

DEPT. COMM. NO. 123

DAVID Y. IGE
GOVERNOR

DOUGLAS S. CHIN
LIEUTENANT GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

November 30, 2018

TRANSMITTED VIA LEGISLATIVE WEBSITE

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

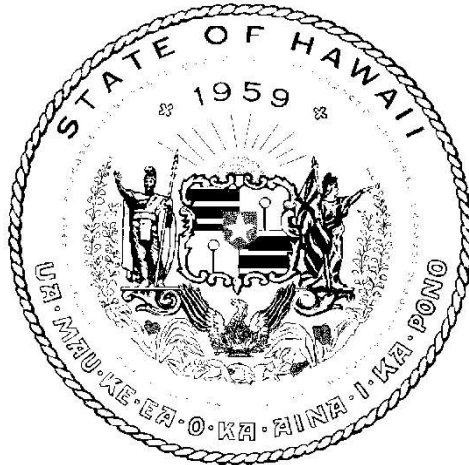
Enclosed is a copy of the 2018 Annual Report on the Medical Inquiry and Conciliation Panel and Design Claim Conciliation Panel, as required respectively by sections 671-20 and 672B-17, Hawaii Revised Statutes (HRS).

In accordance with section 93-16, HRS, a copy of this report will be transmitted to the Legislative Reference Bureau Library and viewable electronically at <http://cca.hawaii.gov/reports/legislative-reports/>, under "Office of Administrative Hearings," and <http://cca.hawaii.gov/oah/reports/>.

Sincerely,

CATHERINE P. AWAKUNI COLÓN
Director

Enclosure



THIRTIETH LEGISLATURE
REGULAR SESSION OF 2019

**Annual Report on the
Medical Inquiry and Conciliation Panel
and
Design Claim Conciliation Panel**

OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

Submitted December 2018

TABLE OF CONTENTS

I. Introduction	1
A. Medical Inquiry and Conciliation Panel (MICP)	1
Flowchart of the MICP Process	2
B. Design Claim Conciliation Panel (DCCP)	3
II. MICP Annual Report	3
A. Program Information	3
B. Operations of MICP	4
1. Expedited Inquiry Filing Process	4
2. Electronic Filing of Documents	4
3. Revised Filing Fee Process	4
C. Statistical Overview of MICP	4
1. Number of Inquiries Filed in 2018	4
Figure 1: Claims and Inquiries Filed from 2011 through 2018	5
2. Disposition of Inquiries Heard in 2018	6
III. DCCP Annual Report	6
A. Creation of DCCP	6
Figure 2: Disposition of DCCP Claims in 2018	6
IV. Conclusion	7

I. INTRODUCTION

The **Annual Report on the Medical Inquiry and Conciliation Panel and Design Claim Conciliation Panel** is submitted pursuant to Hawaii Revised Statutes (HRS) sections 671-20 and 672B-17, respectively, and covers the period of January 1, 2018, through November 30, 2018.

A. Medical Inquiry and Conciliation Panel (MICP)

MICP is a program of the Department of Commerce and Consumer Affairs (DCCA), State of Hawaii. MICP was established by Act 296, Session Laws of Hawaii (SLH) 2012, HRS section 671-11. Effective January 1, 2013, it replaced the Medical Claim Conciliation Panel (MCCP) program that had been in existence since 1976. See Flowchart of the MICP Process on page 2.

The MICP process is designed to help patients and their families obtain information regarding adverse events potentially associated with medical treatment. It provides a non-adversarial forum for patients and their families to facilitate conveyance of information rather than assigning blame. The MICP process also narrows and defines potential claims when complete resolution cannot be achieved, and it employs approaches to liability, causation, or damages in the context of conciliation and mediation.

Panels may still consider and discuss liability, causation, and damages, but they now do so through conciliation or advisory efforts. The proceedings no longer culminate in the issuance of an advisory decision, and the word “claim” has been eliminated from the MICP vocabulary.

MICP changes the focus from rendering non-binding advisory decisions on liability, causation, and damages to a program that facilitates resolution of potential medical tort lawsuits, including inquiries on rendering health care services that involve injury, death, or other damages to a patient.

