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March 25, 2022

Senator Ralph Alvarado
Chairman, Senate Health and Welfare Committee
Room 232, Capital Annex
Frankfort, KY 40602

Dear Chairman Alvarado:

This correspondence is for the sole purpose of expressing the University of Kentucky's opposition to HB 28 as it passed the House on March 10, 2022.

The University of Kentucky's Health Care enterprise participates in Medicare and Medicaid. As a condition of participation in these programs, the University must comply with all Medicare and Medicaid regulations. Among these regulations is the interim final rule imposing a COVID-19 vaccination mandate applicable to staff of healthcare facilities participating in Medicare and Medicaid ("CMS Mandate"). The CMS Mandate requires the staff of healthcare facilities to be vaccinated or to obtain a medical/religious exemption.

To ensure compliance with the CMS Mandate, the University must require the employees and students to disclose their vaccination status and, if they are unvaccinated, to obtain a medical or religious exemption. The University must also maintain records of which employees or students are vaccinated or have an exemption. Those records must be made available to federal officials whenever the federal officials begin an unannounced review.

HB 28 would prohibit the University of Kentucky, including the University's Health Care Enterprise, from requiring a student, prospective student, employee, and prospective employee disclose their immunization status. If HB 28 were enacted in its current form, then there would be a conflict between the CMS Mandate and state law.

Because the Supreme Court of the United States has already held that the CMS Mandate was within the statutory authority of the Department of Health and Human Services, the CMS Mandate, like any federal regulation, has the force and effect of federal law. Under the Constitution's Supremacy Clause, federal law takes precedence over any conflicting state law.

Given the conflict between the CMS Mandate and HB 28, the University would have two choices:

1. Comply with state law and risk losing all Medicare and Medicaid funds that pay for healthcare needs of over a million elderly and poor Kentuckians.
2. Comply with the CMS Mandate and risk losing all state funds and state contracts as well as being subject to liability to individuals.

The first choice would be a disaster for the Commonwealth and our most vulnerable citizens. The flagship academic medical center cannot opt out of Medicare and Medicaid. The second choice would be equally disastrous-the University cannot function without state funds or state contracts.

Lastly, the University of Kentucky's Healthcare Enterprise, which includes Chandler Medical Center, Good Samaritan Hospital, Eastern State Hospital, and other clinics the University staffs throughout the state, including the North Fork Valley Community Health Center in Hazard, is the only major hospital system in the state that must comply with the mandates of HB 28. All other private and non-profit hospitals are not affected by HB 28 mandates. The University's health system is the University of Kentucky, a school in the public postsecondary education system which HB 28 mandates must comply.

For all of the reasons stated above, the University of Kentucky opposes HB 28 and respectfully asked you to defeat this measure.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Bart Hardin", with a long horizontal flourish extending to the right.

L. Bart Hardin