DEPT. COMM. NO. 230

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. 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

December 18, 2017

The Honorable Ronald D. Kouchi,
President and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

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

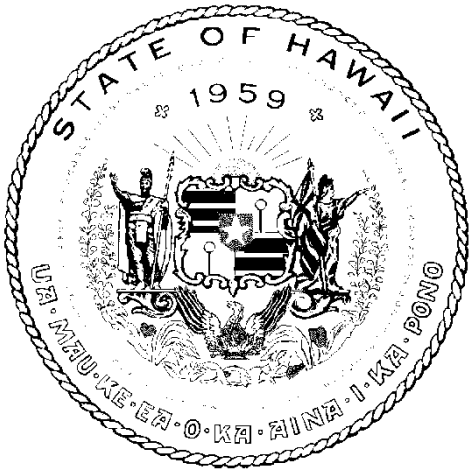
For your information and consideration, I am transmitting a copy of the 2017 Annual Report on the Medical Inquiry and Conciliation Panel and Design Claim Conciliation Panel, as required respectively by sections 671-20 and 672B-17, Hawaii Revised Statutes (HRS). In accordance with section 93-16, HRS, a copy of this report will be transmitted to the Legislative Reference Bureau Library and viewable electronically at http://cca.hawaii.gov/oah/reports/.

Sincerely,

Catherine P. Awakuni Colón

CATHERINE P. AWAKUNI COLÓN
Director

Enclosure



TWENTY-NINTH LEGISLATURE
STATE OF HAWAII
REGULAR SESSION OF 2018

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

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

December 2017

TABLE OF CONTENTS

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, 2017, through November 30, 2017.

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, 2012 Session Laws of Hawaii, 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 3.

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 employs approaches to liability, causation, or damages in the context of conciliation and mediation.

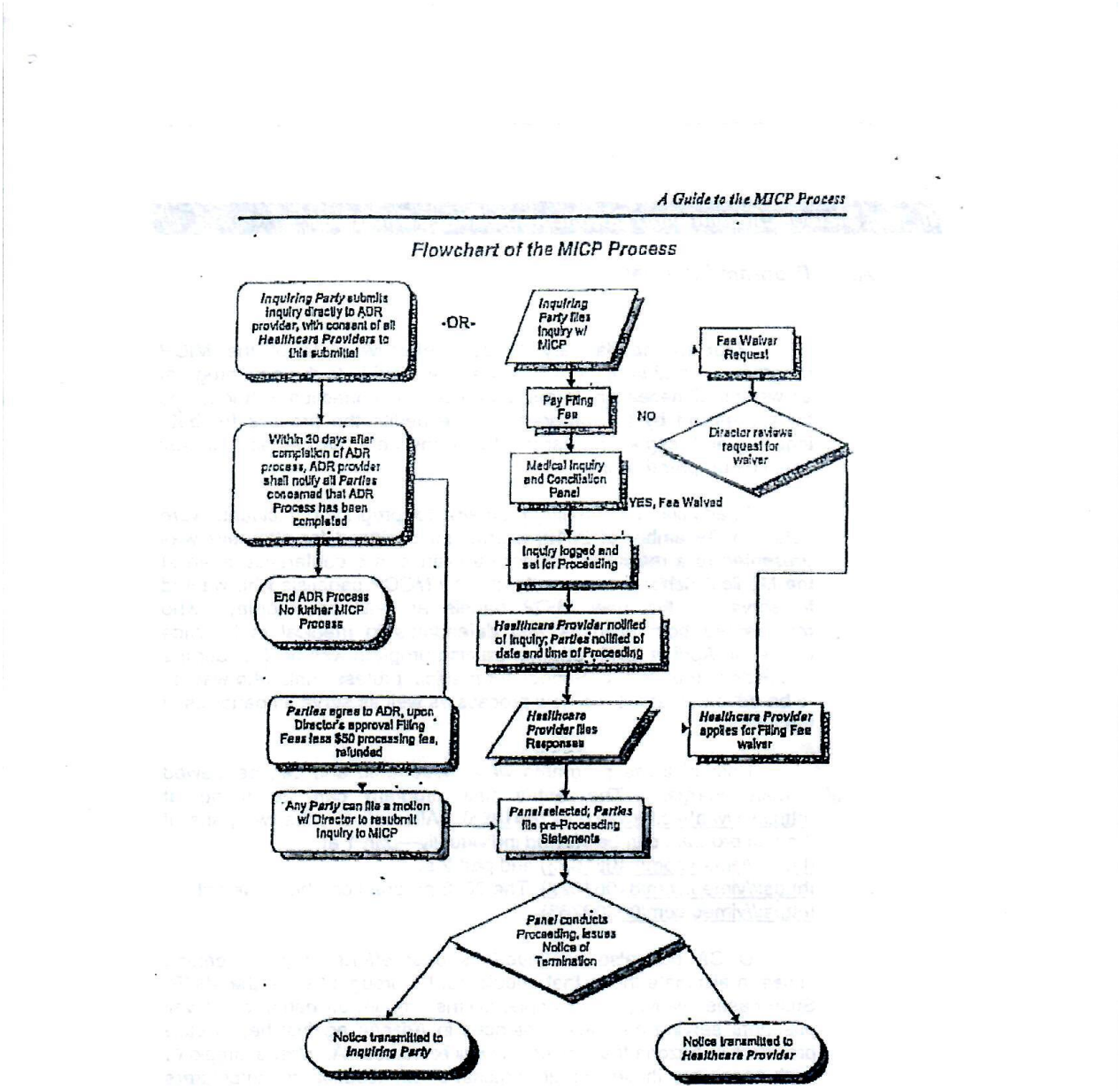
Panels may still consider and discuss liability, causation, and damages, but they now do so through conciliation or advisory efforts. The proceedings no longer culminate in the issuance of an advisory decision, and the word “claim” has been eliminated from the MICP vocabulary.

