

Arbitration Training 2021 Transcript

Slide 1(title slide): Arbitration Process for Balance Billing Disputes

Slide 2 (title slide): Overview of today's presentation

Today we will go over the qualifications of being an arbitrator, the duties and the application process. We will also discuss the arbitration process and the similarities to Texas' arbitration process.

Slide 3: Appointing Arbitrators

Appointed Arbitrators should display these required qualifications.

Examples of training that the Commission would recognize would be:

- organizations which offer arbitration training courses for which continuing education and continuing legal education credits are awarded;
- training by any state insurance department which has implemented an arbitration process, such as Texas or Washington;
- training by arbitrators on behalf of an insurance department or state bar association;
- and training from other organizations which specialize in arbitration training.

An arbitrator must verify that this training was completed within 60 days of the training date in order for the arbitrator to remain active for Virginia. The certificate to attest to completion of this training is available under the "Balance Billing Arbitrators" accordion at: [Virginia Commission - Balance Billing](#) If an arbitrator fails to complete our training, the Commission may remove the arbitrator.

Slide 4: What to provide as part of the arbitrator application

When applying to become an arbitrator, the following should be provided:

- Any experience involving health care billing disputes, carrier and provider or facility contract negotiations, health services coverage disputes or other applicable experience.

When providing the arbitrator fee to be charged, the fee provided must include any indirect costs, administrative fees and incidental expenses.

- The fee you provide to us must be the entire fee per arbitrated case – the total fee from both parties.

Before accepting any appointment, the arbitrator must disclose any conflicts of interest that would adversely impact the arbitrator's independence and impartiality in rendering a decision in the arbitration.

- Applications will be reviewed by the Commission within 30 days of receipt, and notification of their decision will be sent to the arbitrator.
- There is no deadline to apply, however the Commission reserves the right to close the application process at any time and in fact has closed this process currently. If you go to the website and sign up for email notification about changes to the page, you will receive notification when we are again accepting arbitrator applications.
- Once approved, the arbitrator will be added to the list of approved arbitrators on the Bureau of Insurance's website.

- There is not a term limit on being an arbitrator for Virginia. Arbitrators are eligible to serve until they provide a notice of termination to the Commission via a form available on the Bureau's website or until terminated by the Commission. An arbitrator may be terminated by the Commission when:
 - An arbitrator no longer meets the qualifications/requirements to serve as an arbitrator, such as not completing this training.
 - An arbitrator fails to disclose any known facts that a reasonable person would consider likely to affect impartiality in the arbitrator proceeding.

Slide 5: Arbitrators must disclose conflicts of interest

Requirement to Disclose Conflict of Interest:

Pursuant to 14 VAC 5-405-50 D, an Arbitrator must disclose to the arbitrating parties any potential conflict of interest that would adversely impact the Arbitrator's independence and impartiality in rendering a decision and reject the appointment. Items to disclose may include: Current or recent ownership or employment with any health carrier, physician, health care provider, or health care facility; or Having a material professional, familial, or financial conflict of interest with an arbitrating party.

The arbitrator must reject the appointment if any of these situations exist.

Provide first verification code

Slide 6: Arbitrator Duties

The arbitrator should ensure the arbitrations are conducted within the specific timeframes and notifications are provided in a timely manner.

Slide 7: Arbitration Process - Overview

The process includes a timeframe for Arbitration completion, notification to the parties, the decision, bundled claims and the appeal process.

Slide 8: Complete Arbitration Process - Timeline

This is an overview of the entire arbitration process, to include what happens in the pre-arbitration process.

- Carrier offers a payment amount which the provider may dispute if the provider does not consider the amount to be "commercially reasonable." Virginia did not define commercially reasonable; however, a data set was developed in Virginia to assist the parties to determine a commercially reasonable rate. The data set is not a fee schedule or required amount.
- Parties are engaged in good faith negotiation. They have 30 days to attempt to come to an agreement, and must exhaust the full 30 day negotiation period before requesting arbitration.
- Carrier or provider can request arbitration.
- Within 5 days of sending the Notice of Intent to Arbitrate, the initiating party must let the Commission know if the parties have selected an arbitrator OR if they can't agree.
- If the parties cannot agree on an arbitrator, the Commission provides the parties a list of 5 randomly selected arbitrators. Each party can eliminate 2. The Commission will either randomly select from those names that remain or use the one that remains.

