

# MedChi

*The Maryland State Medical Society*

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TO: The Honorable Thomas M. Middleton, Chair  
Members, Senate Finance Committee  
The Honorable John C. Astle

FROM: Joseph A. Schwartz, III  
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J. Steven Wise  
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DATE: March 18, 2015

RE: **OPPOSE** – Senate Bill 803 – *Health Insurance – Nonpreferred Providers – Assignment of Benefits, Reimbursement and Fraudulent Insurance Acts*

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The Maryland State Medical Society (MedChi), which represents more than 8,000 Maryland physicians and their patients, opposes Senate Bill 803.

MedChi had been advised that legislation would be filed to correct some technical difficulties with Maryland's Assignment of Benefits law (AOB). Senate Bill 803 is that promised legislation but, in fact, Senate Bill 803 is a fundamental rewrite of the AOB law for the plain benefit of insurers and to the plain detriment of both doctors and patients. MedChi adamantly opposes Senate Bill 803.

In passing the AOB law in 2010, the General Assembly directed that hospital based doctors (including on call doctors) who accepted the assignment of insurance benefits could no longer "balance bill" the patients for amounts left unreimbursed by the insurance payment. These doctors would be guaranteed a statutory amount in exchange for the prohibition on balanced billing. The statutory amount was to be the greater of (1) 140% of the average rate the insurer was paying to contracted doctors, or (2) the amount that that insurer had paid to the doctor in the year before the AOB law was enacted.

In enacting this formula, the General Assembly mimicked the formula in the Health Maintenance Organizations (HMO) law where balanced billing is also prohibited. That formula had originally been instituted by the current Speaker of the House when he was

Chairman of the House Economic Matters Committee and that Committee had ended the practice of HMOs paying non-contracted doctors whatever amount than the HMO elected without relationship to the value of the services being rendered.

Senate Bill 803 is a radical proposal. It does the following:

1. Eliminates the “greater of” language and the reference to amounts being paid as of January 1, 2010, so that insurers would now be able to pay less than they were paying when the AOB law passed 5 years ago;
2. It changes Maryland’s long standing definition of a preferred provider policy which has historically stated that the coinsurance differential between nonpreferred and preferred providers may not be greater than 20 percentage points. It changes the 20 percentage points to 50 percentage points. For all practical purposes it redefines Maryland’s preferred provider organization (PPO) statute (page 2, line 32); and
3. It makes it a “fraudulent insurance act” for a doctor to waive any cost sharing owed by the patient for the services which the doctor has rendered (page 6, lines 23 through 29). A doctor who waives such a copay is guilty of a felony subject to a fine not exceeding \$10,000 or imprisonment not exceeding 15 years or both. Failure to collect less than \$300 is a misdemeanor subject to a fine not exceeding \$10,000, or imprisonment not exceeding 18 months, or both.

The proponents of this legislation have indicated that it is too difficult to compute the statutory formulas under the AOB law and accordingly they are “forced” to pay whatever amount is charged by the doctor. If that is the case, stockholders of these national insurers would have a legitimate cause of action for the corporation’s failure to carry out its fiduciary responsibilities to their owners. Moreover, for a national insurance company to take such a position in an age when computers adjudicate medical bills and can be programmed to record historical information about prior payments, almost defies credulity. If that is the case, the present formula under the HMO balance billing law needs to be abandoned as well.

Perhaps, the most egregious part of Senate Bill 803 is the rewrite of the preferred provider provisions of Maryland law which have given a certain protection to Maryland insurance consumers for over 40 years. Already, under the law, more than a 20 percentage point coinsurance differential can be changed by an insurer if “...the insurer demonstrates to the satisfaction of the Commissioner that an alternative level of payment is more appropriate...” (page 2, lines 28 through 29). Apparently these national insurance companies either cannot or do not want to so demonstrate to the Commissioner and hence propose to make the coinsurance differential not 20 points but 50 points. This is a technique which would discourage insurance consumers from going to the doctors outside of the network even though they purchased a PPO policy for the advantage of going outside of the network where necessary.

Finally, the “fraudulent insurance act” provision is especially audacious. While MedChi understands that a doctor who defrauded an insurance company and took money not due should be considered guilty of insurance fraud, how can a failure to take money from a patient also be considered insurance fraud? The criminal penalties are severe under Senate Bill 803 but, in addition the doctor would likely lose his medical license if he or she were convicted of a felony under the Maryland Medical Practice Act.

Of all bills filed in the 2015 General Assembly Session, MedChi believes that Senate Bill 803 is perhaps the worst for both doctors and their patients and accordingly, would ask for an unfavorable report.

**For more information call:**

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