

Arbitrating Healthcare Billing Disputes: Best Practices For Patient-Provider And Provider-Payer Dispute Resolution

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With administrative costs accounting for as much as 40 percent of all healthcare dollars spent, healthcare stakeholders, politicians and state regulators are all seeking innovative ways to eliminate bureaucracy and red tape. One area that is receiving increased attention is the resolution of healthcare billing and payment disputes.

The default forum for disputes that arise from healthcare transactions is usually court litigation. But the acrimony, expense and delays often associated with litigation make it an undesirable method to resolve many types of disputes. In fact, as a practical matter, these costs and delays may make litigation unavailable as a way to resolve disputes that involve relatively small stakes.

Patients, providers and payers deserve an effective forum in which to assert and protect their legal rights surrounding billing disputes. Fortunately, effective alternatives to court litigation exist and can be implemented quickly and with relative ease. Arbitration, in particular, is capable of providing parties with the same outcomes they would have achieved in court litigation, but much faster and at much lower cost. And arbitration possesses many characteristics that make it particularly well-suited to resolve billing disputes that arise from the delivery of healthcare services.

Arbitration's benefits compared to litigation include less delay and expense, simpler procedural and evidence rules, less hostility between parties, and more flexible scheduling of times and places for hearings and discovery. A less often recognized advantage is the availability of a decision maker, if the parties so desire, who is an expert in resolving healthcare disputes.

Patient-Provider Arbitration

The most effective way to ensure that disputes are arbitrated rather than litigated is to include an arbitration provision in admissions agreements, service agreements or other contracts. Doing so is quite simple. At minimum, the parties agree in writing to resolve some or all of the disputes that arise between them in arbitration instead of in court and that either party can enforce the award in court. In addition, parties desiring arbitration are wise to agree that the Federal Arbitration Act (FAA) will govern their agreement and to select a particular arbitration administrator and set of rules under which any arbitration will be conducted.

The FAA reflects a strong federal policy in favor of enforcing private agreements to arbitrate, and courts routinely send parties to arbitration and convert arbitration awards into legal judgments. Where one of the parties is an individual consumer such as a patient, however, it is wise for the business party to ensure that



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all of the contractual terms related to arbitration are exceedingly fair. Best practices in contracting to arbitrate billing and payment disputes include:

- **Mutuality:** All parties should be obligated to arbitrate.
- **Low costs:** Arbitration fees and costs borne by the patient should be kept as low as possible.
- **All remedies:** All legally available remedies should be available in arbitration.
- **Full information:** All arbitration agreements should be readily available for patient review and, where helpful, supplementary documentation further explaining arbitration should be made available.

- **Reputable administrator:** Professional administrators provide legally-tested arbitration rules and ensure that parties spend their time contesting issues of substance rather than procedure.

Provider-Payer Arbitration

Contracting principles relevant to arbitrating payment disputes between patients and providers also apply to provider-payer disputes. Where healthcare service agreements contain effective arbitration language, providers and payers have access to an effective forum to hear and resolve billing and payment claims that arise from the provision of healthcare services to covered patients.

However, a written agreement to arbitrate is not always necessary when it comes to disputes between healthcare providers and health insurers. States are beginning to realize that arbitration provides an effective solution to the problem of proliferating billing disputes. Using their regulatory authority over health insurers, these states can require that insurers arbitrate billing disputes at the election of the healthcare provider.

For example, On July 25, 2006, California Governor Arnold Schwarzenegger signed an Executive Order directing the state's Department of Managed Health Care to implement a fair, fast, inexpensive and independent dispute resolution process to resolve the payment disputes between health insurers and providers who have performed services on a non-contracted basis. The Department has since issued proposed regulations to implement an Independent Dispute Resolution Process and announced a pilot arbitration program.

Also, New Jersey's "Health Claims Authorization, Processing and Payment Act" lays out a two-step dispute resolution process that concludes with binding arbitration administered by an independent ADR provider. The first step allows healthcare providers to initiate an appeal through an internal process created by the insurer at no cost to the provider. The resulting internal appeal decision is binding

on the insurer but not on the provider. The second step permits providers who receive an adverse decision – or no decision within 30 days – to initiate independent, binding arbitration. New York and Delaware have recently considered similar legislation.

