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SUBJECT: GENERAL EXCISE, Exempt reimbursements for TRICARE program

BILL NUMBER: SB 427; HB 702 (Identical)

INTRODUCED BY: SB by Ige, Baker, Chun Oakland, Green, Ihara and 4 Democrats; HB by Yamane, M. Lee, Nishimoto, Tsuji, Yamashita and 4 Democrats

BRIEF SUMMARY: Amends HRS section 237-24.75 to clarify that amounts received by a managed care support coordinator of the TRICARE program established under the 10 United States Code chapter 55 for reimbursement of costs or advances made to health care providers pursuant to a contract with the United States shall be exempt from general excise taxation.

EFFECTIVE DATE: July 1, 2009

STAFF COMMENTS: The TRICARE program was established by the U.S. Department of Defense (DOD) as the managed care component of the Military Health Care system to augment the health care services provided to DOD personnel at military treatment facilities. TRICARE contracts with third-party administrators (managed care support contractors) to establish and maintain networks of TRICARE-authorized civilian health care providers. These managed care support contractors make advances to health care providers for the services they provide to TRICARE beneficiaries and are reimbursed by the DOD for the amounts of such advances.

This measure clarifies that amounts received by the managed care support coordinators as reimbursements from the DOD for advances they made on behalf of the DOD for TRICARE program purposes are not taxable under Hawaii's general excise tax law.

While an understanding of HRS section 237-20 which delineates the cost reimbursement provision under the general excise tax law appears to dictate that such reimbursements are not taxable unless the person making the advance receives additional monetary consideration for the services provided, the adoption of this measure may be unnecessary.

On the other hand, if the third party administrator receives a fee for handling these reimbursements, then it runs into the ban that HRS 237-20 imposes where the fee taints the entire amount received from the DOD. Hawaii law has already set precedent, providing that amounts received as reimbursements for wages, salaries and benefits of hotel workers paid by a hotel operator on behalf of the hotel owner are exempt as are reimbursements made on behalf of the city for the operations of the city's bus system by a third-party operator even though additional consideration is received in both cases. It should be noted that the fee paid to the third party administrator would continue to be subject to the general excise tax as the fee is gross income to the third party administrator.

Digested 1/28/09



**Testimony to the House Committee on Finance
Thursday, April 2, 2009
4:30 PM
Conference Room 308
Agenda #3**

RE: SENATE BILL NO. 427, RELATING TO GENERAL EXCISE TAXATION

Chair Oshiro, Vice Chair Lee and members of the committee.

My name is Charles Ota and I am the Vice President for Military Affairs at The Chamber of Commerce of Hawaii (The Chamber). I am here to state The Chamber's support of Senate Bill No.427, Relating to General Excise Taxation.

The Chamber's Military Affairs Council (MAC) serves as the liaison for the state in matters relating to the U.S. military and provides oversight for the State's multi-billion dollar defense industry.

The measure proposes to exclude from the general excise tax, amounts received by a managed care support contractor of the TRICARE program for the actual cost or advancement to third party health care providers pursuant to a contract with the United States.

The TRICARE program is the US government's contracted managed care provider for the US active duty, reserve, retired military members and their families. It was established to ensure the availability of authorized health care services to eligible members and that our troops receive the full range of services required to maintain their physical and mental health in combat ready status.

The TRICARE program is an integral part of the health care services provided by the US Department of Defense. This measure will clarify that the amounts received by managed care support contractors for the actual cost or advancement to third party health care providers are excluded from the state general excise tax.

For these reasons, the MAC recommends that SB 427 be approved.

Thank you very much for the opportunity to testify.

GOODSILL ANDERSON QUINN & STIFEL

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MEMORANDUM

TO: Representative Marcus R. Oshiro
Chair, Committee on Finance

FROM: Chris Pablo

DATE: April 1, 2009

RE: **S.B. 427 relating to General Excise Taxation**
Hearing: Thursday, April 2, 2009 at 4:30 p.m., Room 308 (Agenda #3)

Dear Chair Oshiro and Members of the Committee:

I am Chris Pablo, testifying on behalf of TriWest Healthcare Alliance Inc. (“TriWest”), a Delaware corporation headquartered in Phoenix, Arizona. **TriWest supports S.B. 427.**

In Hawaii, TriWest is the only third-party administrator of a cost-effective, high quality network of health care providers for the nation’s active and retired uniformed service members and their families, under a federal government program known as “TRICARE” (formerly known as “CHAMPUS”).

