

**HOUSE BILL NO. 2849**

**TESTIMONY OF BERNARD W. SMALLEY, ESQUIRE BEFORE  
HOUSE JUDICIARY COMMITTEE, SEPTEMBER 16, 1996  
CHAIRMAN, STATE REPRESENTATIVE THOMAS GANNON**

Mr. Chairman, members of the Committee, good morning. My name is Bernard Smalley. I am a practicing attorney in the Commonwealth, primarily here in Philadelphia and I am currently President of the Philadelphia Trial Lawyers Association. The Philadelphia Trial Lawyers Association is an organization of approximately 1,500 attorneys who practice here in Philadelphia county and virtually every county of the Commonwealth.

I appreciate the opportunity to appear before the Committee and I am here to speak in favor of House Bill No. 2849. I have had the opportunity to review the proposed amendment to Title 42 and I recommend its passage by this Committee.

It is my opinion that the wrongful denial of reimbursement for medically necessary treatment through the use of peer review organization and or utilization review delays proper payment to health care providers, but most importantly, and I underline most importantly, has a negative impact on the continuity of treatment for patients.

While my testimony here may be short, it is based upon my professional experiences both with clients as well as with health care providers.

I have in the past and continue to represent a number of physicians as their personal counsel. In that capacity, I have become aware of problems with peer review, especially its negative impact on the continuity of service and receipt of reimbursement to the providers.

It would appear that peer review can, in some instances, operate to impose an artificial ceiling on the nature and level of treatment provided which is directly contrary to the provider's medical judgment. As we all know, medicine is not an exact science and medical judgment must stand as given by the provider at the time diagnosis or treatment is initiated.

The imposition of a artificial ceiling may be especially true when the initial peer review, which questions or stops reimbursement, is made by someone outside of the provider's area of expertise or speciality. i.e., a nurse who reviews a physician treatment plan and finds it excessive. Or a physician who requests a referral within the provider network to a neurosurgeon for a diagnostic test and has been told that a orthopedist will do. The results, if inappropriate, can be devastating and can in fact lead to a subsequent claim for medical negligence in a court of law where the health care provider has in fact requested but been denied the opportunity for proper referral.

In general, as with any other profession, there is a need for health care providers to be paid for their professional services. Inappropriate denial of reimbursement, should not reward the insurer by allowing the insured to hold on to the proceeds of payment for an inordinately long period of time or to engage in a running battle of negotiation with the health care provider to reduce the overall amount of reimbursement. It may be argued that the penalties or damages provided under Section 2849 are excessive. I believe to the contrary.

The damages, under Section 8371.1(b) will negate the present advantage that insurers have to hold on to the money pending resolution of peer review, without penalty. The overall effect of this legislation, if passed and signed into law, will be to assist in streamlining the delivery of health care services to patients and to provider proper payment reimbursement on a timely basis.

In that regard, there remains adequate provision for medical treatment which is deemed unnecessary not to be reimbursed. One of the critical issues or changes under proposed House Bill No. 2849 is the fact that it requires that a final determination of medical necessity be made only by health care providers licensed by the Commonwealth in the same profession and having the same speciality as the provider for whose treatment, care or services is subject to review.

The institution of this critical provision will eliminate any doubt as to the responsibility of the reviewer to be of the same speciality. This will be especially helpful in the area of health maintenance organizations where referrals to specialists and requests for diagnostic tests can be initially or ultimately rejected by a reviewer who is not within the speciality of the proposed referrer. (emphasis added)

For the foregoing reasons, I am in support of House Bill No. 2849 and the belief of health care providers that they should be reimbursed for diagnosis and treatment provided and penalties should be imposed for the wrongful denial of reimbursement for medically necessary treatment.

I stand ready to answer any questions you might have.

Thank you.