Best Practices For Billing Dispute Arbitration

Whether conducted pursuant to a contractual agreement to arbitrate or under the regulatory authority that a state exercises over health insurers that operate within its borders, administered arbitration can be a highly effective method to resolve healthcare billing disputes. Below are some design considerations aimed at ensuring that a contractual or regulatory arbitration program is tailored to effectively and efficiently resolve billing and payment disputes.

Electronic Filing and Streamlined Administration of Claims

Healthcare billing disputes are numerous and typically involve relatively small sums of money. For example, in 2004-2005, California health plans reported nearly 400,000 disputes where the sole issue was payment of medical claims, and the average claim resolved by the Department of Managed Care was approximately \$300.

Because the healthcare billing process results in a large number of low-dollar claims, it is important to minimize administrative costs and streamline administrative processes for maximum efficiency. Electronic case filing, management and delivery of the award allows for a simplified process, a reduced cost and increased efficiency.

Legal Standards in Arbitration

Parties in a billing dispute are likely operating under a healthcare services contract which was drafted in the context of governing law. In order to uphold the expectations of the parties the dispute should be resolved using the same legal standards. Arbitrators should decide a claim using all relevant laws. An independent arbitrator must uphold the legal rights of the parties.

Expert Arbitrators

As in litigation, a workable arbitration system demands decision makers who can navigate and ultimately resolve complex technical disputes. Healthcare billing disputes typically include both medical coding and complex contractual issues. As a result, an effective arbitrator must be knowledgeable about both the law and about medical coding and treatment protocols.

Reasonable Costs

One of the primary benefits of an alternative dispute resolution system is the lower cost when compared to traditional litigation methods. In order for arbitration to remain a desirable option, the arbitration system must maintain reasonable fees and low administrative costs.

Ultimately, shorter case duration is the main driver of arbitration's cost advantage. If a particular arbitration was to take as long as court litigation, there would be a danger that arbitration costs could approach court costs because of fees paid to arbitrators, experts and attorneys. To control costs, especially where the amount in dispute is relatively modest,

the arbitration process will need to provide a sufficient, but limited, timeframe for the dispute to be resolved.

Flexible Hearings

Because health claims disputes vary in complexity, not all arbitrations require the same level of structure or formality. While smaller claims can sometimes be resolved based upon the findings of documentary hearings, some complex claims may warrant in-person hearings for presentation of evidence and testimony. Anyone considering arbitration for a health claims dispute is encouraged to use a procedural framework that will match the type of hearing to the dispute's level of complexity.

Convenient Locations

Although some aspects of an arbitration program can be automated using technology, in the case of complex claims requiring in-person hearings, arbitrators should be available in several different locations throughout the state or country, so travel time and expense do not eliminate the cost-saving and efficiency benefits of arbitration.

Availability of All Legal Remedies

Although healthcare payment disputes typically involve compensatory monetary awards, in arbitration, just as with litigation, parties may also be entitled to other forms of relief. Equitable relief should be made available for parties seeking declaratory judgments or in the event a party is requesting the other party to do or stop doing something, through specific performance or injunctive relief. All forms of legal and equitable relief must be available so parties can be compensated adequately for their claims, fees and costs.

Independent Arbitration Administration

An independent administrator can provide defined rules and procedures for selecting an arbitrator, discovery procedures, filing and response deadlines, and hearing scheduling. An independent administrator can assist the parties to efficiently achieve their resolution by avoiding wasted time arguing technical issues.

Parties can quickly lose faith in the system if communication is slow and if hearings are unhurriedly scheduled and conducted. An experienced, private-sector arbitration administrator can process a large number of claims quickly and efficiently.

A healthcare billing dispute arbitration system also must be capable of efficiently processing large quantities of cases. These types of administrators are accustomed to handling a large volume of claims and can prove especially valuable while a new program deals with a large backlog of claims.

Summary

Billing disputes result in wasted time and expense for health plans, medical providers and consumers alike. Administered arbitration provides an alternative solution that benefits all parties by cutting down on the time and money spent in the billing dispute resolution process. By adhering to these "best practices" when developing an administered arbitration system, healthcare organizations can help ensure this new method of dispute resolution has a positive impact on the healthcare industry.

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