

ACT 213

H.B. NO. 1959

A Bill for an Act Relating to Conciliation Panels.

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

SECTION 1. Chapter 671, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§671- Waiver of filing fee. (a) If any party to a claim cannot pay the required filing fee, the party may file with the director a motion to waive the filing fee. The motion to waive the filing fee shall be accompanied by an affidavit in a format prescribed by the department, showing in detail:

- (1) The party’s inability to pay the filing fee;
- (2) The party’s belief that the party is entitled to redress; and
- (3) A statement of the issues that the party intends to present at the hearing before a medical claims conciliation panel.

(b) The director shall decide on the motion to waive the filing fee as expeditiously as possible, and no oral arguments shall be permitted.

(c) If the director grants the motion to waive the filing fee, the party may proceed without further application to the director or panel, and without payment of the filing fee. If the motion is denied, the director shall state the reasons for the denial in writing. The director shall promptly provide the party with a filed copy of the director’s order granting or denying the motion.

(d) If a motion to waive the filing fee is denied by the director, the party may seek judicial review under section 91-14.

(e) If the director denies a party’s motion to waive the filing fee, the party shall pay the filing fee within thirty days after the denial of the motion, unless the party has filed an appeal under section 91-14. If the party has filed an appeal under section 91-14, the party may proceed without payment of the filing fee, until such time as a final judicial determination is rendered.

(f) If the party files an appeal under section 91-14, and the court upholds the director’s denial of the aggrieved party’s motion to waive the filing fee, the party shall pay the filing fee within thirty days after the court’s affirmation of the denial. If the court determines that the party’s motion for waiver of the filing fee was improperly denied, the party shall be entitled to proceed without payment of the filing fee.”

SECTION 2. Section 671-11, Hawaii Revised Statutes, is amended to read as follows:

“§671-11 Medical claim conciliation panels; composition, selection, compensation. (a) There are established medical claim conciliation panels which shall review and render findings and advisory opinions on the issues of liability and damages in medical tort claims against health care providers.

(b) A medical claim conciliation panel shall be formed for each claim filed pursuant to section 671-12 and after each panel renders its decision or the claim is otherwise disposed of it shall be disbanded. Each medical claim conciliation panel shall consist of one chairperson selected from among persons who are familiar with and experienced in the personal injury claims settlement process, one attorney licensed to practice in the courts of the State and experienced in trial practice, and one physician or surgeon licensed to practice under chapter 453 or chapter 460. The chairperson shall be appointed by the director of the department of commerce and consumer affairs from a list of eligible persons approved by the chief justice of the supreme court of Hawaii. The attorney shall be appointed by the chairperson from a list of not less than thirty-five attorneys experienced in trial practice submitted annually by the supreme court. The physician or surgeon shall be appointed by the chairperson and shall be currently licensed and in good standing under chapter 453 or under chapter 460.

(c) The chairperson shall preside at the meetings of the panel. The chairperson, all panel members, and any consultant called by the panel to appear before the panel shall be compensated at the rate of \$300 per claim which will become payable when the decision of the panel is submitted. At the discretion of the director, the chairperson, panel members, and any consultant called by the panel to appear before the panel, may be compensated at one-half the amount of compensation specified in this section, if the claim is disposed of by any means prior to the hearing by the panel. The chairperson, all panel members, and any consultant called by the panel to appear before the panel also shall be paid allowances for travel and living expenses which may be incurred as a result of the performance of their duties on or for the panel. These costs shall be paid by the department of commerce and consumer affairs[,] from the filing fees paid by the parties.

(d) The claimant shall pay a filing fee of \$450 to the department upon the filing of the claim and the failure to do so shall result in the claim being rejected for filing. Each health care provider and other parties to the claim shall pay a filing fee of \$450 to the department within twenty days of being served with the claim. Each party to a claim shall be assessed a non-refundable processing fee by the department in the amount of \$50. The non-refundable processing fee shall be retained from each party's filing fee, and shall be used to defray the administrative costs of the medical claims conciliation panel program.

(e) After the panel has made a final decision on a claim, or after a final disposition of the claim has been made without a hearing before the panel, the department shall return any moneys remaining after all panel costs have been paid, to the respective parties on a pro rata basis.

(f) The office and meeting space, secretarial and clerical assistance, office equipment, and office supplies for the panel shall be furnished by the department. The chairperson may designate any alternative meeting place or site for the hearing.

(g) The board of medical examiners and board of osteopathic examiners shall each prepare a list of [physicians, surgeons, podiatrists, or] physicians, surgeons, and podiatrists, as the case may be, along with their respective specialties. These physicians and surgeons shall be eligible to serve as consultants to the panel in their respective fields. Panel members may consult with other legal, medical, and insurance specialists.”

SECTION 3. 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] the claim is made, and every insurance carrier or other person providing medical tort liability insurance for [such] the 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] the claim, provided that [such] cooperation shall not prejudice the substantive rights of those persons.

Any party may apply to the panel to have the costs of the action assessed against any party for failure to cooperate with the panel. The panel may award [such] costs, or a portion thereof, including attorney’s fees, witness fees, including those of expert witnesses, filing fees, and costs of the medical claim conciliation panel hearing to the party applying therefor.

In determining whether any person has failed to cooperate in good faith, the 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[.]; and
- (6) The failure of the person to submit any required fees to the department of commerce and consumer affairs, as required by this chapter.

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 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved June 20, 1995.)

Note

1. Edited pursuant to HRS §23G-16.5.