



INTERNATIONAL CENTRE  
FOR DISPUTE RESOLUTION®

# AAA: Working Together for Healthcare Dispute Resolution Success

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date

# New AAA Healthcare Landing Page

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## Choosing AAA® for Healthcare Industry Disputes: Expertise, Specialization and Experience

Resolve your healthcare disputes fairly, efficiently, and cost-effectively. AAA offers a panel of seasoned professionals, specialized rules, and the case management expertise to find solutions that work for everyone. Contact us today and discover how we can help you get back to what matters most: delivering quality healthcare.



*Rules, HC Panel,  
& Drafting ADR  
Resources Available!*

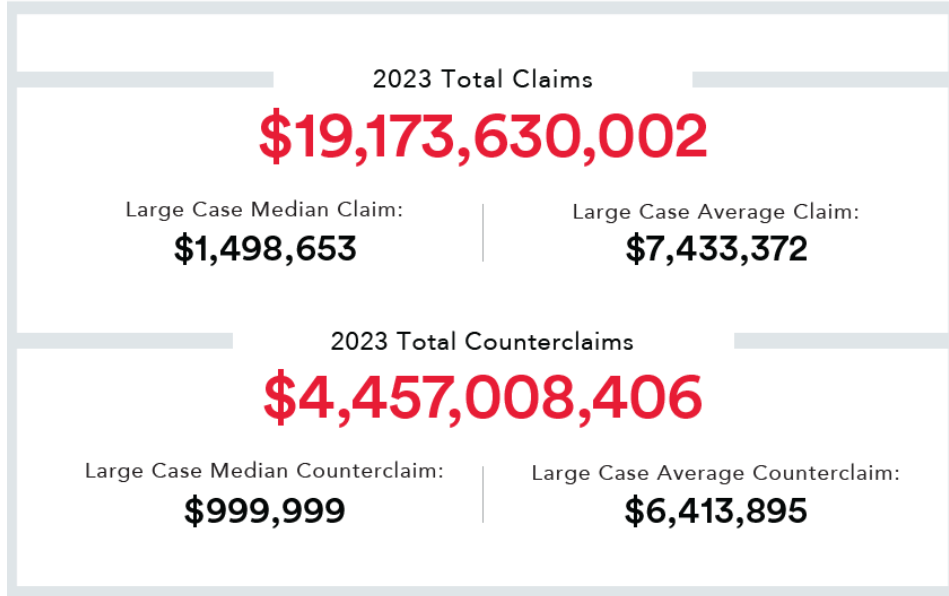
*Visit:*



# 01.

## Healthcare Data Trends

## 2023 B2B Commercial Case Filings\*



# 11,553

Total Number of Cases Filed in 2023

### LARGEST CLAIM AMOUNTS BY INDUSTRY

Industry	Amount
Life Sciences	\$1 billion
Accounting	\$600 million
Energy	\$526 million
Construction	\$500 million
Technology	\$458 million
Entertainment	\$375 million
Transportation	\$284 million
Financial Services	\$244 million
Healthcare	\$213 million
Real Estate	\$200 million
Cannabis	\$155 million



