Mediation and arbitration for facilitators

August 16, 2022
Mediation
• Mediation must take place by Day 180 (resolution deadline).
• Report must be filled out within 45 days after mediation is held.
• No agreement is required to be reached at the mediation conference.

Arbitration
• Arbitration must be completed by day 51 (resolution deadline).
• Arbitrator must also notify parties of final decision and file report on portal by day 51.
• Binding resolution that cannot be changed.
Bad faith

Failure to pay facilitator (28 TAC §21.5011 and §21.5021)
28 TAC §21.5023 and §21.5013; TIC Sec. 1467.101

• Failing to:
  • Participate in the informal settlement teleconference or an arbitration or mediation.
  • Provide information the arbitrator or mediator believes is necessary to facilitate a decision or agreement.
  • Designate a representative participating in the arbitration or mediation with full authority to enter into any agreement.
  • Communicate with the facilitator may fall under “failing to provide information.”

• Bad faith may result in referral to a party’s regulatory body.

• Facilitators can assist with this by maintaining records of communications when you suspect bad faith participation.
Fees

• Fees are per request, regardless of the number of claims.
• Mediation or arbitration must take place even if your fee isn’t paid.
• If a party doesn’t pay your fee:
  • Note this in your report in the portal.
  • If you alert the IDR team, we can reach out to the party or provide additional contact details (if we have them).
  • We can’t act as a collection agent for unpaid fees.
  • You may take action that you think is appropriate (e.g. Legal action, collections, etc.).
Participation

- Parties can’t withdraw a request after assignment.
- A complaint being filed against the health plan does not preclude the parties from participating when a request was submitted.
- One party taking legal action against the other does not preclude them from completing the IDR process.
- Once a request is submitted, the expectation is that the parties will follow through and complete the process in good faith.
Uncooperative parties

Unresponsive parties
• Contact the IDR team but keep attempting to contact the parties.
• The IDR team may have additional contact information.
• If emails are bouncing back, alert the IDR team.

Best practices:
• Contact parties early in the process, especially for mediations.
• Attempt to copy other contacts you may have at the organization.
• Notify the IDR team of issues.
• Don’t enter $0 as a final offer.

• Verify the offer amounts with the parties (e.g. The health plan didn’t enter informal teleconference information, the submitter says the health plan entered incorrect information).

• Parties need to agree on what the offers should be or be able to show dated offers.

• Parties may continue to negotiate after the informal teleconference, so final offers may occasionally change.

• If parties settle outside of arbitration or mediation, you can indicate that in your report.
• Resolution deadlines can only be extended by agreement between the parties.
  • One party enters the extension, the other accepts or rejects it.
• Reports must be submitted by the resolution deadline.
  • The IDR team monitors past-due deadlines and will contact you if your report is past due.
  • It is your responsibility as a facilitator to make sure deadlines are met.
Facilitator rotation

- Facilitators are put into selection when a request is created.
- Taking yourself out of rotation removes you from all requests.
- Being put back in rotation puts you in the selection list for newly created requests only.
- Volume of requests varies greatly and many requests settle prior to assignment.
- You may experience some lengths of time without assignments.
Accessing the IDR Portal

• Traveling:
  • If you travel outside of the US, remove yourself from rotation in advance.

• Password issues:
  • Password resets need to cycle through the database.
  • Wait 10-15 minutes after resetting your password before you attempt to log in with it.
  • Clearing your cache and cookies often helps resolve issues.
  • Safari browser will cause issues, and you can’t reset your password.
• Mediation conferences must take place, and the parties must participate (TIC 1467.051(b)).
• It’s your responsibility to ensure a conference is scheduled.
• Schedule mediations as soon / early as possible.
• Don’t mark the request “not settled” without the conference taking place.
  • This is a legal issue, as mediation claims may only be taken to court if the request isn’t settled at mediation (TIC 1467.0575).
• Consider all 10 factors outlined in TIC 1467.083.
• Determine the reasonable amount of payment for services rendered.
• Once the reasonable amount is determined, the party who wins the award is the party who made the offer closest to the reasonable amount.
• The binding award amount is the offer closest to the reasonable amount.
• Note that in cases of bad faith, a party may be ruled against.
Arbitration topics

• If a party doesn’t send requested information, you will use available information (such as the other party’s position statement) to make your determination (28 TAC §21.5021(g)(6)).

• Arbitration determinations can’t be altered once communicated to the parties.
  • The entry in the portal must match the determination sent to the parties.

• Fair Health is the selected benchmarking database (TIC 1467.006).
Questions?