

Maryland's Malpractice Reform

On January 11 the Maryland General Assembly overrode Governor Robert L. Ehrlich Jr. veto to give final approval to malpractice reform legislation. Because the bill was passed as an emergency measure, it became effective immediately after the veto was overridden. The bill will levy a 2 percent insurance premium tax on health maintenance organizations (HMOs) and managed care organizations (MCOs) to subsidize doctors' escalating liability insurance rates and boost payments to certain Medicaid providers.

Faced with a 33 percent increase in malpractice insurance premiums on Jan 1, the Maryland General Assembly on December 30, in an emergency special session, passed "Maryland Patients' Access to Quality Health Care Act of 2004" (H.B. 2).

The legislation passed the House of Delegates on an 85-50 vote garnering the three-fifths majority needed to override the governor's veto. The Senate passed H.B. 2 by a 31-15 vote, two more than the 29 needed.

Governor Ehrlich vetoed the legislation on Jan. 10, saying that the legislation contains too few legal curbs on malpractice lawsuits and a tax on HMOs and MCOs.

Gov. Ehrlich had proposed funding the program with existing state dollars, but Democratic leaders objected because it would have required cuts in other areas preferring the tax as a dedicated funding source.

According to a Washington Post article, the bill will:

- Use \$40.7 million (in the first year) from a tax on HMOs to limit increases in doctors' insurance rates to 5 percent next year, instead of an average of 33 percent for those insured by the state's largest malpractice carrier.
- Reduce a cap on damages for pain and suffering in wrongful death cases from about \$1.6 million to \$812,500.
- Freeze damages available for pain and suffering in other malpractice cases at \$650,000 for four years; current law calls for a \$15,000 annual increase in the cap.
- Limit past medical expenses to the total amount actually paid by or on behalf of the plaintiff.
- Allow a court to call a neutral witness to testify about future medical expenses and loss of earnings.
- Tighten qualifications for expert medical witnesses in malpractice cases.
- Require mediation unless both parties in a case agree to proceed without it.
- Reduce the standard of proof in physician discipline proceedings from "clear and convincing" to "preponderance of the evidence."
- Require the Maryland Insurance Administration to publish a comparison guide of malpractice insurance available.
- Allow for swifter cancellation of malpractice policies by insurers.
- Create a people's insurance counsel to advocate for consumers against insurance companies.

For more information on H.B.2, including bill text, go to
<http://mlis.state.md.us/2004s1/billfile/HB0002.htm>.

For the Governor's veto message go to
http://www.gov.state.md.us/pdfs/011005_VetoLetter.pdf

If you have any questions on these or other topics, please contact Shuan Tomlinson at 800-338-2746 ext. 4547 or by email at stomlinson@acponline.org.

January 13, 2005