



May 27, 2022

The Honorable Philip Ting
California State Senate
1021 O Street, Room 8230
Sacramento, CA 95814

Subject: Retention Pay Trailer Bill – CONCERNS

Dear Assemblymember Ting:

Gov. Newsom's recent proposal to provide health care workers with \$933 million in retention payments represents an important step toward recognizing the invaluable contributions of California's pandemic heroes.

Hospitals support these efforts and want to see that health care workers — the lifeblood of hospitals and other organizations — are recognized and rewarded. Despite the intent of this proposal, the current trailer bill language creates significant implementation and administration questions that must be addressed if this program is to be successful. Without amendments, the retention pay proposal will effect a lose/lose scenario where payments for workers are reduced, hospitals are needlessly placed in a position of excessive litigation risk, and both the State of California and hospitals will be faced with costly and onerous administrative burdens.

Therefore, on behalf of our more than 400 hospital and health system members, the California Hospital Association respectfully expresses concerns on this vitally important trailer bill. Several overarching key issues need to be remedied to effectively deliver the recognition health care workers deserve. They are:

- 1) **Exclusion of Employees** – As drafted, the language arbitrarily begins the timeframe to qualify for state retention pay matches at Jan. 1, 2022. This would exclude workers who received bonuses in the fourth quarter of 2021, resulting in lower payments for tens of thousands of workers without reason or justification.
- 2) **Temporary Employment Requirements** – The language requires hospitals to transmit payments to temporary employees and contractors. Hospitals do not have the contact and payroll information for these workers or the legal authority to request this information. Therefore, it is impossible for hospitals to comply with this requirement.
- 3) **Limited Funding, Uncertain Payments** – The language provides specific retention payment amounts, but then goes on to allow the Department of Health Care Services to reduce these payments on a pro rata basis. This creates uncertainty on the retention payment amount for both

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employees and hospitals and opens the door to reduced benefits, potentially reducing retention payments for all workers.

- 4) **Limitation on Qualifying State Match** – The type of compensation that enables employees to receive a state match is very limited. By allowing only bonus pay, critical other benefits, such as higher wages, child care vouchers, housing vouchers, and additional paid time off are excluded entirely.
- 5) **Implementation Questions** – The bill is silent on several basic questions around the retention pay proposal. These include, but are not limited to: Do hospitals and skilled-nursing facilities *need* to participate? What happens if the employer cannot locate a former employee? What if there is a material error in the filing? Failure to clarify these questions opens the door to litigation.
- 6) **Legal Liability** – Under state and federal law, payments made for services rendered, including bonuses, are considered wages. These retention payments exist in a gray area, and the language is silent on whether the payments would be considered as wages. Without clarification, hospitals could face multiple lawsuits due to potential wage and hour violations for both employees and contractors, even if no matching contributions are involved.

To reiterate, hospitals support the proposal to recognize and reward health care employees. We appreciate your consideration of these concerns in an effort to make sure this program can be successful. If you have any questions about CHA's position on the retention pay trailer bill, please contact our chief advocate, Kathryn Scott, at kscott@calhospital.org or our labor policy lead, Gideon Baum, at gbaum@calhospital.org.

Sincerely,



Kathryn Austin Scott
Senior Vice President, State Relations and Advocacy