

Health care dispute: Costs of defensive medicine

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In this Oct. 23, 2009, photo, Dr. James Wang, right, meets with a patient in his office in Springfield, Mass. After he was sued for allegedly failing to quickly diagnose an appendicitis, Dr. Wang began practice "defensive medicine" -- ordering extra tests, scans, consultations and even hospitalizations to inoculate himself against future lawsuits. (AP Photo/Jessica Hill)

(AP) -- Dr. James Wang says he tries to tell his patients when extra medical procedures aren't necessary. If they insist, though, he will do it - not so much to protect their health as his own practice.

After being sued for allegedly failing to diagnose a case of appendicitis, Wang says he turned to what's known as "defensive medicine," ordering extra tests, scans, consultations and even hospitalization to protect against malpractice suits.

"You are thinking about what can I do to prevent this from happening again," he said, adding that he did nothing wrong but agreed to a minor settlement to avoid a trial.

The practice is under scrutiny as Congress attempts to get an accurate price tag for the sweeping national [health care](#) overhaul. A pivotal floor vote on the Democrats' bill could come as early as Saturday.

Doctors say the hidden costs of the tests along with malpractice insurance and lawsuit awards are major drivers behind the soaring cost of care. Trial attorneys say bad medicine, not lawsuits, is to blame.

The debate has split along party lines, with Democrats typically siding with lawyers groups and Republicans agreeing with doctors.

The feuding between doctors' groups like the American Medical Association, who have long battled rising malpractice premiums, and trial attorneys, who say malpractice lawsuits discourage bad medicine, has made it tough to put an accurate price tag on the cost of the issues.

That, in turn, is hampering Congress from getting an accurate tally for any sweeping national health care overhaul as it seeks to balance those costs against expanded coverage.

Doctors say the price of defensive medicine and malpractice insurance accounts for up to 10 percent of [health care spending](#). Lawyers say malpractice settlement costs amount to less than 0.5 percent of the \$2.5 trillion spent each year on health care.

The cost of annual malpractice premiums can vary wildly depending on specialty, geographic location and [insurance](#) carrier.

Doctors practicing internal medicine, who typically have the lowest

premiums, can pay as little as \$3,375 in Minnesota and as much as \$57,859 in Florida. Obstetricians and gynecologists, who typically have the highest premiums, can spend as much as \$201,808 in Florida and as little as \$20,626 in Minnesota, according to the Medical Liability Monitor, which tracks premiums costs.

Although Wang, an OB-GYN, said he typically avoids extra procedures and takes time to explain to patients when they are not necessary, he will sign off on them if a patient demands.

"It's one thing to order up a test to protect my patients," Wang said. "It's something else if I order up a test to protect myself."

And, doctors say, defensive medicine can also produce a snowball effect, with one unnecessary test leading to more unnecessary tests.

More than 80 percent of the nearly 900 doctors who responded to a 2008 survey by the Massachusetts Medical Society reported practicing defensive medicine. The group estimated the cost of the extra tests at \$281 million and the cost of unnecessary hospital admissions at \$1.1 billion.

A 2005 study of 824 doctors in Pennsylvania by researchers at the Harvard School of Public Health and Columbia Law School found 93 percent reported practicing defensive medicine.

Lawyers fault the studies, noting they rely on self-reporting by doctors.

They also argued some doctors have a financial interest in laboratories that conduct extra tests or procedures - a conflict of interest they say could add to the level of unnecessary tests. Doctors say it's fear of lawsuits, not financial incentives, that is driving the extra testing.

American Medical Association ethical guidelines state that doctors must "always make referral decisions based on the best interests of their patients" and "under no circumstances may physicians place their own financial interests above the welfare of their patients."

Lawyers defend the use of malpractice claims saying they discourage bad medicine and guard patients' rights.

"Medical malpractice lawsuits bring to the forefront how faulty and flawed the whole system is," said Jeffrey Catalano, a trial attorney specializing in malpractice cases. "The reason for escalating costs is that too many people are getting injured by preventable medical mistakes."

A 2009 analysis from the nonpartisan Congressional Budget Office estimates that government health care programs could save \$41 billion over 10 years if nationwide limits on jury awards for pain and suffering and other similar curbs were enacted. Those savings are nearly 10 times greater than CBO estimated just last year.

As Congress examines what to do about the issues, some places are examining programs and proposals to limit those costs.

The University of Michigan Health System uses a system that allows doctors to acknowledge mistakes and offer compensation, saving time, money and feelings. As a result, according to the university, malpractice claims fell from 121 in 2001 to 61 in 2006, while the backlog of open claims dropped from 262 in 2001 to 106 in 2006 and 83 in 2007.

The drive for less adversarial approaches has also sparked a "just say sorry" movement, trumpeted in part by the Sorry Works! Coalition, which advocates for disclosure, an apology when appropriate and prompt compensation when necessary.

Not everyone is enamored with the movement.

"An apology just means that the doctor is going to tell the truth," said Chris Milne, president of the Massachusetts Academy of Trial Attorneys.

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