

Trial Lawyers Target Damages Cap
Orange County Register
By Brennan Cassidy, M.D.
August 7, 2013

California trial lawyers are bankrolling a November 2014 ballot measure campaign to make it easier to file lawsuits against health care providers and generate bigger legal fees.

The trial lawyers filed ballot measure language seeking to change a law called the Medical Injury Compensation Reform Act (MICRA), which determines how monetary damages are assessed in cases in which someone is injured in a medical procedure.

If successful, lawyers will get richer, but most everyone else will feel negative impacts. It is estimated that such a change could cost state and local taxpayers, health care providers, and consumers billions a year in higher health care costs.

Trial lawyers have sought to change MICRA for years. They've met resistance in the legislature, hit a brick wall in the courts, but they've gotten the most blowback from others who strongly support MICRA: doctors, hospitals, nurses, community clinics, local governments, labor unions, police, EMTs, employer groups, and many others.

Why? Because we all oppose more meritless health care lawsuits and bigger payouts to lawyers.

Meritless lawsuits do nothing but waste resources. Since its inception, MICRA has saved California's health care system billions of dollars because the law has curbed non-meritorious claims and payouts to lawyers. That savings has translated into lower health care costs for consumers and lower medical liability rates for health care providers, helping them stay in practice treating patients.

The law also limits what trial lawyers can receive as payout, making sure that patients and their families are protected. Instead of the lawyers vacuuming up their normal 40% of the awards in fees, MICRA sets up a sliding payment scale of payment to the trial lawyers, so more money goes to patients, not their lawyers.

Current policy

MICRA provides up to \$250,000 for non-economic damages. This reasonable cap limits incentives to file meritless lawsuits, while at the same time ensures that people with legitimate claims can bring a case forward and receive compensation.

Under MICRA, a patient is entitled to unlimited recovery of all economic damages, or out-of-pocket expenses, unlimited recovery of all past and future medical costs, unlimited recovery of all past and future lost wages and unlimited recovery of punitive damages.

Between the limits on attorney's fees and the disincentives for filing meritless claims, it's easy to understand why trial lawyers have hated MICRA since its inception. When it was passed originally, trial lawyers sued to prevent MICRA's implementation in court. They lost.

So now lawyers are forgoing the legislative process and instead going straight to the ballot. The ballot measure they filed includes other provisions serving as "window dressing" relating to drug testing and prescription drugs. But make no mistake, the main purpose is to change MICRA to make it easier and more lucrative for lawyers to file lawsuits against doctors, hospitals, community clinics, and other health care providers, and generate big paydays for themselves.

The initiative's main provision makes changes to MICRA to increase the cap on speculative, "non-economic" damages from the current \$250,000 to more than \$1.2 million (based on an adjustment mandated in the initiative).

We've seen what happens when our legal system is so lax that it invites trial lawyers to file nuisance suits to generate quick settlements. Predatory trial lawyers quickly spring into action. For those sued, it becomes cheaper to settle a phony claim than to prove innocence.

We can't let the same thing happen to MICRA. The law works well to protect patients and to hold down health care costs. That's why groups from all over California, representing all political stripes, including doctors, hospitals, nurses, community clinics, labor unions, local governments, business groups, EMTs, police and many others, support MICRA.

If trial lawyers are pushing a policy change, there's no doubt there's something in it for them. Trial lawyers file lawsuits. That's how they make their money. We need more access to doctors, not to trial lawyers.

Brennan Cassidy, M.D., is a family practitioner. He is past president of the Orange County Medical Association and past president of the California Medical Association.