



Rx: Health Care FYI #16

Subject: *Ending Defensive Medicine*
From: *Rep. Tim Murphy (PA-18)*

The problem: Defensive medicine occurs when medical procedures are undertaken to avoid liability rather than to directly benefit the patient.

- Defensive medicine increases the health care costs to the Federal Government by \$23.66-42.59 billion per year.¹
- A national survey of physicians, hospital based nurses and administrators found that the majority of doctors are practicing defensive medicine. For example, although doctors acknowledge it was not medically necessary:
 - 79% of doctors ordered additional medical tests.
 - 74% of doctors referred patients to specialists.
 - 51% of doctors suggested invasive procedures, such as biopsies.
 - 41% of doctors prescribed additional medications, such as antibiotics.²
- Defensive medicine takes a toll on the patient-physician relationship. Doctors often agree to patient demands for expensive and unnecessary diagnostic studies or refuse to care for patients with prior complications, noncompliant patients, workers' compensation cases, and obese persons.³

An example of defensive medicine: Pennsylvania:⁴

- Pennsylvania's medical liability law does not place caps on medical liability. However, it does restrict change in venue, limits the filing of lawsuits to within two years of an incident and allows for proportional liability.
- However, over 90% of doctors in six specialties (emergency medicine, general surgery, orthopedic surgery, neurosurgery, obstetrics/gynecology, and radiology) acknowledge practicing defensive medicine.
- 43% of doctors reported using imaging technology in clinically unnecessary circumstances.
- Over 50% of doctors referred patients to other specialists in unnecessary circumstances.
- 70% of emergency physicians ordered additional diagnostic tests.
- 1/3 report prescribing more medications than were medically required.
- 60%, except for neurosurgery, reported using unwarranted invasive procedures.

¹ U.S. Department of Health and Human Services. Office of the Assistant Secretary for Planning and Evaluation. *Confronting the New Health Care Crisis: Improving Health Care Quality and Lowering Costs By Fixing Our Medical Liability System*. July 2002.

² Common Good Fear of Litigation Study: The Impact on Medicine, conducted by Harris Interactive, April 11, 2002; Harris Interactive Survey, May 2004

³ Mello MM, Studdert DM, DesRoches CM, et al. Caring for patients in a malpractice crisis. *Health Affairs*. (Millwood). 2004;23:42-53.

⁴ Studdert. David. Et.al. Defensive Medicine Among High-Risk Specialist Physicians in a Volatile Malpractice Environment. *Journal of the American Medical Association*. June 1, 2005.

- 42% percent have taken steps to restrict their practice including eliminating procedures such as trauma surgery and avoiding patients who had complex medical problems.

Reducing defensive medicine saves money and increases the number of doctors:

- The U.S. Department of Health and Human Services (HHS) estimates that medical liability reforms would lead to a 5% to 9% decrease in medical expenses associated with defensive medicine. When applied to the Federal Government, savings from reduced defensive medicine would range from \$28.1 billion to \$50.6 billion.⁵
- In tort-friendly states such as Pennsylvania, New York, New Jersey, West Virginia and Florida, defensive medicine costs each person anywhere from \$320-\$536 per year in extra health care spending. In California, which has caps, it is typically less than half that amount or just \$182.⁶
- Counties in states with a cap on non-economic damages had 2-3% more physicians per capita.⁷
- Rural counties in states with a \$250,000 cap had 5% more specialists per capita than did rural counties in states with a cap above \$250,000.⁶

The federal government's role:

- In April 2005, the Centers for Medicare and Medicaid Services (CMS) began the Physician Group Practice (PGP) Demonstration -- the first pay-for-performance initiative for physicians under the Medicare program. During the three-year project, CMS will reward physician groups that reduce the practice of defensive medicine by improving patient outcomes through the coordination of care for chronically ill and high cost beneficiaries.
- The U.S. Congress twice passed legislation in the 108th Congress that would have placed a cap on punitive medical liability damages to reduce the practice of defensive medicine. However, this measure failed to pass the Senate.

Recommendations:

- Educate patients to review medical decisions with their doctors in order to eliminate unnecessary tests and procedures and cut the practice of defensive medicine.
- Pass federal legislation to reduce junk lawsuits.
- Work with the U.S. Department of Health and Human Services to develop clinical guidelines that target common defensive practices.

⁵ U.S. Department of Health and Human Services. Office of the Assistant Secretary for Planning and Evaluation. Addressing the New Health Care Crisis: Reforming the Medical Litigation System to Improve the Quality of Health Care. March 2003.

⁶ American College of Surgeons: Tillinghast Tort Cost Trends 2000 Report, NORCAL Mutual Insurance, February 4, 2003.

⁷ Encinosa, William. Have State Caps On Malpractice Awards Increased The Supply Of Physicians? Health Affairs. June 1, 2005.

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