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TO: The Honorable Peter A. Hammen, Chairman
Members, House Health & Government Operations Committee
The Honorable Dereck E. Davis, Chairman
Members, House Economic Matters Committee
The Honorable Shawn Z. Tarrant

FROM: Joseph A. Schwartz, III
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J. Steven Wise
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DATE: March 6, 2014

RE: **SUPPORT** – House Bill 1342 – *Workers’ Compensation – Reimbursement for Repackaged and Relabeled Drugs – Fee Schedule and Requirements*

The Maryland State Medical Society (MedChi), which represents more than 8,000 Maryland physicians and their patients, supports House Bill 1342.

House Bill 1342 is a responsible attempt to resolve the back-and-forth controversy which has occurred in the Maryland Workers’ Compensation world since 2011 with Workers’ Compensation insurers attempting to limit or end the doctor dispensing of medicines to workers compensation patients and doctors trying to defend their traditional right to dispense medications as beneficial to the therapy and recovery of injured workers.

In 2011, the Workers’ Compensation Commission (WCC) proposed a Fee Schedule which was objected to by physicians and turned down by the AELR Committee in February of 2012 by a vote of 14-1. That WCC Fee Schedule was “too low” and set reimbursement at rates that were lower than many doctors paid to obtain the medications in question. The WCC Fee Schedule called for a reimbursement rate of 90% of Original Manufacturers’ Allowable Wholesale Price (OMAWP). The Fee Schedule in House Bill 1342 sets a reimbursement level of 130% of OMAWP.

Notwithstanding the back-and-forth over the last four years, it is clear that Maryland’s Workers’ Compensation system is in good shape. According to the most recent Oregon Report, Maryland ranks No. 34 in the cost of Workers’ Compensation Insurance, well below the cost in the majority of states. According to Chesapeake (IWIF), Maryland’s cost for the

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prescription medications is approximately 12% of the total medical and surgical cost which is well below the national average of 19%. While there is no “crisis” with respect to prescription medications in the Maryland Workers’ Compensation system, it makes sense to propose some restraints so that a crisis does not develop.

Fee schedules are the appropriate way to control costs in an “open” system such as the Maryland Workers’ Compensation system. The Maryland system is “open” in that the injured worker has complete freedom of choice as to what doctor, therapist or pharmacy he or she cares to use. Choice is given to the injured worker/patient and not to the employer or the insurance company. In such an “open” system it is prudent to have a fee guide or schedule so that a doctor or therapist or pharmacy may not charge whatever it desires. House Bill 1342 thus provides the necessary schedule to prescription medicines which are the only part of the Workers’ Compensation system which are not now subject to a fee schedule.

MedChi would note several characteristics of the Fee Schedule proposed in House Bill 1342. First, the reimbursement rate is set according to Original Manufacturers’ Allowable Wholesale Price (OMAWP). The repackagers from whom doctors secure their medicines also have an Allowable Wholesale Price (AWP) and – earlier in this debate – doctors had argued that the repackagers’ AWP should be considered. Many states still adhere to repackagers’ AWP (12 states) as opposed to the OMAWP (17 states). House Bill 1342, however, accepts the insurers’ arguments that the Original Manufacturer’s AWP (OMAWP) is most appropriate.

Second, this Fee Schedule only applies to “repackaged” or “re-labeled” drugs. These are the medicines dispensed by Maryland doctors in that almost all physician practices need to secure prescription sized medicines from “repackagers” rather than from the traditional wholesalers that supply chain pharmacies. House Bill 1342 does not disturb any previously existing arrangement between workers’ compensation insurers, their pharmacy benefit managers or retail pharmacies.

Third, it is a Fee Schedule which sets a “ceiling” and not a “floor” on reimbursement. A Workers’ Compensation insurer may pay no more than the amount specified in House Bill 1342 but may pay less where agreement can be reached between the parties. In fact, in the pharmaceutical arena such agreements are often reached between retail pharmacies, pharmacy benefit managers and workers’ compensation insurers.

The debate over the last four years has made a number of points crystal clear. First, insurers have argued that some doctors are “outliers” and charge, according to insurance

industry data, up to 600% on a “per pill” basis over what a retail pharmacy would charge.

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However, the debate has also shown that many workers' compensation insurers are refusing to follow the current law which requires doctors who dispense medication to be reimbursed at their "usual and customary" charge. For example, Chesapeake (IWIF) has publicly indicated that it was paying 80% OMAWP to any dispenser of medications because that is the amount that it is paying to its contract pharmacies and it has therefore elected to pay that amount to all dispensers whether contracted or not. MedChi believes that that practice is a clear violation of existing law and would not be surprised if legal action were taken in the future.

The benefit of House Bill 1342, however, is that it will provide the same certainty which exists with respect to medical and surgical fees in the Workers' Compensation universe. Prescription medications are the **only** part of the Workers' Compensation world which are not subject to a Fee Schedule.

Some will argue that the rate set in the bill (130% of OMAWP) is too high and higher than that allowed in other fee schedule states. Not all states have fee schedules. However, 30 states do have fee schedules. Seventeen states specify fees less than the 130% OMAWP contained in this bill; however, 12 states have fee schedules with greater amounts. For example, Pennsylvania's current fee schedule is 110% of AWP which translates as approximately 200% of OMAWP. A listing of these various fee schedules is attached.

The workers' compensation insurers have argued to this Committee that some doctors are charging on a "per pill" basis 400% to 600% more than charged by the retail pharmacy. MedChi asks these insurers a single question: How can a reduction from 600% to 130% not be helpful to these insurers?

For these reasons, MedChi asks for a favorable report on House Bill 1342.

For more information call:

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