

Medical Injury Compensation Reform Act (MICRA)

Background

California's landmark 1975 Medical Injury Compensation Reform Act (MICRA) is a law that ensures injured patients receive fair compensation while preserving every Californian's access to healthcare. MICRA has kept the doors of medicine open for nearly 40 years, protecting California's healthcare safety net by keeping medical malpractice insurance available and affordable.

Prior to MICRA, out-of-control medical liability costs were forcing clinics, doctors, and other healthcare providers to leave the practice of medicine altogether. MICRA has helped stabilize medical liability costs, keeping more providers and clinics open and treating patients — and more stability means healthcare providers of all types have been less likely to close their doors because of skyrocketing liability premiums.

Weakening MICRA's intent or protections will result in higher healthcare costs overall, no improvement in quality, and reduced access to services. Even with MICRA, many specialty services today, like obstetricians, nurse midwives, community clinics, emergency providers, and rural providers, remain particularly vulnerable to any liability increases or weakening of MICRA's reforms.

We only need to look at other states to see how important it is to preserve MICRA. States with medical liability reform are able to attract more doctors, and are less likely to suffer from shortages of specialty providers leading to the closing of hospitals, clinics, and trauma centers.

According to the Texas Alliance for Patient Access, Texas enacted medical liability reforms in 2003 and has since added more than 14,000 in-state, active physicians. Additionally, 35 rural Texas counties have added at least one obstetrician, including 16 counties that previously had none; 46 counties that did not have an emergency medicine physician now do; and 15 counties that did not have a cardiologist now do.

In New York, a state without reforms, 19 counties are without obstetricians, 22 are without internal medicine specialists, and 15 do not have surgical specialty doctors, according to a 2010 study by The Center for Health Workforce Studies. According to a July 2012 story in *The New York Times*, several hospitals in New York City are partially or completely without liability insurance due to the high cost of liability premiums.

Threats

On May 2, 2013, a coalition — including the Consumer Attorneys of California and the trial lawyer-funded Consumer Watchdog group — announced intentions to seek to overturn MICRA through legislation or, failing that, a ballot initiative.

Consumer Attorneys of California recently paid \$6,635 to install a billboard in Sacramento featuring an infant who died from whooping cough in 2010, with text that reads, “Medical Negligence Kills,” and then beneath it, “But a 38-year-old law says Mia's life was worth only \$250,000. Call your legislator.” The coalition pushing to eliminate the \$250,000 cap is committed to spending \$1 million to do so.

The group has until September to submit a proposed initiative to qualify for the November 2014 general election ballot. If successful, the trial attorney's efforts will cause malpractice rates to skyrocket and re-create the same conditions that threatened to throw California's healthcare system into crisis during the early 1970s. Increasing the amount of noneconomic damages allowed under MICRA from \$250,000 to \$500,000 would raise healthcare costs in California by at least \$9.5 billion annually, according to the State's former nonpartisan legislative analyst; that translates into approximately \$1,000 annually for a family of four.

 **Argument Against MICRA:** The \$250,000 cap on pain and suffering was passed nearly 40 years ago. Shouldn't it be raised, at least to keep up with inflation?

Response: Remember that patients receive unlimited compensation for all economic damages. In other words, wages, medical costs, and punitive damages are all paid on an unlimited basis, and these payments are going up at more than twice the rate of inflation.

The reasonable \$250,000 cap on noneconomic damages is an effective way to limit meritless lawsuits and keep healthcare costs lower, but, not surprisingly, it has been targeted by trial lawyers because it restricts the amount of money they can collect in damage awards. The trial lawyers and their allies would benefit from increased lawsuit payouts, but we would all pay through higher healthcare costs and reduced access to healthcare providers.

Prior to MICRA there were no incentives to limit meritless litigation. As a result, lawyers were suing doctors, clinics, and other healthcare providers out of California. Obstetricians, community clinics, and others couldn't afford the high cost of litigation and insurance, and they were shutting down or leaving. Patients were losing access to their doctors and other healthcare providers.

That's why MICRA put these reasonable limits on noneconomic damages in place. For almost 40 years, MICRA has been successful in limiting meritless lawsuits, in helping keep healthcare costs lower, and in preserving access to care for all Californians.

 **Argument Against MICRA:** Sponsors of this initiative say that changing the MICRA laws

and increasing the noneconomic damages cap will help improve quality by holding doctors accountable. They say there are 98,000 medical deaths each year due to error.

Response: First, we believe even one medical error is too many, but changing MICRA won't do anything to reduce medical errors (or improve quality). Instead, it will create a whole new set of problems by reducing access to healthcare services for some of our most vulnerable populations and increasing the cost of healthcare for all Californians. Make no mistake, this is just an attempt by trial lawyers to increase their lucrative payouts.

 **Argument Against MICRA:** Those who don't have high economic damages are sometimes limited to \$250,000 in noneconomic damages. Is that fair?

Response: Remember that, under MICRA, patients will be made whole for loss of any and all economic damages, or out-of-pocket costs, that they have paid in the past or will pay in the future. But, if we change MICRA and healthcare costs increase as expected, it's exactly California's lower-income individuals and seniors who will be hurt the most because they are already struggling to afford medical coverage.

