

The background of the cover is a photograph of a business meeting. A woman with dark curly hair, wearing a white shirt, is seated at a table and looking towards a man. The man, who is Black, is also seated at the table, gesturing with his right hand while speaking. There are papers and a laptop on the table. The image is partially obscured by two large, overlapping circular shapes: a dark grey one on the left and a blue one on the right.

RULES OF PROCEDURE FOR **EMPLOYMENT ARBITRATION**

These rules apply to
claims received on or
after March 11, 2019



© 2019 American Health Lawyers Association.
1620 Eye Street, NW, 6th Floor, Washington DC 20006-4010.
All rights reserved.

Table of Contents

Introduction	1
Section 1: Policies	2
1.1 Applicable Version of Rules	2
1.2 Electronic Case Management System	2
A. APPLICABILITY	2
B. NOTICE.....	2
C. FILING.....	2
D. SERVICE.....	2
E. OPTING OUT	2
1.3 Representation	2
1.4 Counting of Days	3
1.5 Disclaimer	3
1.6 Administrator	3
Section 2: Filing a Claim	4
2.1 Requirements	4
2.2 Service	4
A. CASE MANAGEMENT SYSTEM	4
B. ALTERNATIVE MEANS.....	4
2.3 Exception for Mandatory Arbitration Clauses	4
A. EMPLOYER RESPONSIBILITY	4
B. DEFINITION.....	4
2.4 Dispute Regarding Mandatory Nature of Arbitration Clause	5
B. INITIAL PAYMENTS.....	5
B. PRELIMINARY HEARING	5
C. INTERIM AWARD	5
Section 3: Appointment of an Arbitrator	6
3.1 Criteria	6
3.2 Appointment Process	6
A. NUMBER OF CANDIDATES	6
B. RANKING SHEET	6
C. CANDIDATE PROFILES	6
D. REVIEW OF CANDIDATES	6
E. INELIGIBLE CANDIDATES	6
F. RANKING CANDIDATES.....	7
G. SELECTION PROCESS	7
3.3 Acceptance of Appointment	7
3.4 Appointment Date	7
3.5 Arbitration Panels	7

A. DEFAULT PROCESS.....	7
B. PRESUMPTION OF NEUTRALITY.....	8
C. PANEL CHAIR.....	8
3.6 Alternative Selection Processes.....	8

Section 4: Arbitrators..... 9

4.1 Conduct.....	9
A. POWERS AND DUTIES.....	9
B. ETHICS.....	9
C. SETTLEMENT AND MEDIATION.....	9
D. MANDATORY AGREEMENTS.....	9
4.2 Ex Parte Communication.....	9
A. GENERAL RULE.....	9
B. NON-NEUTRAL ARBITRATORS.....	9
C. FAILURE TO PARTICIPATE.....	10
4.3 Case Management.....	10
A. DEFAULT TIMEFRAME.....	10
B. EXPEDITED REVIEW.....	10
C. EXCEPTIONAL CASES.....	10
D. TIMEFRAMES.....	10
4.4 Review Board.....	10
A. PURPOSE.....	10
B. APPOINTMENT.....	10
C. QUALIFICATIONS.....	10
D. REVIEW PANELS.....	11
E. COMPENSATION.....	11
F. ETHICS.....	11
4.5 Removing an Arbitrator.....	11
A. UNANIMOUS CONSENT.....	11
B. WITHDRAWAL.....	11
C. REMOVAL.....	11
4.6 Exigent Circumstances.....	12
4.7 Replacing an Arbitrator.....	12

Section 5: Pre-Hearing Process..... 13

5.1 Objections, Answers, and Counterclaims.....	13
5.2 Preliminary Awards.....	13
A. ARBITRABILITY.....	13
B. INTERIM RELIEF.....	13
5.3 Deposits.....	13
A. REQUESTS.....	13
B. DELAYED PAYMENT.....	13
C. NON-PAYMENT.....	13

5.4	Status Conference.....	14
5.5	Discovery.....	14
5.6	Motions.....	14
	A. IN GENERAL	14
	B. CONSOLIDATION	14
5.7	Date, Time, and Location of the Hearing	14
5.8	Subpoenas	15
	A. ISSUANCE.....	15
	B. OBJECTIONS	15
5.9	Inspection or Investigation	15
Section 6: Hearings.....		16
6.1	Exchange of Information.....	16
6.2	Transcript	16
6.3	Attendance	16
6.4	Oaths	16
6.5	Conduct of Hearings.....	17
6.6	Evidence	17
6.7	Failure to Appear.....	17
6.8	Close of Hearing	17
	A. GENERAL RULE.....	17
	B. POST-HEARING BRIEFS	17
Section 7: Final Awards.....		18
7.1	Deadline	18
7.2	Basis.....	18
7.3	Consent Award	18
7.4	Failure to Prosecute.....	18
7.5	Scope of Relief	18
7.6	Fees and Expenses	18
	A. BY AGREEMENT	18
	B. STANDARD ALLOCATION	19
	C. MANDATORY ARBITRATION	19
	D. MISBEHAVIOR.....	19
7.7	Form	19
7.8	Reasoning.....	19
7.9	Corrections	19
7.10	Effect and Use.....	19

Section 8: Post-Award Proceedings.....	20
8.1 Final Accounting	20
8.2 Release of Documents.....	20
8.3 Judicial Proceedings.....	20
Section 9: Emergencies.....	62
9.1 Request for Emergency Relief	21
9.2 Emergency Appointment	21
9.3 Standard of Review	21
9.4 Deposit	12
9.5 Relief	21
9.6 Extension of Appointment	21
Section 10: Class Arbitrations.....	22
Exhibit 1: Arbitrator Selection Process	23
Exhibit 2: Guidelines for Med-Arb and Arb-Med.....	28
Exhibit 3: Fee Schedule.....	29

Introduction

Arbitration is a centuries-old way for industries to promote commerce through self-regulation. It is particularly well suited for disputes involving health care because of the complex nature of the health care marketplace and its highly regulated nature. Disputes are best resolved by arbitrators who understand the laws and regulations governing the delivery of health goods and services and the context in which they are provided.

