MICRA

The Medical Injury Compensation Reform Act

California's Landmark Healthcare Liability Law

A National Model for Assuring Access to Affordable Healthcare

A Handbook

Presented by

Californians Allied for Patient Protection

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A Handbook on

California's Medical Injury Compensation Reform Act

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MEDICAL INJURY COMPENSATION REFORM ACT

MICRA – California's landmark Medical Injury Compensation Reform Act – has successfully relieved the liability insurance crisis that was undermining citizen access to health-care. The American Medical Association (AMA) and the American Hospital Association (AHA) hail it as a "model," and President Bush points to MICRA as an example of how one state successfully solved the medical liability mess now engulfing at least 18 other states. The president has endorsed and the House of Representatives has passed federal legislation that emulates MICRA to provide relief to states saddled with skyrocketing medical insurance premium costs and loss of needed medical care for their citizens.

Others, especially personal injury lawyers and their allies, decry MICRA, blaming its liability protections for removing the "sting" of deterrence against doctors who practice bad medicine.

Changes to MICRA are likely to be debated in California this year. One legislator has publicly stated he intends to introduce legislation to raise the MICRA ceiling on non-economic damages to more than $900,000.

Amidst all the charges and counter-charges about MICRA, we believe this pamphlet will help explain the essentials about MICRA, especially the consequences of eroding what our state Supreme Court has called the "heart" of MICRA – *i.e.*, the $250,000 lid on recoverable non-economic damages.

Californians Allied for Patient Protection

Californians Allied for Patient Protection (CAPP) is the only broad-based organization of physicians, dentists, hospitals, nursing homes, doctor-owned liability carriers, nurses and other health-care professionals whose sole purpose is to protect MICRA from legal erosion. Toward that end, CAPP has, since its inception in 1991, frequently petitioned the Legislature, governor and the courts whenever MICRA has been threatened, explaining (along with allied patient and health clinic groups) why California's fragile safety net for access to healthcare depends on MICRA's continued viability.

MICRA: A National Model for Assuring Access to Affordable Healthcare

California's MICRA reforms have been the national model for state and federal liability reform efforts. California's landmark medical liability health care reforms were enacted by an overwhelming bipartisan vote after two years of investigation and hearings. More than half the states have followed California's lead in enacting medical liability reforms to protect patients and preserve the availability and affordability of healthcare.

Based on 30 years of experience, analyses and a new study by a team of economists led by former California Legislative Analyst William G. Hamm*, significant changes to MICRA are unwarranted:

MICRA has kept many doctors in practice, increasing access to healthcare and keeping it more affordable than it would be otherwise.

- MICRA's cap on non-economic damages saves the healthcare system billions each year. Increasing the cap to $500,000 or more would raise annual healthcare costs in California by at least $6.5 billion.
- Gutting MICRA's cap on non-economic damages would increase medical malpractice premiums by at least 20.5% in California.
- Taxpayers would be forced to pick up a greater share of the cost of healthcare if higher insurance risk drives doctors away, compels hospitals to cut uncompensated care to the uninsured, and pushes employers to reduce or eliminate health insurance for workers.
- Raising or eliminating MICRA's cap on non-economic damages would increase the number of Californians without healthcare insurance. Every 1% increase in healthcare costs would result in the loss of coverage for at least 30,000 Californians.
- Raising or eliminating MICRA's cap on non-economic damages would reduce the availability of healthcare, especially for the most vulnerable Californians.

MICRA protects the social safety net in California.

- Care for indigent and uninsured Californians would be threatened by an increase in the MICRA cap because many hospitals and county health programs — strapped by higher insurance costs and losses — would be forced to cut back on uncompensated care.
- Effects of an increase in the MICRA cap would be felt disproportionately by low-income and rural Californians because the ability of doctors in rural and inner-city areas to absorb the increased costs is more limited than their suburban counterparts.

MICRA protects injured patients while ensuring access to healthcare.

- Patients are fully compensated for their actual economic damages with no limit on economic or punitive damage awards. A $250,000 cap is on non-economic damages only.
- Patients receive the lion's share of settlements and awards — limits on attorneys' fees to ensure that patients receive adequate compensation for their injuries.
- Plaintiffs are prohibited from claiming multiple payments for the same injury.