- The Commission will send an email to the chosen Arbitrator and all parties providing deadlines and requirements of arbitration, to include written submission, payment deadlines, and arbitrator's decision deadlines.
- Arbitrator will acknowledge receipt of the email and provide their invoice to the parties, along with other instruction they want to provide.
- Parties will make payment to the arbitrator and will provide their written submissions to the Arbitrator.
- Arbitrator will make a decision and provide notice of the decision to all parties and the Commission.
- Any additional claim payment required must be made by the carrier.

Slide 9: Initiating the Arbitration Process

The process begins with the party submitting the Notice of Intent to Arbitrate form.

Slide 10: Notice of Intent to Arbitrate Form (NIA) – this must be completed within 10 days of the good faith negotiation period.

Slide 11: Notification email will include

The chart on slide 8 is a good resource when communicating with the parties

Reminder...Under 14 VAC 5-405-40 C and 14 VAC 5-405-50 D, an arbitrator should notify the parties and the BBVA of any conflict of interest in an assignment. If a conflict exists, you must not accept the assignment.

Within 5 days of an arbitrator being selected, you, the initiating party and the non-initiating party should receive an email, from the reviewer, with the following information:

- That you have been chosen as the arbitrator
- A copy of the NIA form with attachments;
- A copy of the Arbitrator Decision Reporting Form to be completed by the arbitrator upon making the decision. (The form will be pre-populated with the deadline for the parties' written submissions to the arbitrator and the arbitrator decision due date);
- The total fee should be split between the IP and NP
- This fee should be paid within 10 days of this notification.
- A reminder that the NDA must be executed within 10 business days of submission of the NIA form, if it has not already been done. Note: The Arbitrator is not expected to be involved in the NDA.
- Both parties have 30 days (from the submission of the NIA) to submit any documentation they want the arbitrator to consider in their decision. In this submission, their final offer should also be included. Note that this submission may be required to occur as soon as 10 days from the date the arbitrator is chosen, since it must happen within 30 days of the arbitration request. It can take up to 20 days following the NIA form receipt to select and be notified of a case. The information submission 30-day time period is ticking through that selection process.

- Any claims considered to be ineligible should also be noted by the non-initiating party– the carrier can provide information as to the ineligibility of claims for the arbitration process, specifically related to bundled claims that don't meet the criteria (not a similar CPT code, not the same carrier). Bundled claims are permitted and may be addressed in a single arbitration proceeding if they involve the same carrier and provider, involve claims related to the same or similar procedural terminology codes and they occur within a period of two months of one another. §38.2-3445.02 B
- Lastly, the parties will be reminded that if they do not adhere to the timeline presented, the arbitrator will declare a defaulting party and require payment or acceptance of payment of the non-defaulting party for the claim . In addition, the defaulting party may be required to pay the entire arbitration fee.

Slide 12: Virginia Arbitrator Decision Reporting Form

This form will come to the chosen arbitrator largely pre-populated with information gained from the Notice of Intent to Arbitrate form. The due dates for the parties to provide their written submissions and the Arbitrator Decision Date will be provided on this form.

BBVA may pre-populate other information on the form. You must complete all other fields not pre-populated – don't forget to pre-populate "Date of your decision."

Slide 13 (title slide): Arbitration Decision: Making a Determination

The requirements for making an arbitration decision are explained in 38.2-3445.02 F and 14 VAC 5-405-40 F.

The arbitrator shall/must consider the following factors in reviewing the submissions of the parties and making a decision requiring payment of the final offer amount of either the initiating party or the non-initiating party:

- Evidence and methodology are two factors which are required to be considered.
- Along with patient characteristics and the circumstances and complexity of the case.
- Other information which may be relevant but optional to review.
- If the arbitrator wants the parties to address anything else in particular, or provide specific information, such as claim forms, it must be requested as part of the original submission to the arbitrator. The arbitrator must not ask for additional information from the parties following the original submission.
- We suggest the arbitrator ask the parties to indicate in the original submission whether the Virginia commercially reasonable data set should be used. If the parties want the Virginia commercially reasonable data set used, indication as to which specific amount from the data set should be used.

