

## POLICY OBJECTIONS

## Legal Reforms

The bill that I introduced would have made the following changes. It would have provided a single cap on noneconomic damages, the so-called pain and suffering damages, in death cases. This would have made the cap in death cases the same as it is in all cases, including those involving serious permanent injuries. Although the bill that passed does reduce the cap in death cases, it does not make it a single cap. Rather, it makes the cap 125% in death cases if there is more than one beneficiary.

With regard to economic damages, the bill I introduced would have made the following changes. First, for past medical bills the plaintiff would have been entitled to the amount actually paid or owing by the plaintiff, not the billed amount. Second, for lost wages, because a judgment or settlement is not considered income which is subject to taxation the plaintiff would not be compensated for taxes that would have been paid. Under the current system, the plaintiff receives a windfall to the extent that he receives a judgment or settlement for any amount that would have been paid in taxes. Third, the bill would have established a rebuttable presumption that future medical bills would be compensated at the Medicare rate of reimbursement. This would have established a fair objective standard that the plaintiff could rebut in the event that this standard was unfair in a particular case.

The bill that passed made only one of the three changes in the area of economic damages, that being for past medical bills. No changes were made concerning tax consequences of lost wages and no changes were made concerning future medical bills. The provision of the bill that allows a court to appoint a neutral expert is a mere redundancy because current law already allows a court to appoint an expert in any case. This provision provides absolutely no relief.

The bottom line is that House Bill 2 does not solve the long-term problem. When the tort reform becomes fully effective in three to five years, it will reduce an average doctor's medical malpractice premium by less than 3%. When the rate stabilization fund ends in four years, health care providers will be back clamoring for more taxpayer assistance or more legal reforms (which will take another three to five years to become fully effective) to address the problem. This bill does nothing but nibble around the edges of the problem to the detriment of taxpayers.

## Constitutional Issues

Article II, Section 17 of the Maryland Constitution states that one of the reasons for granting the Governor the power to veto legislation is to guard against hasty or partial legislation. It is clear that this bill falls into this category.

The Attorney General's bill review letter dated January 3, 2005, has identified two portions of the bill that may not be given effect because they are not reflected in the bill's title in violation of Article III, Section 29 of the Maryland Constitution. These provisions address limitations on commissions paid by a medical malpractice liability insurer and a prohibition on reductions in reimbursements by a health insurer. Relying in part on notes prepared by various staff persons, the letter opines that Conference Committee likely intended that the body of the bill reflect what was