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December 10, 2019

TRANSMITTED VIA LEGISLATIVE WEBSITE

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

Enclosed is a copy of the 2019 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).

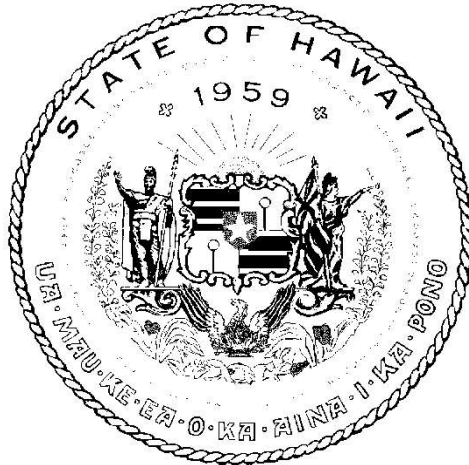
In accordance with section 93-16(a), HRS, a copy of this report will be transmitted to the Legislative Reference Bureau Library and viewable electronically at <http://cca.hawaii.gov/oah/reports/>. Copies will also be transmitted to the State Publications Distribution Center and the University of Hawaii pursuant to section 93-3, HRS.

Sincerely,

CATHERINE P. AWAKUNI COLÓN
Director

Enclosure

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THIRTIETH LEGISLATURE
REGULAR SESSION OF 2020

**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 2019

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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, 2019, through November 30, 2019.

A. Medical Inquiry and Conciliation Panel (MICP)

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

The MICP helps 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 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.

The 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.

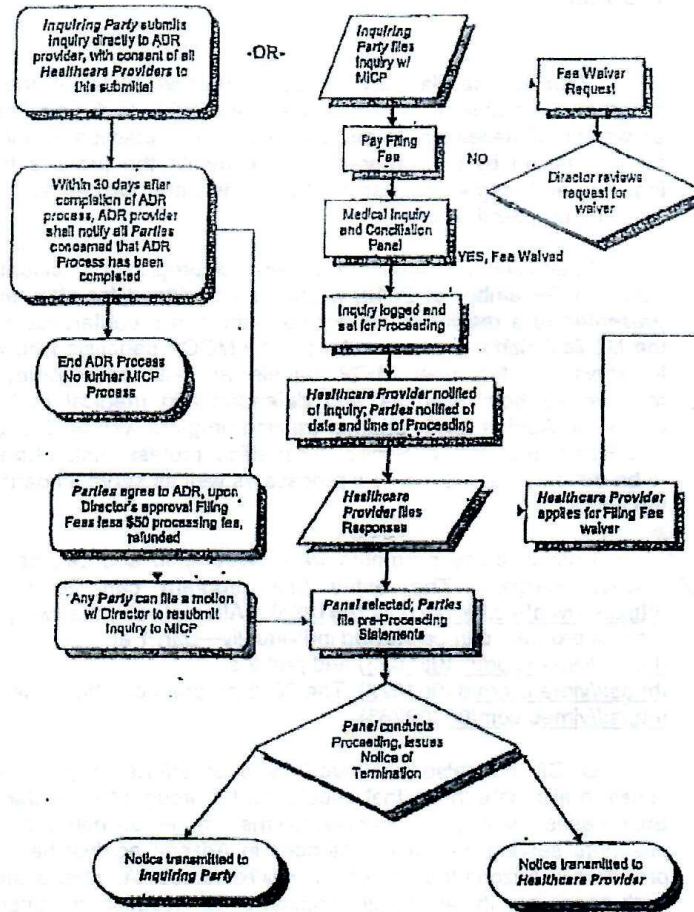
The MICP’s primary purpose is achieved when the parties make conscientious and thorough presentations to the MICP, which includes a licensed physician. MICP proceedings provide the parties with more helpful interactions and more accurate views of the merits of the inquiry. This helps the parties evaluate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

By providing opportunities to exchange information expeditiously and inexpensively, the MICP allows parties to explore the conciliation of potentially meritorious inquiries through additional conciliation and mediation outside of the 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 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. The DCCP is modeled on the former MCCP and operates under the same procedures and guidelines. The DCCP was not affected by the implementation of the new MICP in 2013.

II. MICP ANNUAL REPORT

A. Program Information

Prior to the January 1, 2013, effective date of the MICP, the 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 concerning medical malpractice changes. Attendees of the 2012 AHEC training program included MCCP panelists who wanted to serve on the MICP, as well as medical malpractice attorneys. Attendees of the 2013 AHEC training program were medical professionals who wanted to learn about the MICP and serve as future panelists.

Both programs were videotaped and continue to serve as a training aid for newly appointed MICP members. The 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 2013 training program can be viewed at <https://vimeo.com/80302763>.

The DCCA continues to pre-screen cases to eliminate those that should not be brought before the MICP. These cases involve, for example, inquiries brought on behalf of Hawaii prisoners serving their sentences in Arizona against Arizona health care providers that are not Hawaii licensees, and cases brought against pharmaceutical manufacturers that the MICP statutes do not define as health care providers.

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

B. Operations of MICP

1. Expedited Inquiry Filing Process

Established in 1997, the MCCP Fast Track Filing System allowed a claim to be heard within four months of the filing of the claim with the MCCP, or even sooner if all parties agreed. Additionally, because these expedited cases used other facilities to host the hearings, the MCCP scheduled more hearings for claims brought under the MCCP filing process due to increased availability of the MCCP hearings room. The MCCP Fast Track Filing System was later incorporated into the MICP procedures and continues to be available to the parties. In 2019, two inquiries were filed under the expedited inquiry process.