Disputes impede the close cooperation needed to deliver quality health care. By resolving claims quickly, arbitration helps the health care system maintain its focus on promoting wellness and treating patients.

For further information about these rules or our dispute resolution program, please contact:

Administrator
American Health Lawyers Association
Dispute Resolution Service
1620 Eye Street, N.W., 6th Floor
Washington, D.C. 20006-4010

drs@healthlawyers.org
Phone: 202-833-0762

Section 1: Policies

1.1 Applicable Version of Rules

These rules apply only to contracts that call for arbitration under the Rules of the American Health Lawyers Association for an Employment Case. An “Employment Case” means a dispute between an organization and an individual arising out of an application for, the course of, or the termination of an employment relationship.

A claim will be arbitrated in accordance with the version of these rules (Rules) posted on the website of the American Health Lawyers Association (AHLA) on the date a claim is filed. Any reference to the Rules of the American Health Lawyers Association Alternative Dispute Resolution Service will be deemed to be a reference to such version of the Rules.

1.2 Electronic Case Management System

- (a) **APPLICABILITY.** Parties, party representatives, the Administrator (defined in Section 1.6), and the arbitrator (once appointed), will transmit written messages and documents regarding a case through AHLA’s Electronic Case Management System (ECM).
- (b) **NOTICE.** A message is deemed to have been received by the person(s) to whom it is addressed on the next business day after it is sent through the ECM. A party or party representative is deemed to have notice of the contents of any message sent to it through the ECM.
- (c) **FILING.** A document is deemed to have been filed on the day it is transmitted (uploaded) to the ECM.
- (d) **SERVICE.** A document is deemed to have been served one business day after notice is sent to a party at the email address listed for this party in the ECM.
- (e) **OPTING OUT.** A party or party representative may opt out of using the ECM if it agrees to pay all the additional direct and indirect costs associated with communicating through hard copy documents. AHLA will provide a price list upon request, and will consider claims of indigence in applying and/or adjusting such price list.

1.3 Representation

Parties may designate a representative. The Claimant should designate its representative on the **claim form**. Any party may designate a primary representative, designate additional representatives, change its representative, or withdraw a representative by

completing the **Designation of Representative Form**. Unless otherwise required by law, no representative need be an attorney so long as the individual is an officer of the party or an agent properly designated to act on behalf of the party.

1.4 Counting of Days

Unless otherwise indicated, “days” means business days, which do not include Saturdays, Sundays, United States Postal Service holidays, or any other day on which the AHLA main office is officially closed.¹ Prior to the appointment of an arbitrator, the Administrator has discretion to extend the deadlines set forth in the Rules for good cause shown or upon the request of all parties.

1.5 Disclaimer

AHLA and its employees, Board members, agents, volunteers, and arbitrators are not liable for any loss, liability, or damages arising out of an act or omission in connection with any arbitration under the Rules.

1.6 Administrator

“Administrator,” as used in these Rules, means the American Health Lawyers Association and any AHLA employee designated by AHLA to serve as the Administrator or Acting Administrator.

¹ AHLA is closed on the Friday after Thanksgiving and on Christmas eve. AHLA is closed whenever federal government offices are closed in the Washington D.C. area.

Section 2: Filing a Claim

2.1 Requirements

To file a claim, a party must complete and submit the **claim form** on the AHLA website, pay the applicable fees listed in **Exhibit 3** and on the form, provide a statement describing the issue(s) to be arbitrated, and either provide a copy of an agreement to arbitrate or a court order requiring arbitration of the claim under the Rules or cite a statute or regulation authorizing or requiring arbitration under the Rules.

2.2 Service

The Respondent must receive notice of the claim as set forth below.

- (a) **CASE MANAGEMENT SYSTEM.** If the Claimant furnishes a valid email address for the Respondent or its representative, the Administrator will invite the Respondent or representative to create an account in the ECM and access the case site. If the Respondent or representative accepts this invitation, and thereby gains access to the case site, no further notice is necessary since the statement of claim, and all information provided on the claim form, is available on the case site.
- (b) **ALTERNATIVE MEANS.** If, for any reason, neither the Respondent nor a person representing the Respondent gains access to the case site, the Claimant must serve the claim on the Respondent and must inform the Administrator, in writing, when service on the Respondent has been effected.

2.3 Exception for Mandatory Arbitration Clauses

- (a) **EMPLOYER RESPONSIBILITY.** If an employee voluntarily files a claim under a Mandatory Arbitration Clause, the employer is responsible for paying the filing fee. Voluntarily means not pursuant to a court order.
- (b) **DEFINITION.** “Mandatory Arbitration Clause” means an agreement to arbitrate Employment Cases that an employer requires employees to sign in order to become or remain employed, or that an employee reasonably perceives to be required and non-negotiable. If the employer introduces credible evidence that it negotiated material terms of the employment agreement with the employee or the employee’s representative, the arbitrator shall presume that the arbitration clause was negotiable (not mandatory). The employee may rebut this presumption with credible evidence that he or she asked the employer to remove or modify the arbitration clause and the employer indicated this clause was non-negotiable.

2.4 Dispute Regarding Mandatory Nature of Arbitration Clause

- (a) **INITIAL PAYMENTS.** If an employee asserts the agreement to arbitrate is a Mandatory Arbitration Clause and the employer disagrees, the employer must pay the basic filing fee (for a list of 5 candidates) and initial deposit unless it is clear from the face of document the agreement is not a Mandatory Arbitration Clause, in which case the employee is responsible for his or her own filing fee and share of the initial deposit. To receive an expanded list of candidates, an employee must pay the difference between the fee paid by the employer and the fee applicable to the list the employee is requesting.
- (b) **PRELIMINARY HEARING.** The arbitrator, once appointed, will promptly schedule a preliminary hearing to determine whether the agreement to arbitrate is a Mandatory Arbitration Clause. The arbitrator may conduct the hearing by telephone, by video conference, and/or by submission of briefs.
- (c) **INTERIM AWARD.** Within ten (10) days after this preliminary hearing is closed, the arbitrator will issue an interim award on whether the agreement to arbitrate is a Mandatory Arbitration Clause. If the arbitrator rules in favor of the employer, the arbitrator will order the employee to pay the filing fee and half of all deposits, including the initial deposit.