If data is submitted that is other than the Virginia APCD, then we would expect the Arbitrator to verify its relevance to the case, such as:

- whether similar patient characteristics and circumstances existed,
- services were rendered in a similar geographic area and similar services were provided.

This will allow the Arbitrator to determine if the information should be used in deciding a commercially reasonable payment amount.

As a reminder: the arbitrator may NOT independently gather information to consider in each case – not even from the data set on the Bureau’s website.

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Slide 14: Data Sets

- The Commission was required by Section 38.2-3445.03 of the Code of Virginia to contract with Virginia Health Information to establish the Virginia data set to assist in determining commercially reasonable payments and resolving payment disputes for out-of-network services.
- The data set provides combined median in- and out-of-network allowed amounts and median billed charges for specific services by geographic area in Virginia.
- When sufficient data exists, the data set shows the amounts by geographic rating area (commonly used by carriers) and by health planning region (commonly used by providers).

Slide 15: Using Data Sets in Arbitration Decision

As we stated, any data set may only be considered by the arbitrator if provided by a party in its original submission to the arbitrator.

Note that the current Virginia data set does not break out out-of-network versus in-network median allowed amounts as it was intended to under 38.2-3445.03. This is because this information was not collected in 2019 when the original data set was collected, but is being collected going forward. Therefore, the data set shows combined in- and out-of-network median allowed amounts in this first year. The data set includes adjusted amounts that can be used for 2022, but these updated amounts have only been updated for CPI – Medical. A subsequent update is expected that will distinguish between in-network and out-of-network amounts.

Slide 16: Required Arbitrator Decision Submission

- The Arbitrator has 15 days to make a decision. The Arbitrator will notify BBVA@SCC.virginia.gov and the parties of the decision via the Arbitrator Decision Reporting (ADR) Form within 15 days of receipt of the written offers and submissions from both parties.
- The reviewer will ensure the arbitrator submission includes the above items.
- We suggest the arbitrator go back to the original email sent by BBVA to the arbitrator (with all attachments), forward that email, change the subject line to “Arbitrator Decision,” and include the completed Arbitrator Dispute Resolution form and written decision.
- Do not provide the parties’ written submissions to BBVA unless requested to by BBVA.
- The decision provided to the parties should include the other parties’ written submissions, unless a party requests not to review them.

Slide 17: What should be included in arbitrator’s written decision:

The arbitrator's decision should include information that explains the decision. The decision should indicate what information was relied upon and what information was not given weight in the arbitrator's decision, and why. If the Virginia data set was not used, an explanation should be provided as to why not. If a different data set was used, the explanation should indicate why that data set was relevant.

It is helpful to parties if the arbitrator provides suggestions as to anything that was not clear in the submissions and how the submissions could be improved.

Slide 18: Bundled Claims

Separate arbitration requests must be submitted for each claim in question, unless it meets the requirements for a bundled claim. Virginia does not have a limit on the number of claims in a bundle other than the claims must have occurred within 2 months of each other and be related to the same provider (health care professional – not provider group) and carrier, and the same or similar CPT code.)

Just a note, bundled claims will be treated as one allowing one arbitration fee to be charged. Virginia does not have a mechanism for a separate per claim fee on bundled cases.

Slide 19 (title slide): Right to Appeal

Parties may appeal an arbitration decision within 30 days of the decision by emailing BBVA at BBVA@scc.virginia.gov. The appeal must relate to one of the reasons outlined in 14 VAC 5-405-40 H.

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Slide 20: Virginia and Texas How the processes compare

Virginia's balance billing law and arbitration process is nearly entirely based on Washington state's law and process. However, a large majority of arbitrators participating in the process for Virginia are arbitrators who participate in the Texas process. We wanted to highlight the differences and similarities between the two.

Slide 21: How are Virginia and Texas similar?

- Virginia only has an arbitration process. It does not have a dispute resolution process like Texas does.
- Regarding the first row, an arbitrator can use a similar process in Virginia as they do in Texas – coming up with a reasonable amount based on the information submitted and choosing which party is closest to that reasonable amount.
- We have noticed provider parties submitting Fair Health data as a basis for the requested reimbursement in arbitration. Virginia law does not include any mention of Fair Health data but using that data as a basis for an arbitration decision is not specifically excluded as a basis for determining a commercially reasonable payment amount.

Slide 22 (title slide): Questions