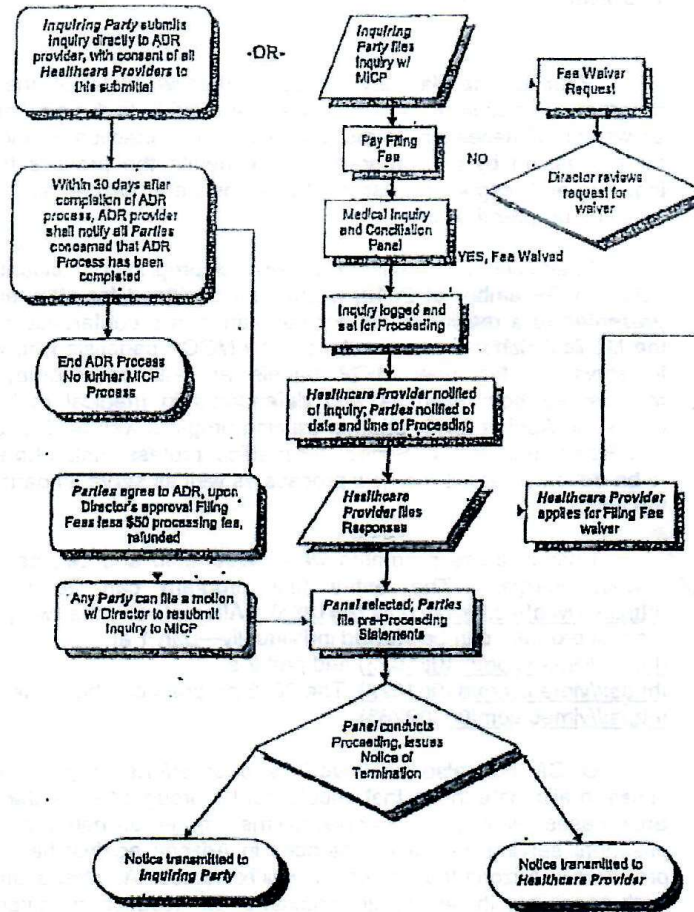
The primary purpose of MICP is achieved when the parties make conscientious and thorough presentations to the MICP panel, which includes a licensed physician. MICP proceedings provide the parties with more helpful interactions and more accurate views of the relative merits of the inquiry. This interaction helps the parties evaluate whether the inquiry should be pursued as a claim through the judicial system.

MICP also provides opportunities for the parties to exchange information in a relatively expedited and inexpensive manner, which allows them to explore the conciliation of potentially meritorious inquiries through additional conciliation and mediation services outside of MICP before any claims are brought before the courts.

Finally, the requirements of exchanging information between the parties and making conscientious and thorough presentations to the MICP panel discourage parties from pursuing frivolous or fraudulent inquiries prior to bringing further legal proceedings.

A Guide to the MICP Process

Flowchart of the MICP Process



B. Design Claim Conciliation Panel (DCCP)

Pursuant to Act 207, SLH 2007, effective January 1, 2008, all malpractice claims against design professionals must be submitted to the DCCP program. DCCP is modeled on the former M CCP program and operates under the same procedures and guidelines. DCCP was not affected by the implementation of the new MICP program in 2013.

II. MICP ANNUAL REPORT

A. Program Information

Prior to the January 1, 2013, effective date of MICP, DCCA featured a guide to the new program and forms necessary to process inquiries. To expedite the process for both inquiring and responding parties, the forms were fillable online.

In addition, the Hawai'i/Pacific Basin Area Health Education Centers (AHEC) held two training programs for participants on medical malpractice changes. In December 2012, AHEC presented a training program to a maximum capacity audience at John A. Burns School of Medicine. Attendees included M CCP panelists who wanted to serve on the new MICP panels, as well as attorneys who represented parties in medical malpractice cases. In April 2013, the AHEC held another training program, under the auspices of the medical school, for medical professionals who wanted to learn about the new process and serve as future panelists.

Both programs were videotaped and continue to serve as a training aid for newly appointed panel members. The December 2012 training program can be found at <http://www.ahec.hawaii.edu/?p=1385>. Alternatively, the first part of this program can be viewed at <https://vimeo.com/84061623>, and the second part can be viewed at <https://vimeo.com/84061622>. The April 2013 training program can be viewed at <https://vimeo.com/80302763>.