Section 3:

Appointment of an Arbitrator

3.1 Criteria

If the filing party (Claimant) produces a document that arguably requires arbitration of the claim under the Rules, the Administrator will appoint an arbitrator pursuant to the process described in this Section. After receiving appropriate evidence and argument, the arbitrator, once appointed, shall have the power to determine his or her jurisdiction and any issues of arbitrability.

3.2 Appointment Process*

The appointment process begins after the requirements in Section 2 have been met. Unless the parties agree otherwise in writing, the Administrator will appoint a single, neutral arbitrator through the process set forth in the Rules.

- (a) **NUMBER OF CANDIDATES.** In its Demand for Arbitration, the filing party may request:

5 candidates with each party having the right to strike 1 candidate;
10 candidates with each party having the right to strike up to 2 candidates;
12 candidates with each party having the right to strike up to 3 candidates; or
15 candidates with each party having the right to strike up to 5 candidates.

If the filing party initially requests fewer than 15 candidates, then prior to the due date for rankings (see subsection (f) below), any party may expand the number of candidates by paying the difference between the filing fee applicable to the number of candidates it is requesting and the fee already paid by the filing party.

- (b) **CANDIDATE LIST.** The Administrator will provide a list of candidates based on information provided by the Claimant in the Demand for Arbitration and any additional information a responding party may choose to provide.
- (c) **CANDIDATE PROFILES.** The Administrator will provide the parties with the profiles and resumes of all candidates. Profiles and resumes are completed by candidates. AHLA does not verify the information in profiles and resumes and does not warrant that they are accurate, current, or complete.
- (d) **REVIEW OF CANDIDATES.** In ranking candidates, parties should carefully assess the candidates' qualifications and experience. Parties may contact candidates directly to inquire about their suitability and their availability for appointment. Such contacts must be in writing, and a copy of any such communication must be provided to the other party(ies). When corresponding with candidates, parties may disclose the general nature of the question in dispute in the case, but may not discuss its merits.

*Amended on September 15, 2019 to increase the options for lists of candidates. The Fee Schedule was amended accordingly.

- (e) **INELIGIBLE CANDIDATES.** A candidate is ineligible to arbitrate a claim only if it would be unethical or impossible for him or her to do so. If a party believes a single candidate is ineligible, it should strike him or her. If a party believes two (2) or more candidates are ineligible, it may petition the Administrator to replace them with eligible candidates and provide a new Ranking Sheet. The Administrator will grant such a petition only if it is clearly established, in the sole discretion of the Administrator, why the candidate(s) to be replaced would be ineligible.
- (f) **RANKING CANDIDATES.** Within ten (10) days after receiving a Ranking Sheet and profiles, parties must rank the candidates sequentially in order of preference in the ECM. The most highly desired candidate should be ranked “1,” the second choice should be ranked “2,” etc. Parties may strike no more than one (1) candidate. If a party fails to timely submit rankings in accordance with these rules, the Administrator shall send notice that, if the party fails to submit rankings within five (5) days of the posting of the notice, the Administrator will appoint an arbitrator or panel based upon whatever rankings it has received by that date.
- (g) **SELECTION PROCESS.** After removing any candidate struck from the list by a party, the Administrator will select the candidate with the lowest combined score from Ranking Sheets completed on time. The process used in the event of a tie score is illustrated in Exhibit 1.

3.3 Acceptance of Appointment

Within five (5) days after receiving an offer of appointment from the Administrator, a candidate who has been selected must complete the **Arbitration Disclosure Checklist** and decide whether or not to accept the appointment. The Administrator may grant a reasonable extension of time.

A candidate accepts an appointment by completing an **Arbitrator's Acceptance Form** in the ECM. If a candidate does not accept the appointment within the five (5) day period, and no extension has been granted, the Administrator will offer it to the candidate with the next lowest ranking. The Administrator will repeat this process until an arbitrator is appointed.

3.4 Appointment Date

The Appointment Date is the date on which an arbitrator's acceptance of appointment is uploaded to the ECM. If a panel has been appointed, the Appointment Date is the date on which the third arbitrator's acceptance of appointment is uploaded to the ECM.

3.5 Arbitration Panels

- (a) **DEFAULT PROCESS.** Parties may agree to appoint a panel of three (3) arbitrators. Unless they specify otherwise, parties will each select a single arbitrator from a list of five (5) or ten (10) candidates provided by the Administrator, and these two (2) arbitrators will select a third arbitrator from this same list of candidates. If the parties designate the same candidate as their top choice, this candidate becomes the panel chair (Chair), and the parties' second choices become the other two panel members.
- (b) **PRESUMPTION OF NEUTRALITY.** If the two (2) selected arbitrators cannot agree on a third arbitrator, the Administrator will appoint a third from the list of candidates. All three (3) arbitrators shall be neutral unless, prior to the appointment date, the administrator receives a written agreement stating that the party-appointed panelists will not be neutral.
- (c) **PANEL CHAIR.** The third arbitrator (or consensus choice, as determined under Section 3.5(a)) will serve as the Chair. The Chair manages the arbitration process and presides at the hearing. The panel will decide all matters by majority vote except to the extent that the parties agree to have the Chair serve as the sole arbitrator of procedural and/or evidentiary issues.

3.6 Alternative Selection Processes

If the parties agree in writing to an alternative process for selecting an arbitrator, and the validity and interpretation of such agreement are not in dispute, the Administrator will not permit a party to delay or avoid arbitration by failing to abide by the agreement.

