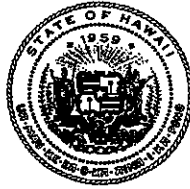


SB 2417

LINDA LINGLE
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

**Committee on Health
Committee on Commerce, Consumer Protection, and Affordable Housing
S.B. 2417, Relating to Health**

**Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health**

February 1, 2008

- 1 **Department's Position:** The Department of Health is opposed to passage of S.B. No. 2417.
- 2 **Fiscal Implications:** The proposed legislation does not specify the amount of tax credits to be offered
- 3 individuals practicing medicine on Maui. Therefore there is no way of projecting the impact the
- 4 proposed bill will have on state revenue.
- 5 **Purpose and Justification:** Act 219, SLH 2007, appropriated funds for a comprehensive health care
- 6 workforce map and data base to be developed for the State. A contract with the University of Hawaii to
- 7 perform this study is currently being finalized. The study will be completed in 2009. The proposed bill
- 8 duplicates portions of this study for the county of Maui. This represents additional expense to produce
- 9 the same information.
- 10 Issues regarding the recruitment and retention of health care providers are statewide and not isolated to
- 11 one county. Providing tax credits for providers in only one county may prove detrimental to recruitment
- 12 and retention efforts in other counties. Physicians living in other underserved areas of the state may
- 13 choose to relocate to Maui for the additional tax benefits. With Maui having a tax credit to offer
- 14 applicants, other counties would be at a disadvantage when recruiting physicians to the state.

1 The proposed bill calls for a study on Maui to be performed by the Hawaii Health Information
2 Exchange, Inc. that duplicates much of the study recently completed by the Maui Health Initiative Task
3 Force. Further, legislation cannot direct the Department of Health to contract with a specific entity
4 without language exempting the contract from Chapter 103D HRS or language must be inserted that
5 monies given are a grant pursuant to Chapter 42F HRS. The Department of Health would not be able to
6 contract with Hawaii Health Information Exchange, Inc. due to the fact that they are not in good
7 standing with the Department of Commerce and Consumer Affairs.
8 Thank you for the opportunity to provide testimony related to this proposed legislation.

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



KURT KAWAFUCHI
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SENATE COMMITTEE ON HEALTH

TESTIMONY REGARDING SB 2417 RELATING TO HEALTH

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)

DATE: FEBRUARY 1, 2008

TIME: 1:15PM

ROOM: 016

This bill proposes to amend chapter 235, HRS, by adding a new section containing a tax credit.

The Department of Taxation (Department) provides comments on this legislation which amends chapter 235, HRS, by granting a refundable income tax credit to physicians and medical facilities that agree to furnish medical services or provide medical training on Maui for a period of not less than five years.

I. THE CREDIT CANNOT BE CLAIMED BY MEDICAL FACILITIES BECAUSE THEY DO NOT FILE INDIVIDUAL INCOME TAX RETURNS.

The bill states that the credit may only be claimed by taxpayers who file individual income tax returns. The licensed medical facilities mentioned in Section 3, subsection (b) of the bill do not file individual income tax returns. The Department recommends removing the word "individual" from subsection (a).

II. THE CREDIT IS TIED TO THE EXISTENCE OF THE MAUI HEALTH INFORMATION CORPORATION.

The credit requires that the taxpayer participate in an organization known as the Maui Health Information Corporation. If this entity is dissolved or changes its name, the statute will need to be amended for taxpayers to continue to be able to claim the credit. The Department recommends adding language that will continue the credit in the event of a name change or a successor organization assuming Maui Health Information Corporation's duties. Or amending the bill to correspondingly eliminate the credit if a dissolution event occurs.

III. NON-PROFIT MEDICAL FACILITY CANNOT CLAIM THIS CREDIT.

Ordinarily, a tax credit only applies to a taxpayer that is "subject to the taxes under Chapter 235." Nonprofit entities are not subject to income tax under Chapter 235, HRS, and therefore ordinarily do not qualify for any tax credits.

IV. IT IS UNCLEAR WHAT TRIGGERS THE ABILITY TO CLAIM THE CREDIT.

The Department notes that the credit appears to be available to taxpayer who merely agree to provide services. There is no requirement that services ever actually be carried out or that they continue to be carried out. The Department recommends modifying the language to reflect that the credit is available to taxpayers who actually perform the services, and, as a measure to ensure enforcement, adding a provision to recapture any claimed credits by taxpayers who do not provide the required services for the full five years.

V. TECHNICAL MATTER – UNNECESSARY SUBSECTIONS.

Subsection (d) grants the Department rulemaking authority, which is redundant as that authority has already been granted by Section 231-3 and Section 235-2.5.

