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POTENTIALS

Veto recommendation for AB 655 (Hayashi)

8 Sept 2011

Dear Gov. Brown,

You may want to reconsider AB 655 (Hayashi). The bill was intended for good purpose, namely, to enable transfer of peer review information from one hospital to another.

After the bill surfaced it was noticed that it makes no provision for the identification of sham peer review material and makes no provision to eliminate false or defamatory material from legitimate peer review material.

Amendments to this end were sought and were, for the most part, denied. An example of amended language in the bill is lines 24 to 27 as of the last time I reviewed the text. You will notice use of the word, "relevant," with no description of how that term will be interpreted or applied. That is one of the entry points for sham peer review.

You've also been told that there was no opposition. Outside the legislature, among physicians, there was plenty of opposition including by California licensed physicians who are also members of the bar. This bill in its current form is an invitation to lawsuits because of the failure to address sham peer review. AB 655 enables sham peer review.

The recent Appellate decision, **El-Attar v. Presbyterian Hollywood Med Ctr**, protects peer review while AB 655 undermines peer review and this Appellate decision. Because AB 655 crosses swords with this case it needs to be modified before enactment.

A Letter of Concern is on file and remains unanswered

There is a "letter of concern" from the California Society of Industrial Medicine and Surgery (CSIMS) that suggests two amendments that would cure most of the problems with the bill. The letter was sent to Assemblyperson Hayashi and to Ross Warren. As of this writing, it remains unanswered. I recommend that you review the CSIMS letter before you make your decision as to whether or not to sign AB 655.

My own recommendation was to convert AB 655 into a two-year bill. I would still recommend that as a viable solution since the bill itself would remain active.

Yours truly,



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Yes, sign AB 584 (Fong) into law!

Dear Governor Brown,

9/08/2011

I wrote my first letter on the current use of non-California licensed physicians doing utilization review (UR) in 2005 – that letter went to the Office of Administrative Law which agreed with Andrea Hoch that a license just about anywhere would suffice for UR purposes. Since then we've seen a plethora of insurance companies scrambling to enroll doctors without California licenses to do utilization review.

These doctors, unlicensed in California, do not have to bother with California law that requires a 12 hour course in pain management for California-licensed doctors who treat injured workers. Their end-run around the law is enabled by their being exempted from compliance with California licensure.

Likewise, California is exempted from having to collect licensure fees from doctors who are not licensed in California.

From the very beginning this policy has been harmful to injured workers in California because it has often enabled inept peer review without consequence.

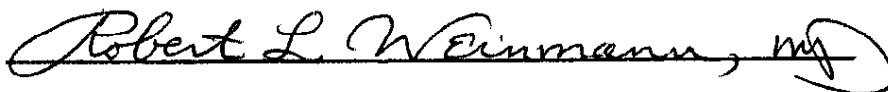
From the very beginning this policy has deprived California of income it should have had from doctors who do UR in California but who are not licensed in California.

The argument is sometimes made that there aren't enough California-licensed physicians to do the job. This argument is false. The fact is that there is a waiting list of applications from properly licensed and qualified physicians who want to do UR. At least two major insurance companies in the state do not use doctors without California licenses.

I've already sent you my op-ed from the **San Francisco Chronicle**, "*How to practice medicine without a license*," 8/29/08 – that piece is still as applicable today as it was then. By tomorrow, I'm hoping it will be obsolete because it'll no longer be applicable.

I would like to be able to say that this letter to Gov. Brown was my last on the subject and that I contributed to the demise of a harmful utilization review policy.

Yours truly,



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