

Rules for NY Workers' Compensation Health Insurers' Match Program (HIMP)



AMERICAN ARBITRATION ASSOCIATION®

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Rules for NY Workers' Compensation Health Insurers' Match Program (HIMP)



Introduction

On February 3, 1993 the Chairperson of the New York State Workers' Compensation Board promulgated a new subpart 325-6 of Title XII of the official compilation of Codes of Rules and Regulations of the State of New York which provides for mandatory arbitration of eligible disputed requests for reimbursement by health insurers or health benefits plans.

The American Arbitration Association® (AAA®) is privileged to assist in the implementation of Regulation 325-6 by administering its mandatory arbitration provisions.

Rules for the Arbitration of Disputed Requests for Reimbursement by Health Insurers or Health Benefits Plan

(1) Administrator and Delegation of Duties

The authority and duties of the AAA, delegated to it by the Chairperson of the New York State Workers' Compensation Board, are prescribed in these rules and may be carried out through such of the AAA's representatives as it may direct.

(2) Request for Arbitration/Initiation of Proceedings

- (a)** A health insurer or health benefits plan shall file its request for arbitration and supporting documents previously submitted to the employer, workers' compensation carrier or special fund in duplicate with the AAA together with the appropriate filing fee as provided in Section 29 of these rules, and proof of service upon the employer, workers' compensation carrier or special fund.
- (b)** Any request for arbitration which is not accompanied by the completed required form, proof of service and the appropriate fee as determined by the AAA, or is not eligible for arbitration as determined by the arbitrator, shall be returned by the AAA to the health insurer or health benefits plan.

- (c) Upon receipt of the completed request for arbitration, the AAA shall acknowledge receipt of same by regular mail.
- (d) An employer, workers' compensation carrier or special fund shall submit all documents in support of its position to the AAA in duplicate with a copy to the health insurer or health benefits plan via US certified mail return receipt requested, within ten (10) business days after receipt of the request for arbitration. Except as provided in the regulations, such documents will not be considered unless the employer, workers' compensation carrier or special fund has previously filed a timely notice of objection with the health insurer or health benefits plan.
- (e) A health insurer or health benefits plan shall, where feasible, submit requests for desk arbitration in batches of forty cases where the employer, workers' compensation carrier or special fund is the same.

(3) Serving of Notice

Each party shall be deemed to have consented that any papers, notices, or process necessary for the initiation or continuation of an arbitration under these rules may be served upon such party or its attorney at the last known address by regular mail.

To facilitate communications between the parties and the AAA, the parties agree that communications with the AAA via facsimile machine or other written forms of electronic communications are valid and proper notice under these rules.

All communications shall be forwarded to the office of the AAA acknowledging receipt of such request. All documents submitted to the AAA by the parties shall be simultaneously exchanged between the parties.

(4) Change of Claim

A party may agree to modify certain aspects of the HIMP reimbursement process, including the deadlines for service, the means of service between the parties, the conditions required for reimbursement, or other aspects of HIMP reimbursements, by executing a written agreement setting forth any such modified conditions and specifying whether the modifications shall be enforceable through arbitration. After notice to the parties that an arbitrator has been appointed, no new or different claim may be submitted except with the arbitrator's written consent.

(5) Fixing of Locale

The AAA may, at its discretion, assign the administration of desk arbitrations to any of its offices within New York State.

(6) Qualifications of Arbitrators

- (a)** The Chairperson of the Workers' Compensation Board of the State of New York shall appoint an advisory committee composed of four members who will review the qualifications of applicants for the position of arbitrator of disputed requests for reimbursement and review their performance. The advisory committee shall make recommendations to the Chair pertaining to the appointment and dismissal of arbitrators. The committee shall consist of one representative each of the AFL-CIO, the Business Council of New York, the New York State Insurance Fund, and the New York State Workers' Compensation Board.
- (b)** An arbitrator shall have basic knowledge of the Workers' Compensation Law, which will qualify such arbitrator to resolve issues involved in reimbursement disputes. Documentation of such knowledge and related experience shall be submitted by the candidates to the advisory committee.
- (c)** All arbitrators shall be appointed by, and serve at the pleasure of the Chair. An arbitrator candidate shall disclose to the Chair any circumstance which is likely to create an appearance of bias or which might disqualify such a person as an arbitrator, and the Chair shall determine whether the candidate should be disqualified. The Chair shall forward the names of all arbitrators to the AAA and promptly inform the AAA of all additions to and deletions from the panel of arbitrators.
- (d)** The advisory committee shall establish any additional qualifications for the appointment as an arbitrator as it may deem necessary.

(7) Appointment of Arbitrator

The AAA shall select from the panel of arbitrators on a rotational basis an arbitrator who will hear the case and shall submit the name of the arbitrator to each party to the arbitration.

