

# New Jersey No-Fault Automobile Arbitration RULES

Effective May 1, 2003

## 1. New Jersey No-Fault Automobile Arbitration Rules

New Jersey automobile insurance law was amended in 1998 to require that all automobile insurers provide any party with the option of submitting a dispute concerning personal injury protection benefits to binding arbitration. Such dispute resolution is governed by *N.J.S.A. 39:6A-5.1 et. seq and N.J.A.C. 11:3-5.1 et seq* . These administrative rules and any amendments thereof shall apply in the form in existence at the time the arbitration is initiated. The duties of the American Arbitration Association (AAA) under these rules may be carried out through such representatives as the AAA may direct. These administrative rules apply to disputes arising under contracts affected by the provisions of the 1998 New Jersey " *Automobile Insurance Cost Reduction Act* ," specifically, to claims under policies issued or renewed on or after March 22, 1999, as well as any voluntary submission by the parties pursuant to *N.J.S.A 39:6A-9.1 and 39:6A-11* . These rules apply for all claims filed on or after the effective date, and the Dispute Resolution Professional shall determine any disputes of substantive law arising out of the application of these administrative rules.

## 2. Panel of Neutral Dispute Resolution Professionals

The American Arbitration Association shall establish and maintain a No-Fault claims panel of dispute resolution professionals (DRPs) in accordance with *N.J.S.A. 39:6A-5.1 et. seq.* and *N.J.A.C. 11:3-5.1 et seq* .

## 3. Initiation of Arbitration

(All references to the dates/deadlines throughout these rules refer to calendar days effective close of business, unless otherwise noted.)

Arbitration may be initiated by any party filing a written *Demand for Arbitration* with the AAA and paying the administrative fee. The demand shall also be served upon all named parties by certified mail, return receipt requested. The demand shall be directed to the address of the party or, in case of an insurer, to the office handling the claim. The demand shall set forth the following information:

1. Name and address of the injured person(s) and of the filing attorney, if any;
2. Name and address of policyholder together with policy number;
3. Identity and location of claims office of insurer, if known, the claim file number, and name of individual at the insurer with whom the claim was last discussed;
4. Date and location of accident;
5. Nature of dispute and injuries alleged, or defenses, and relief sought;
6. Amounts claimed and details thereof, including, but not limited to, copies of all invoices in dispute with appropriate dates transmitted to the insurer and any applicable assignment of rights. All Rule 3(6) documents shall be attached to the demand and tabbed as exhibit

"A."

7. Address of AAA office where copies of demand are being filed;
8. The filing party shall set forth, to the best of its knowledge, any action pending in any court or arbitration proceeding which arises out of treatment to the same patient, arises out of the same accident, or should otherwise be joined in the action being filed.

For administrative purposes, the respondent shall no later than forty-five (45) days from the date of the AAA *initiating letter* provide the Association with notice of settlement or in the alternative the identity of counsel. (The *initiating letter* is the AAA initial letter sent to all parties advising receipt of a demand and the initiation of the arbitration process.)

Any and all requests for consolidation by any party shall be submitted to the AAA for determination. The AAA and/or the DRP shall raise the issue of consolidation when identified and provide an opportunity for the parties to be heard prior to issuing a ruling.

Three (3) copies of the above *Demand for Arbitration* , together with two (2) copies of all submissions under this rule must be filed with the New Jersey Insurance Center along with the administrative filing fee. In the event the matter is to be heard by three (3) DRPs, then five (5) copies of the *Demand for Arbitration* together with four (4) copies of all submissions under this rule are to be filed. The AAA will acknowledge receipt of the demand to all parties.

#### 4. Application for Emergent/Expedited Relief

A party may request emergent relief showing that immediate and irreparable loss or damage will result in the absence of such relief pursuant to *N.J.A.C. 11:3-5.4(b) 3* at the time of the filing of its *Demand for Arbitration* . The party requesting emergent relief shall first notify the AAA and all other parties by a telephone call of its intended filing, followed by a written affidavit stating the nature of the relief sought and the reasons why such relief is both required and entitled on an emergent basis. Said affidavit must also include a statement certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify other parties. This filing must be complete and consistent with all other applicable rules and be accompanied by all applicable filing fees and an additional application fee of \$100.