2. Electronic Filing of Documents

The 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

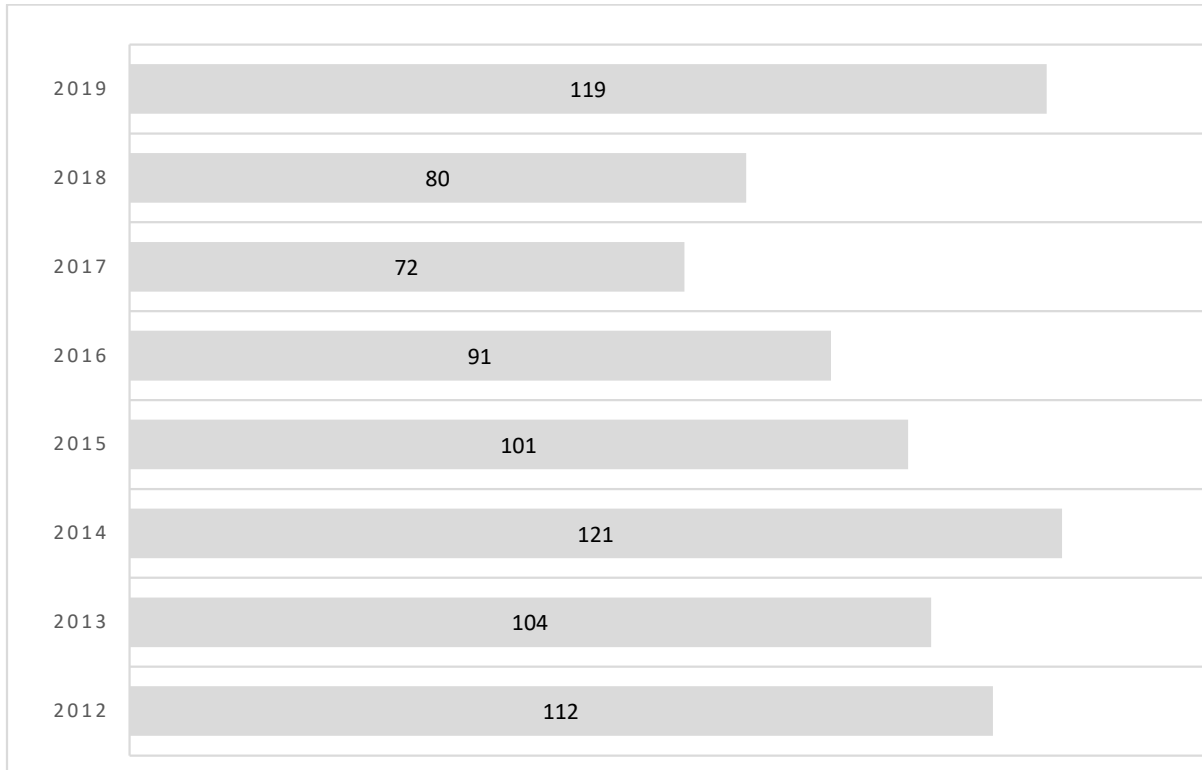
In the past, the MICP routinely issued refund checks to the parties once their inquiries were terminated. These refunds represented the balance of the parties' filing fees after compensating panel members and applying processing fees. This process of requesting, processing, and issuing refund checks to the parties after each inquiry placed an undue burden on MICP staff. Accordingly, in 2018, the MICP began charging each party its filing fee 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 2019

As of November 30, 2019, 119 inquiries were filed with the MICP. See Figure 1: Claims and Inquiries Filed from 2012 through 2019, to compare the MICP's number of filed inquiries with those filed in previous years with the MICP and the former MCCP program.

Figure 1: Claims and Inquiries Filed from 2012 through 2019¹



In 2019, the DCCA director granted 17 requests to waive the MICP filing fees for parties unable to pay.² Also in 2019, 25 MICP inquiries were filed by parties that were not represented by attorneys. Finally, in 2019, 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 2019 is for the entire calendar year. Due to the deadline to submit this report, the number of inquiries for 2019 listed in this report refers to the first 11 months of the year.

² The 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 2019

As of November 30, 2019, the MICP heard 40 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 the MICP heard in 2019, 11 were proceedings in which the inquiring parties were not represented by attorneys (*pro se* inquiring parties).

Because the MICP does not issue opinions on actionable negligence, the DCCA does not report on the substantive disposition of MICP inquiries.

III. DCCP ANNUAL REPORT

A. Creation of DCCP

The DCCP is a DCCA program that was established in January 1, 2008, by Act 207, SLH 2007, HRS section 672B-17.

Figure 2: Disposition of DCCP Claims in 2019

Total claims filed in 2019:	5
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Total number of hearings conducted:	2
Liability found	2
Some Respondents liable	0
No liability found	0
Total damages recommended by panel	0

Disposition of claims in 2019:	
Withdrawn/dismissed	0
Settled	0
Mediation/ADR	0
Tolling period lapsed	0

IV. CONCLUSION

By the end of 2019, the MICP will have been operating for approximately seven years. Based on panelist interviews, 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 the 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.

2019 also had a noticeable and welcome increase in the number of licensed attorneys willing to serve as panel chairs. Due to the Office of Administrative Hearings' concerted recruitment effort in 2018, the Chief Justice of the Hawaii Supreme Court approved 30 attorneys to serve as chairs, and cases were assigned to them in January 2019.