
A BILL FOR AN ACT

RELATING TO THE MEDICAL CLAIM CONCILIATION PANEL.

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

1 SECTION 1. Chapter 671, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§671-A Time for filing claim. Claims shall be filed
5 within the statute of limitations set forth in section 657-7.3.
6 No claim brought after the expiration of the statute of
7 limitations shall be received for filing by the medical claim
8 conciliation panel.

9 §671-B Dismissal of claims. (a) The panel shall review
10 all claims prior to the hearing described in section 671-13.
11 Any claim that is frivolous or without merit shall be dismissed.
12 In reviewing the claim, the panel shall consider all pre-hearing
13 documents filed with the panel."

14 SECTION 2. Section 671-12, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) Within five business days [~~thereafter~~] after
17 submittal of a claim, the panel shall give notice of the claim
18 and a copy of the statement of the claim and the certificate of



1 consultation described in section 671-12.5, by certified mail,
2 to all health care providers and others who are or may be
3 parties to the claim and shall furnish copies of written claims
4 to such persons. [Sueh] The notice shall set forth a date, not
5 more than twenty days after mailing the notice, within which any
6 health care provider against whom a claim is made shall file a
7 written response to the claim, and a date and time, not less
8 than five days following the last date for filing a response,
9 for a hearing of the panel. [Sueh] The notice shall describe
10 the nature and purpose of the panel's proceedings and shall
11 designate the place of the meeting. The times originally set
12 forth in the notice may be enlarged by the chairperson, on due
13 notice to all parties, for good cause."

14 SECTION 3. Section 671-13, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§671-13 Medical claim conciliation panel hearing; fact-**
17 **finding; evidence; voluntary settlement.** Every claim of a
18 medical tort shall be heard by the medical claim conciliation
19 panel within thirty days after the last date for filing a
20 response[-]; provided that the panel may exercise its authority
21 to dismiss claims in accordance with section 671-B. No persons
22 other than the panel, witnesses, and consultants called by the



1 panel, and the persons listed in section 671-14 shall be present
2 except with the permission of the chairperson. The panel [may],
3 in its discretion, may conduct an inquiry of a party, witness,
4 or consultant without the presence of any or all parties.

5 The hearing shall be informal. Chapters 91 and 92 shall
6 not apply. The panel may require a stenographic record of all
7 or part of its proceedings for the use of the panel, but such
8 record shall not be made available to the parties. The panel
9 may receive any oral or documentary evidence. Questioning of
10 parties, witnesses, and consultants may be conducted by the
11 panel, and the panel [may], in its discretion, may permit any
12 party, or any counsel for a party to question other parties,
13 witnesses, or consultants. The panel may designate who, among
14 the parties, shall have the burden of going forward with the
15 evidence with respect to such issues as it may consider, and
16 unless otherwise designated by the panel, when medical and
17 hospital records have been provided to the claimant for the
18 claimant's proper review, such burden shall initially rest with
19 the claimant at the commencement of the hearing.

20 The panel shall have the power to require by subpoena the
21 appearance and testimony of witnesses and the production of
22 documentary evidence. When such subpoena power is utilized,



1 notice shall be given to all parties. The testimony of
2 witnesses may be taken either orally before the panel or by
3 deposition. In cases of refusal to obey a subpoena issued by
4 the panel, the panel may invoke the aid of any circuit court in
5 the State, which may issue an order requiring compliance with
6 the subpoena. Failure to obey such order may be punished by the
7 court as a contempt thereof. Any member of the panel, the
8 director of the department, or any person designated by the
9 director of the department may sign subpoenas. Any member of
10 the panel may administer oaths and affirmations, examine
11 witnesses, and receive evidence. Notwithstanding such powers,
12 the panel shall attempt to secure the voluntary appearance,
13 testimony, and cooperation of parties, witnesses, and
14 consultants without coercion.

