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TO: The Honorable Peter A. Hammen, Chairman
Members, House Health & Government Operations Committee
The Honorable Joseline Pena-Melnyk

FROM: Joseph A. Schwartz, III
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DATE: March 11, 2008

RE: **SUPPORT** – House Bill 991 – *HIV Testing – Informed Consent and Treatment – Pregnant Women*

On behalf of MedChi, the Maryland State Medical Society, the OB-GYN Society of Maryland, and the Maryland Chapter of the American Academy of Pediatrics, we wish to voice our strong support for House Bill 991.

In September 2006, the Centers for Disease Control (CDC) issued revised recommendations for HIV testing in health care settings. The CDC recognized that the historic approach to HIV testing has not been working and, in fact, has erected significant obstacles to the diagnosis of HIV infection. The new CDC guidelines call for major changes in the approach to HIV counseling and testing. They recommend that written informed consent no longer be required. The test would remain voluntary but consent should switch to an “opt-out” approach by which patients are told that the HIV test will be performed, but be given the option to refuse. This “opt-out” consent process is the same consent process that is used for all other diagnostic testing.

The requirement for written informed consent, separate and distinct from consents for other medical care, is largely historic. When HIV testing first became available, there were no effective treatments and a positive HIV test carried significant risk of discrimination and stigma. The current environment has changed significantly as there are highly effective, life-saving therapies which can also reduce the spread of the epidemic. Cases of discrimination based on HIV status are now extremely rare and largely anecdotal.

Our current system erects important obstacles to the diagnosis of HIV infection. Written informed consent, different from the consent a patient is required to provide for all other testing, intimidates patients. Many patients say they would be tested if they didn't have to “put it in writing.” The separate consent procedures and prescriptive requirements for pre and post-test counseling create disincentives for clinicians to test patients broadly and routinely. Many clinicians only focus on those patients with obvious risk factors or do not test for HIV at all. Consequently, by focusing only on patients traditionally thought of as being “at risk,” we have been missing many cases.

By removing the requirement of written consent and streamlining the pre and post-test counseling requirements, we will be eliminating major impediments to HIV

testing. The importance of this change is most pronounced in the testing of pregnant women. Current barriers to testing prevent not only the early and effective identification and treatment of the disease for the pregnant woman, but also prevent the ability to provide appropriate intervention for the baby. Clearly there is a benefit to routine testing of pregnant women without the barriers of specific written informed consent. The testing of pregnant women is specifically discussed in the CDC guidelines.

When you talk about HIV and AIDS, you are talking about a disease that is contagious and fatal if left untreated but for which there is highly effective treatment that restores health, prolongs life, and prevents transmission. Early diagnosis is critical to the effective treatment of this disease and to the prevention of its transmission. Furthermore, the cost of care becomes much higher when the diagnosis comes only after a patient has full-blown AIDS. The CDC guidelines clearly recognize that early identification is essential and that moving to routine testing and “opt-out” consent will eliminate testing barriers, significantly improve the effective treatment of those who are infected and dramatically reduce HIV/AIDS transmission.

The present construct for HIV testing has been in place for more than 20 years. The science of treating HIV/AIDS has progressed exponentially; the testing protocols demand a similar “modernization.” House Bill 991 amends current consent requirements and adopts the recommendations embodied in the CDC guidelines.

Maryland is particularly vulnerable to HIV transmission and AIDS. Maryland has the third highest AIDS case rate in the country and Baltimore ranks second for its AIDS case rate amongst cities. Clearly, Maryland should work towards the elimination of all barriers to testing and the identification of HIV positive individuals. It is the only way we will ever be able to reduce transmission and change the State’s statistics.

House Bill 991 reflects the outcome of a comprehensive stakeholders forum conducted during the 2007 interim. The process emanated from this General Assembly’s direction to have affected stakeholders review the CDC guidelines and report back with recommended changes. While consensus was not reached on all issues, House Bill 991 reflects the findings of a vast majority of the stakeholders who participated. We strongly urge the passage of House Bill 991.

For more information call:

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