*\*based on 2023 case filings*



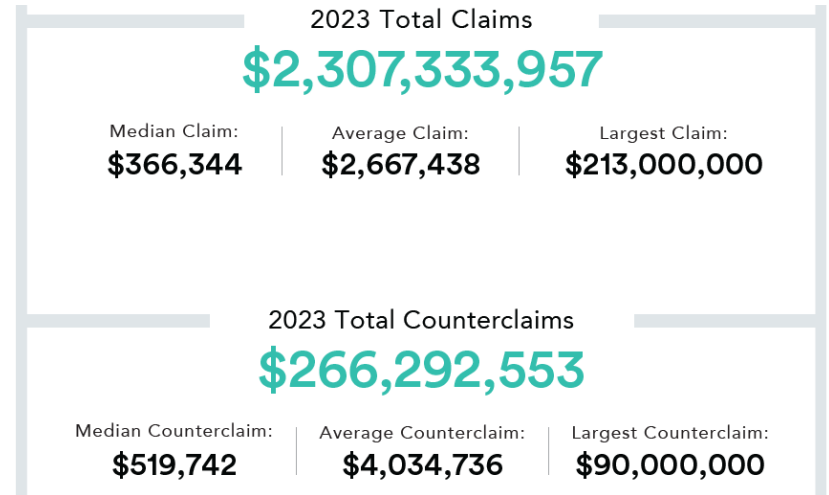
# AAA Healthcare B2B Stats

(based on AAA 2022 & 2023 B2B cases filed)

## 735 Healthcare Cases Filed in 2022



## 897 Healthcare Cases Filed in 2023



- *Percentage of cases with counterclaims – 22%*
- *Percentage of cases that went to Award – 8%*



# Types of Healthcare Arbitrations Filed

(based on AAA 2023 B2B cases filed)

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- Asset Purchase/Business Sale
- Outsourced Services
- Partnership/Shareholder/Joint Venture
- Pharmacy Benefit Management
- Payor Provider/Reimbursement\*\*

**\*\* 84% of Healthcare Arbitrations Filed**



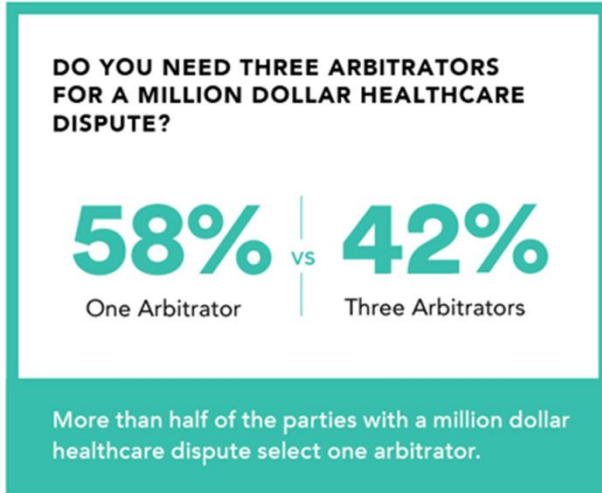
# AAA Healthcare B2B Stats

(based on 2022 & 2023 b2b cases filed)

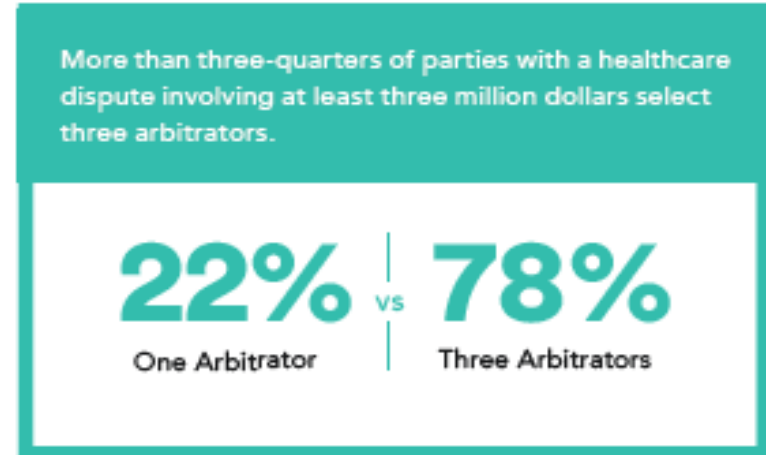
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## *One Arbitrator v. Panel of Three*

2022



2023



*Note: “Arbitration rules changed threshold for three arbitrators effective Sept. 2022.”*



# Healthcare arbitration time filing trend (based on 2023 b2b cases filed)



## TIME TO AWARD (IN MONTHS)

AAA gets you to award much quicker than courts.

