

Approved

REPORT OF THE BOARD OF REGENTS

June 23, 2021

ADOPTION OF REGENTS POLICY ON AFFILIATIONS WITH HEALTHCARE ORGANIZATIONS THAT HAVE ADOPTED POLICY-BASED RESTRICTIONS ON CARE

The President of the University of California recommends that the Regents adopt the Policy on Affiliations with Healthcare Organizations that have Adopted Policy- Based Restrictions on Care, attached as Attachment 1, and amended consistent with the provisions of Attachment 1A. President Drake shall return to the Board with specific language for the amended policy at the Board's July 2021 meeting.

Board vote: Regents Anguiano, Blum, Cohen, Drake, Elliott, Estolano, Guber, Kounalakis, Lansing, Leib, Makarechian, Mart, Muwwakkil, Ortiz Oakley, Park, Pérez, Reilly, Rendon, Sherman, Stegura, Sures, and Thurmond voting "aye" and Regent Butler abstaining.

DRAFT Regents Policy on Affiliations with Healthcare Organizations that Have Adopted Policy-Based Restrictions on Care**POLICY TEXT**

1. Advancing the University's Public Mission. Prior to approving or executing any new or renewed affiliation with a health organization that has adopted policy-based restrictions on care (a "covered organization"), the sponsoring location must: (i) document the rationale for the affiliation, including any anticipated benefits or risks to the University's education, research, and service missions and to the broader patient community; and (ii) verify that access to policy-restricted services such as abortion, contraception, assisted reproductive technologies, gender-affirming care, and end of life care will be maintained or improved as a result of the affiliation. Under no circumstances may such an organization be granted responsibility or authority to operate or manage any University facility or program on behalf of the University.
2. Documenting Adherence to University Policies and Standards in all Affiliation Agreements. Agreements with covered health organizations must recite the University's role as a public entity and commitment to non-discrimination and evidence-based care; and must require all parties to comply with all federal and state anti-discrimination laws, including Cal. Civ. Code § 51 (prohibiting discrimination on the basis of sex [including pregnancy and childbirth as well as gender, gender identity, and gender expression], race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status). The University may not enter agreements with provisions that purport to require the University or its personnel or trainees to enforce or abide by policy-based restrictions on care including, but not limited to, religious directives, or that include any "gag clauses" interfering with their ability to counsel all patients on their treatment options. The University must retain the option to terminate such agreements if the University determines in its sole discretion that continued performance would be incompatible with its policies or values or that the affiliate has breached its promises to not restrict University providers' freedom to advise, refer, prescribe, or provide emergency items and services without restriction.
3. Strengthening Patient and Provider Protections. Each University location contracting with healthcare organizations that have adopted policy-based restrictions on care must develop and implement a process to inform UC patients, faculty, staff, and trainees: (i) about such restrictions at sites to which they may be referred or assigned; (ii) that such referrals or assignments are voluntary; and (iii) and that information about alternative sites for care, practice, and training will be provided upon request. Each location must also develop a process to transfer patients who need restricted services to a UC or other location where the services can be provided. Processes for receiving, evaluating, and resolving complaints or grievances must also be developed and implemented.
4. Ensuring Reporting and Transparency. Each University location (including the Office of the President with respect to systemwide or multi-campus agreements) must provide an annual report to the Regents Health Services Committee: (i) listing all new or renewed arrangements with covered organizations; (ii) summarizing complaints or grievances received from patients, students, faculty, and staff, as well as their resolution; (iii) providing quality monitoring data consistent with systemwide quality guidelines; and (iv) reporting on

any identified noncompliance with the above standards. The first report, due in June 2022, must list all current arrangements with such institutions.

5. Implementation and Accountability. The President shall issue a systemwide policy to implement these requirements after consultation with the chancellors and representatives of the Academic Senate and UC Health. One year after implementation of that policy, the Office of Ethics, Compliance, and Audit Services shall conduct an audit of an appropriate sample of then-current contracts with covered affiliates to ensure their compliance with such policy. Thereafter, the frequency and scope of audits shall be determined by ECAS in consultation with the chairs of the Audit & Compliance Committee and the Health Services Committee.

NO RIGHT OF ACTION

This policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the University of California or its Board of Regents, individual Regents, officers, employees, or agents.

PROCEDURES AND RELATED DOCUMENTS

1. First, UC should only affiliate with covered organizations that agree to offer care on a non-discriminatory basis. In other words, if a covered organization offers a particular medical procedure or service, then—if that organization wants to affiliate with UC—it must provide that procedure or service to all patients on a non-discriminatory basis.
 - a. To be clear: no hospital is required to affiliate with UC. But the University of California should only enter into affiliations that do not make it a party to discrimination.
 - b. So I move to amend the Proposed Regents Policy by adding an express provision in all UC Health agreements with a covered organization that requires the affiliate to offer any service it chooses to provide on a non-discriminatory basis.
2. Second, UC personnel working at a covered affiliate should be permitted to provide any evidence-based, medically-indicated care to any patient at a covered affiliate, if transferring that patient to another facility would be detrimental to the patient's care. If UC personnel determines, in their professional judgment, that transferring the patient to another facility would be detrimental to that patient's care, then UC personnel should be allowed to provide any care necessary at a covered affiliate's site. To be clear, this requirement is not intended to require that a covered affiliate provide in the first instance any service or care that is not offered, for logistical or other reasons, at the covered organization, but would apply to any service or care the patient may need after care is initiated at a covered affiliate.
3. Third, the UC should not enter into any new affiliations that do not comply with this new policy on covered affiliations, and it should phase out any non-compliant affiliations no later than December 31, 2023. This gives existing affiliates two and a half years to consider these requirements and to come into compliance.
4. [No exceptions to these contractual conditions should be permitted. The proposed policy as drafted allows the Chancellor to approve exceptions to the policy's requirements. I would amend the policy to delete this provision.]
5. My motion provides for a 60 day period to review and refine the specific language that implements these three additions.