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S.B. NO. 192

A Bill for an Act Relating to Medical Claim Conciliation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 671-19, Hawaii Revised Statutes, is amended to read as follows:

“[[§671-19]] Duty to cooperate; assessment of costs and fees. It shall be the duty of every person who files a claim with the medical claim conciliation panel, every health care provider against whom such claim is made, and every insurance carrier or other person providing medical tort liability insurance for such health care provider, to cooperate with the medical claim conciliation panel for the purpose of achieving a prompt, fair, and just disposition or settlement of such

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claim; provided that such cooperation shall not prejudice the substantive rights of [said] those persons.

[After trial of such claim or after settlement of such claim after suit has been filed, any] Any party may apply to the [court in which the suit was brought] panel to have the costs of the action assessed against any party [or any insurance carrier or other person providing medical tort liability insurance to a party health care provider, or both,] for failure to cooperate with the [medical claim conciliation] panel. The [court] panel may award such costs, or a portion thereof, including attorney's fees, witness fees, including those of expert witnesses, [costs of discovery and transcribing depositions,] and [court] costs of the medical claim conciliation panel hearing to the party applying therefor.

[On application of the director of commerce and consumer affairs, the court may award as a civil penalty against any party or any insurance carrier or other person providing medical tort liability insurance to a party health care provider, or all or any combination of such persons, all or a portion of the costs and expenses of the medical claim conciliation panel attributable to a claim involving such persons, if the court finds that such person or persons failed to cooperate with the medical claim conciliation panel. Such penalty shall be payable to the general fund.]

In determining whether any person has failed to cooperate in good faith, the [court] panel shall consider, but is not limited to, the following:

- (1) The attendance of the persons at the hearing of the medical claim conciliation panel;
- (2) The extent to which representatives of parties and counsel representing parties came to panel hearings with knowledge of the claims and defenses and authority to negotiate a settlement or other disposition of the claim;
- (3) The testimony of members of the panel as to the facts of the person's participation in the panel hearing;
- (4) The extent of the person's cooperation in providing the panel with documents and testimony called for by the panel; and
- (5) The reasons advanced by the person so charged for not fully cooperating or negotiating.

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

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 7, 1993.)