### AAA Healthcare Cases Up to \$100k



### AAA Healthcare Cases claims over \$100k-\$999k



### AAA Healthcare Cases with claims \$1 million and above



### Time to Trial in U.S. District Court (Civil Cases)





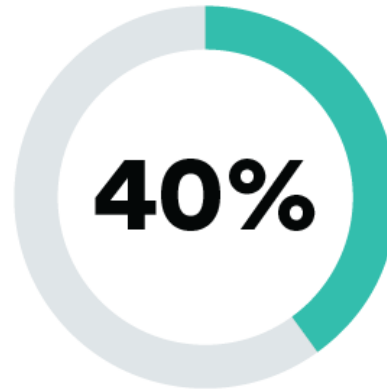
# AAA National Healthcare Panel

AAA Healthcare Panel = 250

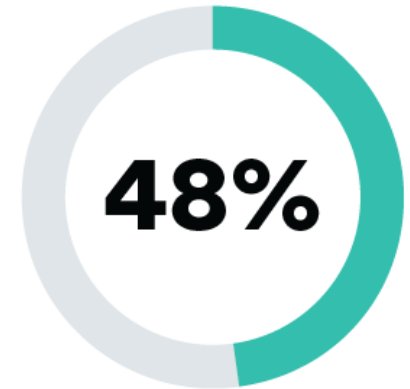
Last 10 years:

- 30% of time engaged in healthcare matters.
- Full time Arbitrators – 30% of appointments are healthcare cases.

**COMMITMENT  
TO DIVERSITY**



**DIVERSE PANEL**



**DIVERSE APPOINTMENTS**



# AAA Healthcare other B2B Stats

(based on 2022 & 2023 b2b cases filed)

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**80%**

of cases settle prior to award.



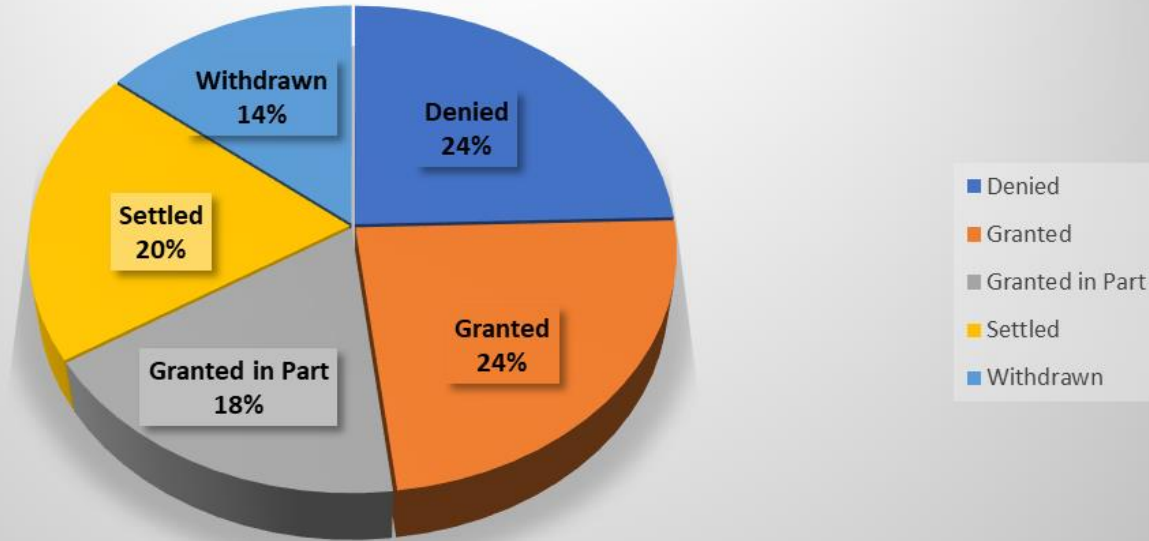
**21%**

of cases settle prior to incurring any arbitrator compensation.