MICRA has reduced the cost of the medical liability system without affecting access for aggrieved patients.

- Medical liability costs are currently $280 each year for a family of four.
- Injured patients receive their awards 26% sooner than patients in states without MICRA reforms.
- MICRA has discouraged unnecessary medical procedures and treatments that inflate healthcare costs without improving medical outcomes.
- While MICRA has reduced incentives to litigate the weakest claims, MICRA has not affected access to the courts for individuals with justifiable claims.
- More medical lawsuits are being filed per capita today than before MICRA was enacted.

** MICRA and Access to Healthcare, 2005*

Top 10 Reasons California Should Maintain MICRA Protections

California's landmark Medical Injury Compensation Reform Act (MICRA) and its cap on non-economic damages awards is a national model that has held down healthcare costs and improved access to care while protecting consumers' rights.

1. MICRA has made it possible for many doctors to stay in practice, increased access to healthcare and kept it more affordable than it would be otherwise.
2. Increasing the cap to $500,000 would raise annual healthcare costs for consumers, employers and taxpayers $6.5 billion.
3. Gutting the cap would increase medical liability premiums by at least 20.5% in California.
4. At least 30,000 Californians would lose health coverage with every 1% increase in healthcare costs resulting from a rise in the cap.
5. Low-income and rural Californians would be hit hardest by MICRA cost increases because their doctors are less able to absorb increased costs.
6. Raising the cap would force financially strapped hospitals and county health programs to cut back on uncompensated care to indigent and uninsured Californians.
7. MICRA has reduced the cost of the medical liability system without affecting access for aggrieved patients.
8. MICRA maintains consumer protections with no limit on economic or punitive damage awards.
9. MICRA has discouraged unnecessary, defensive medical treatments that inflate healthcare costs without improving medical outcomes.
10. MICRA has reduced financial incentives for lawyers to litigate questionable claims but has maintained access to the courts for individuals with justifiable claims.

Source: *MICRA and Access to Healthcare*, 2005

QUESTIONS AND ANSWERS: What You Want to Know About MICRA

The 30-year success story of malpractice limits – helping to control healthcare costs and to provide access to care…

What is MICRA, anyway?

California's landmark Medical Injury Compensation Reform Act (MICRA) is a law that sets the guidelines for personal injury lawsuits arising from medical care. It permits unlimited malpractice awards for actual damages, including medical bills, custodial care and rehabilitation, and punitive damages for negligence. It limits non-economic "pain and suffering" awards to $250,000, caps lawyer fees, discourages "double payments" for the same loss, and marshals judgment resources to provide guaranteed future medical care for injured patients.

Where did MICRA come from?

MICRA is a nonpartisan resolution to the California healthcare crisis of 1975. Democratic Gov. Jerry Brown called a special legislative session, proclaiming that "the inability of doctors to obtain insurance at reasonable rates is endangering the health of the people of this state, and threatens the closing of many hospitals. The longer term consequences of such closings could seriously limit the healthcare provided to hundreds of thousands of our citizens." The state Senate approved MICRA by a vote of 34-4 and the Assembly by a margin of 67-8.

How does MICRA protect Californians?

It contains the cost of malpractice claims, which keeps down the cost of physician insurance, which helps control the cost of healthcare. It keeps physicians from leaving California or retiring. It maintains access to the courts – Californians file malpractice claims at a rate that is 40% higher than the national average, according to The Doctors Company. It keeps compensation higher – in a $1-million award, the injured party takes home nearly $800,000, or about $180,000 more than if the law did not restrict attorney fees.

How does it protect access to care?

