

PROPS 45 & 46



## VOTE FOR PATIENT PROTECTION **NOV. 4**

With our Yes votes, Californians can improve health care in two important ways:

- Prop 45 will control skyrocketing insurance premiums by making insurers prove that rate hikes are justified.
- Prop 46 will adjust 39 year old limits on payments for patients harmed or killed by medical malpractice while also reducing prescription drug abuse and medical errors.

The insurance industry is hell-bent to defeat both initiatives. Insurance companies have poured more than \$80 million into the campaigns against Props 45 and 46 so far. Hospitals and other health care industry opponents have pushed total spending against the measures toward \$100 million.

### **YES ON PROP 45** **STOP Medical Insurance Price Gouging**

Proposition 45 would extend to health insurance the most effective consumer protection law enacted by California voters in decades – Prop 103’s controls on automobile and homeowner premiums. By simply requiring insurers to justify rate hikes, Prop 103 has saved California motorists more than \$102 billion since voters approved it in 1988, according to the Consumer Federation of America.

Prop 45 would require providers of job-based insurance policies covering 50 or fewer workers, and companies that sell coverage directly to individuals and families – some 6 million people in all – to submit evidence justifying proposed rate increases to the Department of Insurance. The state insurance commissioner could deny or reduce the proposed increase after reviewing the evidence. Consumer advocates could inde-

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### **YES ON PROP 46** **Prevent Medical Errors**

At its heart, Proposition 46 deals with one of the most vital questions of all: What is a human life worth?

It’s impossible to put a price tag on life, of course, but for nearly four decades in California the value has been woefully depressed for children, seniors and stay-at-home moms, preventing them – or their survivors – from seeking justice for botched health care. That’s because the Medical Injury Compensation Reform Act (MICRA) has frozen non-economic damages for preventable medical errors at \$250,000 since it was enacted in 1975. Prop 46 would raise this cap to about \$1.1 million, which is the inflation-adjusted value it held in 1975.

At a press conference endorsing Prop 46 at CFC’s San Francisco office, Sen. Barbara Boxer told the story of a young

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pendently challenge proposed rate hikes. (Under Prop 103, in the past year alone, CFC has successfully challenged four major insurance rate hike proposals, saving 4 million motorists and homeowners \$148 million — see below.)

Thirty-five other states have similar controls for health insurance, and the San Jose Mercury News finds the rules in Connecticut, New York, Maryland and Oregon are especially pertinent.

“They provide compelling evidence that this regulation discourages insurance companies from seeking the kinds of outrageous increases California has seen,” the newspaper editorialized. “Prop 103 in California and health insurance regulations in two-thirds of other states show Proposition 45 will work. Voters should approve it.”

Insurance-industry ads make the spurious claim that Prop 45 would interfere with Covered California, the insurance exchange that’s implementing President Obama’s Afford-

able Care Act in the state. On the contrary, Prop 45 would fill a gap in the Affordable Care Act. Covered California offers subsidized rates for the uninsured who qualify because of their income, but it’s not set up to effectively negotiate rates – and most of the state’s residents, who aren’t covered by Covered California, will remain unprotected from insurers’ price gouging. Prop 45 can help hold down rates, guard against discriminatory policies and ensure a competitive market that’s healthy for insurers and consumers alike.

“Prop 103 in California and health insurance regulations in two-thirds of other states show Proposition 45 will work. Voters should approve it.”

— San Jose Mercury News

**CFC:**  
**\$148**  
**MILLION**  
**IN INSURANCE**  
**SAVINGS FOR**  
**RATEPAYERS**



Prop 45 does more than give the Department of Insurance (DOI) the power to reject unfair premium increases. By extending Prop 103’s public participation rules to individual and small-group health insurance, voters will also empower consumer advocacy groups – like CFC – to object to excessive medical premium rate hikes and participate in DOI rate review proceedings.

Last year, CFC began intervening before the Department of Insurance in Prop 103 auto and homeowner insurance rate reviews. Our actuaries scrutinized data submitted by insurers, pointed out errors in calculations or loss projections, and persuaded regulators and insurers to cut their proposed rate increases. As a result of CFC’s intervention, consumers have saved \$148 million in the past 12 months:

- 1.2 million Farmers policyholders saved \$34 million on homeowners insurance.
- 1 million AIG policyholders saved \$7.8 million on homeowners insurance.
- Infinity Insurance policyholders saved \$15.5 million on auto insurance.
- 1.6 million State Farm policyholders saved \$91 million on homeowners insurance.

