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April 16, 2014

Honorable Henry T. Perea  
Chair, Assembly Insurance Committee  
1020 N Street, Room 369  
Sacramento, California 95814

***RE: AB 2616 (Skinner) as amended April 3, 2014***  
***Scheduled for Hearing in the Assembly Insurance Committee on April 23, 2014***  
***Position: Oppose***

Dear Assemblymember Perea,

I regret to inform you that the University of California (University) opposes AB 2616, which would establish a legal presumption for certain hospital employees in the workers' compensation system that any methicillin-resistant *Staphylococcus aureus* skin infection (MRSA) 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 2616 argue that the establishment of a presumption for these injuries is needed because hospital workers have an increased likelihood of exposure to MRSA. 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.

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 2616 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.

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.

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

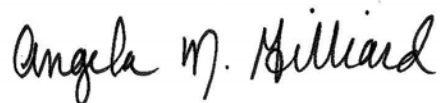
provides coverage for our employees while they are working at a UC facility but not when they are working at another facility, such as another public hospital. In these situations, it can be very difficult to determine at which location the incident of an injury such as MRSA occurred. This bill could 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 2616 may eliminate the ability for the apportionment of a workers' compensation claim for MRSA. Language in the bill states: "A MRSA skin infection that develops or manifests itself in circumstances described in subdivision (b) shall not be attributed to a 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 2616 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 2616 implies that employees with specific employment-related injury risks should be afforded this type of policy change.

The University appreciates your consideration of its concerns. Should you have any questions concerning the University's position on this bill, please do not hesitate to contact Angela Gilliard at 916.445-9924.

Sincerely,



Angela M. Gilliard, JD  
Legislative Director

cc: Assemblymember Nancy Skinner  
Members, Assembly Insurance Committee  
President Janet Napolitano  
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