

THE MEDICAL CLAIMS CONCILIATION PANEL

Report to the 2006 Legislature

Submitted by

**The Department of Commerce & Consumer Affairs
State of Hawai'i**

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I. INTRODUCTION

The Medical Claims Conciliation Panel (“MCCP”) is a program of the Department of Commerce and Consumer Affairs (“DCCA”), State of Hawai‘i. The MCCP was established by Act 219, 1976 Session Laws of Hawai‘i, Hawai‘i Revised Statutes (“HRS”) §671-11.

The MCCP program is responsible for conducting informal conciliation hearings on claims against health care providers before such claims can be filed as lawsuits. The Panel’s decisions are advisory in nature and are not binding on the parties, in the event that any party still wishes to pursue the matter via the courts.

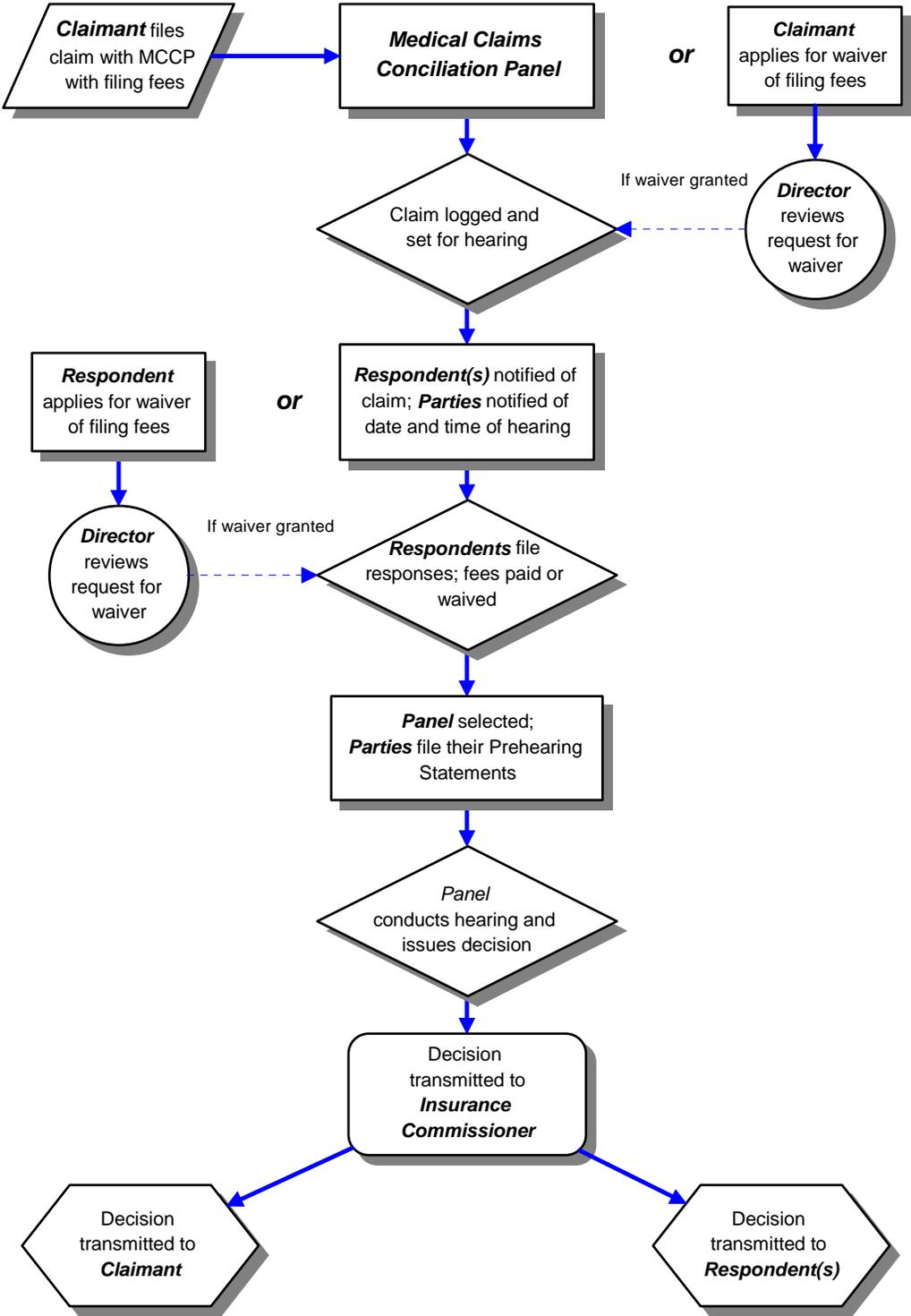
The primary purpose of the MCCP program is achieved when the parties make conscientious and thorough presentations to the Panel. In such cases, the decisions rendered by the Panel provide the parties with fairly accurate advisory determinations of the relative merits of the claims, which should assist the parties in evaluating whether the claims should be pursued through the judicial system.

