

Medical malpractice bill advances

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HONOLULU -- A compromise bill limiting how much a patient can sue a doctor for medical errors advanced in the House Health Committee on Friday, but, as in previous years, its future remains uncertain.

The amended bill, HB 1992, limits noneconomic damages -- such as emotional distress and loss of companionship -- to \$250,000, unless a judge determines the case is "catastrophic," raising the limit to \$3 million. The state currently has a \$750,000 limit on pain and suffering, another type of noneconomic damage. Economic damages, such as medical expenses and lost wages, are not capped.

The bill next goes to the House Committee on Consumer Protection and Commerce, where Chairman Bob Herkes, D-Ka'u, South Kona, says it will be heard, and if previous years are an indication, passed. Its final stop is the House Judiciary Committee, where it has hit roadblocks before. Chairman Tommy Waters, D-Lanikai, Waimanalo, did not return repeated messages left with his staff.

Proponents say capping lawsuits will help solve the health care crisis, especially on neighbor islands and in rural areas, by stabilizing medical malpractice insurance premiums. The bill doesn't require premiums to be held down, but proponents say it will be a natural consequence of letting insurance carriers better predict the amount of claims and losses.

"Increased certainty will have the effect of decreasing or moderating premium costs," said state Insurance Commissioner J.P. Schmidt, adding the state has an "irrational legal system."

The bill would go into effect upon enactment and automatically expire in five years, unless it is renewed. That, said bill sponsor and Health Committee Chairman Josh Green, D-North Kona, Keauhou, Kailua-Kona, would allow the Legislature to let it lapse if it didn't stabilize insurance premiums.

Physicians around the state also testified in favor of limits, as did the Hawaii Medical Association and the Hawaii Association of Health Plans, a group of the state's main health insurance companies. Many cited Texas and California as states with the best handle on medical malpractice issues.

"One of the reasons I have just left Hawaii is the heightened medical legal climate. I personally have been subjected to legal scrutiny which I consider frivolous and unfounded," said Kapaa doctor James McGreevy, who is moving to the mainland after five years of practicing on Kauai. "Still, these claims take a tremendous emotional toll on myself and an excessive amount of time away from my patients and family who are otherwise requesting my services and time."

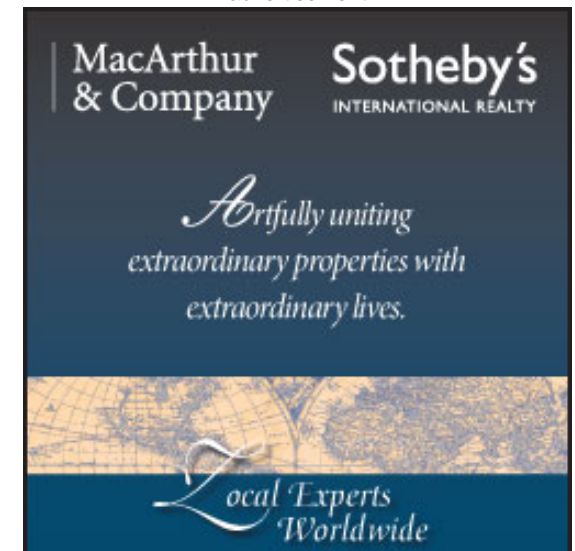
The bill doesn't go as far as the state's medical groups and Gov. Linda Lingle wanted, as it doesn't limit how much of the award goes to a plaintiff's attorney when the attorney takes the case on contingency. That provision was struck out after Rep. Karl Rhoads, D-Kakaako, Iwilei, an attorney, suggested that perhaps the defendant doctor's attorney fees should also be limited, bringing a hue and cry from doctors at the hearing.

"Let's cap them all the way across the board if we're going to cap attorney fees," Rhoads said.

He ultimately was the sole vote against the compromise bill.

Speaking against the flood of people supporting the bill was Robert Toyofuku, representing the Consumer Lawyers of Hawaii. He

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said caps on noneconomic damages hurt children and the poor the most, because they don't have the expectation of lost wages and recovery for medical expenses goes to caregivers, not to the family.

"Caps are unfair, arbitrary and unnecessary and unfairly punish the most severely affected victims, whose quality of life has been destroyed in many instances," Toyofuku said. "The arbitrary nature of a cap also takes away the right of a jury to determine the proper damages for a particular injury."

The committee also passed HB 2151, sponsored by Rep. Cindy Evans, D-North Kona, South Kohala, that creates a "captive" insurance company to provide medical malpractice insurance to self-employed medical doctors.

Green said the bills are part of a comprehensive package he hopes to pass this year tackling the health care crisis. Other components are incentives for doctors to practice in rural areas and increasing reimbursements from managed-care groups.

"I don't see this as a doctor versus lawyer issue," Green said. "I see this as an attempt to put one piece of the puzzle in place as regards the health care crisis."