

MedChi

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TO: The Honorable Peter A. Hammen, Chairman
Members, House Health & Government Operations Committee
The Honorable Nicholas R. Kipke

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

DATE: March 3, 2011

RE: **OPPOSE UNLESS AMENDED** – House Bill 818 – *Manufacturers of Prescribed Products – Payments to Health Care Professionals - Prohibition*

The Maryland State Medical Society (MedChi), which represents over 7,300 Maryland physicians and their patients, opposes House Bill 818 unless amended.

House Bill 818 outlaws any gift to a Maryland healthcare professional which includes “**any** payment, food, entertainment, travel, subscription, advance, service, or anything else of value...” (p.2, lines 15-16). MedChi believes House Bill 818 proposes a draconian rule that will be a duplicate of the new federal health care law and outlaw bona fide and valuable healthcare programs for doctors and their patients.

Beginning January 1, 2012, the Physician Payment Sunshine Provisions of the Federal Accountable Care Act will go into effect. This new federal law requires drug and medical device manufacturers to publicly disclose gift and payments made to physicians in teaching hospitals. It also requires disclosure of payments to all covered recipients including compensation, food, entertainment or gifts, travel, consulting fees, honoraria, research funding or grants, education or conference funding or any other transfers of value as described by the Secretary of the U.S. Department of Health and Human Services (HHS). This information is to be compiled by HHS and will be available for the public to view and search on an HHS website. These forthcoming federal reporting requirements will ensure the disclosure of all Maryland-based industry-physician interactions and it makes the provisions of House Bill 818 redundant and duplicative.

One of the particular problems with House Bill 818 is that it will close down medical programs unless they meet the definition of “significant educational, scientific, or policy conference or seminar” as defined on p.3, lines 24-25. The definition of a “significant” conference or seminar requires that it be accredited for Continuing Medical Education (CME).

There are literally hundreds of important medical conferences and seminars which would not meet this definition. For example, just a few weeks ago the Maryland Society of Eye Physicians and Surgeons (MSEPS) conducted a vision screening program in this General Assembly. Maryland ophthalmologists contributed their time in screening over 200 members of the public (many of them staff members of the General Assembly), all of whom were offered (including the pro bono doctors) a box lunch. Since this program was funded by a “manufacturer” (p.3, lines 3-9), the box lunch – if consumed by the screening doctor – would be illegal under the provisions of House Bill 818. A similar program in the nature of a “health fair” given in a Maryland community would be illegal for a doctor to participate in if he or she were given free refreshments.

Moreover, the medical society itself and its specialty societies are regularly supported in their programs by “manufacturers” even though the programs would not qualify as being CME accredited. House Bill 818 would make these programs illegal.

House Bill 818 “exempts” certain activities such as meetings related to Continuing Medical Education but the exemption appears only partial. While “significant” CME conferences or seminars are exempt from the prohibitions in the bill, House Bill 818 is so poorly worded that currently allowed and routine CME expenses would be illegal. A CME “significant” conference may not provide a free lunch although a “government” meeting can (compare p.5, lines 28-29 to p.6, lines 6-7). The requirement that CME written material must be “...determined by the health care professional” (p.5, lines 17-19) may be at odds with the rules of the Accreditation Council for Continuing Medical Education which require that the accrediting organization demonstrate control of the content.

The American Medical Association (AMA) issued guidance in 1992 concerning “gifts” to physicians from industry. The AMA prohibitions which were followed by almost all doctors would allow a “modest meal” and textbooks and gifts that primarily benefit patient care and that have a value to the physician in the general range of \$100. The guidelines do not allow direct reimbursement to a physician for attending meetings

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and disallows any gifts that are of substantial value. Individual gifts of minimal value are permissible as long as the gifts are related to the physician's work (e.g., pens and notepads). The guidelines preclude direct payments to physicians but allow subsidies to underwrite the costs of professional meetings which can contribute to the improvement of patient care. (Guideline Nos. 3 and 4). Direct travel expenses to physicians to visit facilities are outlawed (Guideline No. 5).

MedChi believes that the AMA Guidelines (copy attached) draw the important and crucial distinction which would allow bona fide meetings to be underwritten by "manufacturers" but disallow direct subsidies of more than nominal value to individual physicians. The AMA guidelines allow for support of all legitimate conferences and meetings not just those that fall within the House Bill 818 definitions of "significant." Indeed, it is this definition which creates innumerable difficulties with House Bill 818.

Finally, MedChi believes that the Maryland ethics laws for members of the General Assembly are a more appropriate model to regulate gifts to physicians. Maryland law prohibits any gifts to individual legislatures other than gifts of nominal value (baseball cap, coffee mug, pen, etc.). It does, however, permit groups of legislators to be entertained by regulated entities. The emphasis on the Maryland ethics law is to disallow individual gifts but to allow group support. If House Bill 818 were enacted for physicians, would it not be reasonable to enact such a prohibition for all Maryland legislators?

In the end, ethical guidelines and laws should concentrate on individual abuses and not be drawn to outlaw meetings, health fairs and screenings which benefit not only the physician community but, more importantly, the patient community.

Unless significantly amended, MedChi would oppose House Bill 818 and ask for an unfavorable report.

For more information call:

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