Any person appointed as an arbitrator shall disclose to the AAA any circumstances likely to affect impartiality, including any bias, financial and/or personal interest in an arbitration. Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties, and if it deems appropriate to do so, to the arbitrator and other interested parties. If a party objects to the appointment of an arbitrator, the specific grounds for such objection shall be submitted in writing to the AAA which shall determine within fifteen (15) days after receipt of the challenge whether the arbitrator shall be disqualified. The AAA shall inform the parties of its decision which shall be final and binding. If an arbitrator should resign, disqualify himself or herself, or otherwise be unable to perform the duties of the office, the AAA shall appoint another arbitrator to the case.

(8) Oaths

All arbitrators shall be required to take an annual oath of office. Arbitrators shall require all witnesses to testify under oath or affirm that their statements are true under penalty of perjury.

(9) Time and Place of Arbitration

- (a) Unless either party requests an oral hearing, all hearings shall be desk arbitrations based on documents alone.
- (b) A health insurer or health benefits plan requesting an oral hearing must make such request together with its submission of its request for arbitration. An employer, workers' compensation carrier or special fund may make a request for an oral hearing within ten (10) business days after receipt of its copy of the request for arbitration.
- (c) The party requesting an oral hearing shall designate the locale of such hearing, which shall be the city of the Board district office serving the location where the underlying compensability of the compensation claim giving rise to the request for reimbursement was established. The arbitrator shall set the date, time and place for oral hearings. In case where an oral hearing is requested, the dispute shall be heard at one of the offices of the Board unless the parties and the arbitrator agree otherwise.
- (d) The AAA shall determine the date, time and place of hearing for desk arbitrations.
- (e) The AAA shall notify the parties by telephone or electronic communication at least fourteen (14) business days in advance of any oral hearing, followed by written notice of hearing. The AAA shall notify the parties in writing only of any desk hearing at least seven (7) days prior to the scheduled date of review.

(10) Withdrawal of Request for Arbitration

The parties may, by mutual agreement, withdraw the request for arbitration on a form prescribed by the AAA for that purpose. Such form must be signed by the parties and filed with the AAA at least two (2) business days prior to the date of hearing. If requested by the parties, their agreement to withdraw may be incorporated in an arbitration award. Additionally, the party requesting arbitration may unilaterally withdraw a request for arbitration by filing such request for withdrawal with the AAA and sending a copy to the other party. Where the request for arbitration has been withdrawn, fees paid to the AAA shall not be refundable, except as provided in Section 29. No request for arbitration may be unilaterally withdrawn unless the withdrawing party has reimbursed the other party for any non-refundable fee which such other party has paid to the AAA.

(11) Communication with the Arbitrator

There shall be no direct communication between the parties and the arbitrator other than at oral hearings. Any other oral or written communication from the parties to the arbitrator shall be directed to the AAA for transmittal to the arbitrator.

(12) Representation

Any party may be represented by counsel or other representatives.

(13) Adjournments

The arbitrator may adjourn any hearing upon request of a party or upon the arbitrator's own motion. Either party may cause an adjournment without the payment of an adjournment fee if said first adjournment request is received by the AAA at least two (2) business days prior to the scheduled arbitration. There shall be an adjournment fee of fifty (\$50.00) dollars payable to the AAA by the party requesting any subsequent adjournment. An adjournment fee of one hundred (\$100.00) dollars shall be payable to the AAA by the party causing the adjournment within two (2) business days or less prior to the scheduled hearing. Such fees shall be used to defray the cost of administering the dispute forum.

(14) Record of Proceedings

A stenographic record of the proceedings shall not be required. Any party requesting such a record shall inform the other party and the arbitrator of such intent, shall make the necessary arrangements, and shall pay the cost directly to the person or agency making such record. The arbitrator and any other party or parties to the arbitration shall be entitled to view the record and shall be entitled to a copy of such record upon payment of the cost of a copy of such record.

(15) Attendance at Hearings

Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall have discretion to determine the propriety of the attendance of any other person.

(16) Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party who after due notice fails to be present or fails to obtain an

adjournment. An award shall not be made in favor of an appearing party solely on the default of the other party. The arbitrator shall require the appearing party to submit such evidence as may be required for the making of an award. The arbitrator may require the appearance of a party at the hearing if the arbitrator determines that the party's appearance is necessary for a fair and just resolution of the dispute.

(17) Evidence

The arbitrator shall not be bound by common law, statutory rules of evidence, or technical or formal rules of procedure but may make such investigation or inquiry and conduct the hearing in such manner as he or she deems proper and necessary.

The parties may offer such evidence that is relevant and material to the dispute and shall produce such additional evidence as the arbitrator may deem necessary for an understanding and determination of the dispute. An arbitrator authorized by law to subpoena witnesses or documents may do so upon request of any party or independently.