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. MICP proceedings provide the parties with more helpful interactions and more accurate views by the panel of the relative merits of the inquiry. This, in turn, 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 in turn allows them to explore the conciliation of potentially meritorious inquiries through additional conciliation and mediation services 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 panel discourage parties from pursuing frivolous or fraudulent inquiries prior to bringing further legal proceedings.



B. Design Claim Conciliation Panel (DCCP)

Pursuant to Act 207, 2007 Session Laws of Hawaii, effective January 1, 2008, all malpractice claims against design professionals must be submitted to the DCCP program. DCCP is modeled on the former MCCP 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, two training programs for participants were held. In December 2012, a program for attorneys was presented to a maximum capacity audience at John A. Burns School of Medicine. It was attended by MCCP panelists who wanted to serve on the new MICP panels, as well as attorneys who represented parties in medical malpractice cases. In April 2013, another training program was held, 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 can be viewed without charge. The first 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 at https://vimeo.com/84061622. The 2013 program can be viewed at https://vimeo.com/80302763.

DCCA has also continued its prior efforts at pre-screening cases to eliminate those that should not be brought before MICP. These cases involve, for example, claims 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 materials and forms are available to parties and interested persons in various formats and media, 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 from 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 2017, one inquiry was filed under the expedited inquiry process.

