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TO: MedChi Members

FROM: Joseph A. Schwartz, III  
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RE: 2008 General Assembly Wrap Up

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The 425<sup>th</sup> Session of the Maryland General Assembly came to its customary end at midnight on its 90<sup>th</sup> day, Monday, April 7, 2008. This was an unusual Session because it followed so closely the Special Session in November 2007 which was principally devoted to raising taxes and righting the fiscal ship of state. There was a certain lack of energy as the regular Session began, described by some as a “hangover” from the earlier Special Session on taxes which had exposed virulent political partisanship.

As usual, MedChi’s Legislative Agenda was broad and inclusive. The Agenda included multiple proposals to improve **physician reimbursement** policies of health insurance companies; proposals to reform the **medical malpractice** environment; proposals to improve the **public health** of Maryland’s citizens on issues ranging from improvements in the HIV laws to regulation of tanning beds; proposals to insure proper physician responsibility in the multiple **scope of practice** laws being promoted by various non physician groups.

Additionally, the MedChi Legislative Committee reviewed in detail 263 bills, after first looking at all 2651 bills introduced. In the main, the results of the 425<sup>th</sup> Session were gratifying, particularly since not a great deal had been expected.

### **Physician Payment Reform**

For a number of years MedChi has been seeking to curb the “cram down” contractual practices of United Healthcare. This is the practice where United demands that a physician practice in multiple health insurance products in order to participate in a single desirable product. Since 2000, Maryland has had a “cram down” law which was interpreted by the Maryland Insurance Administration (MIA) to only forbid certain United practices. After the MIA administrative interpretation of the law was upheld by a decision of the Montgomery County Circuit Court in late 2006, MedChi turned to the Legislature for relief. The result was the passage of Senate Bill 811/House Bill 1219 (Health Insurance – Health Care Provider Panels – Provider Contracts) This legislation will stop United from its current practice of “cramming down” participation in undesirable and low reimbursement products as a condition of participating in higher reimbursement plans. The legislation will take effect in October 2009 as a concession to United’s complaints that the new law would dismantle its existing networks. Beginning in October 2009, all new or renewal contracts will be affected by the new law and it will apply to all contracts within the next year.

MedChi owes special thanks to the leadership of the House Health & Government Operations Committee including Chairman Peter Hammen, Vice Chairman Shane Pendergrass and primary bill sponsor, Delegate Wade Kach of Baltimore County. During the 2008 Session it was the House HGO Committee which initiated not only the “cram down” legislation but other MedChi requested payment reforms and pushed their counterparts in the Senate Finance Committee to recognize the difficulties faced by physicians and to provide remedies.

Another initiative beginning in the House HGO Committee was House Bill 594 (Health Insurance – Carrier Credentialing – Reimbursement of Providers of Health Care Services). This legislation addressed long standing complaints of medical billing companies to the effect that health insurance carriers would not reimburse a new doctor joining a group practice until such time as the new doctor was officially “credentialed.” Since credentialing took upwards of five months, a new doctor would, in effect, be working for free and have to be subsidized by the group practice. Given Maryland’s current low standings in physician reimbursement rankings for the United States, this was another disincentive to practicing medicine in Maryland. The passage of House Bill 594 (and its companion Senate Bill 595) will remedy this inequity in the future.

The House HGO Committee initiated action on House Bill 815 (Health Insurance – Reimbursement of Health Care Practitioners – Information Provided by Carriers), a bill which was also requested by MedChi and required health insurance companies to inform physicians of reimbursement rates for 50 CPT codes (as opposed to the present 20) and further to give appropriate notification to changes in a pharmaceutical formulary so that a doctor would know which drugs to prescribe given a particular patient’s insurance plan.

The passage of these MedChi initiated physician payment initiatives was somewhat unexpected as the Governor’s Task Force on Health Care Access and Reimbursement is not scheduled to report back to the General Assembly until next year. Hence, lobbyists for the health insurance companies attempted to derail all such payment related legislation by arguing that the General Assembly should wait until the final report of the Governor’s Task Force. While the Senate seemed inclined to accept this logic, the Health Subcommittee in the House HGO Committee was not and, accordingly, several issues were addressed.

