



The Legislative Wrap-Up

Library and Information Services, Department of Legislative Services

Special Session

December 28, 2004-January 11, 2005

IN MEMORIUM

Senator Robert H. Kittleman (R-District 9, Carroll and Howard Counties), passed away in September 2004. His long and distinguished legislative career began in the House of Delegates where he served from 1983 to 2002. Senator Kittleman was both the House Minority Whip (1987-1994) and then the Minority Leader (1995-2002). When he crossed the hall to the Senate in 2002, he was appointed to the Budget and Taxation Committee and to the Legislative Ethics and Pensions Committees. He also served as Chairman of the Howard County Senate Delegation. He will be greatly missed by his colleagues on both sides of the aisle and in both chambers.

DELIBERATIONS ON MEDICAL MALPRACTICE

On Monday, December 20, 2004, Governor Robert Ehrlich issued an Executive Order (01.01.2004.70) calling the General Assembly into a special session on Tuesday, December 28, to take "immediate action...to ensure that the costs of medical malpractice insurance are curtailed and that access to health care is maintained." The special session, the first since November 1992, was the sequel to discussions that took place over a number of months among President of the Senate Miller, Speaker of the House of Delegates Busch, and Governor Ehrlich. Maryland physicians were on the average facing a 33% increase in their malpractice premiums, after a 12% increase in the previous year.

Committee meetings on Monday, December 27, included a hearing before the Senate Special Commission on Medical Malpractice on two proposals, one from Governor Ehrlich and the other from Senator Frosh, Chairman of the Senate Judicial Proceedings Committee and of the Senate Special Commission, which had studied medical malpractice throughout the interim. On the House side, the Judiciary Committee, joined by a House Special Committee on Patient Access, heard testimony on the Governor's proposal and on a proposal by Speaker Busch.

When the Senate and House convened the special session on Tuesday, the Governor's proposal was introduced in the Senate and the House as [SB 1](#) and [HB 1](#), respectively. The Frosh measure became [SB 2](#) and the Speaker's legislation was numbered [HB 2](#). After extensive and sometimes heated deliberations in both chambers, [HB 2](#) became the bill through which the chambers would reach agreement.

Differences between the two bodies were resolved by a conference committee, composed of three legislators from each chamber, appointed by the President and Speaker. The adoption of the conference committee report on [HB 2](#) and final passage of the bill occurred in the early morning hours of Thursday, December 30. The House of Delegates adjourned at 3:01 a.m. and the Senate at 3:33 a.m. Both chambers agreed to meet again on Tuesday, January 11, 2005.

When legislation is presented to the Governor for consideration during a session, the Governor has six days to sign or veto the measure or allow it to become law without his signature. [HB 2](#) was presented to the Governor on Monday, January 3. The Governor vetoed the bill on Monday, January 10, and on Tuesday, January 11, the General Assembly overrode the veto of [HB 2](#) by the required three-fifths majority in each chamber. The Senate vote was 31-15. The House vote was 85-50. [HB 2/Chapter 5](#), as an emergency bill, took effect on the date of the override.

MARYLAND PATIENTS' ACCESS TO QUALITY HEALTH CARE ACT OF 2004

[HB 2/Chapter 5](#), as amended and passed by the General Assembly, establishes the Maryland Medical Professional Liability Insurance Rate Stabilization Fund, with two accounts, a rate stabilization account and a medical assistance program account. The purposes of the fund are to retain health care providers in the State by allowing insurers to charge lower rates, increase fee-for-service rates to specialty physicians participating in the Maryland Medical Assistance Program, and increase capitation payments to Managed Care Organization (MCOs) participating in the Maryland Medical

Assistance Program to pay network physicians at least 100% of the fee schedule used in the fee-for-service program.

The bill repeals the exemption applicable to HMOs and MCOs to the 2% premium tax and exempts HMOs and MCOs from the corporate income tax that they currently pay. The premium tax from HMOs and MCOs is dedicated to the fund which is expected to increase by as much as \$29 million in fiscal 2005. The increase in doctors' insurance rates should be limited to 5% for several years, rather than the increases that have continued to escalate for the past two years.

