

Lawsuit-wary docs drive up costs with unnecessary tests



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Ed Homan, an orthopedic surgeon in Tampa, often sees patients complaining of knee pain. Based on a \$40 X-ray and his 40 years of experience, he can usually tell if it is only a sprain.

But there's also a remote chance the pain is caused by a malignant tumor. Rather than risk being sued for a wrong diagnosis, Homan may order an \$800 CT scan.

"You want to make sure you don't make any mistakes," he says. "There's a question of where the line is between very thorough, good medicine and where it becomes defensive medicine."

Concern over the nation's soaring health care costs has increasingly focused on defensive medicine — unnecessary tests, procedures, referrals and consultations ordered by physicians who are afraid of being slapped with lawsuits.

"I've talked to enough doctors," President Barack Obama said in his recent speech to Congress, "to know that defensive medicine may be contributing to unnecessary costs."

Given the difficulty in determining whether a test is needed — if a patient doesn't have cancer does that mean a CT scan was unnecessary? — it is difficult to say how much defensive practices contribute to the nation's \$2 trillion-plus annual health care bill.

Recent studies peg the annual cost of defensive medicine at \$100 billion to \$200 billion.

A survey of Massachusetts doctors found that 83 percent had ordered unnecessary tests, hospital admissions and referrals at a cost of \$1.4 billion a year in that state alone.

Nor is Massachusetts unique.

In South Florida, home to some of the nation's largest medical malpractice awards, "there is a palpable fear of being sued," says Dr. Arthur Palamara, a vascular surgeon in Hollywood.

Palamara often sees patients with swollen legs, a condition that sometimes can be cured by something as simple as losing weight. But because the swelling might be caused by a tumor — a chance so remote he has had only one case in 30 years — he frequently orders a CT scan of the abdomen to rule out cancer.

"You don't want to be sitting there on the witness stand with a guy saying that because you did not order a test, the patient lost his legs," Palamara says. "That mentality is certainly in this state and perhaps in the entire country."

Know-it-all patients

Defensive medicine not only drives up health care costs, it can also hurt a patient's health.

A study in the *Journal of the American Medical Association* found that women are particularly vulnerable because gynecologists, afraid of being sued if they fail to detect cancer, may order breast biopsies or other invasive tests that carry their own risks.



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Barb Gartland, 63, of Palm Harbor says she went to three doctors because of headaches and double vision and none ordered tests. She suffered a stroke that left her unable to work.

Moreover, defensive use of MRIs, CT scans and other technology tends to be self-reinforcing. The more doctors order such tests, "the more likely such practices are to become the legal standard of care," the report said.

They also become the standard by which patients judge their doctors.

Dr. Malcolm Root, a Tampa urologist, gets frustrated by patients who go on the Internet and "self-diagnose," as he puts it. Convinced they have a kidney stone, they demand advanced imaging tests when a simple \$5 urinalysis might be all that is needed for a correct diagnosis.

"I have patients who insist I'm not living up to the standard of care if I don't order a CT scan," Root says. "People have to understand they can't have every test right away, or the system will go bankrupt faster than it already is. Doctors have to be allowed to use their judgment without worry they'll be second-guessed in a court of law."

Contributing to the proliferation of tests is another factor: Insured patients often have no idea of a test's true cost because they are responsible only for a small co-payment.

"For an MRI, they say 'It's only going to cost me \$10,' " notes Homan, the Tampa orthopedist. "But wait a minute, it's going to cost somebody \$800 for your MRI and all your friends' MRIs, and that's why your health insurance costs are so much."

Homan sometimes orders the tests anyway.

"They're going to go to somebody else, so instead of cutting down the cost of health care, they're adding to it now by paying two doctors to get the MRI they want."

Defensive medicine is most common in high-risk specialties like obstetrics, neurosurgery and emergency medicine. Many things can go wrong in a busy ER where doctors treat dozens of patients a day, often without knowing anything about their general health or medical histories.

"Every shift I work in the ER, I order at least \$50,000 of unnecessary tests," says Dr. Scott Plantz, a St. Petersburg emergency room doctor. "Why? To protect myself from lawsuits."

Lawyers not to blame?

Is a doctor's risk of being sued and hit with a big judgment really great enough to warrant so much questionable testing?

A 2006 report in the *New England Journal of Medicine* found that the "great majority" of patients who sustain medical injuries don't sue, and that claims of frivolous litigation are "overblown."

In Florida, "there's this misconception that exists — I think intentionally for political purposes — that you can just go file a lawsuit against a doctor because you want to," says Wil Florin, a Clearwater personal injury attorney.

Florin gets about 75 calls a month from people alleging malpractice. Of those he accepts two or three cases on contingency. And before a suit can be filed, the records must be reviewed by a doctor in the same speciality.

"It is not cheap to prosecute these cases," says Florin, who estimates he spends at least \$100,000 on every suit he tries. "If I lose the case, I'm out the money and an enormous amount of time. Why in the world would I ever spend my time on a frivolous case?"

Among Florin's recent clients: Barb Gartland, 63, who went to three doctors complaining of headaches and double vision. Though she had several risk factors for stroke, none of the doctors did any tests. On March 4, 2008, she suffered a massive stroke that has left her with slurred speech and unable to drive or work.

"It really makes you think about the people whose hands you're putting your life in," says Gartland, who settled for a confidential sum.

And it's the fear of being sued in cases like that, doctors say, that keeps them ordering test after test.

"Every test is going to be necessary so it's not necessary for the plaintiff's attorney to sue you," says Homan, the Tampa orthopedist.

Homan, who is also a state representative, notes that malpractice insurance premiums for doctors in Florida remain relatively high despite a cap, generally \$500,000, on damages for pain and suffering.

Like most other doctors, he thinks Florida should follow the lead of Texas, which capped noneconomic damages at \$250,000 six years ago. Since then, the number of medical malpractice suits has dropped by roughly half and liability premiums have declined more than 30 percent.

But the *Fort Worth Star-Telegram* found that health care spending has still grown faster in Texas than in the rest of the country.

Doctors acknowledge that changes in the malpractice system alone aren't enough to rein in the high costs of defensive medicine. Electronic record-keeping would make it easier to tell what tests a patient has had or might require. Reducing the nation's high obesity rate would make it less likely people needed any tests at all.

"Everything we can do to promote health saves money in the health care system," Homan says. "If you want to lower health care costs, lose weight, exercise — don't wait until a third of the country is diabetic. But nobody is talking about that. They're just talking about who's going to pay."

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