Illustration: Party A and Party B agree to appoint an arbitrator directly (on their own) from a list of ten (10) candidates provided by AHLA, and they agree that their direct appointments will select a third arbitrator from this list. Party A fails to appoint an arbitrator within the prescribed period.

The Administrator will offer appointments to the arbitrators as ranked 1 and 2 by Party B. These two arbitrators will select the third.

Section 4: Arbitrators

4.1 Conduct

- (a) **POWERS AND DUTIES.** An arbitrator has the power to:
- (1) determine his or her powers and duties under an arbitration clause;
 - (2) interpret the Rules to the extent that they relate to his or her powers or duties;
 - (3) sanction parties for failing to comply with any orders of the arbitrator or any obligations under the Rules;
 - (4) stay or dismiss proceedings for good cause, which may include agreement of the parties; and
 - (5) take any actions and make any decisions that are necessary and proper to conducting a fair and efficient arbitration under the Rules.
- (b) **ETHICS.** Arbitrators must comply with the **Code of Ethics for Arbitrators in Commercial Disputes**.
- (c) **SETTLEMENT AND MEDIATION.** Arbitrators should encourage parties to discuss settlement on their own or with the assistance of a mediator. However, arbitrators should not pressure parties to settle, express a point of view on settlement, or participate in settlement discussions. An arbitrator may mediate only as provided in the *Guidelines for Mediation-Arbitration (Med-Arb) and Arbitration-Mediation (Arb-Med)* set forth in **Exhibit 2**.
- (d) **MANDATORY AGREEMENTS.** An arbitrator or the Administrator must disregard any provision in a contract containing a Mandatory Arbitration Clause (see Rule 2.3(b)) that purports to either:
- (1) amend these rules in a manner that unreasonably prejudices the employee; or
 - (2) limit the employee's statutory rights or remedies, including, but not limited to, any increase in the burden of proof required to prove liability or any cap lower than the applicable statutory cap on the recovery of damages, attorneys' fees, or costs. The Final Award must explain the basis for any decision on a statutory claim.

4.2 Ex Parte Communication

- (a) **GENERAL RULE.** Except as provided in paragraphs (b) and (c) below, once an arbitrator is appointed, he or she may not communicate with a party unless all other parties participate in the conversation or exchange of written messages.
- (b) **NON-NEUTRAL ARBITRATORS.** Parties who have agreed to the use of non-neutral arbitrators may agree to permit ex parte communications with such non-neutral arbitrators. Arbitrators are regarded as non-neutral when all parties expect them to be predisposed toward the party appointing them.

- (c) **FAILURE TO PARTICIPATE.** If, after receiving notice, a party fails to participate in a teleconference or video conference or fails to appear at a hearing, an arbitrator may communicate with the participating parties despite that party's absence.

4.3 Case Management

- (a) **DEFAULT TIMEFRAME.** Except as provided below, an arbitrator should use reasonable efforts to issue a Final Award within (12) twelve months after the Appointment Date. Arbitrators should schedule pre-hearing proceedings and hearings accordingly.
- (b) **EXPEDITED REVIEW.** If the parties jointly request expedited review, the arbitrator should make best efforts to issue a Final Award within ninety (90) days after the Appointment Date.
- (c) **EXCEPTIONAL CASES.** If an arbitrator determines that a case is unusually complex, or that a delay is necessary for other reasons, the arbitrator may allow more time for either pre-hearing proceedings or a hearing. However, arbitrators should exercise their discretion sparingly to permit further delay.
- (d) **TIMEFRAMES.** The arbitrator may extend any timeframe for good cause but should endeavor to do so sparingly. Failure of the arbitration to adhere to any timeframe specified herein shall not result in loss of jurisdiction or invalidate an arbitration award.

4.4 Review Board

- (a) **PURPOSE.** The Review Board (RB) and its designated Review Panel(s) will rule on petitions to remove an arbitrator under Rule 4.5.
- (b) **APPOINTMENT.** When the Review Board is initially constituted, the President of AHLA will appoint two (2) Senior Arbitrators to serve two-year terms; two (2) to serve three-year terms; and one (1), who will be appointed as the Review Board Chair (RB Chair), to serve a four-year term. Thereafter, the President will fill vacancies by appointing Senior Arbitrators, including the RB Chair, to three-year terms. Non-chairs serving on the Review Board will be eligible for appointment to serve as RB Chair. Individuals will be eligible to serve multiple terms on the Review Board, provided that three (3) years have elapsed since their last term of service ended.
- (c) **QUALIFICATIONS.** All Senior Arbitrators must have significant experience in the arbitration, litigation, or mediation of health law disputes.*

*Prior to June 28, 2017, Senior Arbitrators were required to have sat as an arbitrator in at least twenty cases.

- (d) **REVIEW PANELS.** When the Administrator notifies the RB Chair that a petition under Rule 4.5(c) requires review, the RB Chair will designate a panel of three (3) Senior Arbitrators drawn from the current RB. This panel may or may not include the RB Chair. In deciding which Senior Arbitrators to select, the RB Chair may take into account their availability, expertise, actual or perceived conflicts of interest, and any other factors relevant to ensuring a well-reasoned and impartial decision. If the RB Chair is not a member of the panel, the RB Chair will designate a Senior Arbitrator as the lead panelist. The lead panelist will preside and perform all administrative functions. The panel will decide substantive matters by majority vote.
- (e) **COMPENSATION.** Senior Arbitrators will receive no compensation for reviewing petitions under Rule 4.5 (Removing an Arbitrator).
- (f) **ETHICS.** When serving on a Review Panel, Senior Arbitrators must comply with the **Code of Ethics for Arbitrators in Commercial Disputes**.

