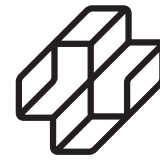


# Revenue Cycle Strategist



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## Payment Claim and Billing Dispute Arbitration

By Keith Maurer

*Arbitration can resolve healthcare billing disputes efficiently and cost-effectively.*

As policymakers become increasingly aware of the problems posed by healthcare billing disputes, states are starting to use administered arbitration to resolve this problem. California and New Jersey recently became the first states to formalize dedicated arbitration programs aimed at resolving billing and payment disputes that arise between healthcare providers and payers. Other states are considering legislation proposing similar programs of contracting privately for arbitration.

Given this legislative activity, healthcare financial executives should take note of the emerging trend toward dispute resolution. For providers, an effective administered arbitration program can create an opportunity to improve cash flow. For payers, such a program can create an avenue to pursue concerns about overbilling practices and can be part of the solution to “balance billing,” where patients are asked to pay

the difference between billed and paid amounts for healthcare services rendered.

### **Billing and Prompt Payment Challenges**

The depth of concern about billing and payment disputes is evident in the fact that 49 states have enacted “prompt payment” laws, which impose deadlines and other restrictions on how insurers may respond to clean claims. Prompt payment statutes impose interest and other regulatory penalties for prompt payment violations.

Despite efforts to regulate billing and payment practices, the path to enforcing prompt payment obligations is not always clear. Some statutes do not contain a private right of action to enable parties to sue to remedy violations of prompt payment requirements. When no private right of action exists, enforcement depends upon the investigative resources available to the state departments of insurance. Even

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### COMING IN SEPTEMBER

**Retroactive denials due to disclaimers in payer contracts can cause organizations to lose revenue unnecessarily. Read more in the next issue of *Revenue Cycle Strategist*.**

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where parties are permitted to sue, the amount of money at stake in any one claim is likely small enough that litigation is economically unfeasible.

Some state insurance departments have been aggressive in prosecuting enforcement actions for noncompliance with state payment statutes and regulations. The American Medical Association tracks state-imposed prompt payment penalties and estimates that state regulators have levied more than \$70 million in fines, interest, and restitution in the past several years.

But what is the real impact felt by healthcare insurers, providers, and their patients? Insurers must recoup the cost of adjudicating claims by passing the cost onto their customers. Providers, especially smaller medical practices, feel the pain of reduced or delayed payments as lost revenue and reduced cash flow. Patients feel the impact in states where

providers are allowed to balance bill patients for unpaid payment amounts. Even where the practice of balance billing is prohibited, it may be permitted where there is no contractual relationship between insurers and providers.

### Patient-Provider Disputes

As changes to America's healthcare system place more responsibility on patients for paying their own medical bills, disputes between patients and providers—especially billing disputes—are inevitable. In this context, healthcare providers in particular find themselves in a delicate position: desiring to pursue unpaid balances without sacrificing their reputations as nurturing, trustworthy caregivers. Providers who follow adversarial collection methods and lawsuits jeopardize not only their public image, but also future revenue and patient relationships.

Arbitration serves as a patient-friendly alternative, because it provides patients access to a system that is easy to navigate and understand. Arbitration's simplified procedural rules mean that parties will not be confused by formal pleading requirements or obscure rules of evidence, for example. The most burdensome elements of the litigation system simply do not exist in arbitration, making arbitration a complement to "patient-friendly" billing initiatives.

### Statutory Arbitration Programs

Today there is widespread recognition that arbitration can provide quick and efficient dispute resolution. U.S. Department of Justice data indicate that the median amount of time it takes to litigate a contract claim is nearly 18 months. Comparable contract claims can be resolved through arbitration in only a few months.

Statutory arbitration programs can provide arbitration rules that are precisely tailored to the characteristics of healthcare billing disputes to ensure that the disputes move from filing to final disposition quickly. In these situations, most of the required evidence takes the form of paper and electronic

documents: specifically, billing and medical records. The issues in dispute are generally known to the parties so everyone is ready to proceed on a relatively tight timeframe. When arbitration takes place after a payer's internal review process is complete, all of the required documentation is shared ahead of time.

