

MedChi

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

FROM: Joseph A. Schwartz, III
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DATE: February 16, 2011

RE: **SUPPORT WITH AMENDMENTS** – Senate Bill 183 – *Health Insurance –
Conformity with Federal Law*

The Maryland State Medical Society (MedChi), which represents over 7,300 Maryland physicians and their patients, supports with amendments, Senate Bill 183.

Senate Bill 183 seeks to bring Maryland law into conformity with the recently enacted provisions of the federal health care reform laws including the Patient Protection and Affordable Care Act and the Federal Health Care and Education Reconciliation Act of 2010. Most of these reforms are enumerated on page 4 of the bill. The new federal law supersedes certain existing Maryland laws and needs to be coordinated with others particularly Maryland's Appeal and Grievance Law which – for well over 10 years – provided a Maryland consumer with the ability to contest decisions by health insurance companies limiting coverage. Most of the bill (pages 8 – 22) make minor amendments to the Maryland Appeal and Grievance Law to allow complaints to be filed by a “MEMBER’S REPRESENTATIVE.”

The federal legislation created “A MEMBER’S REPRESENTATIVE” who was authorized to act on behalf of the “member.” Maryland law had historically allowed the member’s doctor (health care provider) to act on behalf of the member. The federal phrase appears to be broader and would, for example, cover a lawyer representing a member.

Maryland law has always provided that a doctor could file an appeal and grievance on behalf of his or her patient. There are three places in Senate Bill 183 where amendments are required so that a doctor would continue to have the same abilities as a “MEMBER’S REPRESENTATIVE.” On page 12, line 32, insert “OR A HEALTH CARE PROVIDER ACTING ON BEHALF OF THE MEMBER.” The same amendment should be made on page 13, line 11 and line 28 and again on page 20, line 13. Another solution would be to specifically define a “MEMBER’S REPRESENTATIVE” as including a health care provider acting on behalf of a member.

While the additions to Maryland law proposed in the bill include the federal insurance and reforms that were recently enacted, several future reforms such as the abolition of preexisting conditions for adults are not referenced. Given the litigation surrounding the federal legislation, it may be prudent to condition certain revisions in Maryland law on the stated assumption that the federal legislation will ultimately prevail. For example, if the federal requirement that individuals buy insurance is struck down by the Supreme Court as being unconstitutional, there is no realistic way that preexisting conditions for the entire population can be abolished. One of the actuarial assumptions of federal health reform is that millions of young and healthy people (who presently have no insurance) will be required to participate in the insurance system and will so increase the pool of insureds that preexisting conditions can be abolished. If the individual mandate is not upheld by the Supreme Court, the actuarial basis for certain insurance reforms would likely evaporate.

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