The MCCP program also provides opportunities for the parties to exchange information in a relatively expedited and inexpensive manner, which in turn provides for opportunities for the parties to explore the conciliation of meritorious claims prior to such claims being brought before the courts.

Lastly, the requirements of exchanging information between the parties, and making conscientious and thorough presentations to the Panel, discourage the pursuit of frivolous or fraudulent claims, prior to further legal proceedings being taken by the parties.

The ***MCCP Annual Report to the 2005 Legislature*** covers the period of January 1, 2005, through November 30, 2005.

Flowchart of the MCCP Process



II. THE MEDICAL CLAIMS CONCILIATION PANEL PROGRAM

A. The Year in Review

In 2005, we continued to improve the processing and hearing of MCCP claims, as well as streamlining the MCCP procedures to minimize unnecessary costs and procedural requirements.

We also updated all of the MCCP informational materials and forms and made them available to parties and interested persons in various formats and media, including access via DCCA's internet web page: www.hawaii.gov/dcca/areas/oah/medical_claims/.

B. The Operations of the MCCP

1. Expedited Claims Filing Process

In 1997, the MCCP program initiated the MCCP Fast Track Filing System, which allowed a claim to be heard within four (4) months from the date the claim is filed with the MCCP program, or even sooner, if all of the parties agree. Additionally, because these expedited cases utilized other facilities to host the hearings, we have been able to schedule more hearings for claims brought under the regular MCCP filing process, because of the increased availability of the MCCP hearings room.

Although the MCCP Fast Track Filing System continues to be available to the parties, in 2005, only two (2) new claims were filed utilizing the expedited claims process, and two (2) claims were heard on an expedited basis.

2. Appointment of MCCP Chairpersons

In the past, the substantial majority of the MCCP chairpersons have been attorneys; however, starting in 2000, we have also sought qualified chairpersons who are not attorneys.¹

In 2005, there were five (5) qualified MCCP chairpersons who were not attorneys: one individual with extensive mediation and

¹ HRS §671-11(b), requires that the MCCP chairperson be “familiar with and experienced in the personal injury claims settlement process.”

dispute resolution experience, and four physicians who have previously served on Panels as physician members, and who have distinguished themselves by their medical expertise and their understanding of the MCCP process.