# Healthcare Arbitration Emergency Relief Trend

Emergency Relief Outcomes for Healthcare Disputes  
(based on 7 emergency relief matters resolved in 2023)



# AAA Commercial B2B Emergency Motions Filed in 2023

## EMERGENCY MOTIONS FILED WITH THE AAA-ICDR IN 2023

 **112**

# of applications for Emergency Measure of Protection filed

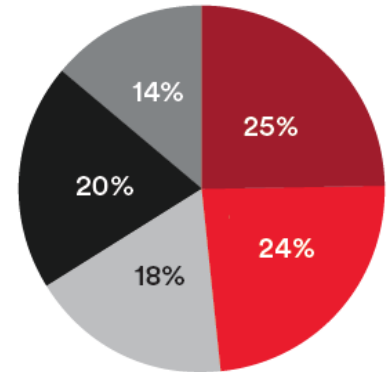
 **106**

# resolved

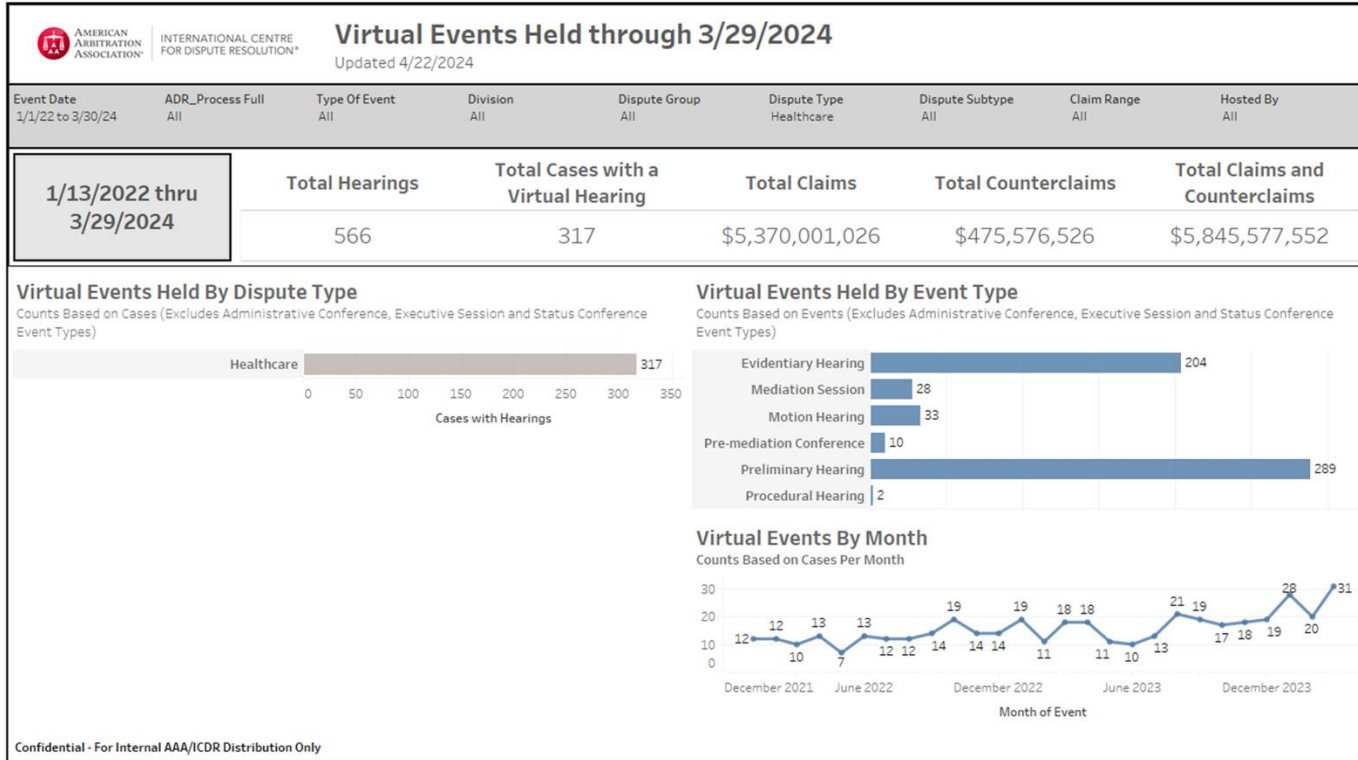
 **6**

# pending as of 1/31/24

- Denied
- Granted
- Granted in Part
- Settled
- Withdrawn



# Still Going Virtual



# Appellate Arbitration Applications

28% Settled

72% went to decision

50% of awards were affirmed/adopted

63% were decided on documents alone

## Appellate Rule Outcomes

(based on commercial/construction matters closed in 2022 and through August 2023)