Within one (1) business day of receipt of the notice for emergent relief, the AAA shall appoint one (1) specially designated DRP. The DRP shall immediately disclose any circumstance likely, on the basis of the facts disclosed in the claim, to affect such DRP's impartiality or independence. Any challenge to the appointment of the DRP must be made within one (1) business day of the communication from the AAA to the parties of the appointment of the DRP and the circumstances disclosed.

The DRP shall, as soon as possible, but no later than two (2) business days from the date of appointment, establish a schedule for consideration of the claim for emergent relief. Such schedule shall provide a reasonable opportunity for all parties to be heard, but may provide for proceeding by telephone conference and/or written submissions as alternatives to a formal in-person hearing.

If after consideration the DRP is satisfied that the party seeking the emergent relief has shown that immediate and irreparable loss or damage will result in the absence of emergency relief, and

that such party is entitled to such relief, the DRP may within three (3) business days, enter an award granting the relief and stating the reasons therefore with findings of fact and conclusions of law. Except as modified in this rule, all other rules shall apply to the processing of the emergent/expedited filings. Any remaining claims shall be processed pursuant to these rules as applicable.

Any application to modify an award of emergent relief must be based on changed circumstances and may be made to the DRP who heard the original application.

## 5. Application for Dismissal

If any party contends that: (a) the requirements set forth in the applicable insurance policy have not been met; or (b) there is no coverage; or (c) the Association lacks subject matter jurisdiction, such party may seek a ruling dismissing the arbitration by submitting a *Request for Dismissal Form* together with a \$100 application fee. The moving party shall set forth the facts supporting such contentions for a formal ruling to the AAA and simultaneously serve a copy of all submissions under this section on all other parties. In no event shall the application under this section be made later than seventy-five (75) days from the date of the *initiating letter*. In the event an application is denied, and/or in the event such application is not made within the initial forty-five (45) days, the requesting party shall submit the required administrative fee of \$285 in addition to the \$100 application fee.

All requests for dismissal shall include a copy of the pertinent policy provisions together with proofs of such contentions, supporting documentation, and the appropriate fee(s) attached. The adverse party must respond, in writing, within twenty-five (25) days of the receipt of the challenge to the arbitration demand. In the event that the adverse party does not respond within the prescribed time frame, the DRP may decide the application on the merits or enter an administrative dismissal of the claim and the loss of the administrative fee. The AAA may grant each party one (1) ten (10) day extension. The AAA shall then submit the issues presented in the application to the DRP who shall decide it and issue a written decision setting forth the basis of the determination within fourteen (14) days.

Where the insurer moves in court or otherwise contests AAA jurisdiction, administration of the arbitration will be suspended upon receipt by the AAA of a court ordered Stay of Arbitration. Neither the AAA nor the DRP is a necessary party to such proceedings and neither should be named as a party.

## 6. Document Submission

In the event that all claims in dispute, except for counsel fees, are resolved within the initial forty-five (45) days of the *initiating letter*, that dispute shall proceed by way of document submission to a DRP or by telephone conference if requested by either party. The DRP shall decide the issue in accordance with *N.J.A.C. 11:3-5.6* and shall require an affidavit of services to be submitted. The claimant(s) shall, within twenty (20) days of the settlement of all remaining issues, file two (2) copies of an affidavit of services with the AAA and simultaneously serve a copy to all other parties. The respondent(s) shall within twenty (20) days of the date the affidavit was transmitted to all parties by the AAA, file two (2) copies of any response with the AAA and serve a copy to

all other parties. The hearing shall be declared closed as of the final date for filing of such response.

#### 7. Change or Withdrawal of Claim

If any party wishes to make any new or amended claim, such claim shall be made in writing in accordance with Rules 3 and 17 and filed with the AAA and a copy thereof mailed to the other party. After the DRP is appointed, no new or amended claim may be submitted except with the consent of the DRP. No claim may be withdrawn after a hearing has commenced, absent mutual consent of the parties or a ruling by the DRP.

#### 8. Fixing of Locale

The AAA shall designate the locale in which the hearing is to be held in accordance with *N.J.A.C. 11:3-5.4(a) 5*.