3. Electronic Filing of Documents

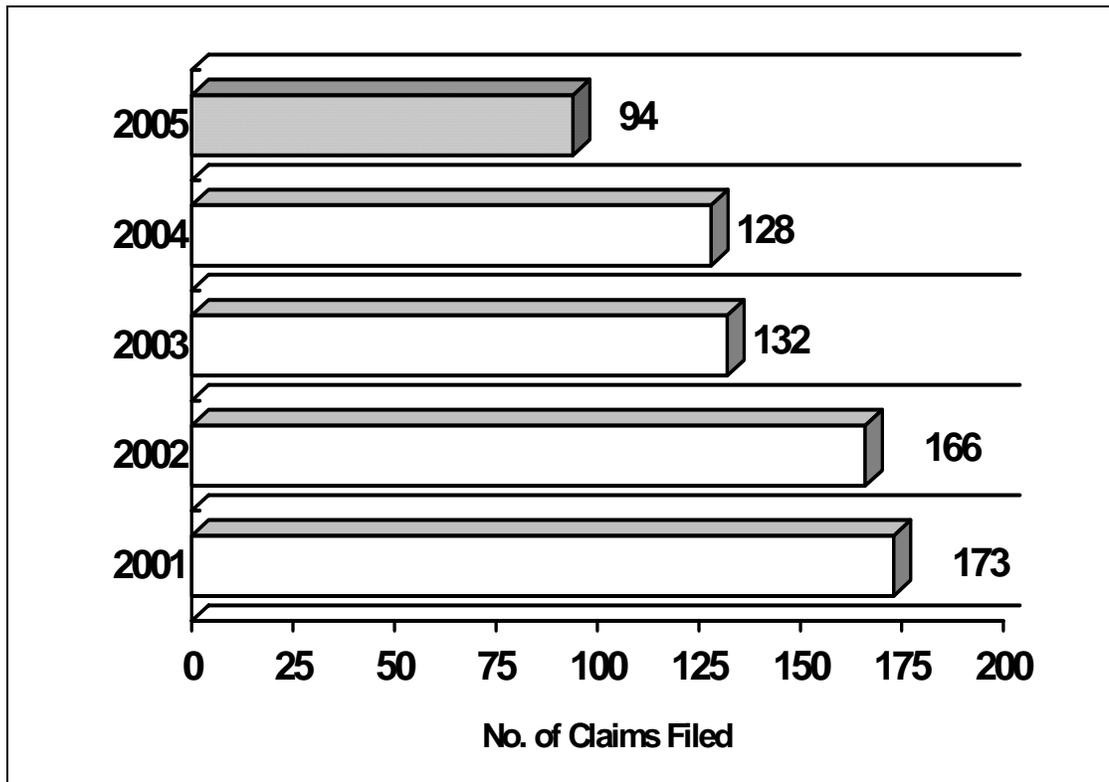
In 2001, the MCCP program inaugurated an optional electronic filing process that allows participating parties to file, distribute, and receive documents electronically.

Technologically capable parties have been utilizing this electronic filing option more frequently, including submitting voluminous records, documents, and graphics via CD format.

C. Statistical Overview of the MCCP Program

1. Number of Claims Filed in 2005

As of November 30, 2005, there were 94 claims filed with the MCCP program, involving 183 claimants, and 299 respondents. It should be noted that although there were 183 different claimants, **there were not 299 different** health care professionals and facilities named as Respondents. However, each case requires the same individualized processing effort, even if some of the cases involve some or all of the same respondents.

Figure 1: Claims Filed in 2001 through November 30, 2005

In regards to parties who are unable to pay the required filing fees, in 2005, 33 requests to waive the MCCP filing fees were granted by the Director.²

Also, in 2005, 23 MCCP claims were filed by claimants that were not represented by attorneys.

Lastly, there were three (3) claims that were rejected because the claims were not accompanied by a certificate of consultation as required by Hawai'i Revised Statutes §671-12.5.

2. Disposition of Claims Heard in 2005

As of November 30, 2005, there were 63 cases heard by the MCCP, involving a total of 123 claimants and 179 respondents. Once again, it should be pointed out that although these statistics indicate that 123 different claimants were involved in the claims heard, there were not 179 different health care professionals or facilities involved.

² The MCCP utilizes the same financial guidelines to determine a party's eligibility to waive the MCCP filing fees as the courts use in determining whether a party can proceed *in forma pauperis* in a judicial proceeding.

Of the cases heard by the MCCP in 2005: 1) there were 17 cases in which the claimants were not represented by attorneys (*pro se* claimants); and 2) there was one claim in which the Panel found the underlying claim to be frivolous (palpably without merit).

Overall, the MCCP found actionable negligence on the part of all or some of the respondents in 17 cases, and rendered advisory determinations of damages ranging from \$30,000.00 to \$6,500,000.00.