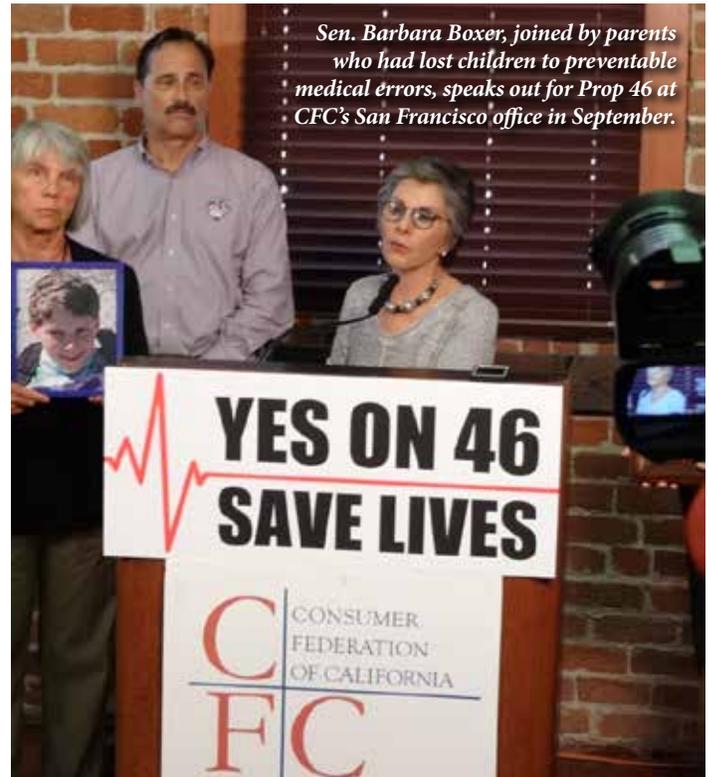
California man who was blinded and brain-damaged by easily preventable errors in the medical treatment he received following an accident. A jury that heard the evidence awarded him \$7.1 million in non-economic damages – “but that award fell by the wayside,” Boxer reported, because due to MICRA “the judge was forced to reduce the amount to \$250,000.”

It’s a tragically common occurrence. The cap on damages keeps many victims – and even the families of loved ones killed by egregiously negligent hospitals or doctors – from going to court to hold them to account for their errors.

### Other provisions of Proposition 46 would:

- Address the estimated 18 percent of physicians who have drug or alcohol abuse problems during their careers by mandating random drug and alcohol testing of doctors, modeled after federal testing of airline pilots, and testing after an adverse event at a hospital, with referral to substance abuse treatment or to the Medical Board of California for disciplinary action as warranted.
- Require that physicians check the state’s existing prescription drug database before prescribing potentially dangerous drugs to first-time patients. This will curb doctor shopping by drug abusers who get multiple narcotic prescriptions for the same medical condition, endangering public safety as well as their own health.

“Prop 46 will prevent medical errors in the first place,” Boxer said. The initiative can cut down on the danger and cost of



*Sen. Barbara Boxer, joined by parents who had lost children to preventable medical errors, speaks out for Prop 46 at CFC’s San Francisco office in September.*

prescription drug abuse, including harm inflicted on patients by self-prescribing physicians, and provide justice to victims of preventable medical errors.

## 2014 LEGISLATIVE SUMMARY

Two bills sponsored by the Consumer Federation of California this year were passed and signed into law. Many other bills that CFC championed were also enacted, and the four main measures that we opposed in the closing months of the legislative session were all defeated. Following are some of the highlights; to review the summer’s key consumer bills and votes, go to <http://bit.ly/CFCwrap1314>

### CFC-sponsored bills enacted into law

**SB 1256 (Mitchell)** Medical services; credit: thanks to this measure, health care patients lacking insurance will no longer be subject to exorbitant third-party credit charges arranged without their full knowledge and informed consent.

