L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Emergency room physician tax credit

BILL NUMBER: SB 2170; HB 2171 (Similar)

INTRODUCED BY: SB by Baker and Chun Oakland; HB by M. Lee, Belatti, Cabanilla, Mizuno, Rhoads, Takai

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow a taxpayer licensed to practice medicine under HRS chapter 453 to claim an income tax credit provided the taxpayer: (1) provides medical care in a state approved hospital emergency room on an on-call basis; (2) has worked a minimum of 576 on-call hours in the year the tax credit is claimed; and (3) does not owe the state delinquent taxes, penalties, or interest.

The credit shall be 5% of the amount of the medical malpractice insurance premium paid by the taxpayer for the taxable year the credit is claimed. Tax credits in excess of income tax liability shall be refunded to the taxpayer provided such amounts are in excess of $1. Allows the director of taxation to adopt necessary rules and forms pursuant to HRS chapter 91 to carry out this section. Claims for the credit, including any amended claims, must be filed on or before the end of the twelfth month following the close of the taxable year.

EFFECTIVE DATE: Tax years beginning after December 31, 2011

STAFF COMMENTS: This measure proposes a tax credit for taxpayers who are emergency room physicians. This credit would merely result in a handout of state funds through the state tax system regardless of a taxpayer's need for tax relief. While the amount of the proposed credit is 5% of the amount of malpractice insurance premiums paid for a taxable year by the physician, apparently the sponsors of this measure believe that medical malpractice insurance is a key cost to such physicians and, therefore, the credit should be based on a percentage of the premium for such insurance. If, indeed, medical malpractice insurance premiums are a financial barrier to attracting physicians to become emergency room physicians, then attacking the problem with a rebate in the form of a tax credit is inane.

If lawmakers truly believe the cost of medical malpractice insurance deters physicians from becoming emergency room physicians, then the attack should be on what causes the high insurance premiums. As the professional community has pointed out time and again, the high cost of medical malpractice begs tort reform with limits placed on how much can be sought in damages for various types of malpractice. With the sky is the limit approach for any litigation, how can one doubt the high cost of those premiums?

On the other hand, if lawmakers believe that their only alternative is to subsidize the cost of the premiums, then an outright subsidy of those premiums should be put in place staffed by persons who can verify the amount of insurance, the premium that is appropriate to subsidize, and to whom the subsidy

should be granted based on the need for medical care throughout the state. Using the state tax system makes absolutely no sense, contributes to complexity of the system which, in turn, increases the cost of administration and compliance.

This measure is a reflection of the lack of understanding on the part of lawmakers about the state's tax system, its purpose, functions and limitations. If adopted, the measure would result in a lack of accountability as there is no way to determine the cost of the credit to the state's revenue resources. This makes about as much sense as imposing a special tax on trial lawyers who bring such malpractice suits to fund the tax credit proposed in this measure.

Digested 2/6/12

HAWAII MEDICAL ASSOCIATION
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Friday, February 10, 2012
2:45 p.m.
Conference Room 229

To: COMMITTEE ON HEALTH
Sen. Josh Green, M.D., Chair
Sen. Clarence K. Nishihara, Vice Chair

From: Hawaii Medical Association
Dr. Roger Kimura, MD, President
Linda Rasmussen, MD, Legislative Co-Chair
Dr. Joseph Zobian, MD, Legislative Co-Chair
Dr. Christopher Flanders, DO, Executive Director
Lauren Zirbel, Community and Government Relations

Re: SB 2170 RELATING TO EMERGENCY ON-CALL PHYSICIANS

In Support

Chairs & Committee Members:

Hawaii Medical Association supports this measure.

Your attention to the severe on-call shortages outlined in both the *On-Call Crisis in Trama Care: Government Response* (Report No. 2, 2006) in accordance with House Concurrent Resolution 229 and *Report of the Physician On-Call Crisis Task Force* (December 2006) in accordance with Senate Concurrent Resolution No. 150, is greatly appreciated.

Attention to Hawaii's On-Call Crisis is important for the following reasons:

1. **The American College of Emergency Physicians report gives Hawaii a "C" for Access to Emergency Care.**

   While shortages may not be as severe for ER doctors, on-call trauma care (Orthopedic Surgeons, Neurological Surgeons, General Surgeons, and all specialist care that may be needed in an ER) is where the most severe shortages exist.

2. **On any given night, Hawaii's only certified trauma center at Queen's has a severe shortage of trauma care physicians on-call**; it used to have more than 20. If more trauma care physicians are needed, or the appropriate specialty is not on-call that particular night, patients must wait longer to receive care.

3. **According to *On-Call Crisis in Trauma Care: Government Response*:**

Rising malpractice liability insurance premiums, in combination with lower reimbursement rates, render the practice of certain specialties less and less cost effective. There is increasing pressure from malpractice insurers for physicians not to provide emergency room coverage. Several liability insurers have simply stopped providing medical liability coverage for certain physician specialties.

