Treatment not medically necessary? Doctors facing more scrutiny from payers

However malpractice suits often allege failure to order test

Physicians are facing increasing pressure from payers to stop ordering tests deemed not medically necessary. Yet failing to order diagnostic tests can leave physicians legally vulnerable.

Many physicians are trying to cut back on unnecessary diagnostic tests, says David P. Sousa, JD, senior vice president and general counsel at Medical Mutual Insurance Co. of North Carolina in Raleigh. “This is particularly true in jurisdictions where there has been medical liability reform that gives physicians some protection,” he says.

Jon M. Pellett, JD, an attorney of counsel with Barr, Murman, & Tonelli in Tampa, FL, says that when he represents physicians facing state licensing board complaints, he doesn’t see many allegations against doctors for performing unnecessary diagnostic testing. “Usually the allegation is that they failed to do a test that they should have done, as opposed to doing more testing than is needed,” he says.

Payers are looking at testing

Payers are looking much more closely at whether diagnostic tests are necessary, however.

“From a financial point of view, there is pressure to stop unnecessary testing,” says Pellett. “What I’m seeing is an increase in questioning of medical necessity for doctors that are being more thorough than the programs would like them to be.”

At the same time, physicians need to be thorough to protect themselves from liability. “In the malpractice world, it’s the failure to order the test that usually comes up,” says Pellett.

When a physician opts not to order a diagnostic test, the results of which can be determinative of a significant disease process or injury, says Sousa, it might be helpful for the physician to “state precisely in the medical record why the test was not ordered.”

In one case, a 34-year-old year old man presented to an urgent care center with acute right upper quadrant abdominal pain. He was diagnosed with cholelithiasis and discharged on painkillers without lab work or imaging being done.

“The next day he went to surgery, where appendicitis was confirmed,” says Jonathan M. Fanaroff, MD, JD, associate professor of pediatrics at Case Western Reserve University School of Medicine and co-director of the Neonatal Intensive Care Unit at Rainbow Babies & Children’s Hospital, both in Cleveland, OH.

At the time of surgery the appendix was gangrenous, so one of the plaintiff’s arguments was that the delayed diagnosis caused harm. The plaintiff alleged that a complete blood count and a urinalysis should have been done at the first visit. “The fact that [testing] was not done and there was no documentation about why it was not done hurt the defendant,” says Fanaroff, adding that the case settled for $200,000.

Fanaroff says that if physicians believe that the risk of radiation from a CT scan outweighs the low likelihood of benefit in a particular case, that they should document this information specifically. “If there is no documentation in the record, and a physician claims as a defense after a lawsuit is filed that they were worried about radiation, a jury may not believe them,” he explains.

Documentation that the physician followed published guidelines is also helpful, adds Fanaroff. The 2010 Centers for Disease Control and Prevention (CDC) guidelines for Group B Strep (GBS) Disease, for example, state that when a full-term infant is born to a mother who had an indication for GBS intrapartum antibiotic prophylaxis and did not receive adequate intrapartum antibiotic prophylaxis, no lab evaluation is necessary as long as the infant is observed, well-appearing, and the duration of membrane rupture was more than 18 hours prior to delivery. (To view the guidelines, go to http://www.cdc.gov/groupb-strep/guidelines/guidelines.html.)

“If an infant meets those criteria, a provider could document that no lab work is needed based on the CDC Group B Strep guidelines,” says Fanaroff.

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Executive Summary

There is increasing pressure on physicians from payers to stop ordering tests deemed not medically necessary, but failing to order diagnostic tests can leave physicians legally vulnerable.

✦ Payers are looking much more closely at whether diagnostic tests are necessary.
✦ If physicians believe the risk of radiation from the CT scan outweighs the low likelihood of benefit, they should document this belief.
✦ Documentation that the physician was following published guidelines that recommend against unnecessary testing can make claims more defensible.