4.5 Removing an Arbitrator

A party who believes an arbitrator is unfit to serve because of a conflict of interest, a mental or physical impairment, or conduct that calls his or her fairness or impartiality into question, may pursue the following options:

- (a) **UNANIMOUS CONSENT.** If all of the parties request an arbitrator to withdraw, the arbitrator must do so. (Code of Ethics, Canon II (G)).
- (b) **WITHDRAWAL.** A party may request an arbitrator to withdraw in writing, served upon the Administrator, the arbitrator and all other parties. In responding to such a request, an arbitrator should be guided by Code of Ethics Canon II (G) (2).
- (c) **REMOVAL.** A party may file a petition with the Administrator requesting the Review Board to remove the arbitrator. Other parties may file a response with the Administrator within fifteen (15) days of service. If the petitioner so requests, neither the Review Panel nor any party may inform the arbitrator of the petition. In ruling on the petition, however, the Review Panel will consider the arbitrator's lack of opportunity to respond. If the Review Panel grants a petition, it will inform the arbitrator why he or she was removed. The Review Board will not assess costs and expenses for reviewing a petition for removal unless it determines the petition was frivolous.

4.6 Exigent Circumstances

A party may petition the Administrator to have the proceedings suspended while a petition for removal is being reviewed in accordance with Rule 4.5 (c), if delay is likely to cause irreparable harm. Neither the Review Panel nor any party may inform the arbitrator of this petition.

4.7 Replacing an Arbitrator

If an arbitrator is removed pursuant to Rule 4.5, or an arbitrator becomes unable or unwilling to serve, the Administrator will replace the arbitrator as follows:

- (1) The Administrator will ask the parties whether they can agree on a replacement.
- (2) If the parties cannot agree, and the original arbitrator was chosen from a Ranking Sheet (see Rule 3.2), the Administrator will select the candidate with the next lowest combined score, and, if necessary use the tie-breaking procedures set forth in **Exhibit 1**.
- (3) If no Ranking Sheet is available, the Administrator will create a new one based on the parties' preferences and request the parties to complete the new Ranking Sheet.
- (4) Generally, a replacement arbitrator will conduct an arbitration de novo. However, the parties may agree to alternative arrangements.

Section 5: Pre-Hearing Process

5.1 Objections, Answers, and Counterclaims

A responding party may: (i) object to arbitration of a claim, (ii) file an answer, and (iii) file a counterclaim and/or third party claim, if any, within fifteen (15) days after the Appointment Date (see Rule 3.4). The arbitrator (or arbitration panel) may extend this deadline for good cause. The filing fee for a counterclaim and/or third party claim shall be the same as the fee assessed for the filing of the claim. No party shall be required to pay more than one filing fee per claim.

5.2 Preliminary Awards

- (a) **ARBITRABILITY.** Once appointed, the arbitrator may issue a preliminary award that addresses whether the arbitration clause is valid, and whether it applies to the claims or counterclaims raised by the parties.
- (b) **INTERIM RELIEF.** An arbitrator may issue interim relief, including an injunction, to maintain the status quo in the dispute until a Final Award is issued. Interim relief will not prejudice the rights of the parties or affect the final determination of the dispute. An interim award may assess costs, fees, and interest associated with the relief awarded.

5.3 Deposits

- (a) **REQUESTS.** The Administrator may require the parties to deposit in advance sufficient funds to cover the costs of the arbitration, including the arbitrator's fees and expenses. The Administrator may require the parties to provide additional funds whenever the amount on deposit appears to be insufficient to cover the costs of the arbitration, including the arbitrator's fees and expenses.
- (b) **DELAYED PAYMENT.** If the Administrator does not receive the required amount, the arbitrator may suspend proceedings pending receipt of these funds. The arbitrator may also sanction a party for non-payment unless the party can prove to the arbitrator's satisfaction that paying the deposit would cause financial hardship. A party may lift the suspension by depositing the amount due from another party, and may request the arbitrator to take this additional payment into account in the award.
- (c) **NON-PAYMENT.** If the arbitrator concludes that the parties are not going to provide the required deposit, he or she may terminate proceedings. In addition, if the contract at issue contains a Mandatory Arbitration Clause within the meaning of Rule 2.3(b), and if, after receiving multiple requests and an opportunity to cure, the employer fails to deposit a reasonable amount to cover the fees and expenses for which it is responsible under Rule 7.6(c), the arbitrator may enter default judgment against the employer.

5.4 Status Conference

Once appointed, an arbitrator will schedule a status conference with the parties as quickly as possible. This conference may be held in person, by telephone, or by video conference. During the conference the arbitrator will discuss:

- (1) challenges to the arbitrator's jurisdiction;
- (2) discovery and motions;
- (3) the date, time, and place of the hearing;
- (4) witnesses and exhibits;
- (5) the treatment of confidential information and documents;
- (6) the scope and form of the Final Award; and
- (7) any other matters the arbitrator deems appropriate to consider.

The arbitrator will post a scheduling order within five (5) days after the status conference.

5.5 Discovery

To promote speed and efficiency, the arbitrator, in his or her discretion, should permit discovery that is relevant to the claims and defenses at issue and is necessary for the fair resolution of a claim. Expert discovery shall be specifically addressed and the disclosure of expert witnesses shall be sequenced in a fashion that will allow fair discovery to proceed.

5.6 Motions

- (a) **IN GENERAL.** The arbitrator may allow motions, including motions for summary adjudication, motions in limine and other motions, which the Arbitrator, in his or her sole discretion, determines will add to the fair and efficient resolution of the case.

Illustration: In the status conference, Party B makes a strong argument that several of Party A's claims can be resolved without an evidentiary hearing. The arbitrator may permit Party B to move for summary judgment on these claims.

- (b) **CONSOLIDATION.** Unless the parties agree otherwise: A party may move to consolidate two or more claims separately filed with AHLA; the motion will be heard by the arbitrator (or panel) appointed to the first claim filed; and, if the motion is granted, the claims will be decided by this arbitrator (or panel).

5.7 Date, Time, and Location of the Hearing

Unless the parties agree otherwise, the arbitrator will convene an in-person hearing. The parties may authorize the arbitrator to conduct the hearing by telephone or video conference, or to render an award based solely upon a written record. Alternatively, the parties may agree to an in-person hearing in which sworn statements are submitted in lieu of live testimony.