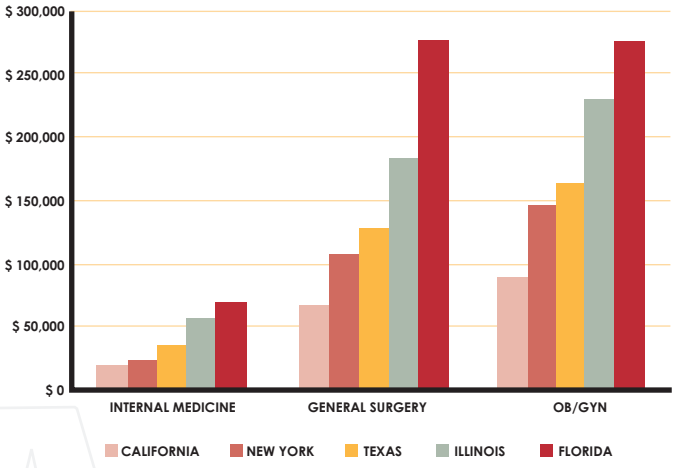
It keeps doctors in practice and hospitals open. The AMA identifies 18 states as now "in crises" the way California was in 1975: a shortage of doctors for high-risk specialties, a closing of hospitals and trauma centers or restriction of their services, and a shrinking supply of skilled nursing homes. An AMA study shows that 45% of hospitals have lost physicians and endured emergency room cutbacks when premiums have gone up.

MICRA stopped the runaway escalation of medical liability insurance costs in California and thus stopped the loss of thousands of healthcare providers.

MICRA also encourages new doctors to set up shop in California. Fully half of all medical students decide where to begin their careers based significantly on the cost of malpractice coverage. (AMA)

How does it contain the cost of healthcare?

MICRA contains liability losses and thus the cost of insurance to healthcare providers. William Hamm, former legislative analyst for California, compared 2004 malpractice insurance premium costs in states with and without caps. California, when compared to four states without caps, enjoys substantially lower medical malpractice insurance premium costs than doctors in the other states. (Hamm, Wazzan, Frech, *MICRA and Access to Healthcare* (2005).)



2004 MALPRACTICE INSURANCE PREMIUMS BY STATE AND SPECIALTY

As the comparison of California with non-cap states shows, Florida internists pay about $49,000, or 242 percent more per year than their California counterparts, while general surgeons pay approximately $209,000 (308%) more, and obstetricians pay approximately $187,000 (208%) more.

Who is hurt the most by escalating malpractice costs?

Mothers-to-be and victims of serious injury or illness – their physicians experience the steepest premium increases when caps are lifted. Also, patients in inner cities and rural areas, where it is more difficult for providers to pass through insurance costs.

Hospital charity care and social services also are reduced as costs cannot be passed through. The University of California, for example, is self-insured and estimated to the Legislature that it would increase reserves by $6-9 million annually to cover the costs of increased malpractice premiums.

Are there other economic impacts to workers?

With employer-provided healthcare insurance, which covers 52% of Californians, premiums increase with the cost of care, or the type of coverage gets narrower, or wages are held back to compensate for the cost of insurance. (Kaiser Foundation and Rand studies.)

WHO BEARS THE COSTS OF A HIGHER CAP?

COST	IMPOSED ON	SHIFTED TO
INCREASED LOSS COSTS	MEDICAL LIABILITY INSURERS	INSURED PROVIDERS
	SELF-INSURED PROVIDERS	GOVERNMENT PROGRAMS HEALTHCARE INSURERS UNINSURED CONSUMERS
HIGHER MEDICAL LIABILITY INSURANCE PREMIUMS	INSURED PROVIDERS	HEALTHCARE INSURERS UNINSURED CONSUMERS GOVERNMENT PROGRAMS
INCREASED COST OF DEFENSIVE MEDICINE	HEALTHCARE INSURERS	EMPLOYERS INSURED CONSUMERS
	UNINSURED CONSUMERS	
	GOVERNMENT PROGRAMS	TAXPAYERS
INCREASED HEALTH INSURANCE PREMIUMS	EMPLOYERS	WORKERS
	INSURED CONSUMERS	
INCREASED COST OF GOVERNMENT PROGRAMS	FEDERAL, STATE & COUNTY AGENCIES	TAXPAYERS

Source: *MICRA and Access to Healthcare*, 2005

Is there proof that MICRA keeps down the cost of malpractice insurance?

A recent study by the federal Health and Human Services Agency concluded that the $250,000 ceiling is critical in keeping healthcare costs and the cost of medical liability coverage within reason. "States with limits of $250,000 or $350,000 on non-economic damages have average combined highest premium increases of 12-15%, compared to 44% in states without caps on non-economic damages." (HHS Study, July 24, 2002.)

