

Audio Report Transcript

Headline: Ballot Measure Aims at Patient Safety
By Raising Limits on Malpractice Suits

Reported/Produced by: Kenny Goldberg
Publication: *California Healthline*
Date Posted: August 20, 2014

Proponents of Proposition 46 on California's November ballot say the measure is designed to improve patient safety.

But opponents say it's about putting more money into trial lawyers' pockets.

This is a report for *California Healthline*, a daily news service of the California HealthCare Foundation. I'm Kenny Goldberg.

Proposition 46 has three provisions.

The first would require random drug testing of doctors.

The second would mandate physicians who prescribe narcotics to use the CURES system, California's electronic database that provides patients' prescription histories.

The third would raise the state's \$250,000 cap on pain-and-suffering damages in medical malpractice awards.

Carmen Balber, the executive director of the not-for-profit Consumer Watchdog, the main backer of Prop. 46, says the measure asks Californians to weigh in on three crucial components of patient safety.

(Balber): "Do the voters think that doctors should be drug tested, to make sure impaired doctors aren't operating on our children? Do California voters think that doctors should have to check a database to make sure that they're not prescribing narcotics to an addict? Do California voters think that patients should be able to hold their doctor accountable in court when they're harmed?"

The idea of lifting the cap on pain-and-suffering damages to \$1.1 million in medical malpractice cases has emerged as the most controversial element of Prop. 46.

California lawmakers approved the cap in 1975. The intent was to lower the cost of malpractice insurance premiums and introduce a modicum of tort reform.

But Balber says the cap is just too low.

(Balber): "It's never been indexed for inflation in California. Few states have a cap as low, and many states have begun to overturn this really draconian law that keeps patients from being able to hold dangerous doctors accountable."

Balber argues the limit on damages makes it hard for victims of malpractice to find an attorney to take their case.

The California Medical Association is part of a coalition of medical groups, community clinics and insurance companies opposing Prop. 46.

CMA President Richard Thorp says changing the cap isn't about holding doctors accountable. It's about increasing attorneys' pay.

(Thorp): "The reason that this is in this ballot measure is because the trial attorneys have not been able to get this done any other way -- through the Legislature or through the courts. And they've taken this deceptive, poorly put-together ballot measure to try to find a way to increase money that goes into their pockets."

What's more, Thorp says if the cap is lifted, medical lawsuits and payouts will skyrocket, leading to higher health care costs for everyone.

(Thorp): "As those malpractice awards increase, medical liability costs increase, potentially three to four times. Clinicians are going to look at that and say, okay, I don't know if I can afford to stay in practice anymore."

As for the drug-testing component of the measure, Thorp says he's heard the argument that airline pilots are drug tested, so then why not doctors? But he said drug-testing protocols are negotiated in pilots' employment contracts, while Prop. 46 would impose it willy-nilly on the physician community.

Cathy Frey is CEO of Central Valley Health Network. She oversees 13 health organizations that operate 145 community clinics in Central California.

Frey thinks making use of the CURES system mandatory is ill-conceived. After all, she says, the database is still going through a major computer overhaul.

(Frey): "That database is probably not yet ready for primetime to handle the thousands and thousands of hits it's going to take on that first day."

In response, Carmen Balber says the state Department of Justice is in the process of upgrading the CURES computer network. She maintains it will be able to handle the increased volume if Prop. 46 goes into effect next year.

And in terms of the cap, she says that seven other states with a limit on non-economic damages, including Michigan, have a provision that adjusts the cap for inflation.

Harvard Kennedy School health economist Amitabh Chandra thinks some concerns about the cap are not supported by evidence in other states.

(Chandra): "If you look at states that don't have the cap compared to states that do have the cap, you don't really see these big variations in malpractice insurance premiums. Nor do you see variation in, say, the use of medical care, and things like that. So what some doctors think is not right, not borne out by the evidence."

We will likely hear a lot more about Prop. 46 in the run-up to the November election -- proponents have about \$1.8 million to spend on their campaign, while opponents have more than \$50 million at their disposal.

This has been a report for *California Healthline*, a daily news service of the California HealthCare Foundation.

If you have feedback or other issues you'd like to have addressed, please email us at CHL@CHCF.org. I'm Kenny Goldberg. Thanks for listening.