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June 25, 2009

The Honorable Elaine Alquist
Member of the Senate
State Capitol
Sacramento, California 95814

Subject: AB 542 (Feuer)---Oppose Unless Amended

Dear Senator Alquist:

On behalf of the University of California, (UC), I am writing to respectfully advise you of our continued 'oppose unless amended' position on AB 542 (Feuer). UC owns and operates academic medical centers (AMCs) at the Davis, Irvine, Los Angeles, San Diego, and San Francisco campuses, all of which AB 542 will have an impact on. While we are supportive of the bill's laudable intent to improve patient safety, we believe the bill fails to define appropriately the non-payment system for certain hospital-acquired conditions. More specifically, in its current form, AB 542 does not include a method for assessing the financial penalty to be borne by California hospitals, which severely limits our ability to model the bill's impact. Moreover, absent clarity and transparency, we are concerned the practical application of this measure could be overly punitive. This uncertainty makes difficult to adequately plan for our sixteen health-care professional schools, and other programs that we operate, in order to fulfill our tripartite mission of education, research, and complex care of the medically vulnerable.

Patient safety is the highest priority of UC and we embrace programs that help us improve patient outcomes. To that end, we have taken the lead, on behalf of the entire industry, to retain a nationally known expert on patient safety and incentive systems to create a methodology that can be used by the State of California to develop a non-payment system that mirrors both the intent and impact of the federal Diagnosis-Related Group (DRG) non-payment system developed by the Federal Centers for Medicare and Medicaid Services (CMS). CMS carefully

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identified the events subject to non-payment as being reasonably preventable by employing evidence-based guidelines. The system also considers whether a condition was present on admission. We have shared this formula and the calculations that reflect the anticipated experience in California, with the author and other stakeholders on a regular basis, and are including suggested language in this letter to effectuate a system that models CMS in both intent and impact.

We do wish to point out that the UC Medical Centers certainly agree that expenses should be borne by the provider for procedures on the wrong patient, the wrong limb, the wrong procedure, or when a foreign object is inadvertently left in the patient during a procedure.

UC believes that the offset in payment for care rendered for HACs as defined by CMS, as applied by both commercial and public payers in California, should proportionally approximate the diminution in pay that CMS will be withholding in the federal DRG system for similar adverse events. We understand that Assembly Member Feuer, in his remarks to an earlier policy committee, similarly indicated that he was hopeful that such a methodology that could mirror the CMS experience in California could be developed. CMS has already undertaken a thorough process for vetting the list of events to be included in the non-payment list as well as the financial offset, so that the CMS non-payment program will provide the appropriate incentives, but will not unduly punish healthcare providers, and therefore the underlying healthcare infrastructure, including our safety net hospitals, caring for our most vulnerable patients.

As the economy continues to soften, causing hundreds of thousands of formerly employed Californians to lose their employer-based coverage, our facilities are treating increasing numbers of sicker patients without coverage, and if this trend continues, there will be further impacts on our ability to continue to offer the services Californians need. Moreover, it is imperative that we have the ability to model what our resources will likely be, as we continue to address a global pandemic, which might further strain our system's resources.

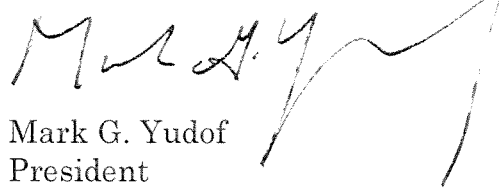
UC hospitals are committed to patient safety and to providing high-quality patient care. The University greatly appreciates the leadership of Assembly Member Feuer in bringing together interested parties, and we are committed to working with him, his staff, and other stakeholders to develop a nonpayment policy that will create the appropriate incentives to improve patient care. Consequently, while the University is opposed to AB 542 in its present form, should the amendments suggested herein be accepted, we would be delighted to come off 'oppose,' on this bill.

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If you have any questions, please do not hesitate to get in touch with Manager of Health Policy for Health Sciences & Services Terry J. Leach, who can be reached at (510) 587-6241 or Associate Vice President of Clinical Services Santiago Muñoz, who can be reached at (510) 987-9062.

With best wishes, I am,

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mark G. Yudof". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark G. Yudof
President

Enclosure

cc: Interim Provost Pitts
Executive Vice President Lapp
Senior Vice President Stobo
Senior Vice President Dooley
Associate Vice President Juarez
Associate Vice President Muñoz
Manager Leach

Proposed amendments to AB 542 as requested by UC:

In Section 1 (e) of the bill on Page 1:

“It is the policy of the State of California that events subject to non-payment be those that are limited to the list of hospital-acquired condition that have been adopted by the Centers for Medicare and Medicaid (CMS) for non-payment under the DRG system. The methodology employed to create payment offsets should result in reductions in payment that mirror both the intent and impact of the CMS non-payment system.”

Section 128871(a) (1), we request:

“On or before September 1, 2010, adopt payment policies and practices regarding nonpayment for hospital acquired conditions that create a payment offset that is proportionally equivalent to the offset that would be developed under the federal Centers for Medicare and Medicaid Services (CMS) pursuant to Section 5001 (c) of the Deficit Reduction Act of 2005 (42 U.S.C. Sec 1395 ww (d) (4) and that have the following characteristics, as defined by CMS:

- (A) High cost or high volume, or both.
 - (B) Would result in the assignment of a case to a diagnosis-related group that has a higher payment, under the Medicare Inpatient Prospective Payment System, if present as the sole secondary diagnosis on a claim for payment and was not present on admission.
 - (C) Reasonably could have been prevented through the application of evidence-based guidelines that are based on nationally accepted standards of care for the age and condition of the patient.
- (2) The non-payment, the policies, and practices shall include nonpayment consistent with CMS for the following events:
- (A) Surgery performed on the wrong body part.
 - (B) Surgery performed on the wrong patient.
 - (C) Wrong surgical procedure performed on a patient.

(2) Synchronize definitions, coding, practices, and payment methodologies, to the extent feasible, with CMS regarding nonpayment for hospital acquired conditions. Average nonpayment amounts or percentages for each HAC will be estimated by applying the appropriate CMS MS-DRG grouper to all prior-year Medicare hospitalizations in California reported to the Office of statewide Health Planning and Development as having that HAC.

We also request that a new paragraph (d) be added to Section 128871 as follows:

“ Nonpayment for hospital acquired conditions pursuant to this Part shall not be an admission of liability, and information and documents related to such nonpayment shall not be admissible or discoverable in a court of law.”

Section 128872, we request:

“In accordance with the nonpayment policies and practices adopted by regulation pursuant to Section 128871, a health facility shall not charge, nor, is a patient or payer required to pay, for the payment offset attributable to the hospital acquired condition, pursuant to the regulations promulgated under Section 128871.”

Finally, we ask that the following sections of Section 14182 be deleted:

(c) Notwithstanding any other provision of law, and subject to applicable federal requirements, a health facility shall exclude its costs related to hospital-acquired conditions subject to the nonpayment policies implemented pursuant to subdivision (a) from both of the following:

- (1) The Annual Disclosure Report submitted by the health facility to the Office of Statewide Health Planning and Development and which is used in the calculation of payment adjustments under the Disproportionate Share Hospital Program pursuant to Article 5.2 (commencing with Section 14166).
- (2) The Medi-Cal 2552-96 cost report, and any other data, submitted by the health facility to the department and which is used for claiming reimbursement from the Safety Net Care Pool pursuant to Article 5.2 (commencing with Section 14166).