

Trial Lawyers' Ballot Measure to Make it Easier and More Lucrative to File Meritless Health Care Lawsuits Will Increase Health Care Costs and Reduce Access to Care

Measure would increase MICRA's cap on speculative, non-economic damages from \$250,000 to more than \$1.1 million.

Trial lawyers and their allies have filed a proposed ballot measure that will make it easier for lawyers to file meritless lawsuits against health care providers and to generate more legal fees for themselves. The initiative would change California's landmark Medical Injury Compensation Reform Act (MICRA) to increase the cap on speculative, non-economic damages from the current \$250,000 to nearly \$1.1 million. While the measure contains other "window dressing" provisions, there is no doubt that the main goal of the trial lawyers is the MICRA change. A broad coalition of doctors, community clinics, nurses, hospitals, EMTs, labor unions, local governments, employer groups and others support MICRA and oppose the trial lawyer changes. Here is why:

Measure Would Increase Meritless Lawsuits and Lawyer Fees.

- A four-fold increase in MICRA's cap on speculative, non-economic damages would make it easier for trial lawyers to file meritless lawsuits and collect more in legal fees. In fact, under the measure, trial lawyers could collect three times more in legal fees than they can today on non-economic damages.
- A higher limit on non-economic damages gives trial lawyers incentive to take on non-meritorious cases because they can reap more in legal fees and the possibility of an out of court settlement is more likely.

Measure Would Increase Consumer Health Care Costs by Billions Each Year.

- Meritless lawsuits waste precious health care resources. The end result is increased health care costs for patients, and increased operating costs for doctors, hospitals and community clinics.
- In fact, a recent study by California's former independent non-partisan Legislative Analyst found that quadrupling MICRA's non-economic damages cap to \$1.1 million, as set forth in the ballot measure, would increase health care costs in California by \$9.9 billion annually.

Measure Would Increase Health Care Costs for State and Local Governments by Hundreds of Millions Each Year – Jeopardizing Funding for Vital Services.

- Economic studies show that changing MICRA will increase health care costs for state and local governments by hundreds of millions of dollars per year. That is because state and local governments provide health care for their employees, operate clinics, hospitals and other health services, and provide health care for low-income residents, such as Medi-Cal.
- After years of state budget cuts, the state and local governments are finally recovering. The lawyers' measure could force new cuts to education, public safety, local services, and health care services for seniors, children and low-income families.

Increasing Lawsuit Payouts Will Reduce Access to Health Care Services.

- California already has a shortage of doctors, and with health care reform expanding coverage for millions more, this shortage will become even more severe.
- Raising MICRA's cap on non-economic damages will dramatically increase operating costs for doctors, community health clinics, hospitals and others and could force many to cut back services or close altogether.
- The trial lawyers' measure will create even longer lines in emergency rooms, long waits to see specialists, and reduced access to women's services like OBGYNs – making it harder for patients to see their doctors.

MICRA Works in California.

- MICRA ensures patients receive fair compensation, while preserving access to important health care services for all Californians.
- The public supports MICRA. According to a recent poll conducted by Californians Allied for Patient Protection, 59 percent of voters support the law.
- The California State Legislature passed MICRA to control the rapidly increasing cost of doctors' liability insurance, which was threatening access to health care because medical lawsuits were rampant. Specifically, MICRA:

UNLIMITED	Economic damages for all past and future medical costs.
UNLIMITED	Economic damages for lost wages, lifetime earning potential and for any other conceivable economic losses.
UNLIMITED	Punitive damages, which seek to punish a defendant.
ADDITIONAL	Up to \$250,000 available for non-economic damages, sometimes called pain and suffering awards.

- MICRA also sets limits on the amount of fees that lawyers can take as payment for representing an injured patient, so that patients, not lawyers, receive more.
- Under MICRA, payments to patients have gone up at more than twice the rate of inflation.
- MICRA is a critical part of California's health care system. It has helped lower health care costs and stabilized medical liability rates so doctors, clinics and other providers can remain in practice, treating patients.
- A look at two states, one with reforms similar to MICRA, and one without, offers insight into the importance of medical liability reforms.
 - 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; 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.