### **Public Health Agenda**

One of MedChi’s proudest accomplishments in the 2008 General Assembly was the passage of Senate Bill 826 / House Bill 991 (HIV Testing – Informed Consent and Treatment) which addresses HIV testing generally and the testing of pregnant women specifically. The legislation is the culmination of a two-year effort to reform Maryland’s antiquated HIV testing laws to bring them into general conformance with guidelines issued by the CDC in September 2006. Passage of this legislation will remove current barriers to testing that have resulted in the dramatic understatement of the number of HIV infected individuals in the State. The legislation removes the requirement for specific written informed consent and moves the State to an “opt out” testing protocol similar to consent requirements for other diagnostic testing. Furthermore, the legislation will ensure that all pregnant women receive HIV testing at the commencement of prenatal care (with opt-out rights) and again in the third trimester when appropriate. Passage of this legislation will strengthen the State’s ability to address Maryland’s high incidence of HIV and AIDS and will save countless lives.

Another MedChi public health initiative emanated from the Maryland Skin Cancer Prevention Program which is housed in the Center for Healthy Maryland, a not for profit affiliate of MedChi. At the

behest of the Center for Healthy Maryland, MedChi initiated House Bill 1358 (Artificial Tanning Devices - Protection of Minors). House Bill 1358 copied a portion of a local Montgomery County ordinance which required any minor to obtain the written consent of their parent or guardian before being admitted to a commercial tanning salon. In addition, the parent or guardian would have to physically visit the tanning establishment in order to give their written consent on the minor's first visit. House Bill 1358 had a rather unusual legislative journey. Once amended in the House Economic Matters Committee to satisfy certain objections, it sailed through the full House of Delegates only to come to an abrupt halt in the Senate Finance Committee where it was voted down by a vote of 6 to 5; however, due to MedChi lobbying efforts the bill was reconsidered the next day and reported favorably by a vote of 8 to 3. The journey, however, was not over. Various Senators who objected to what they called the "nanny society," cited House Bill 1358 as another example of where the State was overtaking parent's prerogatives with their children. Moreover, there was already resentment to the State interfering in various aspects of private life with respect to other initiatives ranging from the proper child safety passenger seats to outlawing cell phone use in an automobile. The net effect: House Bill 1358 barely survived its second reader vote in the Senate, 24 to 22. MedChi lobbyists went to work again and the final successful vote was 34 to 13. House Bill 1358 now awaits the Governor's signature.

### **Medical Malpractice Reform**

Since the Legislative Special Session on malpractice reform in December 2005, the upheaval surrounding medical malpractice lawsuits has subsided. In 2006, 2007 and 2008, Maryland physicians received State assistance in paying for their malpractice insurance. In this same period of time the number of lawsuits stabilized and went down slightly so that the double digit premium increases experienced in 2003, 2004 and 2005 have not reappeared. Indeed, Medical Mutual, which insures as many as 75% of Maryland's private practice physicians, announced in the fall of 2007 that it would withdraw from the State subsidy program because it had sufficient monies to hold premiums steady in 2008 without State funds. The popular belief was that the "malpractice crisis" was over and that further reform was not necessary. This belief was reflected in the Legislature's rejection of House Bill 606 (Health Care Liability - Noneconomic Damages) and House Bill 607 (Health Care Malpractice - Expression of Regret or Apology - Inadmissibility) which were MedChi malpractice reform initiatives.

House Bill 606 prevented the COLA increase of \$15,000 a year to begin again on Maryland's cap on noneconomic damages (currently \$650,000). The Maryland cap has been rising at a predetermined rate of \$15,000 per year but it was "frozen" in the 2005 Special Session. Beginning in 2009, however, the \$15,000 yearly escalator was to begin anew and House Bill 606 sought to extend the freeze permanently. It was rejected by the House Judiciary Committee by a vote of 13 to 7 as was House Bill 607 which sought to clarify Maryland's "apology" law which allows a physician to express sorrow or regret after a bad medical outcome without having that expression of regret being used against the physician in court. House Bill 607 sought to strike language in Maryland's apology law which would allow certain statements to be used against the physician.

The 13 to 7 vote in the House Judiciary Committee is a predictor of future malpractice reform in that Committee. Historically, the Senate Judicial Proceedings Committee has been favorable to trial lawyers and unfavorable to physicians on matters of malpractice reform. It may be that the House Judiciary Committee is equally unfavorable now. The declaration of a dividend by Medical Mutual has certainly not assisted the cause of malpractice reform in either the Senate or the House Committees.