The arbitrator shall be the judge of the relevance and materiality of the evidence offered. All evidence shall be taken in the presence of the arbitrator except when a party is absent in default or waives the right to be present.

(18) Closing of Hearings

- (a)** In cases where no oral hearing is requested, the date of review of documents by the arbitrator shall serve as the date of closing of the hearings.
- (b)** In cases where an oral hearing is requested, the arbitrator shall specifically ask all parties whether they have any further proofs to offer or witnesses to be heard. Upon reviewing negative replies, or if satisfied that the record is complete, the arbitrator shall declare the hearings closed and record the minutes. If briefs are to be filed, the hearing shall be closed as of the final date set by the arbitrator for the receipt of briefs.
- (c)** The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreement by the parties, upon the closing of the hearing.

(19) Reopening of Hearings

The hearing may be reopened by the arbitrator or upon application of a new party at any time before the award is made. The arbitrator shall have thirty (30) days from the date of closing of the reopened hearing within to make an award.

(20) Waiver of Rules

A party who proceeds with the 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.

(21) Extensions of Time

The arbitrator may for good cause extend any period of time established in these rules except those contemplated in Sections 2 and 9 of these rules or the time for making the award. The AAA shall notify the parties of any such extensions and its reasons.

(22) Time of Award

The arbitrator shall render the award promptly but no later than thirty (30) days from the date of closing of the hearings unless otherwise agreed by the parties or specified by law. Failure to comply with this time limit shall not serve to nullify the award.

(23) Form and Scope of the Award

- (a)** The arbitrator shall make the award in writing. The award shall contain a dollar amount or a denial of the claim and specify the basis of the decision on the form prescribed by the AAA for such purpose.
- (b)** In the event that the arbitrator's decision is in favor of the health insurer or health benefits plan in the full amount requested, the amount of the award shall be increased by the amount of any filing fee, or any additional fee paid by the health insurer or health benefits plan, except attorney's fees for oral hearings. In the event the claim for reimbursement is denied in full, the arbitrator shall make an award in favor of the employer, workers' compensation carrier or special fund for any filing fees or additional fees, except attorney's fees paid by them. In all other cases, the arbitrator shall, in his/her discretion, determine whether such fees shall be allocated and the manner of such allocation.
- (c)** Awards shall be paid to the prevailing party no later than thirty (30) days after service of the decision upon the parties.

(24) Delivery of Award to the Parties

The parties shall accept as delivery of the award the placing of the award or a true copy thereof in the mail addressed to the parties of their representatives at their last known address, or by any other form permitted by law.

(25) Enforcement of Awards

Any awards, or part thereof, which remains unpaid after the thirty-day period set forth in Section 22 of these rules may be collected in like manner as award of compensation as set forth in Section 26 of the Workers' Compensation Law. In addition, awards may be made pursuant to the provisions of Article 75 of the Civil Practice Law and Rules for enforcement, vacatur or modification of arbitration awards.

(26) Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. All other rules shall be interpreted by the AAA, subject to consultation with and approval of the Chairperson of the New York State Workers' Compensation Board.

(27) Exclusion of Liability

The AAA, the arbitrator, and the New York State Workers' Compensation Board shall not be made a party to a court proceeding relating to an arbitration unless their presence as a party is pertinent to the issue raised in the litigation. The participation of a party in an arbitration proceeding shall be a waiver of any claim against an arbitrator or the AAA for any act of omission in connection with any arbitration conducted under these rules.

(28) Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party, furnish to such party at its expense certified copies of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

(29) Administrative Fee Schedule

- (a) Desk Arbitration Fee.** The health insurer or health benefits plan shall, together with its request for arbitration, submit a non-refundable filing fee in the amount of \$175.00 per request. For desk arbitrations, the arbitrator shall receive a fee of \$60.00 per arbitration, payable by the AAA from the filing fees received by it.
- (b) Oral Hearings.** In the event either party shall demand an oral hearing, a fee in the amount of \$475.00, of which \$250.00 shall be paid to the Arbitrator, shall be paid to the AAA together with such demand. The party requesting the oral hearing shall pay an additional fee of \$250.00 as the Arbitrator's fee for any additional day of oral hearing. In the event the request for oral hearing is withdrawn prior to the

commencement of the oral hearing, the sum of \$250.00 representing the Arbitrator's fee shall be refunded by the AAA to the party having requested such hearing.

- (c) *Applicability of the Fee Schedule.* The fees payable pursuant to the provisions of this Section shall apply to all requests for arbitration properly submitted to the AAA no later than 180 days after the effective date of these Rules as a final rule. Subsequent to that date, the fees shall be at such rate as may be established and promulgated by the Chair of the New York State Workers' Compensation Board pursuant to the provisions of these Rules.

