in these cases occupational therapists should consider whether there are other viable, effective and safe options for the client (e.g., training of support workers or carers).

References

Mitchell, J.M., & Sass, T.R. (1995). Physician ownership of ancillary services: Indirect demand inducement or quality assurance? *Journal of Health Economics, 14*(3), 263-289.

Van Der Reyden, D. (2010). Legislation for everyday occupational therapy practice. *South African Journal of Occupational Therapy, 40*(3), 28-34.

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