During malpractice crises, concerns are expressed that liability costs will drive high-risk specialist physicians from practice, creating access-to-care problems. Indeed, liability pressures may be leading to greater consolidation of high-risk specialty care services in a smaller number of providers. While the problem is multi-factorial, with reimbursement and managed care arrangements contributing significantly, physician specialists perceive liability to be the strongest driver.

Government responses to improve the availability of physicians for emergency call.

States have employed many strategies to help trauma care and improve the availability of on-call physician specialists, including:

- **Developing dedicated public sources of funding** to reimburse physician specialists for uncompensated trauma services. These funds were found to be effective and essential for maintaining trauma centers and ensuring the on-call availability of physician specialists. However, trauma fund moneys cover only a small fraction of uncompensated trauma costs. Additional funding sources are direly needed. Current revenue sources for dedicated trauma funds include: surcharges tacked onto fines for convictions in traffic violations and substance abuse- and firearm-related offenses; surcharges tacked onto fees for driver's licenses, motor vehicle registration renewals, and the sale, lease, or transfer of motor vehicles; taxes on cigarette sales; tobacco settlement funds; sales and development taxes; and budget appropriations.

- **Implementing tort reforms**, such as caps on damage awards in malpractice lawsuits, which place limitations on traditional legal rules and practices to decrease claim filings and damage award amounts. Underlying this response is the presumption that too many malpractice claims are filed and that damage awards tend to be excessive. These reforms may have a positive effect on physician supply in some instances and may reduce the number of lawsuits filed, the value of awards, and insurance costs.

4. <u>According to the Report of the Physician On-Call Crisis Task Force (2006):</u>

Liability and Malpractice Insurance

The Task Force found that there were other related issues that were not specifically mentioned in SCR No. 150, but were considered to be very important to the physician on-call issue. These include **increased exposure to liability and malpractice insurance costs.**

On-call physicians see patients they have never seen before, and in an emergency situation. **This increases the possibility of both real and perceived liability for the physician. Increased liability, whether perceived or real, has an impact on the supply of specialty coverage.** An insufficient supply of specialty coverage puts increased demand

on the available specialists in an area. This results in the specialists taking call on a more frequent basis or not taking call at all.
In an attempt to address supply issues, tort reform has been enacted in some areas of the nation, with the intention of improving access to medical care. A report, "Impact of Malpractice Reforms on the Supply of Physician Services"[1] in the *Journal of American Medical Association* concluded that tort reform increased overall physician supply and direct tort reform increased most specialties with high malpractice insurance premiums. In 2003, Texas passed health care liability reforms. Three years after those reforms there has been an increase in the number of medical specialists, and medically underserved communities are showing impressive gains in physician supply[2]. The Task Force also heard anecdotal comments that tort reform would be helpful in the recruitment of physicians on all islands.

[1] Impact of Malpractice Reforms on the Supply of Physician Service, Journal of American Medical Association (June 1, 2005-Vol. 293, No. 21).
[2] Texas Medical Association at http://www.texmed.org/Template.aspx?id=5238

The Task Force also received information from several sources related to rising malpractice insurance premiums. The Hawaii Medical Association provided malpractice insurance premium information for the four specialties listed below. The amount of those premiums and the percent increase from the 2001-2002 period to the 2004-2005 period is shown below along with the percent change:

Specialty	2001-2002 Period	2004-2005 Period	% Increase
General Surgery	$24,528	$37,012	50.9%
Neurosurgery	$44,170	$77,104	74.6%
OB/GYN	$40,662	$62,515	53.7%
Orthopedics	$24,049	$34,881	45.0%

5. **Rates for on-call specialist are not the fault of malpractice insurance companies – the malpractice insurance industry in Hawaii is of low profitability and is comprised of two doctor-owned reciprocal insurance companies**. (Does not include HAPI, which is not an insurance company.) Please review the following information:

According to the *2004 Profitability Report for Medical Malpractice Insurance in Hawaii*, in 1995, 1996, 1998, 1999, 2001, and 2004, **medical malpractice insurers in Hawaii suffered losses**. In only four out of ten years did they show a profit, and none of the profits were as big as the losses in the other six years (see Table A).

Table A. – Percent of Direct Premiums Earned; Underwriting Profit

1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	AVG
(31.4)	(29.3)	26.6	(53.1)	(89.9)	1.2	(85.0)	3.7	8.9	(40.6)	(28.9)

Table B below shows Profit on Insurance Transactions. Profit on insurance transactions is underwriting profit plus investment income. Again, there is extreme volatility, with losses in 6 years and some profit in 4 out of 10 years.

Table B. – Percent of Direct Premiums Earned; Profit on Insurance Transactions

1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	AVG
(5.6)	(1.8)	32.2	(20.6)	(47.9)	15.2	(41.4)	11.5	16.2	(14.6)	(5.7)

Table C below shows Return on Net Worth. Return on net worth is profits after taxes divided by capital and surplus, or profitability of the medical malpractice line of insurance. This table shows volatility over the ten-year period and an average return on net worth over ten years of only 1.7%. This is far lower than any other line of insurance and almost breakeven, which is untenable in a high risk (volatile) market.

