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TO: The Honorable Thomas Mac Middleton, Chairman
Members, Senate Finance Committee
The Honorable Kathy Klausmeier

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DATE: February 11, 2014

RE: **OPPOSE** – Senate Bill 215 – *Workers' Compensation – Payment for Physician Dispensed Prescriptions – Limitations*
OPPOSE – Senate Bill 217 – *Workers' Compensation − Payment for Controlled Dangerous Substances Prescribed by Physicians − Limitations*

The Maryland State Medical Society (MedChi), which represents more than 8,000 Maryland physicians and their patients, opposes both Senate Bill 215 and Senate Bill 217.

Both of these bills are championed by Workers Compensation insurers who have sought – since 2011 – to end the doctor dispensing of medicines on the assertion that doctors charge too much. Initially, these insurers supported a regulation of the Workers' Compensation Commission (WCC) that would have effectively ended most doctor dispensing by imposing a fee schedule that reimbursed most doctors less than they paid for the medicines. That regulation was withdrawn after the AELR Committee rejected it by a vote of 14 to 1 in February 2012. In the 2013 Session, these same insurers supported bills to limit doctor dispensing such as that proposed in Senate Bill 215 or to impose a fee schedule substantially identical to the rejected WCC fee schedule. These 2013 initiatives were unsuccessful.

Both of these bills provide for a set of special rules for the benefit of Workers Compensation insurance companies. Senate Bill 215 provides that Workers Compensation insurers do not have to pay for medicines dispensed to a worker in a physician's office unless the medications were dispensed within the first 30 days after the injured worker's initial

appointment.

Senate Bill 217 provides a set of special rules when a doctor "prescribes" a controlled dangerous substance to an injured worker. Senate Bill 217 focuses on the writing of a prescription for a narcotic (as opposed to dispensing of a narcotic). Before any Maryland doctor can write such a prescription, he must receive "pre-authorization" from an employer or its insurer …" (page 2, lines 28-29); the doctor and the covered employee must enter into a "controlled dangerous substance management plan" (page 3, line 2) which describes the limitations of the use of the narcotic being prescribed, possible side effects, the risk of dependency, the importance of physician therapy to relieve a injured worker's pain, the doctor's obligation to document clinically significant improvements in function as a condition of his or her right to continue such a prescription and the worker's responsibility to disclose all substances being taken to his or her employer (page 3, lines 3 through 16). Moreover, the doctor must provide to the insurance company (1) documentation of the worker's physician function and pain intensity each visit, documentation of the daily dose of the narcotics and, if the treatment lasts for more than 90 days, a report with a detailed treatment plan (page 3, lines 17 through 32). Finally, the covered employee must take a urine drug test administered by the physician at least every 30 days.

The proponents of these bills would have one believe there is a "crisis" with respect to the Maryland workers compensation system. In fact, Maryland insurance rates are well below the national average (#34) and Chesapeake (IWIF) reports that prescription costs are 12% of its medical and surgical payouts – well below the national average of 19%.

Senate Bill 215 was filed in a past General Assembly Session, was opposed by MedChi and was unsuccessful. This is the first Session that legislation like Senate Bill 217 has been proposed. MedChi believes that this proposal is particularly wrong-headed as it attempts to dictate specific medical practices to be supervised by Workers Compensation insurance claim examiners.

Senate Bill 215

Proponents of Senate Bill 215 maintain that the doctor dispensing of medicine should be limited because doctors charge "too much" for the medication. However, physician defend dispensing to an injured worker guarantees that that worker receives medications when needed and that their recovery begins immediately. Moreover, if the injured worker returns to the doctor's office for the purposes of refilling his or her prescription, the doctor is given

the opportunity to evaluate the worker, adjust therapy if necessary, and otherwise insure that recovery is occurring. Doctors have "dispensed" medication since the Middle Ages and, at the present time, licensed Maryland physicians who obtain a "dispensing" permit from the Maryland Board of Physicians (MBOP) are allowed to dispense medications to their patients at the time of the office visit for treatment and therapy.

The assertion that the doctors charge too much for medications has been made for the last number of years by the Workers Compensation insurance companies and they point to Reports of the Workers Compensation Research Institute (WCRI) to substantiate their case. WCRI is an organization whose membership is composed principally of large employers and insurance companies. Companies pay up to $220,000 for membership. *See* *www.wcri.net.org*

A recent WCRI report (March of 2010) concluded that physicians who dispense drugs charge more "per pill" than pharmacies. Undoubtedly, this is true since physicians do not buy large quantities of drugs from original manufacturers, but rather, rely upon "re-packagers" who provide the medicines in pre-packaged, normal prescription sizes (30-days, etc.). The cost "per pill" to physicians is higher than that paid by large chain store pharmacies.

