

HAGERSTOWN - Newly passed medical malpractice legislation drew different reactions Monday when Maryland House Speaker Michael Busch stopped in Hagerstown to praise the General Assembly's work.

During a quick press conference at Washington County Hospital, Busch, D-Anne Arundel, listed some of the bill's highlights, such as the lower cap on noneconomic damages.

He also hinted that more work lies ahead in the current legislative session.

"Are there other issues we need to address? Certainly," he said.

After the press conference, Dr. Karl Riggle - the leader of a persistent lobbying effort by Washington County's physicians - quickly named what he said he considers the bill's flaws.

At the top of the list of what's left to fix, Riggle said, is a change in the guidelines for expert witnesses in medical malpractice lawsuits.

He said doctors are fighting for the so-called "Daubert standard," in which "testimony needs to be scientifically valid and subject to peer review."

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Daubert v. Merrell Dow Pharmaceuticals was a U.S. Supreme Court case decided in 1993.

Last fall, hundreds of Washington County doctors threatened to halt or curtail their work because of rising medical malpractice insurance rates.

The issue jumped to the top of the legislators' list and resulted in a special session of the Maryland General Assembly at the end of December.

The General Assembly passed a bill that, among other things, set a 2 percent tax on HMO premiums, creating a fund to underwrite medical malpractice costs.

Gov. Robert Ehrlich vetoed the bill. However, lawmakers overrode his veto, enabling the bill to pass.

Busch and Del. John P. Donoghue, D-Md., met privately at the hospital Monday morning with about two dozen Washington County physicians, according to Riggle.

The doctors "were very candid about their frustration," Riggle said.

Even some new measures, such as mediation and an apology provision for doctors, don't go far enough, he said.

Asked after the press conference what's left for the General Assembly to address, Busch named

physicians' reimbursement and patient safety.

Asked about the Daubert standard for expert witnesses, Busch said it was part of the House bill. He did not mention, however, that it was removed in the amended version that was passed and sent to the governor, which Riggle pointed out.

Riggle agreed that the bill covers safety, insurance and tort reform, but called it "tort light, insurance heavy and safety moderate."

"We're still feeling like there's a target on our back," he said.

Calvin M. Pierson, president of The Association of Maryland Hospitals & Health Systems in Elkridge, Md., said his organization supports the override.

The bill is "a significant first step and there's a lot more that remains to be done," said Pierson, who attended the press conference. "The public should not perceive that the medical liability crisis is over."

The association favors more changes on economic damages, good Samaritan protection and structured settlements, he said.

Busch said there are no new medical malpractice bills yet in the current General Assembly session, which started Jan. 12, but there will be.

Donoghue assured the small audience that the General Assembly will stay focused on the issue, "despite what people are saying out there."

Among the provisions in the Maryland Patients' Access to Quality Health Care Act of 2004:

- A 2 percent premium tax on health maintenance organizations (HMOs) and Medicaid Managed Care Organizations (MCOs) will go into a rate stabilization fund. HMOs and MCOs had been exempt from the premium tax.
- The limit on noneconomic damages, such as pain and suffering, in a wrongful death case will be \$812,500. The old limit was \$1,625,000.
- The state Board of Physicians' standard for imposing discipline is a "preponderance of the evidence," which means something more than likely occurred. The old standard was "clear and convincing evidence," which means it's reasonably certain that something occurred.
- Medical malpractice insurers can receive disbursements from the rate stabilization fund if their base premiums don't rise more than 5 percent per year.
- The state's insurance commissioner must review any request by Medical Mutual Liability Insurance Society of Maryland - which insures most of the state's doctors - that calls for a

premium increase of more than 7.5 percent. Medical Mutual's premiums went up an average of 33 percent this year, 28 percent last year and 10 percent the previous year.

- To testify in a medical malpractice case, a health-care expert must be board certified in that specialty and must have clinical experience, provided consultation or taught medicine in that specialty within five years.
- Healthcare providers' apologies or expressions of regret are not admissible as evidence in a malpractice case, but their admissions of liability or fault are. Previously, apologies and expressions of regret were admissible.