

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- **Certificate of consultation.** (a) Any claim filed with the medical claim conciliation panel under this chapter shall be accompanied by a certificate which declares one of the following:

- (1) That the claimant or the claimant’s attorney has consulted with at least one physician who is licensed to practice in this State or any other state, and who is knowledgeable or experienced in the same medical specialty as the health care professional against whom the claim is made, and that the claimant or claimant’s attorney has concluded on the basis of such consultation that there is a reasonable and meritorious cause for filing the claim. If the claimant or the claimant’s attorney is not able to consult with a physician in the same medical specialty as the health care professional against whom the claim is made, the claimant or claimant’s attorney may consult with a physician who is licensed in this State or in any other state who is knowledgeable and experienced in a medical specialty that is as closely related as practicable to the medical specialty of the health care professional against whom the claim is made. The physician or physicians consulted by the claimant or the claimant’s attorney may not be a party to the case, nor be compelled to testify or otherwise participate in the hearing before the medical claim conciliation panel;
- (2) That the claimant or the claimant’s attorney was unable to obtain the consultation required by paragraph (1) because a statute of limitations would impair the action and that the certificate required by paragraph (1) could not be obtained before the impairment of the action. If a certificate is executed pursuant to this paragraph, the certificate required by paragraph (1) shall be filed by the claimant or the claimant’s attorney within ninety days after filing the claim; or
- (3) That the claimant or the claimant’s attorney was unable to obtain the consultation required by paragraph (1) after the claimant or the claimant’s attorney had made a good faith attempt to obtain such consultation and the physician contacted would not agree to such a consultation. For purposes of this paragraph, “good faith attempt” refers to the responsibility of a claimant or claimant’s attorney to make reasonable efforts to contact a physician for the purpose of reviewing the circumstances upon which a claim is based. The claimant or claimant’s attorney may contact physicians by letter, telephone, facsimile, or other electronic means of communication. If the physician does not respond within a reasonable time, the claimant or claimant’s attorney may submit its claim to the medical claim conciliation panel along with a certificate declaring such nonresponse to claimant’s good faith attempt. A “good faith attempt” shall ultimately be evaluated in light of the goal of having a qualified physician assist the claimant or claimant’s attorney in understanding the basis of the claim, and such determination shall depend upon the circumstances of each individual case.

(b) Where a claimant or the claimant's attorney intends to rely solely on a failure to inform of the consequences of a procedure (informed consent), this section shall be inapplicable. The claimant or the claimant's attorney shall certify upon filing of the claim that the claimant or the claimant's attorney is relying solely on the failure to inform of the consequences of a procedure and for that reason is not filing a certificate as required by this section.

(c) For the purposes of this section, the claimant or the claimant's attorney shall not be required to disclose the names of any physician consulted to fulfill the requirements of subsection (a) to any of the other parties to the claim. The medical claims conciliation panel may require the claimant or the claimant's attorney to disclose the name of any physician consulted to fulfill the requirements of subsection (a). No disclosure of the name of any physician consulted to fulfill the requirements of subsection (a) shall be made to any of the other parties to the claim; provided that the medical claim conciliation panel may contact any such physician to determine if the requirements of subsection (a) were met.

(d) Unless a certificate is filed pursuant to subsection (a) or (b), the claim shall not be received for filing by the medical claim conciliation panel."

SECTION 2. Chapter 671, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§671- Submission of claim to an alternative dispute resolution provider. (a) Any claim initially filed with the medical claim conciliation panel may be subsequently submitted to an alternative dispute resolution provider upon the written agreement of all of the parties to the claim and with the written approval of the director. The director shall approve the alternative dispute resolution provider and the alternative dispute resolution procedures.

(b) The parties shall comply with the procedures established by the alternative dispute resolution provider and approved by the director. If a party does not comply with those procedures, any other party may file a motion with the director to have the claim resubmitted to the medical claim conciliation panel.

(c) Within thirty days after the completion of the alternative dispute resolution process, the alternative dispute resolution provider shall notify all parties concerned, their counsel, and the representative of each health care provider's liability insurance carrier authorized to act for the carrier, as appropriate, that the alternative dispute resolution process has been completed.

(d) The claimant may institute litigation based upon the claim in an appropriate court only if:

- (1) The parties were not able to resolve the entire claim through the alternative dispute resolution process and the matter has not been resubmitted to the medical claim conciliation panel pursuant to subsection (b) of this section; or
- (2) The claim has not been resolved through the alternative dispute resolution process after twelve months from the date the claim was filed with the approved alternative dispute resolution provider.

(e) No statement made in the course of the approved alternative dispute resolution process shall be admissible in evidence as an admission, to impeach the credibility of a witness, or for any other purpose in any trial of the action. No decision, conclusion, finding, or recommendation of the approved alternative dispute resolution provider on the issue of liability or on the issue of damages shall be admitted into evidence in any subsequent trial, nor shall any party to the approved alternative dispute resolution hearing, their counsel, or other representative of such party, refer or comment thereon in an opening statement, in an argument, or at any time, to the court or jury."

SECTION 3. Section 671-16, Hawaii Revised Statutes, is amended to read as follows:

“§671-16 Subsequent litigation; excluded evidence. The claimant may institute litigation based upon the claim in an appropriate court only after a party to a medical claim conciliation panel hearing rejects the decision of the panel, or after the ~~[eighteen-month]~~ twelve-month period under section 671-18 has expired.

No statement made in the course of the hearing of the medical claim conciliation panel shall be admissible in evidence either as an admission, to impeach the credibility of a witness, or for any other purpose in any trial of the action[.]; provided that such statements may be admissible for the purpose of section 671-19, hereof. No decision, conclusion, finding, or recommendation of the medical claim conciliation panel on the issue of liability or on the issue of damages shall be admitted into evidence in any subsequent trial, nor shall any party to the medical claim conciliation panel hearing, or the counsel or other representative of such party, refer or comment thereon in an opening statement, an argument, or at any other time, to the court or jury[.]; provided that such decision, conclusion, finding, or recommendation may be admissible for the purpose of section 671-19, hereof.”

SECTION 4. Section 671-18, Hawaii Revised Statutes, is amended to read as follows:

“§671-18 Statute of limitations tolled. The filing of the claim with the medical claim conciliation panel or with an approved alternative dispute resolution provider shall toll any applicable statute of limitations, and any such statute of limitations shall remain tolled until sixty days after the date the decision of the panel or the notification of completion from the approved alternative dispute resolution provider is mailed or delivered to the parties[.]; ~~provided that in no case shall the applicable statute of limitations be tolled for more than eighteen months~~. If a decision by the medical claim conciliation panel is not reached within [eighteen] twelve months, or the alternative dispute resolution process is not completed within twelve months, the statute of limitations shall resume running and the party filing the claim may commence a suit based on the claim in any appropriate court of this State. The panel or the approved alternative dispute resolution provider shall notify all parties in writing [all parties] of this provision.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on September 1, 2003.

(Approved June 26, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.