

BALLOTWATCH

Important Facts

- 10 measures in 5 states
- Key proposals: limits on pain and suffering awards
- Competing measures from doctors and lawyers in Florida and Nevada

FOCUS ON HEALTH CARE COSTS

The rising cost of health care featured prominently in the presidential and vice-presidential debates, and is playing out in the states with a series of ballot propositions. Five states have a total of 10 ballot measures offering competing solutions to problem of the spiraling costs.

The politics of the issue revolve around two competing views. One view, associated with health providers and Republicans, places the blame on rising medical malpractice premiums, and calls for caps on pain and suffering awards and penalties for frivolous lawsuits. An alternative view, associated with Democrats, advocates price controls to reduce the cost of insurance, or mandatory provision by employers.

California

Prop. 72 began as a bill passed by the legislature and signed by Gov. Gray Davis in the waning days of his administration. Business groups challenged the law by collecting enough signatures to put a referendum on the ballot. The law will take effect only if voters approve Prop. 72.

The measure would require businesses with 50 or more employees to pay at least 80% of the premiums for private health insurance for employees, or pay into a special state fund. The measure would apply to businesses



with 20 or more employees if the legislature enacts an offsetting tax credit. Businesses with fewer than 20 employees would be exempt. Voters rejected a similar measure (Prop. 166) in 1992.

Prop. 72 is supported by the AARP, health organizations, unions, and the California Teachers Association. Supporters argue that it will provide insurance to an additional 1.3 million Californians, and will save tax dollars by reducing the number of uninsured in emergency rooms.

The measure is opposed by the California Chamber of Commerce, taxpayer groups, Gov. Arnold Schwarzenegger, and L.A. County Sheriff Lee Baca. They argue that it would impose crushing costs on California businesses at a time when the state is trying to regain its competitive edge,

and cite a recent study by the Employment Policies Institute that 150,000 jobs would be lost. Virtually every state newspaper has come out against the measure, including the LA Times, Sacramento Bee, SF Chronicle, San Jose Mercury News, and Orange County Register.

The voters have not made up their minds yet. An early October Field Poll found 45% in favor, 29% opposed, and 26% undecided.

Florida

Physicians and trial lawyers are fighting an expensive battle over three initiatives. More than \$28 million has been raised to date, and \$25 spent so far.

Amendment 3, The Medical Liability Claimant's Compensation Amendment, would

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HEALTH CARE (CONT'D)

limit contingency fees in medical malpractice lawsuits to 70% of the first \$250,000 and 90% of the rest. Currently attorneys keep 30-40% of the award.

Amendment 3 is sponsored by the Florida Medical Association and endorsed by Vice President Dick Cheney. Proponents argue that contingency fee limits would deter lawyers from filing meritless lawsuits.

Opponents include trial lawyers and the Florida Chamber of Commerce. They argue that contingency fees allow even the poorest patients — who would not be able to pay hourly fees—to bring lawsuits, and help keep health care providers accountable.

A Mason-Dixon poll in early October found 45% in favor of Amendment 3, 29% opposed, with 26% undecided.

To counter Amendment 3, the Academy of Florida Trial Lawyers put Amendments 7 and 8 on the ballot. Amendment 7 would give patients access to the medical malpractice records of their health care providers. Amendment 8 would prohibit doctors with three or more medical malpractice incidents from practicing medicine.

Supporters of both measures argue that insurance premiums will be lower with fewer medical errors and a more open system that allows patients to make educated choices. The Florida Medical Association, which opposes both measures, claims the amendments would increase

liability costs because doctors would be more likely to settle malpractice cases instead of defending them in court.

A Mason-Dixon poll in early October found over 70% in favor of both Amendments 7 and 8.

Nevada

As in Florida, doctors and trial lawyers are sponsoring competing measures. Physicians and insurers support Question 3, which would impose a \$350,000 cap on noneconomic damages in medical malpractice cases, limit attorney's fees, allow doctors to pay awards over time, require that juries be told what medical expenses insurance companies have already covered, and hold physicians responsible only for their portion of damages.