Compared to going to court, a major advantage of arbitration is the procedural flexibility it affords. Policymakers can take advantage of this benefit by constructing arbitration programs to contain efficient timeframes, limited formalities, and expert decision makers.

### Dispute Resolution Best Practices

States are just beginning to exercise their regulatory authority to implement arbitration programs to resolve healthcare payment disputes. Although many may see this as a positive move, the opportunity will be lost if the enacted laws and regulations do not allow parties to take full advantage of the potential efficiencies of arbitration. As administered arbitration proposals become more widespread, stakeholders and policymakers alike should be aware of key characteristics of arbitration that lead to efficient hearings and fair outcomes.

#### *Independent arbitration administration.*

Arbitrations should be conducted through an independent administrator who will provide defined rules and procedures to accomplish arbitrator selection, filing and response deadlines, discovery procedures, and hearing scheduling. Without well-defined rules, parties will waste time and effort arguing over technical issues.

Another primary benefit of an experienced, private-sector arbitration administrator is the ability to administer the large volume of billing claims that is likely to arise. A healthcare payment arbitration system must be capable of efficiently processing a potentially large number of cases. A newly launched program can be inundated by a large backlog of initial claims. Parties can quickly lose faith in the system if communication is not forthcoming and if hearings are not promptly scheduled and conducted.

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Therefore, it is important to work with an arbitration organization that has experience administering healthcare billing arbitrations.

*Availability of all legal remedies.* Arbitration is more likely to be successful when arbitration awards are similar to the same types of relief that are available in courts. While healthcare payment claims typically seek compensatory monetary awards, parties may be entitled to other forms of relief, and arbitrators should not be prevented from awarding any legally available remedy.

*Convenient locations.* Although technology can be used to automate and centralize many aspects of an arbitration program, in-person hearings require parties to have ready access to decision makers. Larger states should make arbitrators available in several different locations throughout the state, so that travel time and expense do not preclude seeking resolution of smaller claims.

*Disputes decided under legal standards.* Arbitrators should decide a claim using relevant laws to ensure the dispute resolution program is consistent. Parties have drafted healthcare services contracts in the context of the governing law and should have their payment disputes resolved under the same standards.

*Electronic filing and management of arbitration submissions.* The two defining characteristics of healthcare billing disputes are that they are numerous and that they involve relatively

small sums of money. For example, in 2004-05 in California, health plans reported nearly 400,000 disputes whose sole issue was the payment of medical claims. However, the average claim resolved by the Department of Managed Care was approximately \$300.

Because healthcare billing claims involve numerous disputes over small amounts of money, they need to be resolved using electronic filing and case management. It would be nearly impossible to efficiently and cost-effectively administer an arbitration program for healthcare billing claims without electronic claim filing, case management, and delivery of the arbitration award.

*Flexible hearings.* A one-size-fits-all approach to structuring arbitration hearing procedures is not recommended. Certain large or complex claims may warrant an in-person hearing for evidence and advocacy to have its full effect. Other claims, and smaller claims, may be more efficiently resolved based solely upon the paperwork in “documentary hearings.”

*Reasonable costs.* To the extent that an administered arbitration program becomes too complex—prolonged procedures and high fees—it can suffer the same reputation as an overburdened court system. To retain its value, a healthcare payments arbitration system needs to keep its fees and other costs reasonably low.

*Trained arbitrators.* Healthcare billing disputes usually involve a healthy mix of medical coding and complex contractual issues.

Because of this important, but unusual, mix of medical and legal issues, arbitrator training is critical. Arbitrators need to be legal experts with training in medical coding and treatment protocols or medical billing experts with legal training that enables them to properly render an arbitration decision.

### Waves of Change

Large-scale litigation and regulatory penalties do not succeed in completely compensating providers or protecting insurers, and do not provide timely solutions for either party. But there is an alternative. As states are beginning to recognize, administered arbitration programs offer a more efficient resolution process for healthcare billing disputes by reducing the costs for both parties and increasing the speed and integrity of the process. When correctly administered, arbitration can provide a fast, inexpensive, and fair solution to this complicated and growing problem. ☞

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