2. Electronic Filing of Documents

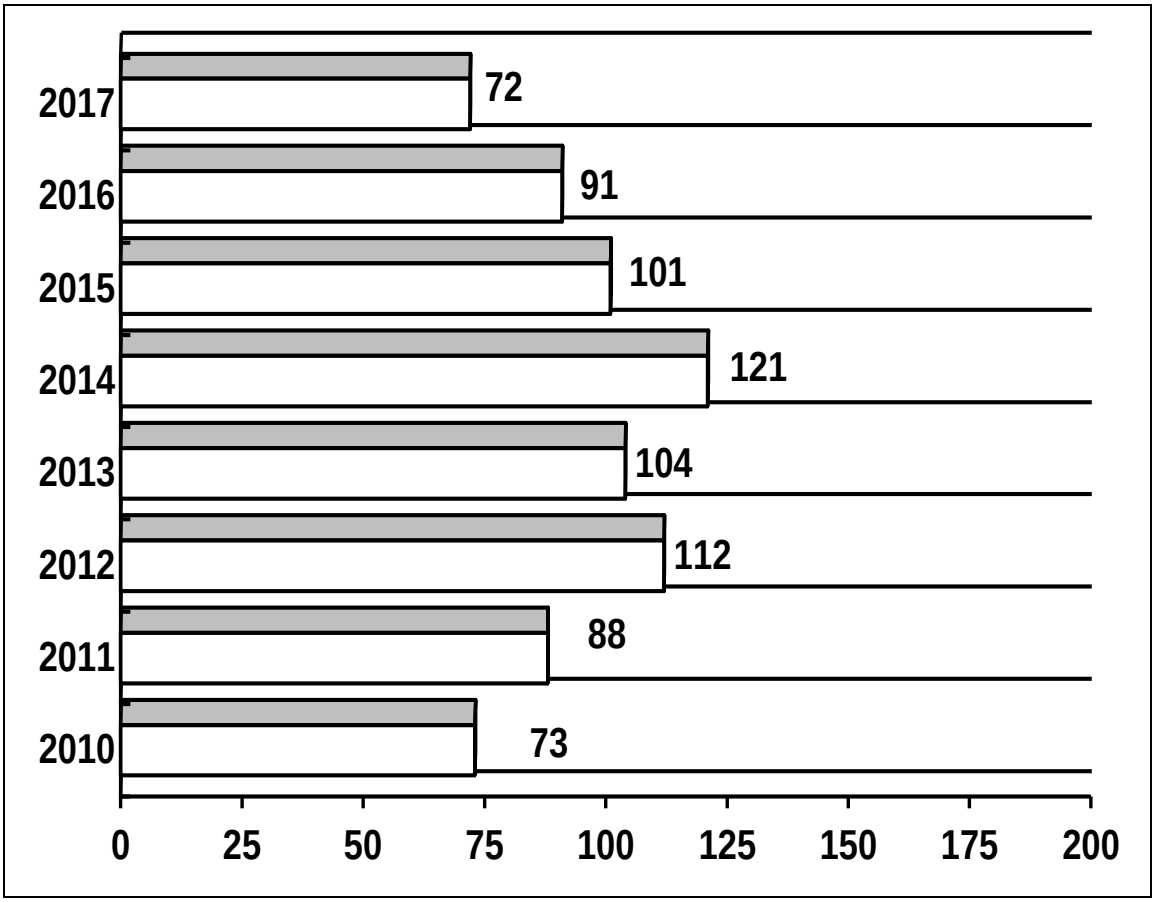
MICP provides an optional electronic filing process that allows participating parties to file, distribute, and receive documents electronically. Technologically capable parties have been using this electronic filing option more frequently, including submitting voluminous records, documents, and graphics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

C. Statistical Overview of MICP

1. Number of Inquiries Filed in 2017

As of November 30, 2017, 72 inquiries were filed with MICP. See Figure 1: Claims and Inquiries Filed from 2010 through 2017, to compare MICP's number of filed inquiries with the number of claims filed in previous years with MICP and the former MCCP program.

Figure 1: Claims and Inquiries Filed from 2010 through 2017[1]



Regarding parties who are unable to pay the required filing fees, in 2017,16 requests to waive the MICP filing fees were granted by the Director of DCCA.[2] Also in 2017, 19 MICP inquiries were filed by parties that were not represented by attorneys. Finally, four inquiries were rejected in 2017 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 2017 is for the entire calendar year. Due to reporting deadlines necessary for timely submission of this report, the number of inquiries for 2017 listed in the text of the 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 2017

As of November 30, 2017, 39 inquiries were heard by MICP. In addition, six inquiries were dismissed, withdrawn, or otherwise terminated. Two inquiries resulted in the parties entering formal mediation conducted outside of the MICP program.

Of the inquiries heard by MICP in 2017, eight 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, Session Laws of Hawaii 2007.

Figure 2: Disposition of DCCP Claims

Total claims filed in 2017:	**4**

Total number of hearings conducted:	**1**
Actionable negligence found	0
Some Respondents negligent	0
No negligence found	1
Total damages recommended by panel	**None**

Disposition of claims in 2017:	
Withdrawn/dismissed	0
Settled	0
Mediation/ADR	0
Tolling period lapsed	0

The two remaining claims not represented in Figure 2: Disposition of DCCP Claims, were still pending at the close of the reporting period.

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. In addition, all participants of MICP experienced a "learning period" that year.

During 2017, OAH received far fewer complaints about the operation of MICP. Presumably, panelists had become more comfortable with the new mediation and conciliation program, and this translated into more satisfied participants.

2017 also had a noticeable and welcome increase in the number of medical professionals willing to serve as the medical member of the panels. Unfortunately, the number of attorney members declined in 2017. Accordingly, OAH is planning an attorney recruitment drive in 2018, similar to the one that was successful in 2013. OAH will then hold a training session for new recruits that will also serve as a “refresher” for current panelists.

By the end of 2017, MICP will have been operating for four full years. This is a reasonable length of time after which to consider the program’s effectiveness in meeting the expectations of the 2012 legislation.