

Rules for Arbitration of No-Fault Disputes in the State of New York

Amended and Effective August 16, 2013

The American Arbitration Association is privileged to assist in the implementation of New York's no-fault law as set forth in the regulations of the New York State Department of Financial Services at 11 NYCRR 65 (the "Regulations") by administering this revised arbitration system.

a. **Notice.** If a dispute has been transmitted for arbitration by the Insurance Department or the conciliation center, the parties will be notified by the designated organization, in writing, that the dispute will be resolved by arbitration. At the arbitrator's discretion, if the dispute involves an amount less than \$2,000, the parties shall be notified that the dispute shall be resolved on the basis of written submissions of the parties. All such submissions shall be received by the designated organization within 30 calendar days of the date of mailing of the notice. No oral arguments will be permitted, unless the arbitrator determines that additional evidence or testimony is necessary. In order to facilitate receipt of evidence by the designated organization, the parties may forward their submissions prior to receipt of the above notification.

b. Special Expedited Arbitration.

1. Special Expedited Arbitration shall be available for disputes involving:
 - i. The failure to submit notice of claim within 30 calendar days after the accident and where it has been determined by the insurer that reasonable justification for late notice has not been established; and
 - ii. The proper application of subdivisions (b) and (c) of Section 65-3.12 of the Regulations and of paragraphs (2), (3) and (4) of Section 65-3.13(a) of the Regulations.
2. An applicant may request special expedited arbitration for resolution of the dispute involving late notice within 30 calendar days after mailing of the denial of claim by the insurer stating that reasonable justification for late notice has not been established.
 - i. In regard to disputes related to subdivisions (b) and (c) of Section 65-3.12 or paragraphs (2), (3) and (4)

of section 65-3.13(a) of the Regulations, an applicant may request special expedited arbitration to designate an insurer that is responsible for processing first-party benefits and additional first party benefits, after each insurer has issued a Denial of Claim form (NF-10) stating that the insurer is not the insurer eligible to process the first-party benefits claimed.

- ii. Special expedited arbitration required by clause (a) of this subparagraph shall only designate a insurer to commence processing the claim based upon the first insurer notified that is otherwise liable for the payment of first party benefits. The insurer designated by the arbitration shall retain all rights of investigation afforded under statute and regulation, and the ultimate liability for payment of benefits shall be resolved in accordance with section 65-4.11 of the Regulations.
3. At the time of a request for special expedited arbitration, the applicant shall make a complete written submission supporting his or her position. Any further written submissions shall be accepted into evidence at the discretion of the arbitrator.
4. Applications for special expedited arbitration shall be submitted to the Conciliation Center of the designated organization and shall comply with the requirements for initiation of arbitration contained in subparagraph 6 5-4.2(b)(1)(iii) of the Regulations.
5. The applicant's submission shall be forwarded by the Conciliation Center to the insurer within 3 business days of receipt. The insurer may provide the Center with reasonable special mailing or transmittal instructions to facilitate the processing of these arbitration requests.
6. The insurer shall respond in writing to the applicant's submission within 10 business days after the mailing by the Center. No further submissions shall be accepted unless requested by the arbitrator.
7. The dispute shall be resolved solely upon the basis of written submissions unless the arbitrator concludes that the issues in dispute require an oral hearing.
8. The arbitrator shall issue a written decision within 10 business days after receipt of all written submissions from the parties or at the conclusion of an oral hearing.
9. For the purpose of Special Expedited Arbitration, the superintendent may appoint arbitrators, qualified in accordance with the provisions of this section, to serve

on a per diem basis. Such arbitrators shall contract with the designated organization. The rate of per diem compensation shall be determined by the designated organization, after consultation with the No-Fault Arbitrator Screening Committee subject to the approval of the Superintendent. Such arbitrators shall be independent contractors, and shall not be employees or agents of the designated organization or the Insurance Department.

