

Special session puts pressure on lawmakers and governor

Ehrlich urges fast action on malpractice reform

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Chances are rising that tomorrow's special General Assembly session on medical malpractice reform could end in discord that would tarnish both Gov. Robert L. Ehrlich Jr. and legislative leaders, painting them more as bickerers than problem-solvers.

Sensing a solution within reach earlier this month, Ehrlich ordered lawmakers to alter holiday plans and return to **Annapolis** to develop a fix for soaring insurance premiums that some fear are forcing doctors from their practices.

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It was a brash move by a governor hoping to solve what he considers to be the most vexing public policy issue facing Marylanders.

"There's some risk, but everybody has to take some risk, everybody has to lead when the situation is dire," Ehrlich said. "The administration warned this was a looming crisis. Now it's a pressing crisis."

Ehrlich, a Republican, was bucking conventional political wisdom, which holds that such sessions should be held only when an outcome is preordained. He implored elected leaders to do their

jobs by passing a package of tort reforms and patient safety measures.



But disagreements with Democrats in the Assembly that once appeared manageable grew more unruly by the hour last week.

Democratic legislative leaders continue to oppose Ehrlich over how to pay for a stopgap account he proposed that would keep insurance rates in check, and whether to impose stricter limits on jury awards and attorney fees.

"I think that when the governor made the decision to call a special session, there was a deal. Now some of the parties are backing away from the deal," said Del. Kumar P. Barve, the House majority leader from Montgomery County.

"The chief executive of the state is the guy responsible for making things happen," he said. "Everyone will try to blame everyone one else, but in the end, the voters expect the governor to make it happen."

Added Sen. Patrick J. Hogan, a Montgomery County Democrat and vice chairman of the Budget and Taxation Committee: "If nothing comes out of the special session, everyone

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looks bad, the governor included.

Proposal

The legislation proposed by Ehrlich would make a doctor's apology to a patient inadmissible in court, require mediation, increase the number of jurors in civil cases and restrict who can testify as a medical expert.

The bill would also change how a malpractice victim's economic damages are calculated, reduce the limit on "pain and suffering" awards to \$650,000 in wrongful-death cases and crack down on attorneys who file frivolous cases.

For much of the year, Ehrlich delivered dire warnings about the status of medical care.

He gave speech after speech flanked by doctors in white coats, talking of how Marylanders are losing access to health care because doctors are retiring, scaling back on high-risk procedures or moving elsewhere in the face of the state's rising insurance bills.

After months of unsuccessful negotiations with House Speaker Michael E. Busch and Senate President Thomas V. Mike Miller, both Democrats, Ehrlich finally acted Dec. 17. But critics and other observers say the governor's special-session call is more of a publicity stunt than a legitimate effort to reach an agreement.

"It's typical Bob Ehrlich. It's a waste of taxpayer dollars, \$45,000 a day, to try to score political points. It's not designed to accomplish any real result," said Del. Neil F. Quinter, a Democrat from Howard County. "To go into special session without a deal when we are only 15 days away from the start of the regular session makes it a waste."

Donald F. Norris, a public policy professor at the University of Maryland, Baltimore County, said Ehrlich appears to be preparing to blame Democrats in the legislature for a lack of progress.

"I think it is about politics. I think it's about one-upmanship," Norris said. "It's not about governing and solving problems.

"Bob Ehrlich has blamed the General Assembly two years in a row for not adopting slots. If he doesn't get what he wants in terms of the medical malpractice insurance crisis, I have no doubt that he will blame the General Assembly again," he said.

Ehrlich supporters say those criticisms are unfounded, and they praise the governor for working toward a solution on complex legislation.

"Not only is it worth the risk, we have an obligation to do this," said Del. Anthony J. O'Donnell, the House minority whip from Southern Maryland. "To make sure women don't lose their obstetricians, and people who need surgery don't lose their neurosurgeons."

"The issue transcends any partisan considerations," O'Donnell said. "For those willing to make it a partisan issue, they stand the risk of facing the wrath of the citizens of Maryland."

Del. Warren E. Miller, a Howard County Republican, said the old way of thinking - that the governor and presiding officers should reach agreement before asking the Assembly to act - doesn't apply in the current era of divided government.

"Maybe traditionally when one party ran everything, it was easy to do that. The governor wants to solve the problem, and this will force a dialogue. It may be an uncomfortable discussion, but it needs to happen."

The people who got Bob Ehrlich elected are looking for medical malpractice reform, Miller said. "The people who ran Annapolis for years are afraid of the topic. It's a changing dynamic: We are looking out for businesses and doctors, rather than trial lawyers."

Timing

For months, the malpractice debate proceeded like so many other issues in Annapolis, from slot machines to education funding, with lots of rhetoric but few compromises.

But in dramatic fashion, Ehrlich announced this month that the time had come to confront the problem. Three days after Christmas was when to do it, the governor said, even though the Assembly was scheduled to begin its regular 90-day session Jan. 12.

Some said the governor was hoping many lawmakers wouldn't be able to cancel holiday travel plans, thus depriving Democrats of votes needed to override the governor's vetoes.

Others said he needed to act before the next state budget is unveiled next month, when much-anticipated funding cuts could make the prospect of using tax dollars to help doctors pay their insurance premiums even more unpalatable.

Ehrlich's proposed bill was not available until Thursday, and major points remain unresolved.

Democrats say lifting an HMO tax exemption is the preferred funding source to supplement insurance costs. Ehrlich insists that taxes should not be raised.

Some lawmakers expressed concern over who would control the dollars, regardless of where they come from. Others said there were too many limits on lawyers. There is no solvent in sight to loosen the sticking points.

Some participants say the governor had other choices. He could have ordered a temporary freeze on malpractice insurance bills, which are rising an average of 33 percent for 2005, they say. Bills from the state's largest insurer of doctors, the Medical Mutual Liability Insurance Society of Maryland, were due Dec. 1, but doctors have until Jan. 1 to pay before their policies are canceled.

"They can halt the rate increase, and there are lots of things they could do besides drag people back for a special session," said Sen. Brian E. Frosh, the Senate Judicial Proceedings Committee chairman who headed a panel that recommended malpractice reforms. "The first rule in legislation, as in medicine, is do no harm. I wonder whether we're acting so quickly that we run the risk of doing harm."

Special sessions in Maryland are relatively rare; the last one was held in 1992, to address budget deficits caused by the recession of the early 1990s. Most such sessions have been brief.

Despite the unexpected scheduling, most lawmakers say they will be able to attend. House leaders say they anticipate about 10 of 141 members won't be there. Some have altered vacation plans, but others said they purposely kept their calendars open.

"I've been on hold since late November," said Del. Salima S. Marriott, a Democrat and chairwoman of the Baltimore House delegation.

Sun staff writer Andrew A. Green contributed to this article.

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