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Giving physicians immunity from malpractice claims does not reduce 'defensive medicine'

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Changing laws to make it more difficult to sue physicians for medical malpractice may not reduce the amount of "defensive medicine" practiced by physicians, according to a new RAND Corporation study.

Studying the behavior of emergency physicians in three states that raised the standard for malpractice in the emergency room to gross negligence, researchers found that strong new legal protections did not translate into less-expensive care.

The findings are published in the Oct. 16 edition of the *New England Journal of Medicine*.

"Our findings suggest that malpractice reform may have less effect on costs than has been projected by conventional wisdom," said Dr. Daniel A. Waxman, the study's lead author and a researcher at RAND, a nonprofit research organization. "Physicians say they order unnecessary tests strictly out of fear of being sued, but our results suggest the story is more complicated."

It is widely said that defensive medicine accounts for a substantial part of the hundreds of billions of dollars of unnecessary health care spending that is estimated to occur annually in the United States. Malpractice reform has been advocated by many experts as a key to reining in health care costs.

RAND researchers looked at three states—Georgia, Texas and South Carolina—that about a decade ago changed the legal malpractice standard for emergency care to gross negligence. Other states use the more common ordinary negligence standard, or a failure to exercise reasonable care.

The higher standard means that for physicians accused of malpractice in the three states examined, plaintiffs must prove that doctors consciously disregarded the need to use reasonable care, knowing full well that their actions were likely to cause serious injury.

"These malpractice reforms have been said to provide virtual immunity against lawsuits," said Waxman, who also is an emergency medicine physician at the David Geffen School of Medicine at UCLA.

Researchers examined 3.8 million Medicare patient records from 1,166 hospital emergency departments from 1997 to 2011. They compared care in the three reform states, before and after the statutes took effect, to care in neighboring states that did not pass malpractice reform.

The study examined whether physicians ordered an advanced imaging study (CT or MRI scan), whether the patient was hospitalized after the emergency visit and total charges for the visit. Advanced imaging and hospitalization are among the most costly consequences of an emergency room visit, and physicians themselves have identified them as common defensive medicine practices.

The malpractice reform laws had no effect on the use of imaging or on the rate of hospitalization following emergency visits. For two of the states, Texas and South Carolina, the law did not appear to cause any reduction in charges. Relative to neighboring states, Georgia saw a small drop of 3.6 percent in average emergency room charges following its 2005 reform.

"This study suggests that even when the risk of being sued for malpractice decreases, the path of least resistance still may favor resource-intensive care, at least in hospital emergency departments," Waxman said.

Provided by RAND Corporation