

DEFENSIVE MEDICINE - DON'T FORGET IT CAN KILL YOU

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Doctors admit to 'defensive medicine' Survey finds 90% of Pennsylvania physicians make medical decisions based on avoiding suits

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By Christopher Snowbeck, Pittsburgh Post-Gazette

More than 90 percent of the Pennsylvania doctors surveyed on the impact of rising malpractice insurance premiums profess to engage in "defensive medicine" -- a catch-all term that includes everything from ordering unnecessary tests to passing off complicated patients.

The findings of the May 2003 survey of 824 physicians, all of whom practiced in specialties at high risk of litigation, could help explain why health care costs keep rising.

The findings are being published today in the Journal of the American Medical Association as part of a broader effort by the Pew Charitable Trusts to settle on some agreed-upon facts for the contentious debate about tort reform.

A related article finds that states that have adopted aggressive restrictions on medical malpractice lawsuits saw their supply of physicians grow faster between 1985 and 2001 than states that did not enact aggressive reforms.

But the supply of doctors also grew significantly in the other states, leading Dr. Peter P. Budetti of the University of Oklahoma Health Sciences Center to stress in an accompanying editorial that the study indicates the impact of tort reform on physician supply is "relatively modest."

While the new studies lend some credence to both sides of the argument on capping jury awards for Pennsylvania malpractice victims, an author of the reports said the growing body of research argues for more fundamental change.

"It is clear that both physicians and patients are victims of a seriously flawed malpractice system," said Dr. William M. Sage, a law professor at Columbia University and director of the Pew Charitable Trusts' Project on Medical Liability in Pennsylvania.

"In particular, the process of airing and resolving claims through litigation is destructive for all concerned, while the market and regulatory dynamics of malpractice insurance drive premiums into crisis cycles with pernicious consequences."

Virtually all the physicians who responded to the survey said they sometimes or often engaged in at least one of six forms of defensive medicine, procedures that in many cases were likely to add to health-care costs.

Fifty-nine percent said they often ordered more diagnostic tests than were medically indicated, and 52 percent said they often referred patients to other specialists even though such referrals were not really necessary.

The findings are likely to add to the suspicions of consumers struggling with increasing health care premiums.

Forty-two percent of the physicians surveyed said liability concerns had forced them to restrict some practices since 2000, from eliminating procedures prone to complications and avoiding patients with complex medical problems to avoiding patients who appeared litigious.

While the overall finding might sound dramatic, authors of the study noted several limitations.

For starters, distinctions between appropriate and inappropriate care are not clear in many clinical situations, they said, adding that it can be difficult to disentangle liability-related motivators from other factors.

What's more, physicians' reports on the use of defensive medicine may be biased toward responses that help the doctors achieve certain political goals, the authors said.

Twenty-one states enacted no reforms between 1985 and 2001, according to the study, and physician supply in those states increased by 61.3 percent. But in the 11 states that enacted direct reforms, physician supply grew by 69.5 percent.

The remaining 18 states either implemented "indirect" reforms, such as statute-of-limitation reforms, or a combination of direct and indirect reforms.

The impact of tort reform legislation on physician supply is further examined in a separate study being published today in the policy journal *Health Affairs*. The report finds that counties in states that cap damages had 2.2 percent more physicians per capita because of the cap, and rural counties in those states had 3.2 percent more physicians per capita.

Finally, another study in today's issue of Health Affairs reports that the average payment in medical malpractice cases grew 52 percent between 1991 and 2003, or 4 percent per year, and now exceeds \$12 per capita each year.

The increases were consistent with the overall growth in health care costs, the study found, and the Pew medical liability project's Sage noted that another recent study on payouts found that there has been remarkable stability in malpractice lawsuits and payouts over the last 15 years.

"We really do have a malpractice system that fails doctors and fails patients and we really do have to do something about that," Sage said. Pointing to a 2002 call from the federal Institute of Medicine for the government to fund demonstrations of innovative, comprehensive malpractice reform, Sage added: "It is time to make those funds available."

On the Internet

Read more about the study and also listen to a conference call with project researchers