DCCA has also continued its prior efforts to pre-screen cases to eliminate those that should not be brought before MICP. These cases involve, for example, inquiries brought on behalf of Hawaii prisoners serving their sentences in Arizona against health care providers in Arizona that are not Hawaii licensees. Another example are cases brought against pharmaceutical manufacturers who are not defined as health care providers by the MICP statutes.

MICP forms and publications are available to parties and interested persons in various media formats, including on DCCA's webpage at cca.hawaii.gov/oah/forms/micp_/.

B. Operations of MICP

1. Expedited Inquiry Filing Process

In 1997, MCCP initiated the MCCP Fast Track Filing System, which allowed a claim to be heard within four months of the date the claim is filed with MCCP, or even sooner if all parties agreed. Additionally, because these expedited cases use other facilities to host the hearings, MCCP scheduled more hearings for claims brought under the regular MCCP filing process due to increased availability of the MCCP hearings room. The former MCCP Fast Track Filing System has been incorporated into the new MICP procedures and thus continues to be available to the parties. In 2018, six inquiries were filed under the expedited inquiry process.

2. Electronic Filing of Documents

MICP provides an optional electronic filing process that allows participating parties to file, distribute, and receive documents electronically. Technologically capable parties have been using this electronic filing option more frequently, including submitting voluminous records, documents, and graphics via CD or DVD.

3. Revised Filing Fee Process

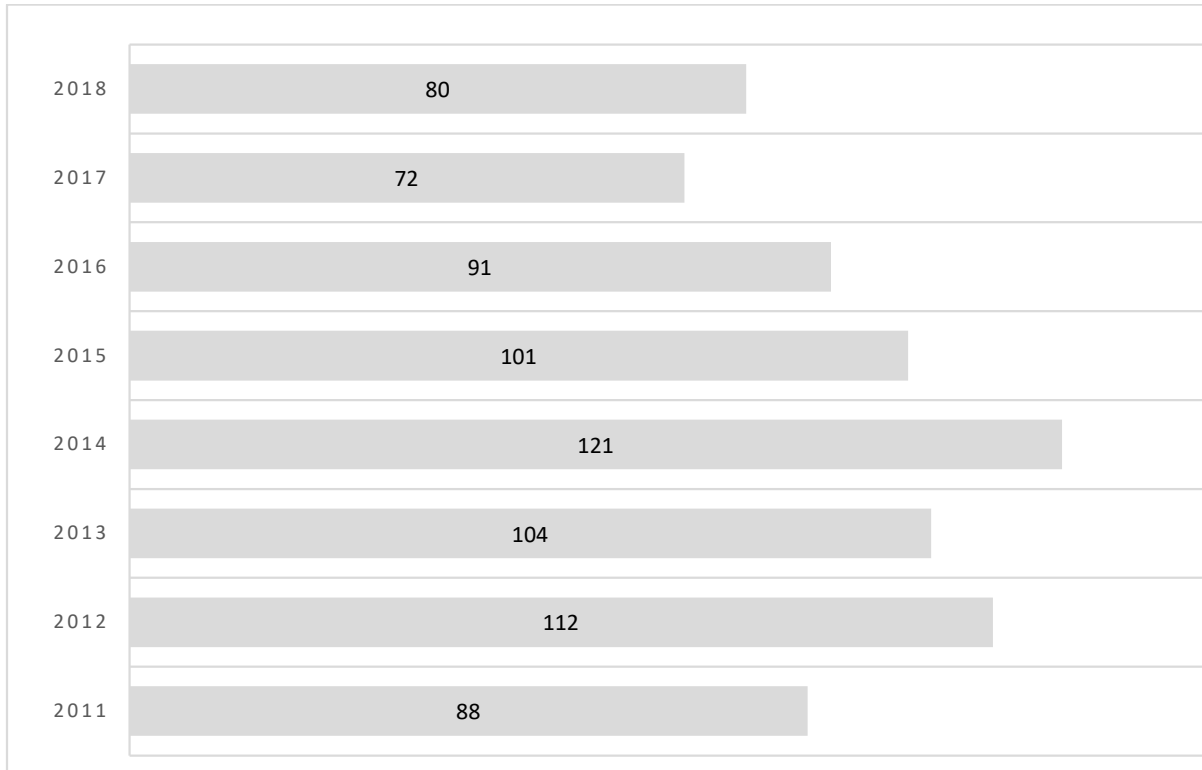
In the past, MICP routinely issued refund checks to the parties once the inquiry was terminated. These refunds consisted of the balance of the parties' filing fees after compensating panel members and applying processing fees. This process of requesting, processing, and issuing refund checks to the parties after each inquiry placed an undue burden on MICP staff. Accordingly, in 2018, MICP began calculating and charging each party their actual filing fee amount at the beginning of each inquiry, thereby eliminating the need to issue refund checks.

