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TO: The Honorable Thomas M. Middleton, Chairman
Members, Senate Finance Committee

FROM: Joseph A. Schwartz, III
Pamela Metz Kasemeyer
J. Steven Wise

DATE: March 10, 2011

RE: **SUPPORT** – Senate Joint Resolution 6 – *Safe Harbor Legislation and Regulations Needed to Form Accountable Care Organizations*

The Maryland State Medical Society (MedChi), which represents over 7,300 Maryland physicians and their patients, supports Senate Joint Resolution 6.

Senate Joint Resolution 6 calls upon the United States Congress and the Federal Trade Commission to pass legislation and adopt regulations that will establish antitrust safe harbors to allow the formation of physician-led Accountable Care Organizations (ACOs) under the new federal health reform law. The American Medical Association (AMA) is presently collaborating with several federal agencies in developing rules to allow for physician-led collaborative efforts in the formation of ACOs. These ACOs will be the building blocks for the delivery of care under the new federal health reform law and the antitrust laws applicable to the formation of ACOs are complicated. See attached AMA letter to Senator Middleton and AMA statement to the federal authorities.

The point of Senate Joint Resolution 6 is to express the will of the Maryland General Assembly to the Congress, the Federal Trade Commission and the Maryland Congressional Delegation that all reasonable efforts should be undertaken to involve physicians in the formation of ACOs. One of the AMA's recommendations to the federal agencies is that physician involvement in forming ACOs – from an antitrust perspective – should be judged by the so called “rules of reason” as opposed to the “per se rule”. Developing Supreme Court precedent indicates the “per se” rule should only apply to the most blatantly negative forms of price fixing that have no plausible justification. Such negotiations should be evaluated

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under the “rule of reason” if sufficient financial or clinical integration of the physician practices exist. Senate Joint Resolution 6 asks the various federal actors to produce a set of regulations which will allow for meaningful formation of physician-led ACOs.

MedChi would ask for a favorable report on Senate Joint Resolution 6.

For more information call:

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