The bill also makes changes to laws affecting patient safety, insurance, and the tort system applicable to medical malpractice claims. Those provisions include:

- Changing the standard of proof in disciplinary actions against physicians from the greater standard of "clear and convincing" to "preponderance of the evidence;"
- Establishing a People's Insurance Counsel to appear before the Insurance Commissioner or in court to represent the interests of homeowner's insurance and medical professional liability insurance consumers and to review proposed rate increases of 10% or more for consumers;
- Expanding and specifying the information that insurers that provide professional liability insurance to health care providers must report to the Insurance Commissioner who also must report to the Legislative Policy Committee;
- Allowing cancellation of a medical professional liability policy under certain circumstances, thus repealing the current requirement that the cancellation be related to the insurer's economic and business purposes only;
- Requiring the Maryland Insurance Administration (MIA) to publish a comparison guide for medical professional liability insurance premiums, similar to the current, but not required, comparison guide for homeowners and auto insurance rates;
- Tightening and expanding State regulation of and reporting requirements by the Medical Mutual Society, the State's largest medical insurer;
- Freezing noneconomic damages at \$650,000 for four years with the amount to increase thereafter by \$15,000 annually and, under certain circumstances in a wrongful death action, capping the total amount of noneconomic damages at \$812,500 for four years. Current law would have allowed, under certain circumstances, up to \$1.625 million in wrongful death suits;
- Limiting past medical expenses to the total amount paid plus the total amount incurred, but not paid, if the plaintiff is obligated;
- Allowing use of a neutral expert witness to testify on a plaintiff's future medical expenses and future loss of earnings;
- Requiring the court to order parties to engage in alternative dispute resolution at the earliest possible date, unless the court finds that it would not be productive and all parties agree not to use it; and
- Making an apology or expression of regret made on behalf of a health care provider inadmissible as evidence of an admission of liability or as evidence of an admission against interest.

VETOES OF 2004 BILLS AND LEGISLATIVE OVERRIDES

The Maryland Constitution requires that bills presented to the Governor after the adjournment of a session must be returned to the respective chambers in the beginning of the next session. The General Assembly may override the gubernatorial veto with a vote of three-fifths of the members of each chamber. Under Article II, Section 17(d), an ordinary bill takes effect 30 days after the override.

Early in the special session, the Senate and the House sustained most of the gubernatorial vetoes of the legislation from the regular 2004 session. However, the Senate reserved action on seven vetoed bills and the House excluded 11 bills for veto override consideration. On Tuesday, January 11, the required three-fifths majority of the membership of each chamber voted to override the vetoes on the following bills:

- Open Meetings Act: Authorizes any person to file a petition with a circuit court to determine the applicability of open session requirements of the State's Open Meetings Act to a session of a public

body. Previously, a person could only file a petition if the person was adversely affected by a public body's failure to comply with the open session requirements. The bill responded to a recent court case, now on appeal to the Court of Special Appeals (SB 87/Chapter 1 and HB 73/Chapter 6);

- Equal Pay Commission: Establishes for two years a commission to study wage disparities in the public and private sectors, between men and women, and between minorities and nonminorities with a report due this September 30, and next (SB 250/Chapter 3);
- Adoption of Regulations: Modifies the process for adopting emergency and proposed regulations. The bills provide that the legislature's Joint Committee on Administrative, Executive, and Legislative Review may not approve the emergency adoption of a proposed regulation earlier than 10 days after the committee's receipt of the regulation unless the Governor declares that immediate adoption is necessary to protect the public health or safety. Other provisions address the availability of information (SB 309/Chapter 2, HB 429/Chapter 8);
- Search, Contact, and Reunion Services – Siblings: Expands the State's adoption search, contact, and reunion services program to include siblings who have been adopted and who are at least 21 years old. Since 1998, the State has provided services for adopted individuals and biological parents of adoptees, but birth siblings of adoptees and adoptees were excluded from actively searching for each other (HB 232/Chapter 7); and
- Elder Care: Requires the Department of Health and Mental Hygiene to apply for a federal waiver to establish a managed care pilot program to provide long-term care services to eligible Medicaid enrollees (SB 819/Chapter 4).

Gubernatorial vetoes of 2004 bills sustained by the Senate included SB 117 - Consumer Protection-Privacy of Social Security Numbers and SB 413 - Baltimore County – Education – Public School Facilities. The Senate also sustained the veto of several House measures including HB 183 - Procurement - Percentage Price Preference - Environmentally Preferable Products or Equipment, HB 740 - Safe Schools Reporting Act of 2004, and HB 811– Procurement - Services Rendered in a Foreign Country.

Despite considerable speculation and media attention directed toward two vetoed measures, SB 621 - State Procurement Contracts - Living Wage and HB 1188 - Higher Education Affordability and Access Act of 2004 - Supplementary Appropriation, no action was taken on either bill. Additionally, the House did not act on HB 95 - Maryland Horse Industry Board - Penalties, HB 351 - Maryland Health Care Foundation and Maryland Health Care Trust, HB 1062 - St. Mary's County - Deputy Sheriffs - Command-Level Appointees, and HB 1285 - Task Force to Study Youth Gang Activities.

SPECIAL SESSION *SINE DIE*

The 2004-2005 special session convened on December 28, 2004, and adjourned *sine die* on January 11, 2005. Floor sessions were held on December 28 through December 30, 2004, and again on January 11, 2005.