The measure is intended to hold down health care costs by reducing medical malpractice insurance rates. Trial lawyers, who oppose the measure, counter that holding physicians responsible only for their portion of damages

would hurt them because payments would come out of physicians' pockets rather than from insurance companies.

A Mason-Dixon poll in mid-October found 57% in favor and 24% opposed.

Trial lawyers are sponsoring Questions 4 and 5. Question 4 would roll back casualty insurance premiums by 20%.

Question 5 would hold lawyers who initiate frivolous lawsuits personally responsible for attorney's fees and court costs, but would ban limits on attorney fees. Both questions 4 and 5 would remove caps on pain and suffering awards.

Opponents include the Nevada Medical Association and Chamber of Commerce. They argue that insurers would be driven out of Nevada if prohibited from charging market rates.

In a mid-October Mason-Dixon poll, opinion on Question 4 was divided 39% in favor, 39% against, and 22% undecided. Question 5 was doing slightly better, with 45% in favor and 39% opposed.

Nevada employs a unique approval process for initiatives that amend the state constitution, requiring measures to be approved in two consecutive elections. Questions 4 and 5 are amendments and would have to go back before the voters in 2006 if approved this year.

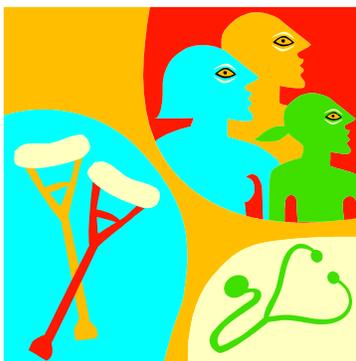
Oregon

Doctors and lawyers are battling over Measure 35, which would place a \$500,000 limit on pain and suffering awards in medical malpractice cases.

Oregonians for Quality, Affordable, and Reliable Health Care, a group supported by doctors, hospitals, and insurance companies is leading the campaign and claims that reform is needed to reduce malpractice insurance premiums.

Opponents, including lawyers, unions, senior citizens, consumer groups, and the state's largest newspaper argue that the measure does nothing to improve health care and would limit the rights

“Physicians and trial lawyers have raised \$28 million in Florida”



INSIDE STORY HEADLINE

of people injured by negligence and recklessness. Two Oregon governors, both Democrats, are on opposite sides of the issue. Former Gov. John Kitzhaber, once a doctor, is in favor, while current Gov. Ted Kulongoski, once a trial lawyer, is opposed.

The battle over Measure 35 is not Oregon's first foray into tort reform. In 1987 lawmakers enacted legislation that set a \$500,000 limit on noneconomic damages in all personal injury lawsuits. In 1999, the Oregon Supreme Court said the law violated the constitutional right to a jury trial. The legislature then referred a constitutional amendment to the 2000 ballot that would have given the legislature the power to limit jury awards and restored the \$500,000 limit. After a campaign that included a TV ad featuring Erin Brockovich, the measure was defeated by a 3-to-1 ratio.

Supporters of Measure 35 say that their proposal is different because it only limits medical malpractice awards and does not give legislatures the power to limit jury awards. Brockovich is again involved with the opposition, as the author of a statement in the Voters' Pamphlet.

A late September poll by The Oregonian found 50% in favor and 36% opposed.

Wyoming

The legislature placed two measures on the ballot concerning medical malpractice

litigation. Amendment C would allow the legislature to require alternative dispute resolution or medical panel review before a person files a lawsuit against a health care provider for injury or death. Amendment D would allow the legislature to limit pain and suffering awards for medical malpractice.



Doctors, hospitals, and insurance companies who support the measures argue that they are necessary to reduce insurance rates and allow doctors to continue to practice medicine in Wyoming. Opponents, including trial lawyers and unions, counter that there is not enough evidence to conclude that damage caps slow insurance rates and that the measures would limit a victim's ability to recover full damages.