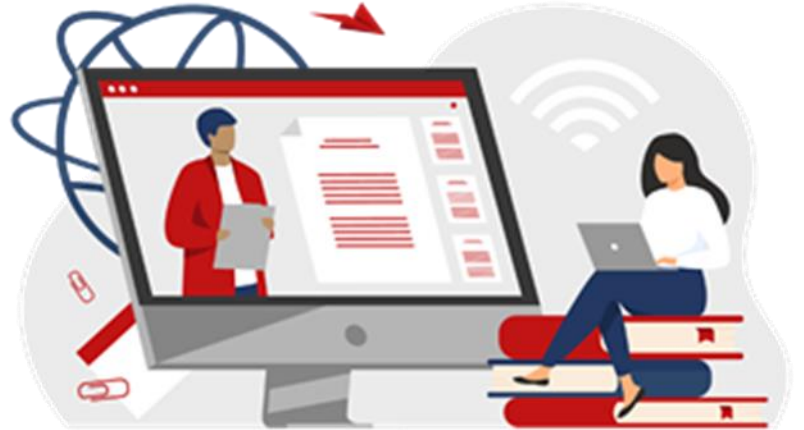


## **02.** **Healthcare Case Management**

# 2024 AAA Healthcare Case Management

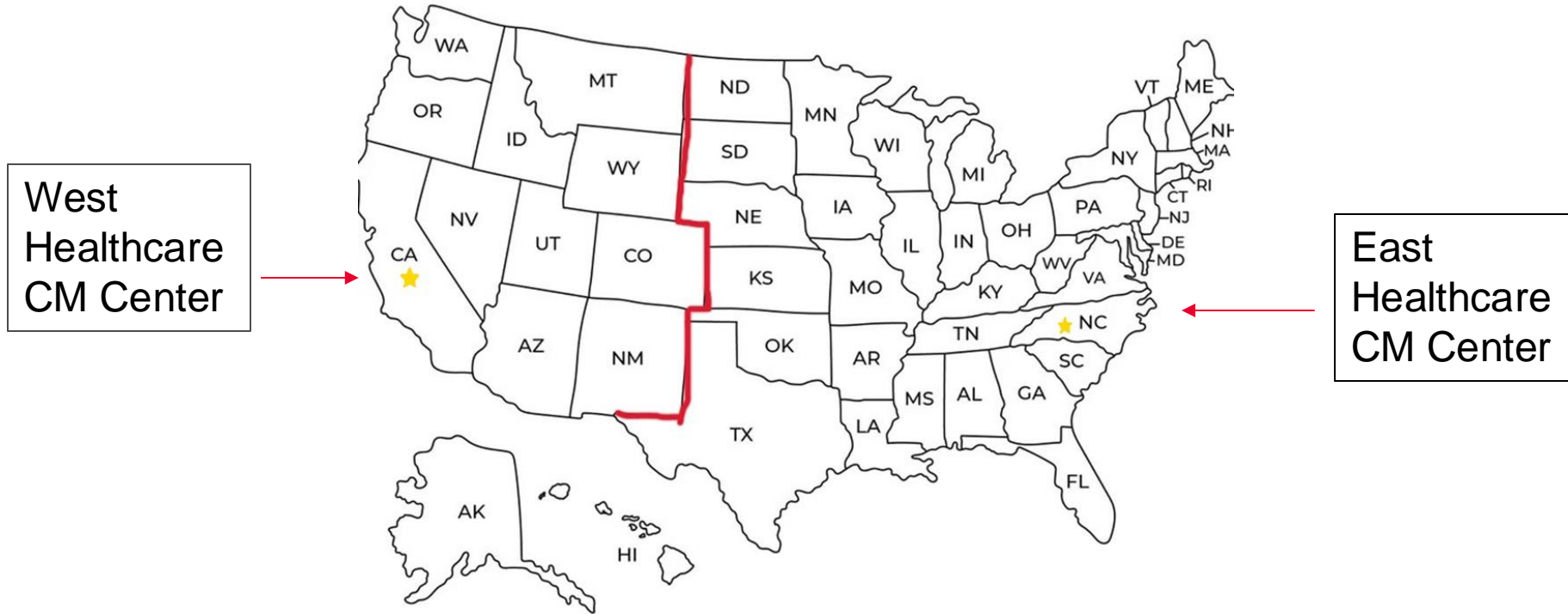
## East/West Healthcare Cases Services

- Case Management Expertise
- Familiar with Arbitrators & Counsel
- Filers are repeat so usually same counsel for Payor Provider Cases
- Understand Arbitrator List for Active Cases
- Consistent Case Management
- Consistent application for arbitration rules





