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Block 5 CAT 2

Reference Article: Waxman, Daniel A., MD, PhD. "The Effect of Malpractice Reform on Emergency Dept Care." The New England Journal of Medicine. 10/16/2014. 371(16), 1518-1526.

Question: Do changes in legislation that change the malpractice standard for emergency care to gross negligence change the way physicians practice, overall use of resources, and overall cost of healthcare?

Background: Defensive medicine is considered by many to be a major source of wasteful spending, estimated to cost \$210 billion annually. Physicians report a fear of lawsuits as a strong influence in their practice. Previous studies have not shown significant changes in medical practice or cost with changes in legislation. Up until recently, though, most laws limited the size of the lawsuit award, but did not make it harder to establish malpractice in the first place. It is thought that this does not change physician practice because they do not want to feel they have deviated from the customary practice or have been "negligent" even if the punishment is minimal. 10 years ago, TX, GA, and SC changed their malpractice standard for emergency care to "gross negligence." Under this standard a plaintiff must show that a physician had "actual subjective awareness of the likelihood of a serious injury" but proceeded with "conscious indifference." In the past, physicians have cited ordering imaging studies, recommending hospital admission, or ordering other tests that increase per visit charges as the most common examples of defensive practices.

Methods: In a Retrospective study, 5% of Medicare claims were randomly chosen from 1997 to 2011 from TX, GA, and SC as well as 5 neighboring states which served as controls. Attempts were made to control for variables such as teaching institution vs. private institution, etc. Patients were excluded if they were seen at hospitals that did not have inpatient admissions. Use of one or more advanced imaging studies (CT/MRI), admission versus discharge from the ED, and total charges for the visit were evaluated in these patients. Data was analyzed from the states above both before and after the reform and compared to control states. Patients were also separated based on age, sex, race, and principle discharge diagnosis.

Results: 3,858,110 emergency department visits in 1,166 eligible hospitals were studied. The proportion of patients who underwent CT or MRI increased each year in the reform states and in the control states. The proportion of patients who were admitted to the hospital declined in both groups. Georgia had a 3.6% reduction in total charges after the reforms were passed. Texas and SC showed no change.

Discussion: Malpractice reform changing the liability standard for emergency care from ordinary negligence to gross negligence for Emergency Physicians did not decrease practice intensity as measured by use of advance imaging and rate of hospital admission. Overall cost did decrease in Georgia, but this was not seen in Texas or SC. It is possible that physicians do not believe that they are fully protected by these laws, but the number of lawsuits in these states after passage of these laws was significantly less. In TX, for example, after passage of these laws, there was a 60% reduction in malpractice claims filed and 70% reduction in malpractice payments. Some legal community blogs have stated the gross negligence standard provides "virtual immunity" to emergency physicians (although this was not seen in actuality as lawsuits and payments were still made.) These results suggest that the use of emergency department imaging and overall ED cost is unlikely to be affected by malpractice reform alone.

Limitations: Since the data used was from Medicare patients, the average age of patients enrolled in the study was 65-70. This population would be expected to have more pathology and require more CT scans and MRIs as well as more likely to require admission. They note that Medicare trends have paralleled the general population in similar studies in the past, but there was no attempt made to evaluate for this in this study. Intuitively it would seem reform such as this would have a larger impact on a younger population. Being a retrospective study, ordering physicians were not

questioned beforehand to evaluate their knowledge of the changes made. While this does sound like significant reform which would likely be communicated to physicians, when and how well this is understood by the average doctor working in a busy ER is unknown.

Bottom Line: Many factors are involved in determining whether an imaging study, other lab tests, or admission are needed for a patient in the ER. While fear of lawsuits is one factor in that decision, this may not be the primary factor. To reduce healthcare costs, a multidimensional approach including legal reform, physician and patient education, and even a change in the way health care is paid for will likely be necessary.
