Injured patients will on average be able to keep a higher proportion of their original jury awards, and their lawyers will also benefit.

In California decide on liability in malpractice trials and award damages without knowledge of MICRA’s limits on noneconomic damages. Judges then adjust the awards to comply with state law. The original awards would not change if Proposition 46 passes, but injured patients will, on average, be able to keep a higher proportion of their original jury awards. Their lawyers will also benefit.

A RAND study looked at the effects of MICRA on malpractice awards in California by examining 257 medical malpractice trials that ended with a verdict for the plaintiff between 1995 and 2000. In these cases, judges reduced trial awards (which include verdicts for both economic and noneconomic damages) by an average of 35 percent to comply with the law. The cap was imposed in 45 percent of all plaintiff verdicts.

WHAT IF THE MICRA CAP HAD BEEN INCREASED FOR INFLATION?

The researchers also calculated how these results would have been different if the MICRA cap had been indexed for inflation since 1975. By 2000 (the last year of the study sample), the cap would have nearly tripled to $770,000 from the original $250,000. Assuming that the case number and types of trials would occur under these-studied conditions in the five-year ‘worth’ of cases examined, researchers found:

-Previous laws would have served 21 percent of the amounts originally awarded (compared to a 35 percent savings under the fixed MICRA cap). But another way, their payments for all of the trials in the sample would have increased by 13 percent as a result of tripling the cap.

-Almost all verdicts over the cap would have decreased by more than half, from 45 percent to 10 percent.

-Almost all catastrophic injury cases would have been capped 40 percent of the time, with 63 percent of the time with a fixed cap.

-Total attorneys’ fees paid would have increased by about 12 percent.

-Net recoveries to plaintiffs (adjusted awards minus attorneys’ fees) would have increased by about 13 percent.

WHAT WOULD BE THE EFFECT OF INCREASING THE CAP TO $1.1 MILLION AS PROPOSED BY PROP 46?

A dramatic and immediate jump in the threshold would undoubtedly change the malpractice landscape in noticeable ways—by expanding access to attorney representation, increasing the number of malpractice claims made against health care providers, and changing the frequency and type of litigation that arrive to the trial stage. Based on what the earlier report concluded about a hypothetical tripling of the cap, it is reasonable to assume that raising the cap to over a million dollars would reduce the savings realized by defendants and their insurers that MICRA now affords.

reduce the number of jury verdicts reduced by a judge increase total net recoveries across all plaintiffs decrease the number of jury verdicts reduced by a judge increase total net recoveries across all plaintiffs

It will be important to remember, however, that it is impossible to forecast conclusively without collecting information about recent verdicts in medical malpractice trials in California. Verdict size, trial frequency, and the types of cases brought to trial all may change in ways that were not foreseen prior to the advent of MICRA. It will be important to continue monitoring the effects of MICRA on malpractice outcomes and the effects of Prop 46 to track any changes that may be seen.

PATIENTS AND LAWYERS BOTH BENEFIT

Injured patients will on average be able to keep a higher proportion of their original jury awards, and their lawyers will also benefit.

The damage cap had a proportionate effect on certain kinds of cases in the study sample:

-Death cases had much larger reductions than non-death cases, with a median of 49 percent when the award was capped versus a 28 percent drop for injury cases. The reason for these deep percentage cuts in trial award size for wrongful death verdicts is that death cases receive relatively low awards for economic damages compared with the amounts originally granted by juries for noneconomic damages.

-Western and young children with very critical injuries had some of the steepest reductions in their awards—often, $1.5 million or more. Plaintiffs’ awards one year prior to age 15 were capped 71 percent of the time, compared to 42 percent for all plaintiffs with spinal injuries.

-Outline of brain damage and other catastrophic injuries, including paralysis, often incurred reductions of more than a million dollars.

What is the likely effect of Proposition 46 on trial awards for medical malpractice plaintiffs?