

Question and Answers About The Fairness For Injured Patients Act (FIPA)

What will the ballot initiative do if enacted?

- The initiative will adjust for inflation the maximum \$250,000 compensation cap set in 1975 by politicians on quality of life and wrongful death survivor damages – bringing it up to \$1.2 million. The \$250,000 cap is worth today only \$50,000 in 1975 dollars.
- Judges and jurors will also be allowed to decide that compensation above the cap is appropriate in cases of catastrophic injury or death.
- Juries will be informed about the existence of the cap – now the judge reduces their verdict after they leave the room because juries are not told of the cap.
- The collateral source rules that apply in other civil cases will also apply in medical negligence actions and periodic payments for medical negligence verdicts and judgments will be disallowed.
- Attorneys who file medical negligence lawsuits will be required to file a certificate of merit and attorneys who file meritless lawsuits alleging medical negligence will pay the doctors' attorney's fees and costs. This, along with extending the time patients have to file, as in other civil cases, will provide sufficient time to obtain a certificate of merit and will deter and reduce the number of meritless lawsuits.

What does the compensation cap set by politicians in 1975 apply to?

In 1975, California politicians set a maximum compensation cap of \$250,000 on the value of quality of life damages for patients who are injured or maimed and on the total recovery allowable to an entire family whose loved one is killed because of medical negligence. The maximum compensation any patient-victim is entitled to for disfigurement, permanent damage to quality of life, physical impairment, disability, pain, loss of a limb, blindness, and other quality of life damages is \$250,000. Even brain damaged babies and children with spastic quadriplegia and cerebral palsy caused by medical negligence are limited to \$250,000 as maximum quality of life compensation by this 1975 legislative cap despite the fact that they will never be able to walk, talk, eat, or live any facet of a normal human life.

Does California have the most regressive medical negligence law in America?

Yes. More than two-thirds of the states in the nation do not have caps like California, including New York, Washington and Pennsylvania. 20 states and the District of Columbia have no caps at all. 14 other states have caps with

exemptions for wrongful death or catastrophic injury. California is 1 of just 3 states with a cap as low as \$250,000 with no exceptions. (Read more about other states' laws at https://www.consumerwatchdog.org/sites/default/files/2019-10/FIPAFctSheetStateCaps10-2-19_0.pdf)

“Economic” damages aren’t capped – why aren’t those enough to cover victims’ costs?

- Since economic damages are calculated based largely on lost wages, injured patients without an income, like stay at home parents or children, or earners without a significant income do not receive fair compensation. In addition, many negligence victims can work, so they have no lost wages due to their injuries.
- Injured patients’ recovery for medical and other costs is also limited. Under the 1975 law, future medical bills and other costs caused by medical negligence that should be paid to victims by wrongdoers can instead be reduced by the availability of health insurance and taxpayer funded programs, as well as other “collateral sources” of income, such as life insurance and long term care policies. This rule is unlike auto accidents and other types of civil cases where wrongdoers pay the cost of the harm they cause. The initiative changes this and makes the “collateral source” rules for medical malpractice and other civil cases the same.
- Medical costs and other needs resulting from malpractice are often unpredictable at the time of the verdict, so injured patients are not compensated enough to be able to afford unanticipated treatments or items they need in the future.

Which groups does the 1975 compensation cap impact most?

The current 1975 law unfairly discriminates against women and their survivors because women do not receive equal pay and also do not receive fair compensation for losses that specifically affect women, like loss of fertility, failure to diagnose breast and cervical cancer, and injuries to women during childbirth.

Children, who do not have wage loss, and must endure a lifetime of the loss of quality of life under a one-size-fits all cap are also unfairly targeted. In the case of a child who dies, the maximum recovery is only \$250,000.

Low income individuals are not fairly compensated for their losses, which are based almost exclusively on wage loss, and often cannot find attorneys to take their cases.

Minorities are more likely to be uncompensated for their losses because they earn lower wages on average. Disparities in health care mean minorities are also more likely to experience medical negligence because they are more likely to be

uninsured or underinsured, receive poorer quality health care, and experience worse health outcomes.

Retired and elderly individuals are also less likely to find attorneys or be fairly compensated for their losses because they are less likely to have high incomes. When a retired person with no dependents dies, the maximum recovery is \$250,000.

How does the economics of the 1975 cap deny victims access to justice today?

Since the cap has never been indexed for inflation, the maximum a consumer and their contingency fee attorney can recover in many cases is \$250,000. The attorney must take their fee and all the costs of a case, including court fees and expert testimony, from that total recovery. These costs can easily reach \$100,000 or more. A medical negligence case in the event of a child's death, for example, is limited to a total of \$250,000, with fees and costs deducted from that amount. The economics make these cases nearly impossible for a contingency fee attorney to bring and prevents wrongdoers from being held accountable.

Will the initiative raise health care costs?

FIPA will reduce health care costs. The cost of caring for undeterred medical negligence adds significant costs to the health care system, which today are borne by California taxpayers and health care insurance providers rather than wrongdoers. Increasing payouts to victims, ending unfair rules on reduction for "collateral sources" of payments and ending periodic payments will limit the shifting of costs onto health insurance policyholders and taxpayer-funded public programs. Wrongdoers will pay for their mistakes, rather than the health care system and the government. Deterrence of preventable medical injuries, injuries that add billions annually to our health care costs, will increase dramatically.