

High Physician Concern About Malpractice Risk Predicts More Aggressive Diagnostic Testing In Office-Based Practice

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Abstract

Despite widespread agreement that physicians who practice defensive medicine drive up health care costs, the extent to which defensive medicine increases costs is unclear. The differences in findings to date stem in part from the use of two distinct approaches for assessing physicians' perceived malpractice risk. In this study we used an alternative strategy: We linked physicians' responses regarding their levels of malpractice concern as reported in the 2008 Health Tracking Physician Survey to Medicare Parts A and B claims for the patients they treated during the study period, 2007–09. We found that physicians who reported a high level of malpractice concern were most likely to engage in practices that would be considered defensive when diagnosing patients who visited their offices with new complaints of chest pain, headache, or lower back pain. No consistent relationship was seen, however, when state-level indicators of malpractice risk replaced self-rated concern. Reducing defensive medicine may require approaches focused on physicians' perceptions of legal risk and the underlying factors driving those perceptions.

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Medicare patients receive more diagnostic tests and emergency department referrals when treated by physicians who worry more about malpractice liability, regardless of whether states have adopted common malpractice tort reforms.

According to a study by the Center for Studying Health System Change (HSC) in the August Health Affairs, physicians' perception of their risk—rather than their actual risk—of malpractice liability predicts their practice of defensive medicine.

The findings suggest that traditional malpractice reforms, such as caps on damages, don't change how physicians practice.

Funded by the National Institute for Health Care Reform, the study breaks new ground, according to the researchers, by analyzing office-based physicians' concerns about malpractice liability and the actual tests and emergency referrals—based on claims data—they ordered for elderly Medicare patients with new complaints of chest pain, headache and lower-back pain. Across the conditions, patients whose physicians reported higher levels of malpractice concern received more services, the study found.

For example, patients with chest pain were more likely to be referred to the emergency department if their physician had a high or medium level of malpractice concern, according to the study. Likewise, patients with a headache were more likely to receive advanced imaging of the brain, such as a CT or MRI scan, if their physicians had high levels of malpractice concern.

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In contrast, when researchers compared physicians' level of malpractice concern with objective state-level indicators of malpractice liability risk, such as whether a state caps economic damages, they found no consistent relationships. In a few cases, care use was lower in states with a higher level of measured malpractice liability risk.

"Traditional malpractice liability reforms don't appear to resolve the concerns that drive physicians to practice defensive medicine," said Emily R. Carrier, M.D., an HSC senior researcher and coauthor of the study with James D. Reschovsky, Ph.D., an HSC senior fellow; David Katz, M.D., an associate professor at the University of Iowa; and Michelle M. Mello, Ph.D., J.D., a professor at the Harvard School of Public Health.

"Dealing with defensive medicine, which not only increases costs but subjects patients to unnecessary care, may require reassuring physicians that medical injuries can be resolved in less adversarial and stressful ways while still protecting patients, Carrier said.

According to these researchers, past malpractice research has focused on physician self-reports of how they would treat hypothetical patients and various measures of liability risk, including state-level malpractice insurance premiums and tort reforms, such as caps on damages. These studies generated conflicting results, leading to disagreements about the role of defensive medicine in the overuse of care, they said.

By comparing claims for physicians who report high levels of malpractice concern with claims for physicians with less concern, the study provides a new picture of the two groups' actual practice behavior, according to the study.

The Health Affairs article, titled "High Physician Concern About Malpractice Risk Predicts More Aggressive Diagnostic Testing in Office-Based Practice," is based on a national sample of elderly Medicare fee-for-service beneficiaries linked to HSC's 2008 Health Tracking Physician Survey. The study included Medicare Part A and B claims from nearly 1.9 million beneficiaries who received services from 3,469 physician survey respondents in 2007-09.

The Center for Studying Health System Change is a nonpartisan policy research organization. Based in Washington, D.C., HSC is affiliated with Mathematica Policy Research.

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Practice Management

Doc's Level of Liability Worry Drives Testing

Published: Aug 5, 2013

By [David Pittman](#), Washington Correspondent,
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Office-based physicians who reported a high level of concern about medical malpractice lawsuits were more likely to practice defensive medicine, ordering aggressive diagnostic testing, a review of Medicare claims and physician surveys found.

For instance, physicians with a high or medium level of malpractice concern were more likely to refer patients with chest pain to the ED (3.4% and 3.7% respectively) than were physicians with a low level of malpractice concern (2.5%). Both differences were significant at $P \leq 0.05$, according to a study published in the August issue of *Health Affairs*.

Similarly, when confronted with a patient complaining of headache, 11.5% of those with a high level of concern were more likely to order advanced imaging compared with 8.5% of those with medium concern and 6.4% of those with a low level of concern. The difference between those with a high level of concern was significant at $P \leq 0.05$ for both of the lower levels.

