The Honorable Shane Pendergrass
Chair, House Health and Government Operations Committee
Room 241
House Office Building
Annapolis, Maryland 21401

RE: **SUPPORT WITH AMENDMENT** – House Bill 1148 – *Health Insurance – Two-Sided Incentive Arrangements and Capitated Payments – Authorization*

Dear Chair Pendergrass:

On behalf of the Maryland State Medical Society (MedChi), the largest physician organization in Maryland, we support with amendments *House Bill 1148: Health Insurance – Two-Sided Incentive Arrangements and Capitated Payments – Authorization*. At your request and that of Senator Beidle and the Senate Finance Committee, MedChi has diligently been working over the last year to reach consensus with CareFirst, the Maryland Hospital Association, and other insurance carriers to authorize two-sided incentive arrangements between physicians and insurance carriers, a practice currently prohibited in Maryland. From April 13, 2021 - February 7, 2022, twenty-seven (27) meetings occurred between the three organizations. MedChi also convened a special Physicians Task Force and included all physician specialty societies to participate and provide feedback on the proposal.

A two-sided incentive arrangement allows a physician to contract with an insurance carrier to earn bonus payments, but it also subjects physicians to recoupment of funds. While this has been characterized as "value-based," the reality is that physicians are accepting risk and thus these arrangements have always been deemed the "practice of insurance" in Maryland. Physicians are in the business of providing medical care to patients. That is what they learn in medical school. There are no classes provided on managing or accepting risk; that has UNTIL NOW been left to insurance companies. House Bill 1148 is a clear shift in the delivery of health care in Maryland and, if Maryland is to authorize this shift, it must be done carefully to ensure that both physician practices and patients are not unknowingly placed in jeopardy.

Throughout our negotiations, we have been pleased with the progress made in crafting House Bill 1148. House Bill 1148 recognizes both sides of the spectrum – physicians who want to enter into two-sided incentive arrangements and those who do not. Given the complexity of these arrangements, not every physician is well-suited to accepting risk, especially smaller practices that you may find in more rural areas of the State. And, even for those that may want to take part in such contracts, it is important to ensure that the terms are just and fair, especially given that physician offices do not have the staff and resources afforded to insurance companies to properly analyze them for fairness and to ensure that the physician won't be inappropriately penalized.

1211 Cathedral Street • Baltimore, MD 21201-5516 • 410.539.0872 • Fax: 410.547.0915 • 1.800.492.1056 • www.medchi.org

Therefore, House Bill 1148 seeks to accomplish two goals. The first goal is to provide adequate safeguards for physicians that ultimately decide to enter into these arrangements. House Bill 1148 contains minimum requirements for what must be included in a contract between an insurance carrier and a physician practice. These safeguards include limiting recoupment to not more than 50% of the excess above the mutually agreed on target budget and specifying a mutually agreed on maximum liability for total recoupment that may not exceed 10% of the annual payments from the insurance carrier to the physician practice.

The second goal is to provide adequate safeguards for physicians that do not want to participate in two-sided incentive arrangements but want to remain fee-for-service. While we acknowledge that House Bill 1148 states that acceptance of a two-sided incentive arrangement is "voluntary," this is simply not strong enough language. Physicians are always at a disadvantage when negotiating with insurance carriers. Insurance carriers may argue that they "need" physicians to ensure network adequacy standards, but the reality is that insurance coverage in Maryland is operated as a monopoly with one insurance carrier representing the vast majority of the market. If physicians do not want to place their own patients in harm's way or want to maintain physician-patient relations, physicians must contract, often to their disadvantage.

It is easy to say that these arrangements are voluntary, but there are ways to pressure physicians to ultimately need to accept these arrangements simply to stay in business. We are disappointed that we have come so far but have not had a "meeting of the minds" on this issue. From the beginning, MedChi has stated that protections for physicians was our paramount concern and that a "floor" must be established to ensure that payment rates could not be reduced for non-participation. Even when this issue was not agreed upon early on, MedChi continued to negotiate in good faith.

The language in the bill (page 8, lines 5-10) is not acceptable. Using the term "solely" negates all protections for physicians and renders the language useless. Insurance carriers may argue that House Bill 1148 should not be changing fee-for-serve standards, but the reality is that the inclusion of two-sided incentive arrangements forever changes both the delivery of care and payment standards. One simply cannot be separated from the other. In addition, the notion that physicians will be subjecting insurance carriers to constant complaints before the Maryland Insurance Administration (MIA) is also without merit. Physicians can file complaints now with the MIA and don't at any significant rate. They are too busy caring for patients, often despite insurance carrier's policies. Lastly, while we fully support the 10-year study by the Maryland Health Care Commission, it is not a substitute for clear and strong language supporting the concept of "voluntary." The study is after the fact. Physicians need reassurance during the negotiation stage.

Therefore, MedChi has proposed the following substitute language:

15-113 (c)

5. A CARRIER MAY NOT REDUCE THE FEE SCHEDULE OF A:

(I) HEALTH CARE PRACTITIONER OR A SET OF HEALTH CARE PRACTITIONERS BASED WHOLLY OR IN PART ON THE HEALTH CARE PRACTITIONER OR SET OF HEALTH CARE PRACTITIONERS NON-PARTICIPATION IN THE CARRIER'S BONUS OR OTHER INCENTIVE–BASED COMPENSATION OR TWO–SIDED INCENTIVE ARRANGEMENT PROGRAM; OR

(II) HEALTH CARE PRACTITIONER OR A SET OF HEALTH CARE PRACTITIONERS BASED WHOLLY OR IN PART ON THE HEALTH CARE PRACTITIONER'S OR SET OF HEALTH CARE PRACTITIONER'S PERFORMANCE UNDER AN ELIGIBLE PROVIDER'S TWO–SIDED INCENTIVE ARRANGEMENT WITH THE CARRIER.

6. PARTICIPATION IN A TWO-SIDED INCENTIVE ARRANGEMENT MAY NOT BE THE SOLE OPPORTUNITY FOR A HEALTH CARE PRACTITIONER OR A SET OF HEALTH CARE PRACTITIONERS TO BE ELIGIBLE TO RECEIVE INCREASES IN REIMBURSEMENT. (*already accepted by carriers*)

With this language, MedChi believes that House Bill 1148 can move forward and that both physicians that want to participate and those that do not want to participate will have the needed protections. With this change and only with this change do we urge a favorable vote on House Bill 1148.

Sincerely,

Gene M Ransom III

Gene M. Ransom, III
Chief Executive Officer
MedChi, The Maryland State Medical Society