

MICRA

Medical Injury Compensation Reform Act

2022 Update

What is MICRA? Why is it important?

MICRA (Medical Injury Compensation Reform Act) was a historic piece of medical liability reform legislation enacted in 1975 when malpractice insurers were either leaving California or imposing substantial increases to medical malpractice premiums in response to soaring malpractice judgments and a staggering rise in the number of malpractice claims. Doctors were left scrambling for malpractice insurance paying extremely high malpractice premiums. Some healthcare providers were forced to leave California because of the rate hikes. Access to healthcare, especially among the neediest of the population in California, was in jeopardy. MICRA helped preserve access to healthcare by maintaining stable malpractice rates for healthcare providers, keeping doctors in practice in California while simultaneously providing fair compensation to injured patients.

MICRA, which is a series of statutes impacting healthcare and medical professional liability claims, has as its most infamous element a limitation on non-economic damages in medical malpractice claims of \$250,000. Other notable MICRA statutes include a limitation on attorneys fees, requirements for what can be claimed by an injured patient to avoid double recovery, and a strict statute of limitations element. MICRA has survived multiple constitutional and judicial challenges in the past 47 years, preserving healthcare in California. MIEC has been an active part of the coalition to protect MICRA (known as Californians Allied for Patient Protection—CAPP.

micra.org).

Why was there concern that MICRA protections were in jeopardy?

A costly initiative which sought to decimate MICRA and its protections known as the Fairness for Injured Patients Act (FIPA) was on the California November 2022 ballot. If successfully passed, FIPA would have eliminated MICRA and created a devastating landscape for malpractice claims in California by:

- Increasing the non-economic damage cap to \$1.25M
- Eliminating the non-economic damage cap altogether for claims deemed “catastrophic”
- Extending the statute of limitations
- Allowing double recovery for medical damages
- Eliminating the limitations on attorney’s fees

The changes would have applied to all open medical malpractice claims, increasing medical malpractice costs overnight, jeopardizing healthcare safeguards which had been in place for decades and essentially creating a crisis similar to 1975. (protectaccesscontaincosts.org)

What is AB 35? How did it amend MICRA?

On May 23, 2022, Governor Newsom signed AB 35, legislation crafted following negotiations by the proponents of FIPA and members of CAPP. Importantly, the new legislation preserved a majority of the MICRA statutes and the catastrophic ballot initiative was withdrawn from the November 2022 ballot. Long term stability for malpractice premiums and healthcare access was achieved. The key amendments to the MICRA

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statutes include a limited increase to the non-economic damage cap over a ten year period (then adjusted annually), a modified attorney fee structure for settlements made pre-litigation or following a filed lawsuit and a revised minimum threshold for payment for future economic damages following a judgment. All other MICRA statutes remain in place without modification.

A summary of the non-economic damages increases applicable to claims filed after January 1, 2023 is:

- \$350,000 for non-death claims resolved in 2023, increasing each year by \$40,000 over 10 years to a limit of \$750,000, adjusted by 2% annually thereafter
- \$500,000 for death claims resolved in 2023, increasing each year by \$50,000 over 10 years to a limit of \$1,000,000, adjusted by 2% annually thereafter

The AB 35 amendments increase general damages, which sounds like malpractice claims will have more value, is that really good news?

MIEC recognizes that any increase, even by a slight amount each year and over time, will have an impact to the cost of medical malpractice claims. MIEC has long history of defending and protecting the interests of its members in California, both in preventing malpractice claims and during the life of a malpractice lawsuit. MIEC's Claims and Patient Safety Risk Management staff is long tenured and experienced, many with backgrounds in medical malpractice defense. MIEC historically closes over 90% of its malpractice claims without an indemnity payment. You can be assured that MIEC will continue to vigorously protect your interests following an adverse outcome involving a patient.

What else is MIEC doing to protect and support me?

Included in AB 35 is an expansion of California's apology law. Current California law protects expressions of sympathy or benevolence in a disclosure discussion from discovery in a medical malpractice claim. AB 35 significantly expands this protection and established new discovery and evidentiary protections for all pre-litigation expressions of sympathy, regret or benevolence, including admissions of fault by a healthcare provider. Many healthcare providers stop short of having conversations with their patients about what happened following an adverse event out of fear of litigation. This is a common cause of why patients file malpractice claims – they were never told “what happened” or never had their questions answered. MIEC has a program specifically designed to encourage these conversations called RESTORE – Rebuilding Strong Relationships Through Recovery and Engagement (miec.com/restore). RESTORE is an effective tool in maintaining physician patient relationships, reducing costly medical malpractice claims and avoiding the stress of litigation.

How will the changes in MICRA affect my professional liability rates?

There will be upward pressure on rates starting in 2023 when these provisions take effect. While the new law provides for incremental change, we expect that there will be more claims reported and that the settlement values will be increased as a result of the increased (and greater number of) caps.

For 2023 we don't expect any change in base rates (which are regulated by the California Department of Insurance) but there will likely be reductions in discretionary credits which may result in small premium increases. Beyond 2023 we expect gradual increases in base rates over several years as the impact of the legislation becomes clear in the claims data. Our goal remains to continue providing fair and stable coverage for our members into the future.