15 At the hearing of the panel and in arriving at its opinion,
16 the panel shall consider, but not be limited to, statements or
17 testimony of witnesses, hospital and medical records, nurses'
18 notes, x-rays, and other records kept in the usual course of the
19 practice of the health care provider without the necessity for
20 other identification or authentication, statement of fact, or
21 opinion on a subject contained in a published treatise,
22 periodical, book, or pamphlet, or statements of experts without



1 the necessity of the experts appearing at the hearing. The
2 panel [~~may~~], upon the application of any party or upon its own
3 decision may appoint, as a consultant, an impartial and
4 qualified physician, surgeon, physician and surgeon, or other
5 professional person or expert to testify before the panel or to
6 conduct any necessary professional or expert examination of the
7 claimant or relevant evidentiary matter and to report to or
8 testify as a witness thereto. Such a consultant shall not be
9 compensated or reimbursed except for travel and living expenses,
10 to be paid as provided in section 671-11. Except for the
11 production of hospital and medical records, nurses' notes, x-
12 rays, and other records kept in the usual course of the practice
13 of the health care provider, discovery by the parties shall not
14 be allowed.

15 During the hearing and at any time prior to the rendition
16 of an advisory decision pursuant to section 671-15, the panel
17 may encourage the parties to settle or otherwise dispose of the
18 case voluntarily. "

19 SECTION 4. Section 671-19, Hawaii Revised Statutes, is
20 amended to read as follows:

21 **"§671-19 Duty to cooperate; assessment of costs and fees.**

22 It shall be the duty of every person who files a claim with the



1 medical claim conciliation panel, every health care provider
2 against whom the claim is made, and every insurance carrier or
3 other person providing medical tort liability insurance for the
4 health care provider, to cooperate with the medical claim
5 conciliation panel and fulfill all pre-hearing requirements
6 imposed by law or rule for the purpose of achieving a prompt,
7 fair, and just disposition or settlement of the claim, provided
8 that cooperation shall not prejudice the substantive rights of
9 those persons.

10 Any party may apply to the panel to have the costs of the
11 action assessed against any party for failure to cooperate with
12 the panel[-] or fulfill all pre-hearing requirements imposed by
13 law or rule. The panel may award costs, or a portion thereof,
14 including attorney's fees, witness fees, including those of
15 expert witnesses, filing fees, and costs of the medical claim
16 conciliation panel hearing to the party applying therefor.

17 In determining whether any person has failed to cooperate
18 in good faith, the panel shall consider, but is not limited to,
19 the following:

20 (1) The attendance of the persons at the hearing of the
21 medical claim conciliation panel;



- 1 (2) The extent to which representatives of parties and
- 2 counsel representing parties came to panel hearings
- 3 with knowledge of the claims and defenses and
- 4 authority to negotiate a settlement or other
- 5 disposition of the claim;
- 6 (3) The testimony of members of the panel as to the facts
- 7 of the person's participation in the panel hearing;
- 8 (4) The extent of the person's cooperation in providing
- 9 the panel with documents and testimony called for by
- 10 the panel;
- 11 (5) The reasons advanced by the person so charged for not
- 12 fully cooperating or negotiating; and
- 13 (6) The failure of the person to submit any required fees
- 14 to the department of commerce and consumer affairs, as
- 15 required by this chapter.

16 The party against whom costs are awarded may appeal the
17 award to the circuit court. The court may affirm or remand the
18 case with instructions for further proceedings; or it may
19 reverse or modify the award if the substantial rights of the
20 petitioners may have been prejudiced because the award is
21 characterized as abuse of discretion."

22



1 SECTION 5. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before its effective date.

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY:

[Signature]
Pano Chong
[Signature]
[Signature]

JAN 24 2009



Report Title:

Medical Claim Conciliation Panel

Description:

Prohibits the medical claim conciliation panel from filing claims brought after statute of limitations expires. Authorizes the panel to dismiss frivolous or non-meritorious claims. Requires the panel to provide a copy of the certificate of consultation to the health care providers.