**AB 2667 (Bloom)** Rental purchase agreements; electronic devices, monitoring technology: It’s an outrageous violation of personal privacy, but spyware on computers leased by rent-to-own companies can track their customers’ location, collect sensitive personal, medical and financial records and passwords, even turn on Web cams and transmit images to remote servers, all without the knowledge or consent of the people being silently snooped on. That can’t happen in California once AB 2667 takes effect.



### CFC-supported bills made law

**SB 962 (Leno)** Advanced mobile communications devices: Thefts and strong-arm robberies of smartphones are fast-growing crimes, so adding a “kill switch” to allow owners to easily de-activate the devices and make them worthless on the black market isn’t just a good idea – it’s a matter of public safety. And now it’ll be the law for phones sold in California after July 1, 2015. SB 962 turned out to be among the toughest fights in the Legislature this year, with the bill failing on its first Senate floor vote. News coverage exposing how AT&T and Verizon profit from phone theft and a grassroots lobbying campaign by CFC and other consumer groups turned the tide.

**SB 1019 (Leno)** Upholstered furniture; flame-retardant chemicals: This requires that upholstered furniture be labeled to indicate whether it’s loaded with dangerous and ineffective flame-retardant chemicals. This is a win for a broad coalition representing firefighters, environmental and health groups, along with CFC, who have worked for years to remove these harmful toxics from our homes.

## ABOUT US

The Consumer Federation of California (CFC) is a non-profit advocacy organization. Since 1960, CFC has been a powerful voice for consumer rights, campaigning for state and federal laws that place consumer protection ahead of corporate profit. Each year, CFC testifies before the California legislature on dozens of bills that affect millions of our state's consumers and appears before state agencies in support of consumer regulations.

Contributions are not tax deductible.



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# Prop 46 opponents are privacy hypocrites



BY RICHARD HOLOBER, EXECUTIVE DIRECTOR

Health care industry-funded ads sounding the Prop 46 privacy alarm flunk the straight face test.

The ads allege Prop 46 sets up a secret medical record database that will be vulnerable to hacking. Not only is this absolutely false, it's galling when you consider that the hospitals and insurance companies funding the ads have exposed millions of their own patient records through their negligence.

Prop 46 creates no new patient database. It does put to better use a database that has been in place for 17 years: the Controlled Substance Utilization Review and Evaluation System (CURES). It is encrypted and stored on a server behind the Department of Justice's firewall, and it's never been breached. Access is tightly restricted to licensed prescribers, pharmacists and law enforcement.

Overprescribing of prescription narcotics is a national epidemic. The Centers for Disease Control cited 475,000 emergency room visits and 36,000 deaths from prescription

narcotic overdoses in a recent year. A big contributor to this epidemic is doctor shopping by drug abusers who go from one physician to the next, getting multiple prescriptions for the same narcotic.

CURES is a powerful tool to halt such doctor shopping. But it's only effective if physicians check it. It's estimated that only 8 percent of California's doctors do so. New York and Virginia recently required mandatory checks of their CURES-type databases, reducing doctor shopping by 75 percent and 73 percent respectively.

The hospital and insurance companies behind the No on 46 ads have a lot of nerve to assume the mantle of privacy protectors. The perfect security record of CURES stands in stark contrast to the failure of these health care corporations to safeguard their own patient records.

According to Privacy Rights Clearinghouse, from January 2013 through June 2014, hospitals and insurers – including No on 46 funders – exposed more than 1.5 million California patient records in data breaches.

### A few examples:

- AHMC Hospitals, Alhambra, 2013: 729,000 patient records breached

- Anthem Blue Cross, 2012-13: 57,000 patient records exposed
- Health Net, 2011: 1.9 million patient records lost

No on 46 funders have also worked overtime to weaken patient privacy laws. This year the California Hospital Association pushed amendments to Assembly Bill 1755 that would have ended mandatory patient notification requirements and instead allowed each hospital to decide whether or not to inform patients when its records were negligently released. In 2012 the California Hospital Association supported amendments to AB 439 that would have eliminated most patients' right to have their day in court when a health care provider exposed their personal records to strangers. The Consumer Federation of California and our privacy allies stopped both health care industry efforts to mug patient privacy rights.

Hospitals and insurance companies should stop scaring voters about Prop 46, clean up their own negligent security practices, and respect California medical privacy laws.