#### 9. Appointment of Dispute Resolution Professionals

Cases will be heard by one (1) DRP appointed by the AAA from its panel, except when the parties agree otherwise, or the amount claimed exceeds \$50,000 and request is made by either party within forty-five (45) days of the *initiating letter*, in which case three (3) DRPs will be appointed. Each party shall have the right to challenge the appointment of the DRP for reasonable cause within twenty (20) days of the notice of appointment. Reasonable cause may include application of the principles outlined in the Code of Judicial Conduct contained within the New Jersey Court Rules. The party challenging a DRP shall submit a written demand for a ruling, including the specific grounds for such challenge, and simultaneously serve a copy on all parties to the arbitration who will have ten (10) calendar days within which to submit a response. When challenges and objections to the challenge are received, the AAA shall refer such challenge to a designated DRP for a determination, which shall be final.

#### 10. Qualification of Dispute Resolution Professionals

No person shall serve as a DRP in any arbitration in which that person has any financial or personal interest. A DRP shall disclose any circumstances likely to create an appearance of bias, which might disqualify him or her as a DRP. If a DRP should resign, be disqualified, or be unable to perform the duties of the office, the AAA shall appoint a replacement in accordance with the provisions of Rule 9.

#### 11. Date, Time and Place of Hearing

The AAA shall fix the date, time and place for each hearing in accordance with Rule 8. At least thirty (30) days prior to the first scheduled hearing, the AAA shall mail notice thereof to each party, unless a party waives such notice.

#### 12. Representation

Any party may be represented by counsel or other authorized representative.

### 13. Stenographic Record of Oral Hearing

Any party wishing a stenographic record shall make such arrangements and payment with the stenographer directly, and shall notify the other parties and the AAA of such arrangements in advance of the hearing and provide the DRP with a copy of the transcript upon request.

### 14. Interpreter

Any party wishing the services of an interpreter shall make such arrangements and payments with the interpreter directly, and shall notify the other parties and the AAA of such arrangements in advance of the hearing.

### 15. Attendance at Hearing

Persons having a direct interest in the arbitration are entitled to attend the hearing. The DRP shall otherwise have the power to require the retirement of any witness or witnesses during the testimony of other witnesses. It shall be discretionary with the DRP to determine the propriety of the attendance of any other persons.

### 16. Postponements

A matter may be initially postponed with the consent of the parties. An initial postponement request that is not resolved by consent of the parties and/or a second postponement request shall be referred to a DRP for a ruling. The DRP may grant such request for postponement only upon a showing of good cause. Any additional requests for postponements shall be granted by the DRP only upon a showing of extraordinary circumstances by the requesting party.

### 17. Exchange of Information

In the event of a dispute between the parties regarding the exchange of information, the DRP may establish the extent of, and schedule consistent with this section, any such exchange pertaining to the subject matter of the arbitration including, but not limited to, the carrier's rights under *N.J.S.A. 39:6A-13* or as provided by the applicable policy of insurance.

Copies of any submissions and/or the identity of any expert witness that a party intends to offer at a hearing, must be provided to all other parties and the AAA at least twenty (20) days in advance of the hearing. If not submitted within said time frame, such submissions and/or expert(s) shall be disallowed subject to a showing of good cause to the DRP at the time of the hearing. The parties shall be allowed no more than twenty (20) days in total to submit post-hearing documents at the discretion of the DRP except upon a showing of extraordinary circumstances.

### 18. Communication with the Dispute Resolution Professional

No party, party witness, or party representative shall have any ex-parte communication with the DRP concerning the arbitration.

There shall be no written communication directly with the DRP.

#### 19. Order of Proceedings in an Oral Hearing

An oral hearing shall be opened by the DRP by recording the place, time, and date of the hearing, the presence of the DRP and parties, and the receipt by the DRP of the demand and submission(s).

The DRP may, at the beginning of the hearing, ask for statements clarifying the issues involved. The claiming party may then present its claim, proofs, and witnesses, who shall submit to questions or other examination. The defending party may then present its defense, proofs, and witnesses, who shall submit to questions and other examination. The DRP has the discretion to vary this procedure but shall afford full and equal opportunity to all parties for the presentation of material or relevant proofs.

Exhibits, when offered by either party in accordance with Rule 17, may be received in evidence by the DRP. The names and addresses of all witnesses and exhibits in the order received shall be made part of the record.