Table C. – Percent of Net Worth; Return on Net Worth

1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	AVG
0.9	3.5	19.7	(4.7)	(16.6)	11.8	(18.7)	11.1	15.5	(5.5)	1.7

These tables show that no one is making excessive profits in the medical malpractice insurance business in Hawaii. It is a constant challenge to simply stay in business.

As reported by the Insurance Commissioner, there were three licensed medical malpractice insurers in Hawaii with $1 million or more in medical malpractice insurance premiums written during CY2004. The top two, Medical Insurance Exchange and The Doctors Co., an interinsurance exchange, insure physicians. The third, Executive Risk Indemnity, Inc., insured hospitals. Executive Risk notified the Insurance Division that it will not be renewing hospital policies in 2005. It should be noted that the two insurance exchanges are owned by doctors who are also the insureds.

If the state is willing to provide this immunity to lifeguards it is only logical that the state should also be willing to provide the same immunity to trauma care doctors in the name of public safety and the continued functionality of Hawaii's healthcare system.

In absence of that a 5% tax credit will be accepted and appreciated but will likely not solve the shortage of physicians willing to take call in Hawaii.

Thank you for the opportunity to testify.

THE QUEEN'S HEALTH SYSTEMS

1301 Punchbowl Street • Honolulu, Hawaii 96813 • Phone (808) 691-5900

To: Senator Josh Green, M.D., Chair
Senator Clarence K. Nishihara, Vice Chair
Committee on Health

Hearing Date: February 10, 2012; 1:30 p.m.

Testimony in SUPPORT of S.B. 2170, Relating to Emergency On-Call Physicians

My name is Dr. Gerard Akaka, Vice President, Medical Affairs and Chief Medical Officer for The Queen's Medical Center, testifying in strong support of S.B. 2170 which provides a 5% malpractice insurance tax credit for physicians who work a minimum of 576 on-call hours in a State-approved emergency department.

As the heart of the State's trauma system, Queen's maintains a full complement of specialists, surgeons, clinicians, 24 hours a day, 365 days a year to immediately respond to trauma patients arriving in our emergency department.

However, Queen's continues to have a severe shortage of neurosurgeons, oral & maxillofacial surgeons, and ENT surgeons willing to take emergency call. The hospital continues to work with these dedicated physicians to stay on the call schedule. This gets more difficult every year because of inadequate reimbursements, liability concerns, and quality of life issues.

The Queen's Medical Center appreciates the Legislature's support of physicians who provide on-call services to emergency departments and hospitals that provide care to trauma patients.

I strongly urge you to support S.B. 2170.

Thank you for this opportunity to provide testimony.

HAH
Healthcare Association
of Hawaii

SENATE COMMITTEE ON HEALTH
Senator Josh Green, M.D., Chair

Conference Room 229
February 10, 2012 at 1:30 p.m.

Supporting SB 2170: Relating to Emergency On-Call Physicians

The Healthcare Association of Hawaii advocates for its member organizations that span the entire spectrum of health care, including all acute care hospitals, as well as long term care facilities, home care agencies, and hospices. In addition to providing quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 40,000 people. Thank you for this opportunity to testify in support of SB 2170, which creates tax credits for physicians who provide on-call services to emergency departments.

Historically, physicians provided on-call emergency coverage in exchange for hospital admitting privileges, which allowed them to meet potential new patients and helped build their practices. In addition, medical education subsidies and residency training have traditionally been accompanied by an unwritten social contract for physicians to maintain the core competencies of their specialty in hospitals where they practice and to provide some emergency call.

However, attitudes and practices are changing. Fewer physicians are providing on-call services for reasons related to inadequate reimbursements, liability concerns, and quality of life issues. Many physicians believe payment for care provided while on call is inadequate, and when they are required to care for uninsured patients, the situation becomes untenable. Time spent by a physician seeing emergency department patients has an opportunity cost in terms of time away from insured patients in their office practice. In addition, many physicians prefer not to be obligated to be available for those long periods when they are on call. Finally, many specialists are now shifting the focus of their practices away from hospital settings, so they are less reliant on hospital admitting privileges to care for their patients or to maintain a practice.

Nationally, 73% of emergency departments report inadequate on-call coverage by specialist physicians. Specialists who are particularly difficult to secure for on-call coverage include orthopedic surgeons, neurosurgeons, plastic surgeons, trauma surgeons, hand surgeons, obstetrician-gynecologists, neurologists, ophthalmologists and dermatologists. A financial incentives in the form of a tax credit for physicians who provide on-call services to emergency departments is designed to encourage them to provide on-call services.

For the foregoing reasons, the Healthcare Association supports SB 2170.