What is TRICARE? The Federal Government has established a managed health care program for members of the uniformed services and certain dependents. It was created in the early 1990s to supplement the existing military health care delivery system and provide health care services for active duty military personnel, military retirees, and their families (collectively, the “Beneficiaries”) by utilizing civilian health care providers.

In Hawaii, the Beneficiaries have access to military health care facilities, such as the Tripler Army Medical Center, and to health care clinics on military bases throughout the state. In addition, the Beneficiaries have access to medical services through the network of community health care providers that have been contracted by TriWest.

TRICARE receives its funding as part of the annual defense appropriations budget. It is administered by the TRICARE Management Activity (“TMA”), which is part of the United States Department of Defense (“DoD”), Office of the Assistant Secretary of Defense (Health Affairs).

April 1, 2009

Page 2

What is TriWest? TriWest is dedicated to providing the best possible service to military families. It manages the TRICARE program for over 2.7 million Beneficiaries – this is TriWest’s only line of business. In Hawaii, TriWest employs approximately sixty employees.

In the health care industry, TriWest’s business would be characterized as a “**third-party administrator.**” TriWest, known as a “**managed care support contractor**” in the applicable Federal laws and regulations, is a disbursing agent for the Federal Government in the western states, including Hawaii. Its job is to receive claims and invoices from health care providers, and then pay those claims according to the amounts and guidelines set by the Government (“**reimbursement**”). The Government then reimburses TriWest for the amounts paid, and also pays TriWest an **administrative fee** for its services. This is best illustrated in the attached PowerPoint slide.

TriWest pays Hawaii General Excise Tax on the amounts it receives from TRICARE as compensation for its services as *managed care contractor*, but it does not pay, and has never paid, tax on the reimbursement amounts. TriWest has been working with the Department of Taxation to seek confirmation that it is not subject to Hawaii General Excise Tax on such amounts. Department representatives generally have been sympathetic to TriWest’s position and understanding of its desire for certainty as to its tax liability. In the process of reviewing TriWest’s request for a definitive ruling letter from the Department, however, some technical concern was expressed as to the clarity of the legal basis for exempting such reimbursement amounts from Hawaii General Excise Tax. TriWest, therefore, is asking the Legislature to clarify that such reimbursement amounts are not taxable to TriWest.

What is the purpose of S.B. 427? The purpose of S.B. 427 is to make clear that the amounts received by TriWest from TRICARE as “reimbursements” are excluded from the imposition of the General Excise Tax. This clarification will be made by amending Section 237-24 (Amounts not taxable) to add a new subsection (17):

“(17) Amounts received by a managed care support contractor of the TRICARE program that is established under 10 United States Code chapter 55, as amended, for the actual cost or advancement to third party health care providers pursuant to a contract with the United States.”

We thank you for the opportunity to testify in support of **S.B. 427**.



US Department of Defense
Military Health System



REIMBURSEMENT

*For Medical Services
Provided to
Hawaii-based TRICARE beneficiaries
by Hawaii medical providers/hospitals*

\$30 million/year

ADMINISTRATIVE FEES

*\$8.4 million/FY 2008
\$376,000 in GE Taxes/FY 2008*

*S.B. 427
Proposes to
Amend §237-24 to
clarify that the
reimbursements are
not taxable amounts*



Managed care support contractor

*aka "TPA"
Third-Party Administrator
-Claims Processing
-Enrollment
-Utilization and Disease Mgmt
-Network Building*

Network Health Care Providers

Medical services & supplies



Soldiers, Sailors, Airmen, Dependents, Retirees
Beneficiaries

HMSA



April 2, 2009

The Honorable Marcus Oshiro, Chair
The Honorable Marilyn Lee, Vice Chair

House Committee on Finance

Re: SB 427 – Relating to General Excise Taxation

Dear Chair Oshiro, Vice Chair Lee and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify in support of SB 427.

This measure would clarify that any amounts received by a managed care support contractor for reimbursements of costs made by the contractor, made pursuant to the contract with the federal government for the administration of the TriCare program, are exempt from the Hawaii General Excise Tax (GET).

SB 427 would bring Hawaii in line with every other state in the U.S. (except Texas). This exemption will truly support the continued availability and strength of the TriCare program and ensure that HMSA is able to provide coverage to the approximately 150,000 current and former military personnel and their family members who reside in Hawaii.

Sincerely,

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

Jennifer Diesman
Assistant Vice President
Government Relations