Unvoted on in both Committees was Senate Bill 550 / House Bill 969 (Health Care Malpractice -

Death - Noneconomic Damages). This legislation would undo one reform accomplished in medical malpractice Special Session which was to “reduce” the cap on noneconomic damages in medical malpractice death cases. Until 2005 there were 1½ caps in a death case but that was reduced to 1¼ caps in the Special Session. This legislation was not voted on but it seems almost certain that it would have passed in the House Judiciary Committee if a vote had been taken. Interestingly enough, however, it may well have failed in the Senate Judicial Proceedings Committee in a very close vote.

The prospects for substantive malpractice reform in the current General Assembly and, given the current malpractice insurance environment, is not favorable. It may be that MedChi should devote its attention to legislation such as Senate Bill 730 / House Bill 1124 (Task Force on Administrative Compensation for Birth-Related Neurological Injury) in the future. This bill would establish a study group to determine if removing certain types of cases from the malpractice system would be advantageous.

### Other Significant Issues

- **The defeat of House Bill 614 (Sales and Use Tax - Elective Cosmetic Procedures)** which sought to apply Maryland’s 6% sales tax to certain medical procedures. Uniformly opposed by the Maryland medical community, it received no support in the House Ways & Means Committee.
- MedChi supported legislation to ban text messaging and cellular telephones while driving was defeated (House Bill 380-, House Bill 1110 and Senate Bill 2).
- **Senate Bill 215 (Maryland False Health Claims Act) was defeated on the Senate floor.** Senate Bill 215 would have exposed physicians, hospitals and other providers to “whistleblower” lawsuits for mistaken practices and would have duplicated federal law. After a fierce fight on the floor of the Senate, the bill was defeated by a vote of 25 to 21.
- Senate Bill 600 / House Bill 653 (Schools - Early Intervention - Hearing and Vision Screenings) was an initiative of the Maryland Society of Eye Physicians and Surgeons to change the timing of vision screenings in Maryland’s schools in order to more effectively diagnose amblyopia in young children so that it could be effectively treated. The legislation now awaits the Governor’s signature.
- House Bill 535 (Morbidity, Mortality, and Quality Review Committee - Pregnancy and Childhood) was an initiative of the OB/GYN Society and DHMH to establish a state level FIMR Program to enhance Maryland’s efforts to address its high infant mortality rates.
- Legislation to allow pharmacists to give certain vaccinations was severely amended at MedChi’s insistence and then enacted (House Bill 551 - Pharmacists - Administration of Vaccinations - Expanded Authority).
- The yearly efforts of the Maryland psychiatric community to regulate the issuance of subpoenas by the Maryland Board of Physicians for mental health records was again successful in the Senate but unsuccessful in the House. Senate Bill 443 / House Bill 876 (State Board of Physicians - Subpoenas - Medical Records for Mental Health Services) which is known as the “Eist” bill has regularly passed the Senate but has been unsuccessful in the House HGO Committee due to the opposition of the Maryland Board of Physicians. It met a similar fate again this year.

- **Kudos are due to Senator Joan Carter Conway, Chair of the Senate EHE Committee, and Delegate Peter Hammen, Chair of the House HGO Committee.** Their joint efforts persuaded the Board of Physicians to consider MedChi's Physician Rehab Program (the oldest in the State) as a responsive bidder in the BOP's current procurement to award a rehab contract. The Board had initially refused to allow MedChi to participate but a Joint Chair letter on last year's legislative intent resulted in a change.
- The issue of network adequacy is also in a significantly improved posture following a flurry of activity early in the Legislative Session. At the commencement of the Session, the Maryland Insurance Administration issued network adequacy regulations that were grossly inadequate. Delegate Eric Bromwell and Senator Katherine Klausmeier promptly filed House Bill 1161 / Senate Bill 719 (Health Insurance – Carrier Provider Panels – Standards for Availability of Health Care Providers) to remedy the deficiencies of the regulations. Subsequent dialogue with the Maryland Insurance Administration led to a substantially enhanced regulatory proposal that will advance MedChi's objectives with respect to requiring carrier accountability for network adequacy. As a result of the development of an enhanced regulatory framework, MedChi was able to request the withdrawal of the legislation. **MedChi applauds the new energy in the Maryland Insurance Administration in the person of recently appointed Deputy Commissioner Elizabeth Sammis.**