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TO: The Honorable Peter A. Hammen, Chairman
Members, House Health & Government Operations Committee
The Honorable Joseline Pena-Melnyk

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

DATE: February 26, 2009

RE: **SUPPORT WITH AMENDMENTS** – House Bill 255 – *Health Maintenance Organizations – Payments to Nonparticipating Providers*

The Maryland State Medical Society (MedChi), which represents over 7,200 Maryland physicians and their patients, supports House Bill 255 with amendments.

House Bill 255 is a product of the Governor’s Task Force on Health Care Access and Reimbursement. It seeks and does improve the reimbursement of “non participating” physicians with Maryland HMOs. Over the years, the Legislature has created statutory formulas for the reimbursement of “**non par**” doctors who treat HMO patients. The enactment of statutory formulas was made necessary by another Maryland law which disallows Maryland doctors from billing HMO patients for the portion of their bills which are not paid by the person’s HMO¹

At the present time there are two different formulas. Certain physicians (trauma physicians) receive 140% of Medicare; all other physicians receive the greater of the amount the HMO was paying as of January 1, 2001 or 125% of the amount that the HMO pays to a contracting physician for the same service. HMOs have been permitted by the Maryland Insurance Administration to pay 125% of the lowest contract rate as opposed to the average contract rate.

¹ Rather than create statutory reimbursement formulas, MedChi believes the most effective solution would be the Colorado approach which requires the HMO to pay the doctor’s bill in full less any patient co pay or deductible. While MedChi supports the efforts behind House Bill 255, it would urge this Committee to adopt the Colorado alternative.

House Bill 255 makes a number of corrections to the present formula. First, it substitutes the **average rate** as opposed to the lowest rate for purposes of the 125% multiplication. Unfortunately, the bill provides for no easy way to verify the “average” rate although a doctor is allowed to request the “average rate” from the HMO (page 5, lines 3-6).

The second change is to create 3 separate formulas for **non par** doctors as follows:

- A. Non par trauma physician in trauma centers: greater of 125% of average contract or 140% of Medicare;
- B. Non par doctors providing evaluation and management services: greater of 125% of average contract or 140% of Medicare;
- C. Non par doctors for non evaluation and management services: 125% of average contract.

Allowing all doctors (not just trauma physicians) the use of the Medicare fee schedule is a decided improvement since that fee schedule is readily transparent. MedChi believes that limiting the new formula to only certain codes (page 2, lines 9-12, 15-17) will serve to complicate the already Byzantine medical billing system. **MedChi would suggest that there be a single formula for all codes and all doctors.** House Bill 255 refers to a system called the “Berenson-Eggers type of service code in the category of Evaluation and Management.” Doctors attending the MedChi Legislative Committee meeting on February 2 had never heard of this system.

MedChi also believes that the purpose of House Bill 255 would be defeated if certain insurance carriers (CareFirst) could actually reduce the payments they presently are making to non par providers. Accordingly, a necessary amendment to House Bill 255 is to provide that, in no event, shall the carrier pay less than they were paying at the present time. This is the same amendment that we added to the current statutory formula when it was enacted in 2001. This portion of the formula should be carried forward.

Accordingly, MedChi would suggest two amendments:

Amendment No. 1

On page 2, strike lines 9-12 and lines 15-17 and renumber accordingly; on page 4 strike the new language on lines 14-15 and lines 34-38 and on page 5, lines 1-2.

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Amendment No. 2

Add a provision that the HMO must pay the greater of the amount it is currently paying or the amount of the new formula.

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