If the agreement to arbitrate does not specify where or when the hearing will take place, and if the parties cannot agree on a date, time, or location for the hearing acceptable to the arbitrator, the arbitrator, in his or her sole discretion, will determine an appropriate date, time, and location, with the aim of minimizing the cost and inconvenience to parties and witnesses.

5.8 Subpoenas

- (a) **ISSUANCE.** To the extent authorized by law, an arbitrator may issue subpoenas for the attendance of witnesses or the production of documents. Parties are expected to produce witnesses who are in their employ or otherwise under their control without a subpoena.
- (b) **OBJECTIONS.** A subpoenaed person may object to the issuance of a subpoena. An arbitrator will promptly rule on an objection by weighing the burden on the objector of complying with the subpoena against the potential value of the subpoenaed witness or documents to ensuring a fair hearing.

5.9 Inspection or Investigation

If all parties agree or an arbitrator determines that an inspection or investigation of a physical site is necessary, the arbitrator will provide the parties with twenty (20) days advance notice of the date, time, and location of the inspection or investigation. All parties and representatives have the right to attend. An inspection or investigation must comply with all applicable laws regarding privacy and confidentiality.

Section 6: Hearings

6.1 Exchange of Information

At least twenty (20) days prior to the hearing, the parties must exchange copies of all exhibits they intend to introduce at the hearing and furnish a list of all witnesses they intend to call. The arbitrator may permit additional time to furnish rebuttal exhibits or exhibits pertaining to unanticipated issues. An arbitrator may exclude evidence that a party fails to exchange in a timely manner.

6.2 Transcript

If a party wishes to obtain a record of the hearing, it must inform the arbitrator and the other parties of its intention to hire a reporter no less than ten (10) days prior to the hearing.

The arbitrator may designate a transcript as the official record of the hearing if:

- (1) The parties agree to share the costs of producing a transcript, including a copy for the arbitrator;
- (2) The parties authorize the arbitrator to allocate the costs of producing the transcript, including a copy for the arbitrator, in the award; or
- (3) One party agrees to bear the costs of producing the transcript, including copies for the arbitrator and the other parties.

6.3 Attendance

Arbitrations are not public forums. Generally, only the parties, their authorized representatives, and the reporter (if any) may attend a hearing. Subject to the arbitrator's approval, the parties may agree to allow other participants, and the arbitrator may permit others to attend if their presence would promote the fairness or integrity of the hearing.

If a party so requests, an arbitrator may permit witnesses to attend only while testifying and may forbid them from discussing their testimony with other witnesses until the hearing is closed.

6.4 Oaths

The arbitrator may require witnesses to testify under an oath administered by the arbitrator or another person qualified to administer oaths.

6.5 Conduct of Hearings

The arbitrator will afford all parties an equal and adequate opportunity to present their case. Generally, the Claimant will present evidence to support claims (and refute any counterclaims), and the Respondent (the party upon which the claim has been filed) will present evidence to refute these claims (and support any counterclaims). Witnesses will be subject to both direct and cross examination and to questioning by the arbitrator.

The arbitrator may vary the manner in which the hearing is conducted in order to promote the fair and speedy resolution of the dispute.

6.6 Evidence

The parties may offer whatever evidence the arbitrator regards as relevant and material to the dispute. The arbitrator may order the parties to produce additional information he or she regards as necessary to understand the dispute and reach a full and fair resolution.

In determining what evidence to admit, the arbitrator need not follow rules applicable in court proceedings, but should generally permit evidence to be introduced that is relevant, material, and will allow for a fair adjudication of the matter. Unless the parties agree otherwise, the arbitrator should not allow them to introduce information that is determined to fall within an applicable evidentiary privilege.

6.7 Failure to Appear

If a party or a party's authorized representative who has been notified of a hearing fails to appear, or fails to request and receive a postponement, the arbitrator must take evidence from whichever parties and representatives are present.

6.8 Close of Hearing

- (a) **GENERAL RULE.** Except as provided in paragraph (b) below, when the parties indicate that they have no further evidence to present, or the arbitrator determines that the record is complete, the arbitrator will declare the hearing is closed.
- (b) **POST-HEARING BRIEFS.** If the arbitrator sets a schedule for the submission of post-hearing briefs or other documents, the arbitrator will declare that the hearing is closed as of the final due date for such submissions.

Section 7: Final Awards

7.1 Deadline

An arbitrator must issue an award within thirty (30) days after the hearing is closed unless the arbitrator and all parties agree to extend this deadline. The Administrator may extend the time for issuing an award in unusual or extenuating circumstances.

7.2 Basis

Except as provided in Rules 7.3 and 7.4, the Final Award must be based on evidence presented at a hearing. If a party fails to attend the hearing its evidence need not be considered.

7.3 Consent Award

If the parties settle a case before a Final Award is issued, they may request the arbitrator to issue the terms of the agreement in the form of a Consent Award. The Consent Award must set forth how costs and fees associated with the arbitration will be paid, including but not limited to attorneys' fees and the arbitrator's fees and expenses.

7.4 Failure to Prosecute

If, prior to the close of the hearing, a party fails to pursue a claim or counterclaim, the arbitrator may issue a Final Award dismissing all or part of a case either with or without prejudice.

7.5 Scope of Relief

An arbitrator may award any relief authorized by contract or applicable law that appears to be fair under the circumstances, including specific performance of a contract.

7.6 Fees and Expenses

- (a) BY AGREEMENT: Except as is set forth in paragraph (c) below, if the parties have agreed on the allocation of the arbitrator's fees and expenses, and/or the parties' attorney fees, an arbitrator must implement their agreement unless it is contrary to applicable law.
- (b) STANDARD ALLOCATION: Except as is set forth in paragraphs (c) and (d) below, if the parties have not specified how fees and expenses should be allocated, an arbitrator will:
 - (1) require the parties to pay their own attorney's fees and the expenses of the witnesses they produce; and
 - (2) split the costs of the arbitration process, including the arbitrator's fees and expenses, evenly between the parties.