Regarding access to healthcare, the "MICRA and Access to Healthcare" report finds that "[a]n increase in the MICRA cap would decrease access to healthcare, particularly for low-income people and those seeking physician care in high-risk specialties such as obstetrics and gynecology."

The National Association of Insurance Commissioners – the elected industry watchdogs – published a study that shows a strong correlation between increased malpractice claims and the cost of insurance. After Oregon's Supreme Court struck down the pain and suffering cap in 1999, premiums are up 155%. (Northwest Mutual)

How does MICRA accomplish its goal of assuring access to healthcare through affordable malpractice liability protection for healthcare providers?

MICRA sets limits on when lawsuits must be filed and how much can be paid out for certain categories of damage, makes sure more goes to an injured patient and less to the lawyers from awards or settlements in big cases, eliminates double recoveries and insurer liens on awards, provides alternatives to court trials, and marshals payouts in a structured way to take care of injured patients' future needs.

While MICRA permits unlimited recovery of economic losses and punitive awards, it tightens the statute of limitations (when a lawsuit must be filed) for medical malpractice lawsuits, limits payment for non-economic "pain and suffering" damages to $250,000, sets a sliding contingency fee scale for plaintiff attorney fees (starting at 40% of the first $50,000 and going down as the amount of the award goes up), permitting medial liability disputes to be resolved by arbitration, and allowing awards for future damages that are more than $50,000 to be paid periodically rather than in lump-sum.

If $250,000 was felt to be a sufficient ceiling for "pain and suffering damages" more than a quarter century ago, shouldn't that amount be adjusted upward for inflation today?

Damages for "pain and suffering," unlike economic losses (which are not limited by MICRA), cannot be objectively measured. Putting an arbitrary value to it does not, then, make it a real or measurable loss that should, like wage loss, medical care and other objectively verifiable losses, rise with inflation.

That $250,000 is still a fair amount to compensate one for non-economic loss like pain and suffering is shown by its use as a ceiling in the federal government's compensation fund for victims of 9/11 who lost loved ones from that tragedy. The $250,000 amount is the same compensation payable under insurance for military personnel killed in action and public safety officers killed on duty. (See, September 11th Victim Compensation Fund of 2001, 67 Fed. Reg. 11,239 (Mar. 13, 2002).)

But isn't a flat ceiling fundamentally unfair because it leaves injured persons worse off than they would have been before MICRA became law?

Even with MICRA's lid on non-economic losses recoverable for medical malpractice, the average award today – adjusted for inflation – exceeds what plaintiffs in medical malpractice lawsuits were paid before its enactment.

While MICRA has helped stabilize medical liability awards by preventing "blockbuster" awards based on speculation as to what will adequately compensate one for "pain and suffering," it has not left plaintiff patients with less money on the average then they were getting before MICRA.

Why is it that even with the non-economic damages lid, medical malpractice claimants are getting more today in real dollar awards than they were before MICRA?