- c. **Consolidation.** The designated organization shall, except where impracticable, consolidate disputes for which a request for arbitration has been received, if the claims involved arose out of the same accident and involve common issues of fact.
- d. **Qualifications of arbitrators for a hearing held in New York State.**
 1. No-Fault Arbitrator Screening Committee. The superintendent shall appoint an advisory committee composed of six members, who will review the qualifications of applicants for the position of no-fault arbitrator for hearings to be held in New York State and review the performance of the appointed arbitrators. The screening committee shall make recommendations to the superintendent pertaining to the appointment and dismissal of no-fault arbitrators. The committee shall consist of one representative of the New York State Bar Association, one representative of the New York State Trial Lawyer's Association, two representatives of the insurance industry selected by the No-Fault Optional Arbitration Advisory Committee, a nonvoting representative of the designated organization and a nonvoting representative of the Insurance Department. Tie votes shall be reported as such to the superintendent.
 2. A no-fault arbitrator shall be an attorney, licensed to practice law in New York State, with at least 5 years' experience which the No-Fault Arbitrator Screening Committee has determined qualifies such attorney to review and resolve the issues involved in no-fault insurance disputes. Documentation of such experience shall be submitted to, and reviewed by, the superintendent prior to the appointment of an arbitrator.
 3. All no-fault arbitrators shall be appointed by, and serve at the pleasure of, the superintendent. An arbitrator candidate shall disclose to the superintendent any circumstance, which is likely to create an appearance of bias, or which might disqualify such person as an arbitrator, and the superintendent shall determine

whether the candidate should be disqualified. The superintendent shall forward the name of all no-fault arbitrators to the designated organization, and promptly inform the designated organization of all additions to, and deletions from, the panel.

4. No person shall, during the period of appointment as an arbitrator, have any practice or professional connection with any firm or insurer involved in any degree with automobile insurance or negligence law. The No-Fault Arbitrator Screening Committee, subject to the approval of the superintendent, shall establish any additional qualifications for appointment as a no-fault arbitrator.
- e. **Qualifications of arbitrators for a hearing held outside New York State.** For a hearing which will be held outside New York State, the arbitrator shall be a licensed attorney in the State or Canadian province where the hearing is held.
- f. **Designation of arbitrator.** The designated organization shall assign an arbitrator who will hear the case, and shall submit the name of the arbitrator to each party to the arbitration. The designated organization shall maintain a file containing the professional background of each of its no-fault arbitrators, and the information contained therein shall be available to any party to the arbitration upon written or oral request.
- g. **Conflict of interest and disqualification of arbitrator.** No person shall serve as an arbitrator in any arbitration in which such person has any financial or personal interest or bias. If a party challenges an arbitrator, the specific grounds for the challenge shall be submitted in writing to the designated organization, which shall determine, in consultation with the Insurance Department, within 15 calendar days after receipt of the challenge, whether the arbitrator shall be disqualified. Such written determination, in a format approved by the Department, shall be final and binding. If an arbitrator should resign, be disqualified or be otherwise unable to perform necessary duties, the designated organization shall assign another arbitrator to the case.
- h. **Oaths. Arbitrators shall take an annual oath of office.** Arbitrators shall require all witnesses to testify under oath or affirm that their statements are true under the penalties of perjury.
- i. **Time and place of arbitration.** The arbitration hearing shall be held in the arbitrator's office or any other appropriate place selected by the designated organization and, to the extent practicable, within the general locale of the

applicant's residence but, in no event, more than 100 miles from such residence. The arbitrator shall fix the time and place for such hearing. At least 15 calendar days prior to the hearing, the designated organization shall mail a notice of hearing to each party. Unless otherwise agreed by the parties, the hearing shall be scheduled to be held within 30 calendar days of the date of the appointment of the arbitrator. The parties to the arbitration shall not directly contact the arbitrator at any time prior to or subsequent to the hearing, but shall direct all communications to the designated organization.

- j. Effective with arbitrations filed on and after March 1, 2002,** if the applicant requests arbitration within 90 days after the claim became overdue or within 90 days after receipt of the denial of claim, the arbitration shall be scheduled for a hearing within 45 days after transmittal from the conciliation center, when requested by the applicant.
- k. Postponements and adjournments.** The arbitrator may for good cause postpone or adjourn the hearing upon request of a party or upon the arbitrator's own initiative. Each party may cause one adjournment without the payment of an adjournment fee, if the adjournment request is received by the designated organization at least two business days prior to the scheduled arbitration. There shall be an adjournment fee of \$50 payable to the designated organization by the party requesting any subsequent adjournment. An adjournment fee of one hundred dollars (\$100) shall be payable to the designated organization by the party causing any adjournment within two (2) business days prior to the scheduled hearing. Such fees shall be used to defray the cost of administration of the arbitration forum.
- l. Representation at arbitration.** Any party shall either represent itself or be represented by an attorney.
- m. Record of proceedings.** A stenographic record of the arbitration proceedings shall not be required. However, a party requesting such a record shall inform the other party or parties of such intent, make the necessary arrangements, and pay the cost thereof directly to the person or agency making such record. Any other party or parties to the arbitration shall be entitled to a copy of such record upon agreeing to share the cost of the total stenographic expense. Whether or not a stenographic record of the proceeding is made, the arbitrator shall, at a minimum, record the exhibits offered by each party and the names and addresses of all parties and witnesses.