If the cap is increased, lawyers will have more incentive to file meritless claims. Lawsuits increase the cost of healthcare for everyone, and those on the lower end of the socioeconomic scale will be hurt the most. And keep in mind that these individuals will still have to pay a premium even under federal healthcare reform. More lawsuits do nothing to improve healthcare; they just enrich trial lawyers at everyone else's expense.

 **Argument Against MICRA:** Under MICRA, if a baby is unable to make it past delivery, and fault is found with the medical provider, MICRA limits the family to \$250,000 in noneconomic damages. Is that fair?

Response: My heart goes out to any parent who loses a child, no matter how young or old. I'm sure everyone would agree there's no amount of compensation that could make up for the loss of a loved one. But we need to remember why MICRA was passed in the first place. Before MICRA, lawsuits were forcing doctors' medical liability premiums to skyrocket so high that they couldn't afford to practice medicine. Physicians were quitting medicine or leaving California to treat patients in other states. Patients were losing access to healthcare services.

MICRA has stabilized healthcare, it has provided fair compensation to injured patients, it has allowed doctors to remain in practice treating patients, and it has kept healthcare costs lower by limiting meritless lawsuits. More lawsuits do nothing to improve healthcare. It only enriches trial lawyers, and we all pay.

 **Argument for MICRA:** MICRA protects access to healthcare services.

Explanation: Prior to MICRA, out-of-control medical liability costs were forcing community clinics, health centers, doctors, and other healthcare providers out of practice. MICRA was intended to, and has been successful in, stabilizing liability costs. MICRA is especially critical in protecting specialty and high-risk services, including women's healthcare, community clinics, health centers, and rural providers that can

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In Order to Be Victorious in This Fight, We Need Your Help!

DONATE: A fight of this magnitude will be extremely costly. CMA is urging all physicians to consider a donation to CMA's political action committee (CALPAC), which for the past 38 years has served as the first line of defense for California's historic physician protections. Call (800) 225-7229.

JOIN: If you are not already a member of SDCMS-CMA, please consider joining today. By joining SDCMS-CMA, you will help to ensure that the voice of California's physicians is heard loud and clear in the capitol and beyond. Together, our unified voice can move mountains.

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least afford skyrocketing costs. States without medical liability reform suffer from shortages of providers leading to the closing of hospitals, clinics, and trauma centers, and leaving patients with no doctors in their immediate vicinity.

When we are trying to implement federal healthcare reform and provide access to healthcare for all Californians, this is the worst possible over-reach at the worst possible time. With millions of patients entering the healthcare system under the Affordable Care Act and reimbursements from Medicare, Medi-Cal, and Denti-Cal being slashed, changing MICRA will worsen this situation.



Argument for MICRA: MICRA protects against rising healthcare costs.

Explanation: Increasing the amount of noneconomic damages allowed under MICRA from \$250,000 to \$500,000 would raise healthcare costs in California by at least \$9.5 billion annually, according to the State's former nonpartisan legislative analyst. That translates into approximately \$1,000 annually for a family of four. Any legislation attempting to circumvent MICRA's intent and protections will result in higher healthcare costs and reduced access to services.

The threat of a ballot measure is nothing more than a money grab by trial lawyers that will come at the expense of higher healthcare costs for all patients and decreased access for patients and clinics already struggling to keep their doors open.



Argument for MICRA: MICRA protects patients' rights and preserves access to the courts.

Explanation: MICRA preserves patients' access to fair compensation when they have justifiable claims, including economic damages for all past and future medical costs; economic damages for lost wages, lifetime earning potential, and for any other conceivable economic losses; punitive damages, which seek to punish a defendant; and up to \$250,000 available for noneconomic damages, sometimes called pain and suffering awards. Under MICRA, the average size of medical liability awards in California has increased faster than the rate of inflation. MICRA limits attorneys' fees so patients, not lawyers, receive more from awards.



Argument for MICRA: MICRA protects California's strong patient safety record.

Explanation: California has a strong patient safety record. Between 2003 and 2009, according to the Agency for Healthcare Research and Quality, California had far fewer adverse patient safety events per 100,000 people than the average of all other states.



Argument for MICRA: MICRA is supported by a large and diverse coalition of patient advocates and healthcare providers across California.

Explanation: MICRA's supporters consist of more than 700 groups, including doctors and healthcare providers, local governments, public safety and labor groups, community clinics and health centers, organizations committed to disease prevention, hospitals, medical and dental societies, medical groups, healthcare provider-owned professional

Weaken-
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costs overall,
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liability carriers, and many
more from around the state.

Time and time again, the
trail lawyer-funded Consumer
Watchdog group has tried to
undermine the care afforded to
California's neediest patients
with threats. Time and time
again, patients, advocacy
groups, constituents, and
hundreds of organizations
have rallied behind MICRA's
merits. Trial lawyers should
take the hint: The people have
spoken, and they don't want to
change a successful policy that
would just siphon millions of
dollars away from patients and
into the pockets of wealthy tri-
al lawyers. In the most recent
polling, voters support MICRA
by more than a 2-1 margin,
with 56% in support and 25%
opposed to the law. **SDP**

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