Overview

In October 2009, Jackson Healthcare conducted a national survey of physicians to qualify their attitudes regarding the practice of medicine in light of the healthcare reform environment. In their open-ended responses, defensive medicine was an issue consistently offered by physicians as the primary problem driving healthcare costs. Survey participants reported that medically unnecessary diagnostic and treatment services were being ordered in an effort to avoid lawsuits.

Jackson Healthcare believed this issue merited further exploration and quantification. Our secondary research found no publicly reported research that quantified the extent and economic impact of defensive medical practices among U.S. physicians.

In December 2009, Jackson Healthcare polled physicians again to quantify the scope and impact of defensive medicine practices. Jackson believed physicians were the most reliable source to quantify unnecessary medical activities, since physicians drive all healthcare expenses through their orders. Survey participants estimated that 34 percent of overall healthcare costs is attributable to defensive medicine. Nine out of 10 physicians reported practicing defensive medicine. In Texas, where tort reform legislation was passed in 2001, physicians’ defensive medicine practices were no less than the overall participant average.

Based upon these findings, and in an effort to validate the scope and impact of defensive medicine, Jackson Healthcare retained Gallup to conduct an independent national physician poll using their world-renown methodology. Gallup’s findings, though more conservative than Jackson’s, found that physicians attribute 26 percent of overall healthcare costs to the practice of defensive medicine. Of the physicians surveyed, 73 percent agreed that they had practiced some form of defensive medicine in the past 12 months.
Bottom Line
A report from The Centers for Medicare and Medicaid Services recently estimated overall U.S. healthcare spending in 2009 to be $2.5 trillion. If physician estimates are accurate, according to Gallup and Jackson surveys, between $650 billion and $850 billion are being spent each year due to defensive, or lawsuit-driven, medicine.

Jackson Healthcare’s online survey also found that the impact of defensive medicine practices extends beyond inflating costs. Its consequences are 1) limiting access to care for high-risk patients, 2) over- and under-treating patients with life-threatening illnesses, and 3) fostering distrust among patients and their physicians, which has resulted in lowered physician morale and manpower.

As long as physicians are personally financially liable for medical errors or omissions, they will continue to practice defensive medicine, because they have to put their careers, reputations and personal net worth at risk every day. This is placing an unnecessary burden on patients by subjecting them to unnecessary tests and treatments, while inflating their out-of-pocket expenditures.

Key Findings from Gallup Survey
- Physicians attribute 26 percent of overall healthcare costs to the practice of defensive medicine
- Of the physicians surveyed, 73 percent agreed that they had practiced some form of defensive medicine in the past 12 months
- Physicians indicating they had practiced a form of defensive medicine in the last twelve months attribute 21 percent of their practice to be defensive in nature
Key Findings from Jackson Healthcare Survey

- Physicians attributed **34 percent of overall healthcare costs** to defensive medicine.

- **Nine out of 10 physicians** (92 percent) reported practicing defensive medicine.

- In cases of true negligence, **nine out of 10** (89 percent) physicians agree that patients receiving negligent treatment should be compensated.

- **Emergency room, primary care and OB/GYN** physicians are most likely to practice defensive medicine.

- **Younger physicians** and **female physicians** reported less tolerance for risk and are more likely to practice defensive medicine.

- Physicians who reported practicing defensive medicine, estimated the following:
  - 35 percent of diagnostic tests were ordered to avoid lawsuits
  - 29 percent of lab tests were ordered to avoid lawsuits
  - 19 percent of hospitalizations were ordered to avoid lawsuits
  - 14 percent of prescriptions were ordered to avoid lawsuits
  - 8 percent of surgeries were performed to avoid lawsuits

- Consequences reported to exist beyond the threat of the courtroom, included:
  - Practicing “**rule-out medicine**” vs. “diagnostic medicine”
  - Physicians appear afraid to trust their own clinical judgment and trust first-round tests, resulting in **tests to confirm the results of tests**
  - Physicians expressed concern over not only missing a diagnosis, but being charged with delay in diagnosis
  - Patients are viewed as plaintiffs, not partners
  - Patient access to medical information and self-diagnoses via the web has increased physician compliance with patient demands in an effort to avoid lawsuits
  - **Physicians avoid high risk patients**, because a bad outcome increases chances of litigation
Physicians avoid procedures and practices that would increase medical malpractice insurance premiums, thereby limiting patient access to treatment.

Physicians are considering leaving the profession.

Conclusions
An opportunity exists to save $6.5 trillion over the next 10 years. However, traditional tort reform will not solve this problem. It may reduce malpractice costs, but until physicians are protected from being personally liable for unintended mistakes and omissions, they will continue ordering unnecessary tests and treatments to avoid lawsuits.

Gallup Survey Methodology
Between December 2009 and January 2010, Gallup conducted telephone interviews with 462 randomly selected practicing physicians from across the U.S.

Jackson Healthcare Survey Methodology
In December 2009, Jackson Healthcare invited 138,686 physicians to participate in a confidential online survey in an effort to quantify the costs and impact of defensive medicine. Over 3,000 physicians spanning all states and medical specialties completed the survey, a 2.21 percent response rate. The survey error range is at the 95% confidence level: +/-1.15 percent.

The following definition was cited in the survey: “Defensive medicine is the practice of diagnostic or therapeutic measures conducted primarily not to ensure the health of the patient, but as a safeguard against possible malpractice liability. Fear of litigation has been cited as the driving force behind defensive medicine. Defensive medicine is especially common in the United States of America, with rates as high as 79% to 93%, particularly in emergency medicine, obstetrics, and other high-risk specialties.”
“Defensive medicine takes two main forms: assurance behavior and avoidance behavior. Assurance behavior involves the charging of additional, unnecessary services in order to a) reduce adverse outcomes, b) deter patients from filing medical malpractice claims, or c) provide documented evidence that the practitioner is practicing according to the standard of care, so that if, in the future, legal action is initiated, liability can be pre-empted. Avoidance behavior occurs when providers refuse to participate in high risk procedures or circumstances.

“Theoretical arguments based on utilitarianism conclude that defensive medicine is, on average, harmful to patients.”

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