#### 20. Arbitration in the Absence of a Party

The arbitration may proceed in the absence of any party or counsel whom, after due notice, fails to be present, fails to submit evidence, or fails to obtain an adjournment. In the event one or more parties does not appear at the designated time and place for the arbitration of a dispute, the DRP shall, in the presence of all other parties, place a call to the party or, if known, to the party's representative not appearing. At that time, the DRP shall determine whether to proceed with the hearing and/or under what conditions the hearing may be held, including, but not limited to, telephonic participation and supplemental written submissions. The DRP shall require the party present to submit such evidence as may be required for the making of an award.

#### 21. Evidence

The parties may offer such evidence as is relevant and material and shall produce such additional evidence as the DRP may deem necessary to an understanding and determination of the dispute, consistent with Rules 17 and 23 in order to make a decision in accordance with Rule 29 of these rules. A DRP or an attorney representing a party, as authorized by law, may subpoena witnesses or documents on their own initiative or upon the request of any party. The DRP shall be the judge of the relevancy and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. At an oral hearing all evidence shall be taken in the presence of all parties, except parties in default and parties who have waived the right to be present.

The DRP may receive and consider the evidence of witnesses by affidavit or other document.

#### 22. Access to Medical Expertise

The AAA shall use a list of certified medical review organizations in accordance with *N.J.S.A. 39:6A-5.2 et. seq.*, who shall perform the review upon the request of (a) the DRP or (b) any party

to the dispute. The request shall include a completed *Medical Information Form* together with four (4) copies of redacted medical records. A copy of the completed *Medical Information Form* and redacted medical records shall be forwarded to all parties. All party requests for a Rule 22 review must be made no later than twenty (20) days prior to the scheduled hearing, except when requested in connection with a Rule 4 application. A DRP shall have the option of making such a request at the hearing. The determination of the health care consultant on the dispute referred shall be presumed to be correct by the DRP, which presumption may be rebutted by a preponderance of the evidence. Should the DRP find that the decision of the health care consultant is not correct, the reasons supporting that finding shall be set forth in the DRP's decision.

Within twenty (20) days (or earlier if required by the medical exigencies of the case) after the review of the medical evidence the medical review organization shall submit to the AAA a written report which shall contain the consultant's advisory opinion for consideration by the DRP. The AAA shall submit such report to the DRP and the parties.

### 23. Closing of Oral Hearing

The DRP shall specifically inquire of the parties whether they have any further evidence. If they do not, the DRP shall declare the hearing closed. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the DRP for receipt of such briefs but in no event later than twenty (20) days post hearing except where extended under Rule 17. The time limit within which the DRP is required to make the award shall commence to run upon the closing of the hearing.

### 24. Reopening of Hearing

The AAA may reopen a hearing only to correct an administrative error.

### 25. Waiver of Rules

Any party who proceeds with an arbitration after knowledge that any provision or requirement of these rules has not been complied with, and who fails to state objection thereto in writing shall be deemed to have waived the right to object.

### 26. Extension of Time

The AAA or the DRP for good cause may extend any period of time established by these rules except the time requirements set forth in Rule 3 and the time for making the award. The AAA shall advise the parties of any such extension of time in writing.

### 27. Serving of Notices

With the exception of the demand and appeal, which shall be served by certified mail, return receipt requested by the parties, each party shall be deemed to have consented that any other papers, notices, or process necessary or proper for the continuation of an arbitration under these rules, and for any court action in connection therewith or for the entry of judgment of any award made thereunder, may be served upon such party by:

1. Mail addressed to such party or its attorney at its known address

or

2. Personal service, within or outside the state where the arbitration has been or is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to such party

or

3. Facsimile transmission, telegram, or other written forms of electronic communication to give the notices required by these rules.

## 28. Time of Award

The DRP shall render the award promptly and, unless otherwise agreed by the parties, no later than forty-five (45) days from the date of the close of either the hearing or the reopened hearing.

## 29. Form of Award

The award shall be in writing in accordance with the standards set forth at *N.J.A.C. 11:3-5.6(d)* and shall be signed either by the sole DRP or by at least a majority if there is more than one (1) DRP, unless the concurrence of all is required by law. It shall be in accordance with New Jersey law and the applicable policy provisions and executed in the manner required by law. The DRP's award shall set forth findings of fact and conclusions of law upon which the award is based .

## 30. Scope of Award

The costs of the proceedings shall be apportioned by the DRP. Attorney's fees shall be determined to be reasonable if they are consonant with the amount of the award, and with Rule 1.5 of the Supreme Court's Rules of Professional Conduct. The DRP shall require an affidavit of services to be submitted and shall permit all parties to present arguments on the claimed amount.