- n. **Interpreters.** Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of such services.
- o. **Attendance at hearings.** Persons having a direct interest in the arbitration are entitled to attend hearings. It shall be discretionary with the arbitrator to permit the attendance of any other persons.

p. Evidence.

1. The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary. The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations.
 2. The arbitrator or an attorney of record in the arbitration may subpoena witnesses or documents upon the arbitrator's own initiative or upon the request of any party, when the issues to be resolved require such witnesses or documents.
 3. For arbitrations filed prior to March 1, 2002, copies of all documents to be submitted to the arbitrator shall be simultaneously transmitted to the other parties at least seven calendar days prior to the hearing. The arbitrator shall determine if all parties received such documents prior to the commencement of the hearing.
 4. For arbitrations filed on or after March 1, 2002, the arbitrator shall determine if the parties provided and exchanged documents in accordance with the requirements of paragraph (3) of subdivision (b) of section 65-4.2 of the Regulations.
 5. If a party to the arbitration intends to introduce an expert witness at the hearing, the identity of the expert witness must be given to all parties at least seven calendar days prior to the hearing.
- q. **Arbitration in the absence of a party.** The arbitration may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain a postponement or adjournment. An award shall not be made in favor of an appearing party solely on the default of another 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 to realize a fair and just resolution of the dispute and to afford all parties due process.

- r. **Reopening of hearing.** The hearing may be reopened by the arbitrator, for good cause, at any time before the award is made.
- s. **Time of award.** The award shall be made and delivered no later than 30 calendar days from the date the hearing is completed or 30 days from the date of the designated organization's transmittal of the final documentary proofs to the arbitrator. Failure to adhere to this time limit shall not nullify the award.
- t. **Form and scope of award.** The award shall be in writing in a format approved by the superintendent. It shall state the issues in dispute and contain the arbitrator's findings and conclusions based on the Insurance Law and Insurance Department regulations. It shall be signed by the arbitrator and shall be transmitted to the parties by the designated organization with a copy to the Insurance Department. The award shall contain a decision on all issues submitted to the arbitrator by the parties. In the event that the applicant prevails in whole or in part on the claim, the arbitrator shall also direct the insurer to:
 - 1. reimburse the applicant for the amount of the filing fee paid, unless the filing fee had already been returned to the applicant
 - 2. if due under section 5106 of the Insurance Law, pay a reasonable attorney's fee in accordance with the limitations set forth in section 65-4.6 of the Regulations; and
 - 3. in an award of interest, compute the amount due for each element of first-party benefits in dispute, commencing 30 days after proof of claim therefor was received by the insurer and ending with the date of payment of the award, subject to the provisions of subdivision 65-3.9(c) of the Regulations (stay of interest).
- u. **Imposition of costs.**
 - 1. Effective with arbitrations filed on and after March 1, 2002, the arbitrator may impose all administrative costs of arbitration to the applicant or apportion the administrative costs of arbitration between the parties if the arbitrator concludes that the applicant's arbitration request was frivolous, was without factual or legal merit, or was filed for the purpose of harassing the respondent. Cases in which arbitrators impose all

administrative costs to the applicant shall be excluded from the assessment calculation contained in paragraph (bb) of these Rules.

2. The amount of such administrative costs per case shall be established for each calendar year by the designated organization. The administrative cost shall be based upon the actual administrative costs per case in the prior calendar year. Such costs shall be paid to the designated organization and the receipt of such costs shall be used to reduce the actual expenses of the designated organization for the administration of the arbitration forum.

v. Award upon settlement.

