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SENATE FLOOR ALERT
AB 375 (Skinner) – File #164

August 31, 2011

TO: Members of the California State Senate

RE: AB 375 (Skinner) as amended August 18, 2011
Position: OPPOSE

The University of California (UC) opposes AB 375, which would establish a legal presumption for certain hospital employees in the workers' compensation system that any blood-borne infectious disease and MRSA infection is related to their employment. The University believes that the existing laws governing the California workers' compensation system and the determination of the compensability of industrial injuries are equitable for both employees and employers. Existing workers' compensation law requires that the payment of benefits to an injured employee depend on the existence of an injury that not only occurs during the course of the employee's duties, but that the injury also arises out of their employment.

Proponents of AB 375 argue that the establishment of a presumption for these injuries is needed because hospital workers have an increased likelihood of exposure to MRSA and blood-borne diseases. However, there is no evidence that hospital workers filing claims for these injuries are being denied benefits under the existing system and thus no evidence that a presumption for these injuries is justified. To the contrary, historical workers' compensation claims data for employees at the UC medical centers demonstrate that claims filed for these injuries are generally accepted.

Since 2007, an average of 97 percent of all UC medical center claims submitted for contagious diseases, which includes claims for blood-borne infectious diseases, MRSA and aerosolized infectious diseases, are accepted. In fiscal year 2011, of the 636 workers compensation claims that have been submitted by medical center employees for contagious diseases, only 17 have been denied. This data illustrates that the existing workers' compensation system is functioning as intended and that injured employees are receiving benefits for these injuries when evidence demonstrates that the injury arises out of their employment.

The practical impact of the creation of a presumption is that the University will have a higher burden of proof when attempting to rebut a claim that it believes to be non-work-related. Given the lifetime benefits afforded under the workers compensation system, it is reasonable to presume that the creation of the presumption under AB 375 could incentivize some individuals to file questionable claims. It is unknown how many new claims might be filed due to the creation of a presumption and at what cost.

While some treatment costs may be viewed as having a marginal fiscal impact on a public hospital's workers compensation program, others could be substantial. The cost of medical treatment for a MRSA infection can range from $200 to $7,500 per case, depending on the treatment needed. Treatment costs for a blood-borne infectious disease such as Hepatitis C can be substantially higher; in excess of $500,000 and

can even reach costs as high as $1 million. The University of California is self-funded for workers compensation claims, and as such under California law must reserve for the worst case scenario on each claim for the employee's life expectancy. In addition to treatment, the lifetime benefits under workers' compensation include temporary and permanent disability. One additional catastrophic Hepatitis C claim could have significant cost implications for UC's workers' compensation system.

Presumptions circumvent the basic test of compensability in the existing workers' compensation system and shift the burden of proof to the employer to prove an employee's job duties did not cause their injury. Although these presumptions are considered rebuttable, the truth is the everyday application of these presumptions leads to an insurmountable burden that employers cannot overcome. Some may argue that a UC medical center could conduct pre-employment testing of new hires for MRSA and blood-borne diseases as a method of defending against questionable claims. However, in addition to the cost, approximately $50 and $100 per test for both MRSA and blood-borne diseases respectively, in conducting these tests UC could expose itself to potential litigation over the legality of the test under California's Fair Employment and Housing Act. The Act limits an employer's ability to conduct pre-employment medical examinations to only tests for conditions that are related to an employee's ability to perform a job. Further, there is no guarantee that the results of a pre-employment test would be sufficient to rebut the presumption.

It could also be extremely difficult to determine which employer may be responsible for a workers' compensation claim with such presumptions. It is standard practice for UC employed doctors and nurses to work at other medical centers, hospitals and clinics. UC's workers' compensation program provides coverage for our employees while they are working at a UC facility, but not when they are working at another facility, such as another public hospital. In these situations, it can be very difficult to determine at which location the incident of an injury such as MRSA or a blood-borne disease occurred. This bill could result in additional increased litigation between employers to determine which medical center, hospital or clinic should bear the claim.

Lastly, UC is concerned that language in AB 375 may eliminate the ability for the apportionment of a workers' compensation claim for MRSA or a blood-born infectious disease. Language in the bill states: "The blood-borne infectious disease or MRSA skin infection so developing or manifesting itself in those cases shall not be attributed to any disease or skin infection existing prior to that development or manifestation." It is unclear how this bill would impact apportionment which requires that a physician make an apportionment determination with respect to permanent disability by making a determination of what approximate percentage of a permanent disability is caused by the direct result of the injury arising out of and in the course of employment and the percentage caused by other factors both before and subsequent to the injury.

Although there is a history of legal presumptions being applied to certain public employees and safety officers, AB 375 establishes a costly precedent by creating the first such presumption to private sector employees who face specific types of work-related risks. Employees in a variety of occupations face inherent employment risks. The current workers' compensation system is a fair standard that is applied to all injuries for all other employees. AB 375 implies that employees with specific employment-related injury risks should be afforded this type of policy change.

Should you have any questions on the University's position on AB 375, please do not hesitate to contact Angela Gilliard at (916) 445-9924

<u>UC urges a "NO" vote on AB 375.</u>