"Malpractice reform alone is unlikely to solve the problem of overuse of healthcare services, which has multiple drivers," [Emily Carrier, MD](#), senior researcher at the Center for Studying Health System Change in Washington, and colleagues wrote. "Our study suggests that innovative reforms that address the underlying causes of defensive medicine have

potential rewards far beyond their advantages for individual patients and clinicians -- rewards that make them worth pursuing."

Carrier and colleagues linked results of the [2008 Health Tracking Physician Survey](#) from the researchers' Center for [Studying Health System Change](#) with Medicare Parts A and B claims from 2007 to 2009. The survey had a 62% response rate and nearly 3,500 respondents and the Medicare claims included roughly 1.9 million patients.

The researchers analyzed the 29,079 Medicare patients who presented to a physician's office with either chest pain, headache, or lower back pain to see how they were treated.

Contrary to their colleagues, physicians who had a low level of concern about malpractice risk were more likely to order stress testing (19.4%, $P \leq 0.05$) than were their colleagues who were most afraid of liability suits.

Results were similar for patients with lower-back pain, with 29% of most concerned physicians ordering conventional imaging and 6.1% ordering advanced imaging compared with 17.6% and 4.1% respectively of least concerned physicians. Again, differences were significant at $P \leq 0.05$.

The researchers found no association between physicians' malpractice concerns and services ordered for patients who initially visited an emergency department rather than a physician's office.

"One possible explanation for this finding is that emergency physicians have incorporated defensive practices into their routine care, so that even those who perceive themselves to have low levels of malpractice concern already practice in a defensive manner," the authors wrote.

Although they found physicians' perceived risk was more likely to affect the services they ordered, "these effects were not observed when state-level measures of malpractice risk were used in lieu of individual physicians' reported concerns," Carrier and colleagues said.

One explanation is that state tort reform efforts don't reduce physicians' level of malpractice concern, and doctors operate under perceived rather than actual risk, they wrote. Policymakers may want to target the underlying causes of physicians' malpractice concerns to reduce the practice of defensive medicine, they suggested.

"Being sued is associated with substantial distress for physicians, but tort reforms are generally aimed at lowering the cost of eventual payouts to the exclusion of other approaches," the authors wrote. "Physicians' extreme dread of malpractice litigation may stem from their perception that it is unpredictable, uncontrollable, and potentially disastrous both financially and psychologically."

Policymakers can educate clinicians on certain facts about malpractice suits such as:

- Physicians greatly overestimate the risk of being sued
- Only about one in 50 injuries caused by negligence result in a claim
- Lawsuits are almost never settled for amounts in excess of a physician's insurance policy
- Malpractice plaintiffs lose four out of five trials

Carrier and colleagues said previous studies have focused on care in the hospital setting rather than physicians' offices.

"Furthermore, our study helps reconcile the discrepancy between prior estimates of the cost of defensive medicine based on physician surveys and those based on state-to-state comparisons of defensive medicine," they stated.

Primary source: Health Affairs

Source reference: Carrier ER, et al "High physician concern about malpractice risk predicts more aggressive diagnostic testing in office-based practice" *Health Affairs* Aug. 2013; DOI: 10.1377/hlthaff.2013.0233.

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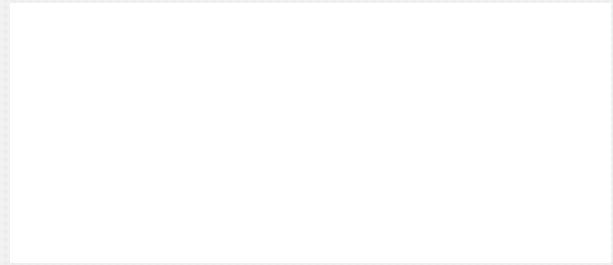
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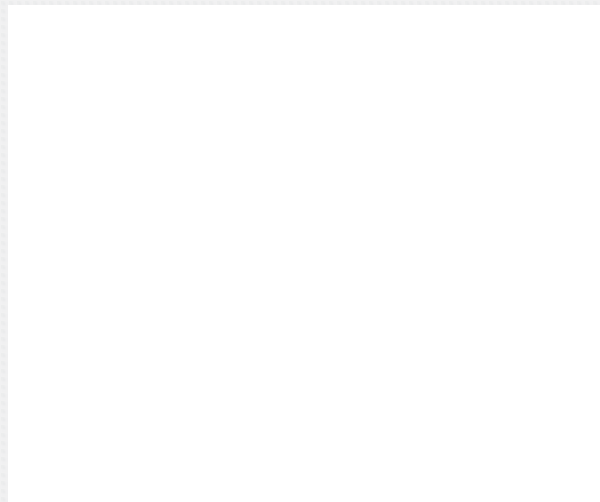
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