1. If the parties settle their dispute during the course of arbitration, the arbitrator shall set forth the terms of the agreed settlement in an award, which shall provide that the parties agree that the settlement is final and binding and shall not be subject to review by a master arbitrator or by a court. If an attorney's fee is due under section 5106 of the Insurance Law, such fee shall be awarded in accordance with the limitations set forth in section 65-4.6 of the Regulations. The award shall be signed by the arbitrator and shall be transmitted to the parties by the designated organization, with a copy to the Insurance Department.
2. The insurer shall provide the designated organization with the terms of settlement for transmittal to the arbitrator no later than thirty calendar days following the scheduled date of the hearing.

w. **Delivery of award to 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 or their designated representatives at their last known addresses, or by any other form of service permitted by law. The designated organization shall note on such award or transmittal letter thereof the date of mailing and keep a record of same.

x. **Interpretation and application of procedures.** The arbitrator shall interpret and apply these procedures insofar as they relate to the arbitrator's powers and duties. All other procedures shall be interpreted by the designated organization, subject to consultation with and approval by the superintendent.

y. **Alternative legal remedies.** The designated organization shall not be made a party to a court proceeding relating to an arbitration award unless the designated organization's

presence as a party is pertinent to the issues 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 designated organization for any act or omission in connection with any arbitration conducted under these rules. The designated organization shall transmit to the superintendent copies of any legal papers served upon designated organization or an arbitrator, relating to any stay or appeal of an arbitration.

z. **Payment of award.** Insurers shall, within 30 calendar days of the date of mailing of the award, either pay the amounts set forth in the award or, where grounds exist, appeal to the master arbitrator as provided for in the Regulations, which appeal shall stay payment of the award. The award need not be confirmed into judgment.

aa. **Arbitrator's compensation and expenses.** At the direction of the Superintendent, arbitrators shall contract on an annual basis with the designated organization. The rate of annual compensation shall be determined by the designated organization, after consultation with the No-Fault Arbitrator Screening Committee subject to the approval of the Superintendent. Arbitrators shall be independent contractors, and shall not be employees or agents of the designated organization or the Insurance Department.

ab. **Financing.**

1. The cost of administering the No-Fault Arbitration forum shall be paid annually by insurers (including self-insurers and MVAIC) to the designated organization upon receipt of a statement therefrom. This cost shall be distributed among insurers in an equitable manner approved by the Superintendent of Insurance. This distribution shall, to the extent practicable, be a function of the degree to which an insurer is named as a respondent in No-Fault Arbitration forum proceedings.
2. Semiannually, the designated organization shall prepare a budget of the estimated fees to be incurred for the operation of the No-Fault Arbitration forum during the subsequent six-month period. The estimated fees of the No-Fault Arbitration forum shall be assessed on a proportionate basis to those insurers named as respondents on cases forwarded to No-Fault arbitration in the preceding calendar year and shall be subject to the approval of the superintendent. The designated organization shall send to each applicable insurer a bill for the amount due and any payment due shall be made to the designated organization within 30 days after billing date.

3. On an annual basis, as of December 31st of each year, the designated organization shall prepare a detailed analysis of the fees for the operation of the No-Fault Arbitration forum. This analysis shall be forwarded to the No-Fault Optional Arbitration Advisory Committee and the superintendent on or before April 30th of each year. The No-Fault Optional Arbitration Advisory Committee shall notify the designated organization and the superintendent whether it accepts or rejects the designated organization's fee analysis in whole or in part. In the event that the designated organization and the No-Fault Optional Arbitration Advisory Committee cannot resolve any differences that may exist, such differences will be referred to the superintendent for resolution. The superintendent's decision shall be binding on the designated organization and insurers.
4. Once the designated organization submits a final fee analysis that has either been approved by the No-Fault Optional Arbitration Advisory Committee or resolved by the superintendent in the event of a dispute, the designated organization shall send to each applicable insurer an accounting of the designated organization's assessment. Any adjustment shall be made to the bill for the subsequent estimated assessment, as illustrated by the following example:

EXAMPLE

(1) Total No-Fault Arbitration forum cases closed during year	6,000
(2) Cases in which Insurer A was named as a respondent in the No-Fault Arbitration forum proceeding	250
(3) Insurer A's Assessment Percentage = (2) / (1)	4.167%
(4) Actual Expenses of the No-Fault Arbitration forum	\$2,500,000
(5) Insurer A's actual expense = (3)x(4)	\$104,175
(6) Insurer A's Estimated Assessment	\$102,000
(7) Insurer A's Debit or (Credit) = (5)-(6)	\$2,175