C. Statistical Overview of MICP

1. Number of Inquiries Filed in 2018

As of November 30, 2018, 80 inquiries were filed with MICP. See Figure 1: Claims and Inquiries Filed from 2011 through 2018, to compare MICP's number of filed inquiries with those filed in previous years with MICP and the former MCCP program.

Figure 1: Claims and Inquiries Filed from 2011 through 2018¹



Regarding parties who are unable to pay the required filing fees, in 2018, 16 requests to waive the MICP filing fees were granted by the Director of DCCA.² Also in 2018, 25 MICP inquiries were filed by parties that were not represented by attorneys. Finally, in 2018, two inquiries were rejected because they were not accompanied by a certificate of consultation as required by HRS section 671-12.5.

¹ The number of claims for years prior to 2018 is for the entire calendar year. Due to the deadline to submit this report, the number of inquiries for 2018 listed in this report refers to the first 11 months of the year.

² MICP uses the same financial guidelines to determine a party's eligibility for waiver of MICP filing fees as the courts in determining whether a party can proceed *in forma pauperis* in a judicial proceeding.

2. Disposition of Inquiries Heard in 2018

As of November 30, 2018, MICP heard 60 inquiries. In addition, six inquiries were dismissed, withdrawn, or otherwise terminated. One inquiry resulted in the parties entering formal mediation conducted outside of the MICP program.

Of the inquiries MICP heard in 2018, 13 were proceedings in which the inquiring parties were not represented by attorneys (*pro se* inquiring parties).

Because the MICP panels do not issue opinions on actionable negligence, DCCA does not report on the substantive disposition of inquires under MICP.

III. DCCP ANNUAL REPORT

A. Creation of DCCP

DCCP was created by the 2007 Legislature effective January 1, 2008, through Act 207, SLH 2007.

Figure 2: Disposition of DCCP Claims in 2018

Total claims filed in 2018:	5
------------------------------------	---

Total number of hearings conducted:	1
Liability found	1
Some Respondents liable	0
No liability found	1
Total damages recommended by panel	\$134,982.00

Disposition of claims in 2018:	
Withdrawn/dismissed	1
Settled	0
Mediation/ADR	1
Tolling period lapsed	0

IV. CONCLUSION

MICP began in January 2013. During that year, OAH coordinated the completion of a significant number of cases filed the previous year under the former MCCP program. OAH also began assigning cases under the new format. As a result, all participants in the MICP program experienced a "learning period" that year.

By the end of 2018, MICP will have been operating for approximately six years. In interviews with panelists conducted by OAH, it has become apparent that both panelists and the attorneys representing the parties have become more comfortable with the new mediation and conciliation program, and this has resulted in more satisfied participants. These interviews have also confirmed the success of MICP in bringing parties together for a frank discussion of their claims, with the assistance of a neutral medical expert, before deciding whether to pursue those claims in the court system.

2018 also saw a noticeable and welcome increase in the number of licensed attorneys willing to serve as chairs of the panels. Due to OAH's concerted recruitment effort in March 2018, the Chief Justice of the Hawaii Supreme Court recently approved of 30 attorneys to serve as chairs. Training of these new recruits is ongoing, and it is anticipated that beginning in January 2019, cases will be assigned to panels chaired by these recruits.