- (c) **MANDATORY ARBITRATION:** If the contract at issue contains a Mandatory Arbitration Clause within the meaning of Rule 2.3(b), the employer will pay the arbitrator's fees and expenses, and any other out of pocket costs incurred by AHLA to administer the arbitration,* unless:
 - (1) the employee volunteers to pay a portion of these costs; or
 - (2) the arbitrator determines the employee's claim is frivolous or the employee engaged in misbehavior within the meaning of paragraph (d) below.
- (d) **MISBEHAVIOR:** An arbitrator may require a party to pay the fees and expenses incurred by the arbitrator and/or the attorney fees of other parties, or any portion thereof, as a result of the party's lack of cooperation or abuse of the process.

7.7 Form

An award must be in writing and signed by the arbitrator, in compliance with applicable state and federal law.

7.8 Reasoning

An arbitrator should provide a concise statement of the reasons supporting his or her award unless the parties agree prior to the completion of the arbitration hearing that a reasoned award is not required.

7.9 Corrections

Within fifteen (15) days after receiving an award, a party may request the arbitrator to correct clerical, typographical, or computational errors in the award. The other parties will have fifteen (15) days to respond to this request. The arbitrator must respond within thirty (30) days after receiving the request. An arbitrator may not reconsider the merits of an award after it has been issued. He or she may alter the award only to correct inadvertent mistakes.

7.10 Effect and Use

A Final Award or a Consent Award fully and finally resolves all claims and counter-claims presented in arbitration. An award may be entered and enforced in any state or federal court with jurisdiction over a case. The Administrator and the arbitrator shall maintain the confidential nature of the arbitration proceeding and any award, except as necessary in connection with a judicial challenge to or enforcement of an award, or unless as otherwise required by law.

**Revised on October 9, 2017, to conform with Rule 2.3(a).*

Section 8:

Post-Award Proceedings

8.1 Final Accounting

After an award is issued and the arbitrator provides a final invoice, the Administrator will provide the parties a statement listing all costs deducted from the amounts deposited. The Administrator will promptly return any funds on deposit that are not required to cover costs. If the arbitrator's fees or expenses as approved by the Administrator, exceed the amount on deposit, the Administrator may invoice which-ever party or parties are responsible for paying those costs.

8.2 Release of Documents

AHLA will not release documents from a case file, including an award, unless:

- (1) it is required to do so by a valid court order or other valid legal process; or
- (2) a party requests the Administrator to provide copies (certified or not) of documents in its possession and pays appropriate fees.

8.3 Judicial Proceedings

Neither AHLA nor an arbitrator it appoints is a necessary party to any judicial proceedings related to arbitration under the Rules.

Section 9: Emergencies

9.1 Request for Emergency Relief

To request emergency relief, a Claimant must file: (a) a **claim form** along with the appropriate filing fee; (b) a petition requesting emergency relief and explaining the basis for this request; and (c) proof that it has notified all parties of the petition or has made a good faith attempt to notify them.

9.2 Emergency Appointment

The Administrator will nominate an arbitrator to arbitrate the petition for emergency relief as quickly as possible based on the information provided by the Claimant in the claim form and any additional input other parties may choose to provide.

Based on the claim form, the petition, and any other documents the parties may have provided, the nominee will determine within one (1) day whether to accept this limited appointment.

9.3 Standard of Review

In determining whether to award emergency relief, the arbitrator should determine whether the Claimant: (i) is likely to succeed on the merits and (ii) will suffer irreparable harm without emergency relief, and, if so, should balance that against the burden such relief would impose on the Respondent. Whenever it is practical to do so, the arbitrator will provide the Respondent an opportunity to respond orally and in writing before ruling on the petition. However, in exigent circumstances, the arbitrator may act on the petition without receiving argument from both sides.

9.4 Deposit

The Administrator shall require an advance deposit equal to eight (8) hours of the arbitrator's time before an arbitrator rules on a petition for emergency relief.

9.5 Relief

Rules 7.5-7.9 apply to an award of emergency relief, and Rule 7.2 applies to an award for emergency relief to the extent deemed feasible by the arbitrator.

9.6 Extension of Appointment

After an arbitrator rules on a petition, the parties may agree to extend the arbitrator's appointment for the duration of the case. If the parties do not agree on an extension, or the arbitrator declines to accept it, the Administrator will appoint an arbitrator in accordance with Rule 3.2.

Section 10: Class Arbitrations

If the parties have agreed to arbitrate a class action under the Rules, or a court orders class arbitration, the arbitrator will apply procedures based on appropriate court rules and legal standards, including the Federal Rules of Civil Procedure.

Exhibit 1: Arbitrator Selection Process

As is stated in Rule 3.2(g), the Administrator appoints the candidate with the lowest combined score from the parties' Ranking Sheets (see Illustration 1). In the event of a tie, the Administrator appoints the candidate ranked most similarly by the parties (see Illustration 2). If this tie-breaking procedure fails to produce a winner, the Administrator appoints the candidate whose last name comes first in alphabetical order if the case number is odd, and in reverse alphabetical order if the case number is even (see Illustration 3).

Illustration 1: Lowest Combined Score

Party A's rankings are:

1. Smith
2. Jones
3. Johnson
4. Brown
5. Murphy

Party B's rankings are:

1. Johnson
2. Smith
3. Murphy
4. Jones
5. Brown

Smith has the lowest combined score ($2+1=3$) and is therefore appointed as the arbitrator.

Illustration 2: Most Similar Rankings

Party A's rankings are:

1. Jones
2. Smith
3. Johnson
4. Brown
5. Murphy

Party B's rankings are:

1. Murphy
2. Smith
3. Jones
4. Johnson
5. Smith

Both Jones and Smith have the lowest combined score of three (3). Because there is no difference between Smith's scores ($2-2=0$) and a two (2) point difference between Jones's scores ($3-1=2$), Smith is appointed.

