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To: The Honorable Members of the House Labor and Industry Committee

From: Samuel R. Marshall

Re: House Bill 1800 – allowing for the establishment of medical treatment guidelines in workers compensation

We support this bill: It will bring consistency and fairness into determinations of reasonable and necessary medical care in workers compensation, not just by providers, insurers and employers, but by those in the workers compensation system reviewing those determinations.

The Workers Compensation Act requires payment for reasonable and necessary care provided to an injured worker. The provider makes the first call when providing or proposing treatment. The employer or insurer makes the next call by accepting or questioning this. Any differences then go to a review system under the Bureau of Workers Compensation: First is a review by a Utilization Review Organization approved and assigned by the Bureau. Appeals from that then go to the workers compensation judge, who may or may not consult with a medical expert. After that, disputes can be appealed to the Workers Comp Appeal Board and then to the Commonwealth Court.

That sounds exhaustive, and maybe even excessive – but that's not the problem. The real problem is at the outset: There is no consistency among these parties and levels as to what is "reasonable and necessary" care. The problem isn't that parties aren't heard when differing on the reasonableness and necessity of care. It is that there isn't uniformity throughout the process of answering that question.

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House Bill 1800 addresses this in several ways:

- It empowers the Secretary of Labor and Industry to select evidence-based treatment guidelines from nationally recognized guidelines.
- It empowers the Secretary to make modifications based on recommendations from a panel of medical experts and public comment.
- It requires that everyone involved in the review process – insurers, employers, UROs and workers comp judges – use these guidelines in deciding whether treatment is reasonable and necessary.
- It requires UROs to satisfy national accrediting criteria and to have some uniformity in rates.

That's a balanced answer to the need for a consistent standard of reasonable and necessary care: It isn't just that guidelines will bring consistency, but that the guidelines will bring quality and fairness – they are to be evidence-based, not whimsical or set by hunches or biases.

That's what the law should do – not that it becomes unduly rigid in evaluating medical care, or too closed for questioning in particular cases, but that it gives a framework where everyone involved knows the ground rules and where decisions at all levels or review are made under the same standards. Nobody – not providers, not employers, not insurers and especially not injured workers – benefits from arbitrary or inconsistent decisions on medical care, and yet that is precisely what the current system allows.

We'd like to credit Rep. Mackenzie for recognizing the problem and coming up with this solution. But we can't go quite that far, because the use of medical treatment guidelines in evaluating medical care in workers compensation has a track record across the country, with Pennsylvania being able to learn from the other states in coming up with the right approach.

The Work Loss Data Institute produces one of the nationally-recognized evidence-based guidelines, the ODG guidelines. You may have also heard from the American College of Occupational and Environmental Medicine, which has its own evidence-based guidelines. Both organizations can explain the process for developing their guidelines, and how those guidelines have worked and been accepted by all sides in getting injured workers better and back to work.

We'd like to address the concerns we've heard about treatment guidelines since this idea has been broached for Pennsylvania:

- **Is this really a problem – aren't workers comp rates going down anyway?** Our support for this bill isn't because this will stem the tide of huge rate increases in workers comp, or because providers, insurers and employers are having widespread disputes on what is reasonable and necessary care. Workers comp rates are stable. And despite the way it can seem in Harrisburg, employers, insurers and providers generally work things through without government intervention.

That said, this bill will solve a troubling outlier and needless ambiguity – what qualifies as “reasonable and necessary” care and how to assure consistency in this, both across the board and in any appeal. That will mean savings – consistency in the law generally does. More important, it will mean everyone knows the parameters going in. Anytime you remove arbitrariness from the decision-making process, you've made for better decisions.

- **Doesn't this shift the burden to the injured worker or provider in determining whether care is reasonable or necessary?** Not at all: Everyone knows, from the outset, what the guidelines say, so providers won't have to confront an employer or insurer insisting on less than the guidelines. There may be instances where either the provider or employer thinks care outside the guidelines is reasonable or necessary, and the guidelines themselves allow for that – that's why they are guidelines, not confines. But they give parameters that will help all sides know what's going on going in, and that's good for the injured worker.
- **Are these guidelines just some employer or insurer creation to minimize treatment for injured workers?** First, that's why these are evidence-based – to take any bias out of them, from either side. Second, that's where the Secretary's selection of them comes in – as does the ongoing review of them by a panel of medical specialists. Third, if the guidelines didn't work – if they didn't provide consistency and the right amount of treatment – we'd be against them: They wouldn't get injured workers better and back to work, and that's our main objective throughout.

- Pennsylvania providers will have an ongoing voice in setting guidelines. We're wary of too much regionalism or whimsy in this, so we recommend the bill be revised to ensure that any modifications are also evidence-based, and that the panel includes providers from all sides of these specialties.

- **What's up with having criteria for Utilization Review Organizations?**
The Bureau of Workers Compensation approves the UROs that it assigns to any disputes on the reasonableness and necessity of care. Unfortunately, the Act doesn't give much guidance for becoming an approved URO. As a result, only about one-tenth of the UROs approved by the Bureau are certified by URAC or any major accrediting entity; in contrast, Pennsylvania requires health insurers to use UROs that are URAC-certified. Injured workers deserve the same quality of URO.

- **Isn't this socialized medicine?** If "socialized medicine" means "government controlled," we've already crossed that Rubicon: The Act already sets forth what is to be paid and how questions of reasonable and necessary care are to be processed. The problem is those controls are causing wasteful inconsistency, which isn't fair to anybody. These guidelines allow for flexibility and patient-specific judgment; they bring the added benefit of ensuring that decisions when reviewing that judgment are based on evidence and with consistency among everyone involved.

And if "socialized medicine" means government-funded, that's certainly not the case here: The cost of inefficiency and inconsistency is paid by employers and ultimately providers and injured workers.

- **What about judges?** There is always the risk of workers comp judges will ignore decisions of UROs. We hope that will be reduced, because the quality of the UROs will be improved, and the standard of what is "reasonable and necessary" will apply to judges, too. Further, when judges use their own medical experts – in the parlance of the Act, Peer Review Organizations – those PROs have to be equally qualified and follow the same guidelines.

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To an insurance guy, "stability and predictability" is a veritable tattoo. But our support goes beyond that: Over the years, we've seen the problems created by inconsistency and uncertainty as to what constitutes reasonable and necessary care; those problems are more than "just" needless added expenses - they go to improper and occasionally dangerous treatment.

Adopting evidence-based treatment guidelines for decisions of reasonable and necessary care is a responsible way to bring long-needed consistency, quality and evidence-based criteria into this area, and we ask for your support.