



# THE MEDICAL LIABILITY CRISIS: WHY REPEALING McCARRAN-FERGUSON OR PASSING OTHER INSURANCE LAWS IS NOT THE ANSWER

## **What Is McCarran-Ferguson?**

The McCarran Act is the federal law authorizing state regulation of insurance. The act also provides a limited federal antitrust exemption for the business of insurance, subject to state regulation and oversight, for activities such as joint data collection that help foster a competitive marketplace benefiting consumers. Furthermore, the exemption does not insulate insurers from the enforcement of state or federal antitrust laws in the context of anti-competitive business practices such as boycott, coercion or other intimidation in the marketplace.

## **Why Won't Repealing McCarran-Ferguson's Antitrust Provisions Help?**

State regulators are required by law to reject rates that are excessive, inadequate or unfairly discriminatory. Repealing McCarran-Ferguson would do absolutely nothing to change the underlying reason for the rise in medical liability premiums – namely the explosion of meritless litigation and skyrocketing jury awards.

## **How Are Medical Liability Rates Set?**

As a matter of law, medical liability rates are determined by estimates of *future* losses from claims and *future* investment income.

A common misconception is that insurance companies attempt to recover past losses, hence increasing rates. This is not true. Rates are developed on a prospective basis, i.e., they must be adequate to cover future costs that are projected to occur under the policies being written. The process of ratemaking uses historical information to project what will happen in the future. If actuaries underestimate projections and the rates are too low, then they have to adjust them going forward to correct for under-pricing. There is no recoupment aspect, whether it be for insured losses or investment losses.

## **So Insurers Can't Raise Premiums To Recover Bad Stock Market Investments?**

Absolutely not. This is just a myth designed to derail passage of medical liability reform.

## **What Will Work?**

The only way to end America's medical liability crisis is to address the underlying causes that are making insurance either unaffordable or unavailable at any price. That means reining in meritless lawsuits and establishing clear guidelines to curb runaway juries.

Federal legislation modeled on California's successful Medical Injury Compensation Reform Act (MICRA) passed in 1975 is working its way through Congress. This legislation would:

- Create clear guidelines on non-economic damages, including the establishment of a \$250,000 limit;
- Ensure that the bulk of jury awards and settlements goes to the plaintiffs, not the lawyers.

***Medical Liability Reform Is  
The Proven Way To Cure America's Medical Liability Crisis***