Comparison of the AAA® Healthcare Payor Provider Rules and the AAA Commercial Arbitration Rules

COMMERCIAL RULE	PAYOR PROVIDER RULE
R-4 The Commercial Arbitration Rules provide for the filing of claims or counterclaims (1) by parties (the rules are silent concerning the number of parties) who either signed a single contract providing for either the provision or payment of healthcare services or who signed multiple such contracts that included consolidation provisions; or (2) by third parties who although not signatories are by law authorized to demand arbitration involving disputes arising out of contracts for the provision or payment of healthcare services. AAA policy mandates that healthcare related claims involving consumers be administered according to either the Healthcare Due Process Protocol or the Consumer Supplement depending upon the underlying nature of the dispute.	The Healthcare Payor Provider Rules limit the filing of a case to a Payor or a Provider (R-1). What constitutes a Payor and what constitutes a Provider are defined in R-1 and clearly excludes consumers. A Payor or a Provider may file as a single case all reimbursement related claims, including those involving multiple patients and/or multiple dates of service, arising under a single contract (R-4(a)). A Payor or a Provider may file as a single case all reimbursement related claims, including those involving multiple patients and/or multiple dates of service, arising out of multiple contracts between a specific Payor and a specific Provider (R-4(b)). Where there is no contract between a Payor and a Provider, the parties may agree to submit for arbitration under these rules all claims arising out of the same alleged non-contractual bases for payment in the same case (R-4(c)).
The Commercial Rules consist of three sets of procedures: expedited (E-1 – E-10), regular (R-1 – R-58, P-1 & P-2) and large complex (L-1 – L-3). Determination as to which set of procedures govern is controlled by default upon the total amount of claims or counterclaims filed by the parties: below $75,000 the expedited procedures govern (R-1(b)); above $75,000 but below $500,000 the regular procedures govern; above $500,000 the large complex procedures govern (R-1(c)). Under the expedited procedures for claims and counterclaims less than $25,000 the dispute shall be resolved by submission of documents, unless any party requests an oral hearing or the arbitrator determine that an oral hearing is necessary (E-6).	The Healthcare Payor Provider Rules describe three sets of proceedings or tracks: (1) desk/telephonic track; (2) regular track; (3) complex track. Regardless of the amount in controversy the track is either agreed upon by the parties or by default the regular track governs (R-1(d). The procedures governing desk/telephonic arbitration consists of R-1 through R-60 as amended by D-1 through D-6. A party may request or the arbitrator can order one or more telephonic hearings to supplement the submission of documents or briefs (D-5). The procedures governing a regular track arbitration consists of rules R-1 through R-60, P-1 & P-2. The procedures governing a complex track arbitration consists of Rules R-1 through R-60, P-1 & P-2 as amended by C-1 through C-5.

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R-1(a) Parties by agreement may vary the Commercial Arbitration Rules without restriction provided the dispute does not involve a consumer or healthcare patient. The AAA may assess additional fees where procedures or services outside the Rules sections are required under the parties' agreement or by stipulation.	The Healthcare Payor Provider Rules allow the parties to vary the procedures without arbitrator approval prior to appointment of the arbitrator. Following appointment the arbitrator must approve procedural changes agreed to by the parties and additional fees may be charged by AAA. R-1(c)
E-4(a), R-3, (L-2(b)) The Commercial Rules provide that arbitrators be drawn from either the expedited (E-4(a)), commercial (R-3) or large complex Commercial panel (L-2(a)) depending upon the amount in controversy without any requirement that the neutral possess specific subject matter expertise unless such a requirement is mandated by the arbitration agreement or agreed upon by the parties during the administrative conference conducted under the large complex procedures.	The Healthcare Payor Provider Rules requires that AAA establish and maintain a National Healthcare Roster (Introduction) and that by default the arbitrator be selected or appointed from this specialty panel (R-3).
E-4(a), R-16, 4(a) The Commercial Rules provide that by default a single arbitrator shall be appointed to hear expedited (E-4(a)) and regular cases (R-16). Cases administered under the large complex procedures shall be default be heard by three arbitrators if a claim or counterclaim is greater than $1,000,000 (L-2(a)).	The Healthcare Payor Provider rules by default provide for one arbitrator regardless of the amount of the claims and/or counterclaims (R-12).
R-20, L-3 The Commercial Rules provide that for cases governed by the regular procedures (R-21), a preliminary hearing may be requested by any party or at the discretion of the arbitrator or the AAA. If a preliminary hearing is held the parties and the arbitrator should discuss the future conduct of the case, including clarification of the issues and claims, a schedule for the hearings and any other preliminary matters. The arbitrator has the authority to resolve disputes involving the exchange of information. For cases governed by the large complex procedures a preliminary hearing shall be held (L-3) and a number of matters governing the proceeding shall without limitation be discussed. The matters designated in the Commercial Large Complex Rules (L-3) are general in scope and not specifically related to healthcare reimbursement disputes. The arbitrator is authorized to resolve any disputes involving information exchange.	The Healthcare Payor Provider Rules mandate that a preliminary conference be held regardless of the track or procedures under which the case is being administered. The arbitrator is granted the authority to resolve any differences between the parties over the issues addressed during the preliminary hearing. The matters to be addressed without limitation include industry specific issues, such as execution of a confidentiality agreement, precedential effect of the award, inclusion of similar claims involving affiliated parties subject to the consent of the affiliated parties, and the content of the initial disclosures as outlined without limitation in the Rules (R-18, P-1 & P-2).

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L-3(f) The expedited and regular procedures of the Commercial Arbitration Rules are silent concerning depositions. The large complex procedures provide that at the discretion of the arbitrator, upon good cause shown and consistent with the expedited nature of arbitration, the arbitrator(s) may order depositions (L-3(f)).	The Healthcare Payor Provider Rules prohibit the ordering of depositions or other methods of discovery in documents only proceedings absent extraordinary circumstances and a finding of good cause by the arbitrator to prevent an unfair or unjust result (D-4). For cases administered under the regular track the parties are limited to one deposition each unless otherwise agreed by the parties or ordered by the arbitrator for good cause shown (R-22). For cases administered under the complex track procedures, the parties shall each be limited to two depositions unless otherwise agreed or ordered by the arbitrator for good cause shown (C-4).
The Commercial Rules are silent concerning publication or dissemination of the award by the parties.	The Healthcare Payor Provider Rules specifically prohibit absent written agreement of the parties or unless required by law the dissemination or publication of the award except to the extent necessary to effectuate enforcement of the award or following issuance of a court order (R-52(a)).
The Commercial Rules are silent concerning the precedential effect of the award.	The Healthcare Payor Provider Rules specifically state that absent written agreement of the parties the award shall have no res judicata, collateral estoppel, or precedential effect (R-52(b)).