

Viewpoints: Raising Cap on Malpractice Law Will Increase Health Care Costs Sacramento Bee

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The Consumer Attorneys of California, a trade association representing trial lawyers, and their allies are "declaring war" on physicians, according to a story last month in The Bee. Their coalition has committed to spend \$1 million for a political and public relations campaign to pass legislation that would increase lawyer payouts in lawsuits against doctors, hospitals, nurses, community clinics, firefighters, EMTs and other health workers who provide care for patients.

This all-out assault by the trial lawyers includes advertising, billboards and lobbying in an attempt to significantly alter California's Medical Injury Compensation Reform Act. The law, known as MICRA, governs legal proceedings and payouts when someone is injured in the course of medical care. The law fairly compensates patients by providing unlimited compensation for past and future earnings, past and future medical care, and punitive damages, while reducing incentives to file meritless lawsuits.

If the trial lawyers are successful, it will mean more lawsuits against health care providers and higher payouts that benefit lawyers. Everyone else will pay through higher health insurance costs, higher taxpayer costs for state and local governments, and less access to the doctors, hospitals, clinics and other health workers we all rely on.

In other words, if the trial lawyers win, patients, families, health care providers, hospitals, clinics, businesses and taxpayers all lose.

Before MICRA, California was in crisis. Doctors and other providers couldn't afford medical liability insurance because frivolous lawsuits were rampant, driving up costs for all providers. Doctors were moving out of state, going without insurance or closing their doors. Patients had a harder and harder time getting timely access to much needed health care.

Since MICRA was enacted, California has seen fewer meritless lawsuits.

This has kept malpractice premiums lower in California than in states without MICRA-like reforms, resulting in lower overall medical costs and keeping more medical providers in practice, available to treat patients.

Most important, MICRA is fair to patients. Under MICRA, a patient is entitled to unlimited recovery of all "economic damages," which include past and future lost wages, past and future costs for medical care, and unlimited punitive damages. In addition MICRA also provides up to \$250,000 for "non-economic damages."

Total awards – the sum of economic and noneconomic damages – have significantly outpaced inflation in our state, so that injured patients today actually receive higher

awards than in past years. What trial lawyers aren't saying is that their payouts have also increased significantly.

Finally, MICRA limits the amount of fees lawyers can take for representing an injured patient, so that more money goes to the patient for medical care and living expenses.

In short, MICRA ensures that patients are fairly compensated, not the trial lawyers. When patients suffer, they should get compensated. Not lawyers.

So, it's easy to understand why trial lawyers have been gunning to change MICRA's noneconomic damages cap since its inception. Fortunately for patients and health care providers, the trial lawyers have failed to change the law to benefit themselves.

Legislation this year or a ballot measure in 2014 were floated in the media by trial lawyers, yet nothing has shown up publicly, which shows this is the same posturing trial lawyers have been doing for decades.

Whatever the trial lawyers' proposal, the end result will be to make it easier and more lucrative for lawyers to file meritless lawsuits – not to protect patients. A recent study showed that just doubling MICRA's cap would increase health care costs by billions, and it would increase state and local government health care costs – paid for by taxpayers – by hundreds of millions per year.

More lawsuits and bigger lawyer payouts hurt everyone. More lawsuits also jeopardize the ability of doctors, hospitals and other health care providers to keep their doors open. That's why policymakers in Sacramento, along with a broad coalition of consumers, doctors, hospitals, community clinics, nurses, police, labor groups, firefighters and others are fighting to protect a law that works well.

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