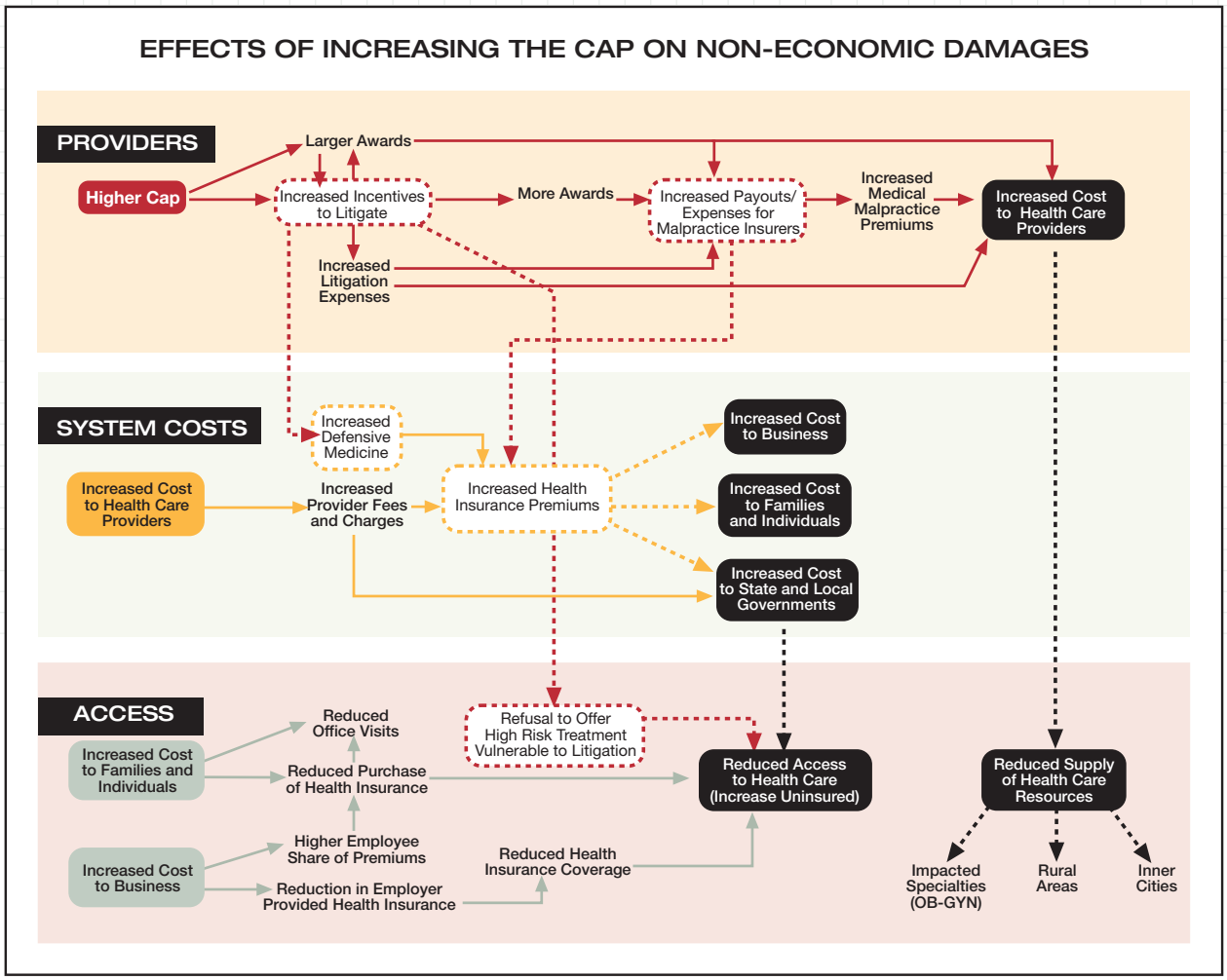
Awards for malpractice claimants since MICRA have outpaced the growth of healthcare inflation for two reasons. First, personal injury attorneys have become much more adept at enlarging the economic damages to compensate for MICRA's ceiling on non-economic damages. Second, MICRA's sliding contingency fee schedule assures that as the seriousness of the injury increases, the patient gets more of an award and the attorneys less. This shifts some of money that formerly went to attorneys to their clients and goes far to explain why the personal injury lawyers want to raise or repeal the "cap." As former Chief Justice Roger Traynor said about non-economic damages,"[A]wards for pain and suffering serve to ease plaintiffs' discomfort and to pay for attorney fees for which plaintiffs are otherwise not compensated." (*Seffert v. Los Angeles Transit Lines* (1961) 56 Cal.2d 498, 511.)

Isn't this just a way to increase insurance company profits?

Most malpractice insurers are owned by their members, like a credit union, and there is no incentive to drive up profits. Insurers are tightly regulated by elected officials, and investments must be conservative by law. Most have less than 10% of assets invested in stocks. Insurers' return on equity was 3.2% from 1990 to 2003, compared to 4.8% on Treasury bonds. (Aggregate data from several insurers.)

In fact, during the 1975 crisis in California, the Legislature took it seriously enough to commission a study by the Joint Legislative Audit Committee as to the "true causes" of the medical malpractice crisis.

When the Committee completed its investigation, the study concluded that the reason for California's crisis was that claims costs for medical malpractice outpaced premiums charged for several years. Insurers were, in other words, losing money on their medical malpractice underwriting, not on their stock market losses.



Source: *MICRA and Access to Healthcare*, 2005