MICRA: Protecting Community Clinics and Health Centers

California's Medical Injury Compensation Reform Act (MICRA) ensures injured patients receive fair compensation while preserving patients' access to health care by keeping doctors, nurses and health care providers in practice and hospitals and clinics open. Weakening MICRA's intent or protections will result in higher health care costs overall, no improvement in quality, and reduced access to services. These impacts would be devastating to community clinics, health centers and their patients.

MICRA is Critical to Ensuring Access

- Prior to MICRA, California was facing a crisis. Out-of-control medical liability costs were forcing health care providers out of practice.
- MICRA stabilized providers' medical liability rates allowing more to stay in practice treating patients.
- Cuts to Medicare, Medi-Cal, and Denti-Cal reimbursement rates are already devastating to patients and health care providers. Changing MICRA will worsen this situation.
- Many, but not all community clinics and health centers in California are Federally Qualified Health Centers (FQHCs) and receive medical liability coverage through the Federal Tort Claims Act (FTCA) at no cost.
- For those not qualified as FQHCs, they must buy all medical liability insurance on the open market. MICRA helps keeps those rates lower.
- For those clinics and health centers that do qualify, federal coverage is limited and does not cover all services, nor does it cover volunteers, part time providers, and does not cover physicians who are on contract with the health center.
- Even FQHCs must buy "wrap around" medical liability coverage for services not covered under the FTCA. They, too, must buy it on the open market, and again, MICRA helps keep those costs lower.
- If MICRA is changed, medical liability coverage costs would certainly increase. Community clinics and health centers are already operating on razor thin budgets, any increase in costs would have to be offset by cuts elsewhere, possibly in reduced patient hours, cuts in medical staff, and cuts in services offered.



Photo courtesy of Eisner Pediatric & Family Medical Center

That is why community clinics and health centers in California have joined CAPP!

MICRA: Protecting California's Most Vulnerable Populations

California's Medical Injury Compensation Reform Act (MICRA) ensures injured patients receive fair compensation while preserving patients' access to healthcare by keeping doctors, nurses and healthcare providers in practice and hospitals and clinics open. MICRA has saved healthcare consumers billions of dollars. Weakening MICRA's intent or protections will result in higher healthcare costs overall, no improvement in quality, and reduced access to services.

Without MICRA:

Low Income Patients Would Suffer Most

Weakening MICRA's protections and increasing healthcare costs will reduce resources for Medi-Cal and Denti-Cal which provide healthcare for California's most vulnerable.

Fewer Obstetric Providers

Any weakening of MICRA's intent will worsen an already critical situation in obstetric care where the supply of physicians and healthcare providers is limited, but the demand is growing.

Less Prenatal Care

With fewer obstetric providers, women's access to early prenatal care will be reduced. Although California has one of the country's lowest infant mortality rates, providers' ability to maintain this standard will be threatened if additional stress is placed on our maternal healthcare system.

Cutbacks to Community Clinics, Health Centers and Public Hospitals

California safety-net providers serve millions of uninsured patients, the majority of whom are women and children. Unable to shift higher insurance costs to their patients, community clinics and health centers will have no alternative but to care for fewer people.

Additionally, undermining MICRA will jeopardize access to care for low-income patients who receive care from county and UC health systems that are self-insured, as these providers would have to redirect funds from patient care to pay for increased medical liability costs.



Photo courtesy of Eisner Pediatric & Family Medical Center

Crisis for Rural Patients

Those in underserved rural areas will be particularly hard hit by any further loss of healthcare providers. The economic viability of doctors practicing in these areas is already marginal due to sparse population, and low insurance and Medi-Cal reimbursement for services. An increase in malpractice insurance costs will force many rural physicians to cut back on services or close their doors – further isolating rural patients.

Reduced Access to HIV/AIDS Specialists

Any weakening of MICRA's protections will make it difficult for HIV/AIDS patients to find the specialists they need for treatment. Early access to care, especially within the first 12 months, is critical. According to 2010 estimates by the California Department of Public Health Office of AIDS, California has more than 69,000 AIDS patients. If physicians are not able to afford liability insurance to practice in California, many of these patients may be unable to find the appropriate care.

Less Preventative Healthcare

Undermining MICRA's intent will also reduce access to routine healthcare, including regular screenings for high blood pressure, cholesterol, diabetes, sexually transmitted diseases and other serious health risks.