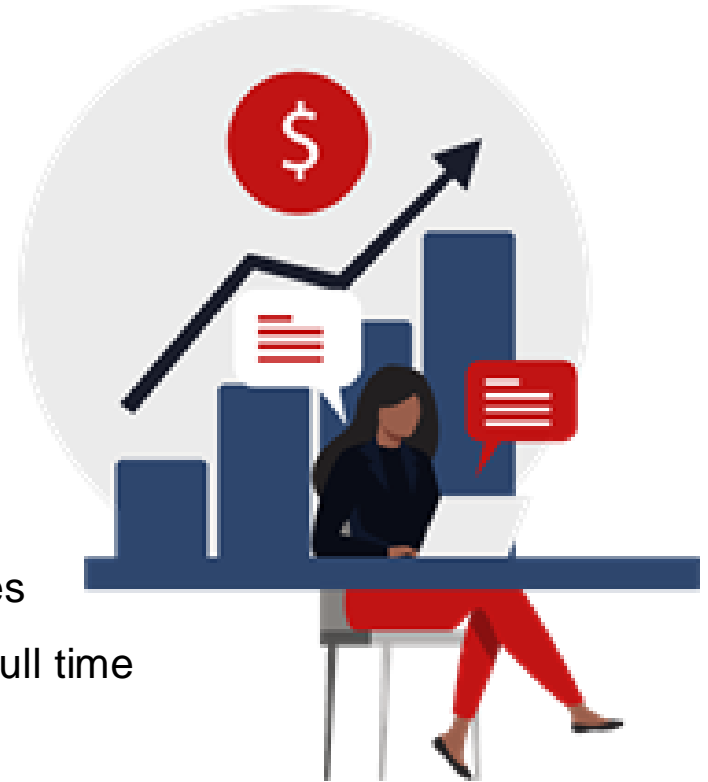
# 2024 AAA Healthcare Case Management Consolidation



# AAA Healthcare Services Overview

## Why AAA? **Full Case Administration**

- Filing to Award
- AAA paid ONLY for Filing and Final fees
- No share of arbitrator compensation
- Streamlined Panel Options
- Administrative Review Council – LCC
- Locale, Filing requirements, Arbitrator challenges
- National Healthcare Panel (Not required to be Full time Arbitrators)
- Arbitrator Selection - CHOICE