Illustration 3: Alphabetical Order

Party A's rankings are:

1. Jones
2. Smith
3. Johnson
4. Brown
5. Murphy

Party B's rankings are:

1. Smith
2. Jones
3. Brown
4. Johnson
5. Murphy

Both Jones and Smith have the lowest combined score of four (4) and the difference between their rankings is the same (one (1)). Jones will be selected if the case number is odd; Smith will be selected if the case number is even.

MULTI-PARTY CASES

To provide each side equal input into the selection of an arbitrator, the Administrator averages the rankings of parties with common interests into a single score (see Illustration 1). If Claimants or Respondents have conflicting interests, their scores are weighted separately (see Illustration 2).

Illustration 1: Common Interests

General Hospital claims Dr. Young and Dr. Restless violated their recruiting agreement when they established Group Practice with three other physicians. The parties' rankings are:

General Hospital

1. Murphy
2. Johnson
3. Brown
4. Jones
5. Smith

Dr. Young

1. Smith
2. Brown
3. Johnson
4. Jones
5. Murphy

Dr. Restless

1. Smith
2. Murphy
3. Brown
4. Johnson
5. Jones

Because Dr. Young and Dr. Restless are similarly situated, their scores are averaged into one:

Smith	1
Brown.....	2.5
Johnson.....	3.5
Murphy	3.5
Jones	4.5

Murphy has the lowest combined score (1 + 3.5) and is appointed as the arbitrator.

Illustration 2: Competing Interests

Dr. Young seeks compensation for unpaid bills from General Hospital and Medical Insurance for surgeries performed at General Hospital. Medical Insurance refused to pay because General Hospital provided false and incomplete information. General Hospital denies these allegations. The parties' rankings are:

Dr. Young

1. Murphy
2. Johnson
3. Brown
4. Jones
5. Smith

General Hospital

1. Smith
2. Brown
3. Johnson
4. Jones
5. Murphy

Medical Insurance

1. Smith
2. Murphy
3. Brown
4. Johnson
5. Jones

Because all three parties are at odds with each other, their rankings receive equal weight. Smith has the lowest combined score ($5 + 1 + 1$) and is appointed as the arbitrator.

Exhibit 2: Guidelines for Mediation-Arbitration (Med-Arb) and Arbitration-Mediation (Arb-Med)

Introduction

A key advantage of resolving disputes privately is the freedom to customize the process. These guidelines explain how to successfully combine mediation and arbitration. If an agreement does not conform to these guidelines, the Administrator may refuse to accept the case.

Definitions

In “Mediation-Arbitration” or “Med-Arb” a Neutral assists parties in negotiating an agreement to resolve a legal dispute, and, if no agreement is reached, resolves the dispute by holding an evidentiary hearing and issuing a binding award.

In “Arbitration-Mediation” or “Arb-Med” a Neutral holds an evidentiary hearing on a legal dispute and, before issuing an award, assists the parties in negotiating an agreement to resolve the dispute. If no agreement is reached, the Neutral resolves the dispute by issuing a binding award.

Guidelines

1. **PREREQUISITES.** Prerequisites for initiating arbitration or mediation must be clearly articulated. In other words, if certain events must occur before parties become obligated to mediate or arbitrate, the agreement must clarify what those events are and how a Neutral can determine whether these events have occurred.
2. **TRANSITIONS.** The agreement must provide that, at any given point in time, the Neutral serves in only one role—as either a mediator or an arbitrator. The agreement must clearly delineate when the Neutral transitions from one role to another.
3. **MED-ARB.** A Med-Arb agreement must:
 - (a) state that information shared with the Neutral in mediation may form the basis for an award in arbitration; and
 - (b) waive the parties’ right to contest the award because ex parte communications took place in mediation caucuses.
4. **ARB-MED.** An Arb-Med agreement must indicate whether the arbitrator is going to seal the award before mediation begins in order to foreclose the possibility that the award will be based on information shared in confidence in mediation. If the award is not sealed, the agreement must comply with Guidelines 3(a) and 3(b) above.

Exhibit 3: Fee Schedule

The filing fee is based on the number of candidates provided to review and rank and the number of separate parties who are reviewing and ranking them:

Base fees for a claim involving two parties:

Parties select an arbitrator by agreement	\$900
List of 5 candidates to rank	\$1100
List of 10 candidates to rank	\$1300
List of 12 candidates to rank	\$1500
List of 15 candidates to rank	\$1700
Surcharge for each additional Claimant or Respondent: \$200.	

The Respondent may expand the list by paying the fee for the desired number of candidates less the amount already paid by the Claimant (e.g., \$200 to increase from 5 to 10 candidates).

In claims under either the consumer rules or the rules pertaining to mandatory employment agreements, either party may expand the list by paying the fee for the desired number of candidates less the \$1100 fee generally furnished by the health care provider or employer.

Counter-Claim Fee

To file a counterclaim, a party generally must pay the same amount furnished by the filing party to submit the claim. Exceptions are noted in Consumer Rule 5.1 and Employment Rule 5.1.

Late Fee for Deposits

A deposit is due 30 days after a party receives an invoice through the case management system. A late fee of 1.5% per month applies to deposits that are not paid on time.

Closing Fee

AHLA deducts \$250 from unused funds in excess of \$1000 returned to a party to compensate for the administrative costs associated with closing out a case.

Inactive Case Fee

The Claimant(s) must pay a \$400 administrative fee per case, per year, for matters that remain inactive for more than 12 months. If the Claimant(s) fails to pay within 30 days of receiving an invoice, AHLA will close the case.

Administrative Fee

AHLA retains a percentage of the amount billed and collected on behalf of arbitrators. The parties are not billed for this fee.

All fees are non-refundable. No exceptions.



AHLA

American Health Lawyers Association

1620 Eye Street, NW, 6th Floor • Washington, DC 20006-4010
(202) 833-1100 • Fax (202) 775-2482 • www.healthlawyers.org