However, buried in the WCRI report at page 25 is Table R1A which compared cost, pricing and utilization of prescription drugs in workers compensation cases by "dispensing point" (either a doctor's office or a pharmacy). Table R1A showed that, while Maryland doctors charge more "per pill" than Maryland pharmacies, the same Maryland doctors dispense far fewer pills and that the pharmaceutical cost per claim was substantially less when doctors dispensed the medicine. Table R1A demonstrated the following:

	Physician Dispensed	Pharmacy Dispensed
Avg. Pills/Claim	183	344
Avg. Price Per Pill	$1.71	$1.19
Rx Price Per Claim	$255	$445

In sum, the WCRI Report indicates that physicians dispense substantially less pills per claim than doctors who write a prescription and send the patient to a pharmacy. The savings per claim are dramatic ($255 per claim versus $445 per claim). The 2010 WCRI Report collected information on 5,821 workers' comp claims in Maryland where the claim involved greater than 7 days of lost time.

In July 2011 the WCRI Report was updated and covered 27,493 Maryland claims with greater than 7 days of lost time. The 2011 update revealed the same disparity between claims where physicians had dispensed medications as opposed to medicines being dispensed by a pharmacy. The physician dispensed medicine price per claim was $340 as opposed to the $698 cost of medications where there was a pharmacy dispensing as indicated below.

	Physician Dispensed	Pharmacy Dispensed
Avg. Pills/Claim	215	520
Avg. Price Per Pill	$1.79	$1.40
Rx Price Per Claim	$340	$698

WCRI has published two other Reports related to Maryland workers compensation claims. One was published in July 2012 and the other in September 2013. As with the first two Reports discussed above, these Reports again show the doctor's prices "per pill" were more expensive than when received at a retail pharmacy. Significantly, however, the data related to the number of pills dispensed and the cost of medicines per claim was not included as it had been included in the earlier reports.

Legislative leaders have written to WCRI and asked for the "missing data" but their letters have not been acknowledged or answered. MedChi believes that WCRI's silence on this issue is deafening and feels it is safe to conclude that WCRI would have to agree with the following proposition: "Doctors charge more per pill but give out significantly less pills and the "per claim" cost for medicines is significantly less when the medicine is dispensed at the doctor's office."

Senate Bill 217

The proponents of Senate Bill 217 will maintain that its prescriptive provisions will control addictive narcotics in the treatment of workers compensation patients. Hence, a Maryland doctor is given minute legislative direction on how to treat a workers comp patient who is receiving narcotics. If these rules are truly good, MedChi would have thought they would have been applied to doctors treating **all** patients not just workers compensation patients. However, MedChi believes that Workers' Compensation insurers are not really concerned with narcotics as much as they are concerned with the payment for narcotics.

The State of Maryland, unlike the Workers Compensation insurers, is concerned about the abuse of narcotics by **all** patients. To that end, this General Assembly created the Maryland Prescription Drug Monitoring Program (PDMP) which became operational in December 2013. Indeed, the House HGO Committee had a bill hearing related to the Maryland PDMP just last week. The PDMP is a comprehensive way to look at and identify potential prescription drug abuse. Moreover, it allows treating doctors and pharmacies to log on to a data base to determine if a particular patient may be "doctor shopping" or may have secured narcotics from another source and to take appropriate action. The Maryland PDMP also allows appropriate law enforcement personnel to review the prescriptive practices of doctors and pharmacies. The whole purpose of the Maryland PDMP is to try to identify individuals who are abusing prescription drugs or profiting from the abuse of prescription drugs. MedChi believes that this is the correct way to deal with the problem rather than the measures suggested by Senate Bill 217.

The practical problems with Senate Bill 217 are innumerable but consider this: a worker breaks his leg while working overtime on Saturday and goes to the emergency room at a local hospital; the leg is x-rayed and reveals a fracture of the right tibia and the worker is sent home on crutches with a prescription for Percocet. However, if Senate Bill 217 is the law of Maryland, the emergency room doctor must call the insurance company and receive pre-authorization before discharging the patient with his or her 10 day supply of Percocet; moreover, the doctor must enter into a "controlled dangerous substance management plan" with the patient (page 3, lines 1 through 16). Hence the injured worker in the emergency room on Saturday will not be able to be discharged until (1) the insurer okays the Percocet and (2) the substance management agreement is executed and entered into his or her medical record. MedChi does not see how anyone could possibly think this would be a good result much less an effective resolution to the problem of prescription drug abuse.

MedChi believes that both Senate Bill 215 and Senate Bill 217 merit an unfavorable report.

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