Pennsylvania Medical Society®

Testimony on House Bill 1141
House Labor & Industry Committee
September 13, 2016

Good morning. My name is Dr. Steven Morganstein. I am a rehabilitation physician practicing in the central PA area and a partner at Morganstein De Falcis Rehabilitation Institute (MDRI). We have three outpatient offices located in Harrisburg, York and Mechanicsburg. I am also currently the Director of Rehabilitation for PinnacleHealth System.

I appreciate the opportunity to speak to you today on behalf of the Pennsylvania Medical Society in support of House Bill 1141. The issues that this legislation seeks to address are not isolated issues within the workers' compensation system. We deal with them – mainly, my office staff deals with them – every day. Some may argue that there already is a system in place for providers to dispute fees and that that process of filing an application for fee review with the Department is sufficient recourse for providers. Unfortunately, it is not sufficient. If it was, I wouldn't be taking time away from my patients to be here today to share with you my experience and illustrate the need for these important reforms.

HB 1141 would prohibit a practice commonly referred to as silent discounting, where a health insurer or its "affiliates" pays us at a discounted rate – in other words, below the mandated workers' compensation fee schedule – without my knowledge, approval or my contractual agreement.

Twenty years ago, I was employed by another local practice that specializes in orthopedic and rehabilitative care. My employer at that time had accepted discounted workers' compensation rates with Coventry Workers' Comp Services. Despite the fact that I left employment with that practice over a decade ago and have since started my own practice, I am still being held to the discounted rates agreed to by my former employer over 20 years ago. I'm not certain how this is happening since I am submitted the claims under a completely different tax identification number. To make matters worse, several years back, Coventry was acquired by Aetna. Since that time, all workers' compensation insurance carriers affiliated with Aetna pay my practice these discounted rates. Not only do I receive less than the state-mandated fee schedule, but the providers I employ receive the same. The discounted rates we receive fall short in covering the expenses to appropriately treat these patients.

In an effort to resolve this problem, my staff has made repeated requests for a copy of a valid contract that justifies them to pay less than the state-mandated fee schedule. Those requests have been ignored. We have sent certified letters informing Coventry that any past contractual relationship they had with me in which discounted rates were agreed to is now null and void. Despite our best efforts to resolve this issue, the discounted payments continue. We have no way of knowing what carriers are affiliated with Aetna umbrella despite our repeated requests for this information. As a result, we are reduced to either accepting what little reimbursement we receive or filing a fee review dispute. Each application for fee review takes a tremendous amount of staff time – time to regularly file the requests and to continually monitor their status.

As a physician, my primary objective is to take care of the patients. Every patient that comes through our door is required to have an initial drug screening. This makes sense since many of our patients have considerable pain which requires appropriate treatment, often involving narcotics. If we prescribe narcotics for their pain, they are then drug tested every 8 weeks to make sure they're taking what we prescribed to them, nothing more and nothing less. We also do periodic pill counts with patients. If they fail any of these tests, we sit down with them to find out why and may discontinue to treat them. We do this to protect our patients. But when my staff submits a claim for a drug screening – a covered service under the WC fee schedule – and we receive as payment a single penny taped to the Explanation of Benefits (EOB) form due to a contractual relationship that my employer over 20 years ago had with Conventry, we get pushed against the wall. Imagine…. someone at the insurance company actually takes the time to tape a penny to the EOB; it's shameful. We can't write off the entire cost of these drug screenings every time they give us a penny, so we have to have someone fight that. That's staff salary, wages and benefits that we have to pay for them to fight for a service that we're legitimately doing.

In addition to prohibiting silent discounting, HB 1141 would prohibit an insurer from soliciting a physician to accept discounted fees and using tactics to coerce them such as threatening patient access. This isn't unusual. When it comes to accepting these discounted rates, there is typically no negotiation. Essentially a carrier will say, if you don't sign this contract, you can't be on our panel. For example, we have a physician who started with our practice at the end of June 2016. My staff has been working to get her credentialed with insurance carriers so that she can begin to see patients. Coventry (Health America/Health Assurance/Aetna) has informed us that they will not allow her to participate with their commercial plans unless she signs the discounted rate workers' compensation portion of the contract. She cannot opt out of that portion – it's all or nothing. So, she limits her practice and the rehab patients who have had strokes, amputations, head trauma, heart attacks, etc. who need care wait longer to be treated.

Some of the most important provisions in HB 1141 are the ones that just enforce current rules and bring the system of billing and paying for workers' compensation services into the 21st century. Current law requires the maximum allowance for a health care service to be updated every January 1 and to apply to all services performed after that date. However, there's no enforcement or penalty for carriers who fail to update their payment systems until March or April of the given year. Again, the burden is on providers to file costly fee reviews for all services performed after the new year. It's the only means of being paid for the difference. HB 1141 would not only impose penalties on insurers who do not update their payment systems by February 1, but it would require them to retroactively calculate and pay any bills for services performed after January 1 at the new rate without the requirement of a fee review.

Under HB 1141, workers' compensation payers would also be required to accept electronic billing for medical services. With today's technology, there is absolutely no reason the current process of billing and payment within workers' compensation can't be executed through electronic means. Medicare and the commercial insurers do it, yet workers' compensation remains largely a paper system. My staff would tell you that this is all part of a "game" that the carriers play, and they play it consistently. We will submit a claim for a patient with a required progress note for reimbursement. Inevitably, the carrier will claim to have lost or not received the progress note, which prevents the claim from being processed. We find this out when we call to follow up on a submitted claim that we haven't received payment for, and we have to submit the paper claim again. Or, we'll receive an EOB for a claim that we submitted, and it will say that the payment will be sent separately. When payments come without an EOB, there's no identifying information so that we can post that payment to a patient's account. It's a guessing game

and they're hoping we'll just give up. As providers, we believe that requiring payers to accept electronic billing would eliminate many of these hassles.

Injured workers present challenges that ordinary patients do not. Their cases typically involve complex injuries that require a great deal of intensive treatment. Often I ask myself why our practice continues to see workers comp patients. The answer is simple: there are a limited number of physicians who can treat these patients. If I don't treat them, who will? That's why we continue to do what we do despite the unfair treatment we receive from insurers.

In conclusion, I would like to thank Representative Saylor for championing these issues on behalf of the provider community and the injured workers we care for. The legislation would ensure that standard processes exist within the workers' compensation system and that those processes are fair and adhered to. In doing so, it would make the system more efficient and cost-effective, and allow us to put more focus where it belongs – on our patients and on helping injured workers receive proper and timely treatment for their work-related injuries.

Thank you for the opportunity to be here today. I'm happy to answer any questions you may have.