

JAN 19 2007

A BILL FOR AN ACT

RELATING TO MEDICAL CLAIMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the medical claim
2 conciliation review panels that review and render findings and
3 advisory opinions on the issues of tort liability and damages in
4 medical tort claims against providers often put appointed
5 physician panel members in an uncomfortable situation when
6 making judgments for or against their colleagues. Appointing
7 out-of-state physicians to serve as experts that are independent
8 from the panel will ensure an impartial review process. In
9 addition, when a defendant's license is put at risk, it will
10 ensure that those reviewing the claim are qualified to make a
11 medical opinion under those circumstances.

12 The purpose of this Act is to protect the rights of
13 defendants and claimants in medical malpractice claims by
14 requiring the medical claim conciliation review panels to
15 appoint out-of-state physicians to serve as experts who shall
16 render findings on the claim and who shall have expertise in the
17 same field of medicine as the defendant.



1 SECTION 2. Section 671-11, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§671-11 Medical claim conciliation panels; composition,**
4 **selection, compensation.** (a) There are established medical
5 claim conciliation panels [~~which~~] that shall review and render
6 findings and advisory opinions on the issues of liability and
7 damages in medical tort claims against health care providers.

8 (b) A medical claim conciliation panel shall be formed for
9 each claim filed pursuant to section 671-12 and after each panel
10 renders its decision or the claim is otherwise disposed of it
11 shall be disbanded. Each medical claim conciliation panel shall
12 consist of one chairperson selected from among persons who are
13 familiar with and experienced in the personal injury claims
14 settlement process, one attorney licensed to practice in the
15 courts of the State and experienced in trial practice, and one
16 physician or surgeon licensed to practice under chapter 453 or
17 chapter 460. The chairperson shall be appointed by the director
18 [~~of the department~~] of commerce and consumer affairs from a list
19 of eligible persons approved by the chief justice of the supreme
20 court of Hawaii. The attorney shall be appointed by the
21 chairperson from a list of not less than thirty-five attorneys
22 experienced in trial practice submitted annually by the supreme



1 court. The physician or surgeon shall be appointed by the
2 chairperson and shall be currently licensed and in good standing
3 under chapter 453 or [~~under chapter~~] 460.

4 (c) Each medical claim conciliation panel shall appoint
5 two out-of-state physicians for each claim being reviewed who
6 shall render findings independently from the panel and shall
7 submit their findings to the panel and the defendant physician
8 prior to the panel rendering a final opinion. The appointed
9 physicians shall serve as experts to the claim for which they
10 are appointed with expertise in the same field of medicine as
11 the defendant physician. Each appointed physician shall provide
12 the panel with verification of the status and good standing of
13 the physician's license from the state in which the physician is
14 currently licensed to practice medicine. An appointed physician
15 is not authorized to engage in the practice of medicine in this
16 State. Any appointed physician that introduces a fraudulent,
17 false, or misleading statement or document shall be released
18 from the physician's appointment, shall not be reimbursed for
19 travel expenses or costs related to the appointment, and the
20 state board that issued the physician's license shall be
21 notified.



1 The department shall set guidelines for determining the
2 qualifications for appointed physicians serving as experts.

3 [~~e~~] (d) The chairperson shall preside at the meetings of
4 the panel. The chairperson, all panel members, all appointed
5 physicians serving as experts, and any consultant called by the
6 panel to appear before the panel shall be compensated at the
7 rate of \$300 per claim [~~which~~] that will become payable when the
8 decision of the panel is submitted. At the discretion of the
9 director, the chairperson, panel members, [~~and~~] any consultant,
10 and any experts called by the panel to appear before the panel,
11 may be compensated at one-half the amount of compensation
12 specified in this section, if the claim is disposed of by any
13 means prior to the hearing by the panel. The chairperson, all
14 panel members, all appointed physicians serving as experts, and
15 any consultant called by the panel to appear before the panel
16 also shall be paid allowances for travel and living expenses
17 [~~which~~] that may be incurred as a result of the performance of
18 their duties on or for the panel. These costs shall be paid by
19 the department of commerce and consumer affairs from the filing
20 fees paid by the parties.

21 [~~d~~] (e) The claimant shall pay a filing fee of \$450 to
22 the department upon the filing of the claim and the failure to



1 do so shall result in the claim being rejected for filing. Each
2 health care provider and other parties to the claim shall pay a
3 filing fee of \$450 to the department within twenty days of being
4 served with the claim. Each party to a claim shall be assessed
5 a non-refundable processing fee by the department in the amount
6 of \$50. The non-refundable processing fee shall be retained
7 from each party's filing fee, and shall be used to defray the
8 administrative costs of the medical claims conciliation panel
9 program.

10 [~~e~~] (f) After the panel has made a final decision on a
11 claim, or after a final disposition of the claim has been made
12 without a hearing before the panel, the department shall return
13 any moneys remaining after all panel costs have been paid, to
14 the respective parties on a pro rata basis.

15 [~~f~~] (g) The office and meeting space, a dedicated
16 hearings officer, secretarial and clerical assistance, office
17 equipment, and office supplies for the panel shall be furnished
18 by the department. The chairperson may designate any
19 alternative meeting place or site for the hearing.

20 [~~g~~] (h) The board of medical examiners and board of
21 osteopathic examiners shall each prepare a list of physicians,
22 surgeons, and podiatrists, as the case may be, along with their



1 respective specialties. These physicians and surgeons may be
2 from out-of-state and shall be eligible to serve as consultants
3 to the panel in their respective fields. Panel members may
4 consult with other legal, medical, and insurance specialists.

5 (i) No person shall serve on the medical conciliation
6 review panel or as an appointed physician serving as an expert
7 who, through familial relationship within the second degree of
8 consanguinity or affinity, or for other reasons, has a direct
9 and substantial professional, financial, or personal interest in
10 the outcome of the claim being reviewed by the panel."

11 SECTION 3. Section 671-14, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§671-14 Same; persons attending hearings of panel.**

14 Unless excluded or excused by the panel, the following persons
15 shall attend hearings before the panel:

- 16 (1) The party or parties making the claim;
- 17 (2) The health care provider or providers against whom the
18 claim is made or representatives thereof, other than
19 counsel, authorized to act for ~~such~~ the health care
20 provider or providers;
- 21 (3) Counsel for the parties, if any~~[-]~~; and
- 22 (4) Appointed physicians serving as experts."



1 SECTION 4. Section 671-17, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~§~~671-17~~§~~] **Immunity of panel members from liability.**

4 No member of a medical claim conciliation panel or an appointed
5 physician serving as an expert shall be liable in damages for
6 libel, slander, or other defamation of character of any party to
7 medical claim conciliation panel proceeding for any action taken
8 or any decision, conclusion, finding, or recommendation made by
9 the member while acting within the member's capacity as a member
10 of a medical claim conciliation panel under this Act."

11 SECTION 5. There is appropriated out of the compliance
12 resolution fund the sum of \$, or so much thereof as
13 may be necessary for fiscal year 2007-2008, and the same sum, or
14 so much thereof as may be necessary for fiscal year 2008-2009,
15 for a dedicated hearings officer to the medical claims
16 conciliation panel.

17 The sums appropriated shall be expended by the department
18 of commerce and consumer affairs for the purposes of this Act.

19 SECTION 6. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 7. This Act shall take effect on July 1, 2007.

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Report Title:

Medical Claims Conciliation Panel; Experts; Hearings Officer

Description:

Requires the medical claims conciliation panel to appoint out-of-state experts when conducting hearings. Makes appropriations from the compliance resolution fund.