## 31. Award Upon Settlement

If the parties settle their dispute during the course of the arbitration, the DRP, upon their request, may set forth the terms of the agreed settlement in an award.

## 32. Delivery of Award to Parties

Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail, addressed to such party or its representative at its last known address, or personal service of the award, or any other manner prescribed by law.

## 33. Applications to Court and Exclusion of Liability

Neither the AAA nor any DRP nor any independent health care consultant as defined in Rule 22 in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration.

Neither the AAA nor any DRP nor any independent health care consultant as defined in Rule 22

of the rules shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

#### 34. Interpretations and Application of Rules

The DRP shall interpret and apply these rules insofar as they relate to the DRP's powers and duties. When there is more than one DRP and a difference arises among them concerning the meaning or application of these rules, or any other decision required by the arbitration, it shall be decided by a majority vote. If that is unobtainable, either a DRP or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

#### 35. Modification/Clarification

On written application filed with the AAA within thirty (30) days after the award has been mailed to the parties, any party, on notice to all other parties, may request the DRP to clarify the award or correct any clerical, typographical, or computational errors or make an additional award as to claims presented to the DRP but omitted from the award. In the case of an administrative error, the hearing may be reopened in accordance with Rule 24. The hearing may not be reopened for new evidence. Any objections shall be filed with the AAA and the other parties within ten (10) days after the AAA's acknowledgment of receipt of the request. The application and any objection shall be transmitted by the AAA to the DRP who shall dispose of any such application in the form of an award within thirty-five (35) days of transmission to the DRP.

#### 36. Appeals Under These Rules

Any party may file a written request for a limited appeal upon payment of the administrative fee for an appeal. An award by a DRP rendered under these rules may be vacated or modified by appeal to a DRP panel only if that award was incorrect as a matter of law. The panel hearing the appeal shall consist of three (3) designated DRPs on the No-Fault panel but none of which may be the DRP that rendered the award on appeal. A majority of the panel must make all decisions and rulings.

All requests for appeals must be filed, by certified mail, return receipt requested, simultaneously with the AAA and all other parties to the dispute, within thirty (30) days of the date the award was mailed. The AAA shall forward a copy of the written request for an appeal to the DRP who rendered the original decision. In the event a Rule 35 request for modification/clarification was made, the time to file a written request for an appeal will be thirty (30) days from the date the DRP's response to the clarification/modification was mailed to the parties. The request for an appeal shall contain a copy of the award in issue and shall state the nature of the dispute and the grounds for review. All reviews will be based solely on submitted documents. The AAA will assign the panel of DRPs, subject to the same standards set forth in Rule 9, who will render a decision within sixty (60) days of the assignment.

#### Administrative Fees

The party initiating arbitration shall pay an initial administrative fee in the amount of \$285 to the AAA. The initial administrative fee is due and payable in full at the time of filing. No refund of

the initial fee is made when a matter is withdrawn or settled after the filing of a *Demand for Arbitration* . Any application pursuant to Rules 4 and 5 shall include an application fee of \$100.

An administrative fee of \$285 is payable by the responding party involved, due and payable in full in the event that the matter is not resolved within forty-five (45) days from the date of the *initiating letter* . In the event that the matter is filed pursuant to Rule 4 payment is due immediately.

The AAA shall have the discretion to set and charge additional fees for claims arising from separate accidents included in a single demand.

An additional \$800 shall be paid when three (3) DRPs are appointed in accordance with Rule 9. The fee shall be paid by the party requesting three (3) DRPs, or shall be borne equally if the parties agree to appoint three (3) DRPs.

A party requesting an appeal shall pay an administrative fee of \$1,050.

Parties requesting copying of documents by the AAA shall pay a per page fee set by the AAA.

#### Abeyance Fee

In the event that a claim is placed in abeyance for any reason other than by order of the court, the AAA shall keep said claim in abeyance with consent of all parties without charge for up to 365 calendar days. If the parties consent to keeping a claim in abeyance for any additional time, the requesting party shall pay an administrative fee of \$250 to the AAA to hold the claim in abeyance for an additional 365 calendar days. Any additional requests to hold the matter in abeyance shall require consent of the parties and the payment of an additional administrative fee of \$250. In the event that the requesting party fails to pay the required fee, the AAA shall administratively dismiss the matter on notice to all parties.