Subsection (e) is unnecessary as Section 231-23(c)(1) already applies to all taxes.

VI. REVENUE IMPACT

Revenue loss is indeterminate due to an unspecified amount of tax credit.

LATE TESTIMONY



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February 1, 2008

To: Sen. David Ige, Chair
Sen. Carol Fukunaga, Vice Chair
Senate Health Committee

Sen. Russell Kokubun, Chair
Sen. David Ige, Vice Chair
Senate Commerce, Consumer Protection and
Affordable Housing Committee

From: Cynthia J. Goto, M.D., President
Linda Rasmussen, M.D., Legislative Co-Chair
Philip Hellreich, M.D., Legislative Co-Chair
Paula Arcena, Executive Director
Dick Botti, Government Affairs Liaison

Re: SB2417 Relating to Health (Requires a study of health care adequacy on Maui, including regional health information organization establishment; establishes a tax credit providing an incentive for health care providers to furnish services and health care training on Maui. Makes appropriation.)

The Hawaii Medical Association supports the intent of SB2417 to address the patient access to care crisis on Maui.

While the crisis is most acute on neighbor islands, Maui and the Big Island being the worst, this is a statewide crisis that is affecting all of Hawaii's residents.

SB2417 proposes a study of Maui's healthcare system and tax credits for medical providers practicing on Maui or any entity that provides training for health care professionals on Maui.

A study is not necessary to determine that Hawaii has a physician shortage. Tax credits alone will not be adequate incentive to practice medicine on Maui.

It will take several kinds of statewide incentives to make Hawaii competitive with other jurisdiction for its physician workforce. The physician shortage is national and is expected to last for the next several decades.

Medical liability reform, which establishes reasonable limits on non-economic damages (ie. pain and suffering, loss of consortium, loss of enjoyment of life) and puts no limits on economic damages (ie. past and future medical expenses, cost of living expenses, lost wages,

PLEASE DELIVER

CPH/HTH Committee

Friday
2-1-08
1:15pm
Room 016

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Honolulu, HI 96814
(808) 536-7702
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etc.) has served as a powerful physician recruiting and retention measure for other states.

Texas, in particular, has compelling data showing vast improvements in patient access to care since passing medical liability reform in 2003. Given Hawaii's remote location, high cost of living and other disadvantages, medical liability reform would help Hawaii to compete with other jurisdictions.

The HMA supports the following meaningful measures of medical liability reform because they will help to stabilize now volatile medical malpractice insurance premiums, which is a major cause of Hawaii's patient access to care crisis.

Caps on non-economic damages

- The HMA suggests a \$250,000 cap on non-economic damages, which has been proven to stabilize otherwise volatile premiums.
- Non-economic damages are compensation for pain and suffering, loss of consortium and loss of enjoyment. These are difficult damages to quantify and a cap would establish a much needed standard.
- The HMA proposes no cap on economic damages, which are compensation for past and future medical expenses, rehabilitative expenses, living expenses and lost income or income-equivalents (in the case of a homemaker, for instance). These damages can be quantified.
- The HMA proposes no cap on punitive damages, which is compensation intended to punish the defendant.

Limit Attorney's Fees

The HMA supports establishing limits based on attorney's fees and suggests following the California example.

- 40% of the first \$50,000
- 33.3% of the next \$50,000
- 25% of the next \$500,000
- 15% of any amount over \$600,000

This provision gives more of damages to the injured patient, rather than the attorney.

Abolish Joint and Several Liability

Hold defendants responsible only for the portion of fault attributable to them.

In other states, caps on non-economic damages and limits on attorney fees have been powerful tools for stabilizing medical malpractice insurance premiums in other states.

Formerly in crisis, the state of Texas has successfully overcome its patient access to care crisis in large part due to establishing caps on non-economic damages.

Improvements include:

- Licensing 3324 new doctors in 2007, including a net gain of 186 obstetricians
- Bringing specialty care to underserved areas, including the addition of 189 physicians in Rio Grande Valley and other rural areas
- Stabilized and reduced medical malpractice insurance premiums
- Four new admitted, rate-regulated malpractice insurance carriers (Advocate MD of the Southwest, Medical Liability Insurance Company of America, Medicus Insurance Company and the Physicians Insurance Company).

In order to address Hawaii growing patient access to care crisis, the Hawaii legislature needs to take major steps. Medical liability reform is positive change that needed now to prevent failure of Hawaii's healthcare system.

Thank you for the opportunity to testify on this matter.