The following table provides a statistical overview of the disposition of cases heard by the MCCP in 2005.

Figure 2: Disposition of Claims Heard in 2005

Total number of parties in cases heard:	302
Total number of Claimants	123
Total number of Respondents	179

Total number of hearings conducted:	63
Actionable negligence found:	12
Some Respondents negligent	6
No negligence found:	44
No majority opinion	1
Total Damages Recommended by Panels:³	\$ 7,997,572.87

³ In ten (10) of the cases in which Panels found actionable negligence on the part of some of the respondents, the Panels were either not able to make determinations of damages, or were requested not to make determinations as to damages.

Figure 3: Comparative Disposition of Claims Heard in 2005

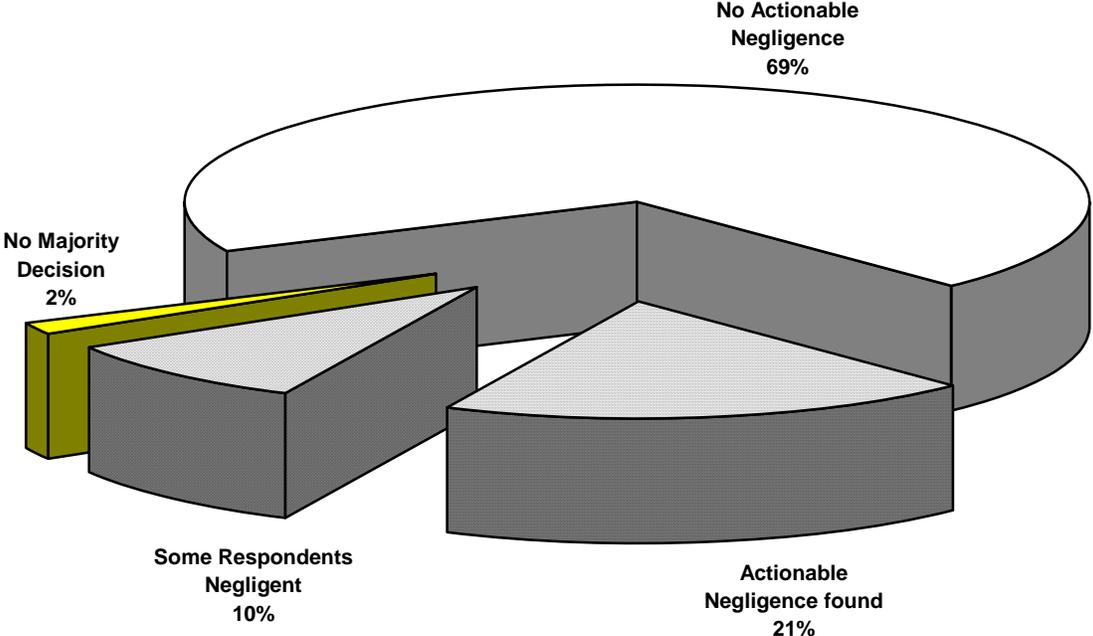


Figure 4: Disposition of Claims Closed Without Hearings

Total claims closed without hearings:	22
Rejected – no certificate of consultation	4
Dismissed	4
Mediation/ADR	2
No jurisdiction	1
Terminated by Director	6
Tolling period lapsed:	2
Withdrawn:	2
Other:	1

III. CONCLUSION

The primary objective of the MCCP has always been to provide the parties with a fair, informal, inexpensive, and expedited process through which the parties may obtain reasonably accurate determination regarding the underlying merits of the claim. Consequently, the MCCP will continue to work with the parties and participants of the MCCP program to find new ways to improve the MCCP process and procedures.

We are also very committed to modernizing every appropriate component of the MCCP process to allow for maximum access by the parties and the expedited processing of claims.

Since 2002, there has been a significant reduction in the number of claims filed and the number of cases heard.

We believe that these statistical trends are the result of the 2003 statutory revisions made to the MCCP provisions of the Hawai'i Revised Statutes, particularly the need for a certificate of consultation.