

TESTIMONY

OF

RICK BLOOMINGDALE, PRESIDENT

THE PENNSYLVANIA AFL-CIO

ON

HOUSE BILL 1800

BEFORE THE

HOUSE LABOR & INDUSTRY COMMITTEE

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Good morning Chairperson Gingrich, Chairman Galloway, and members of the House Labor & Industry Committee. My name is Rick Bloomingdale. I am the President of the Pennsylvania AFL-CIO, and I am here today on behalf of the affiliated labor organizations representing over 800,000 hardworking women and men. Thank you for the opportunity to present testimony regarding House Bill 1800. This bill compromises the treatment available to injured workers through the state's Workmen' Compensation program.

Many decades since the inception of the Workmen's Compensation program, a revision to this system is being proposed known as "evidence-based medicine" (EBM). Labor's concerns with this bill are twofold. First, we fear that, amid all the statistics and fiscal analysis, the inherent value and dignity of human life can be missed. Second, we are concerned that this legislation will result in shifting the burden of proof from *employer* to *employee* in matters of whether and to what degree a worker has incurred an injury.

The allegedly novel aspect of evidence-based medicine meriting our attention is its *statistical approach*. At a time when the trend in medicine is and ought to be toward tailoring treatment and therapy to the individual in light of a variety of factors, evidence-based medicine stands out as a "one size fits all" approach and is decried as a "cookbook" style of medical care removing the physician and patient alike from medical decision-making.

Statistically oriented approaches and cost/benefit analysis have one set of functions and results when dealing with tools and commodities. Statistically oriented approaches and cost/benefit analysis have altogether different functions and consequences when dealing with human beings. History teaches us the dangerous results of treating people as instruments instead of things to be valued in their own right. The medical and health insurance communities would do well to bear this in mind. We fear that this valuable insight is not sufficiently factored into “evidence-based medicine.”

Claims that evidence-based medicine improves patient health care are actually devoid of an empirical basis. Legislators would do well to heed other states’ experiences with evidence-based medicine before proceeding to adopt it in Pennsylvania. In the state of New York, for example, this guideline for medical treatment adopted by its Workers’ Compensation Board has driven up costs, as well as delayed and denied more treatment than previously. It is true that, under “evidence-based medicine,” some *medical* costs have come down. But what needs to be noted is that *legal* costs are more likely to go up.

Under current law, if the employer should question the “reasonableness or necessity” of treatment provided by a health care provider, they can request “prospective, concurrent or retrospective utilization review.” This puts the burden of proof on an employer questioning the “reasonableness or necessity” of treatment

provided by a health care provider. This proposed legislation guts this section of the law and provides instead that “reasonable and necessary treatments, services, products or accommodations shall be those treatments, services, products or accommodations that are consistent with or recommended by evidence-based medical treatment guidelines selected and referenced by the department by publication in the Pennsylvania Bulletin.” This shifts the burden of proof from an employer questioning the “reasonableness or necessity” of treatment provided by a health care provider to an employee seeking treatment they consider reasonable or necessary even if at odds with the evidence-based medical treatment guidelines. To be sure, this bill expressly stipulates that “An injured worker may challenge an employer's determination of reasonableness or necessity by filing a request for utilization review with a utilization review organization approved by the department.”

To put things in perspective, let's say a construction worker gets injured on the job and his health care provider says he needs six weeks of treatment while his physician says he needs twelve. According to the medical treatment guidelines, the construction worker interested in the twelve-week treatment need only provide “medical evidence in support of efficacy of the proposed treatment or testing[, which]...may include relevant medical literature published in recognized peer reviewed journals”

<http://www.wcb.ny.gov/content/main/hcpp/MedicalTreatmentGuidelines/FAQs.js>). Now I don't know about you, but I haven't broken bread with that many construction workers versed in peer-reviewed medical journals. This serves as a glaring example of the obstacles this legislation seeks to erect between the injured worker and the treatment for their injury that he or she deems fit.

So, by default, the guidelines of evidence-based medicine prevail. Thus, as if an injured employee doesn't already have enough problems, in the wake of their injury they now incur the burden of proving treatment is reasonable and necessary in their case if it so happens to be at variance with evidence-based medicine.

According to Elliot Schreur, Research Director at the Workers' Injury Law & Advocacy group, "Even when the guidelines are in place, the complexity of adjudicating the medical necessity of recommended treatments is scarcely diminished from the pre-EBM status quo. If anything, the medical-claims process requires even more litigation" ("Reducing the Impact of Evidence-Based Medicine in Workers' Compensation: Concepts and Strategies" February 27, 2016 p. 3).

Unsurprisingly, evidence-based medicine limits medical treatment options and can have only detrimental repercussions for injured workers. Indeed, in surveying the players and supporters behind HB 1800, one hardly needs to pierce the veil very far before recognizing as familiar faces high-ranking insurance company officials standing to gain handsomely from enactment of this bill.

To quote Schreur again, “At its best, EBM provides treatment options to help physicians make informed medical decisions....[However,] [i]n the process of translating the principles of EBM into statutory language, the good in EBM is lost, and the worst remains. Yet legislatures across the country look to EBM as a cost-saving measure, one that is ultimately intended to restrict medical treatment options for injured workers. The end goal is to reduce medical payments by insurers, thereby reducing workers’ compensation premiums paid by employers.” With the adoption of evidence-based medicine, an “agency-dictated guidebook” on the quantity and quality of treatment will take the place of the best judgment of treating physicians.

In any case, evidence-based medicine is too novel to be adopted without further ado. It has been used for less than a decade, and, of those states that have used it, there has been a notable lack of uniformity to the manners in which it is employed. According to even evidence-based medicine’s own proponents, it is a “work in progress.”

In conclusion, the Pennsylvania AFL-CIO wants to emphasize the importance of not losing sight of human life’s sanctity in the morass of minutiae with which medical and insurance business models can be rife. We also believe that the last thing an injured worker needs is the burden of proving that they have in fact been injured. We advocate for a focused, individualized approach to workers who have

suffered injuries instead of evidence-based medicine as an insurance cost-saving scheme denying workers treatment. We ask that you **OPPOSE** HB 1800.