# AAA Healthcare Services Overview (cont'd)

## *A La Carte Services*

- Case Financial Administrative Services
- eDiscovery Special Master
- Arbitrator Select Services-List only or Appointment Services
- Arbitrator Challenges – Non Administered cases
- Judicial Settlement Conference
- Optional Appellate Arbitration Rules
- Hearing Room Rental
- Virtual Hearing Managed Services



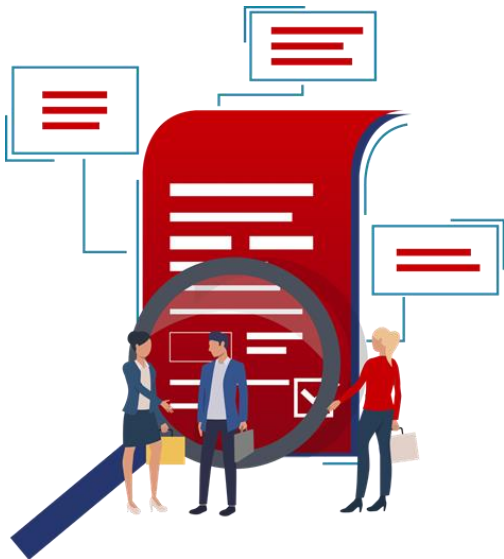
*More details at:*  
[www.adr.org/alacarteservices](http://www.adr.org/alacarteservices)



**03.**

## **AAA Administrative Review Council (ARC)**

# AAA's Administrative Review Council (ARC)



## What is ARC?

Executive Level administrative decision-making authority created to resolve certain administrative issues in AAA's Large Complex domestic cases.

## Issues Reviewed by ARC:

- Objections to Arbitrators
- Locale Determinations
- Whether the filing requirements contained in the AAA rules have been met

## Council Guidelines

## Council Review Standards

More information about ARC at: [www.adr.org/arc](http://www.adr.org/arc)



# 04. ClauseBuilder® and ClauseBuilder AI (Beta)

# AAA ClauseBuilder

[www.clausebuilder.org](http://www.clausebuilder.org)

- FREE wizard that walks users through step-by-step
- Choose which options to include or skip

ALTERNATIVE DISPUTE RESOLUTION  
**ClauseBuilder® Tool**

Introduction | Foundation | **Options** | Review

### The Standard Arbitration Clause

The Standard AAA arbitration clause is often the best choice for ease in contract drafting and negotiation. By invoking the AAA's rules, the standard AAA clause provides a complete set of rules and procedures and eliminates the need to spell out each contingency and procedural matter. When combined with the AAA's case management, the standard AAA arbitration clause provides a simple, time-tested means of resolving disputes that has proven highly effective in hundreds of thousands of disputes.

To use the Standard AAA Clause without viewing a variety of optional clause provisions, please click on the "Finish and Choose this Clause" below.

To be guided through a selection of optional issues that many parties address in arbitration agreements, including the location of the arbitration, the applicable law, the number of arbitrators to be appointed, and others, please select the "Proceed to Other Options" button below. Many parties use the Standard AAA clause as their "foundation" clause, and then modify it to address the additional provisions described on the following screens.

#### Standard Arbitration Clause Options

- ▶ Number of Arbitrators  
Method of Arbitrator Selection: AAA Commercial Arbitration Rules
- ▶ Arbitrator Qualifications
- ▶ Locale Provisions
- ▶ Governing Law
- ▶ Discovery
- ▶ E-Discovery
- ▶ Documents Only Hearing
- ▶ Duration of Arbitration Proceedings
- ▶ Remedies
- ▶ Assessment of Forum Fees and Attorneys' Fees
- ▶ Opinion Accompanying the Award
- ▶ Confidentiality
- ▶ Non-Payment of Arbitration Expenses
- ▶ Appeal

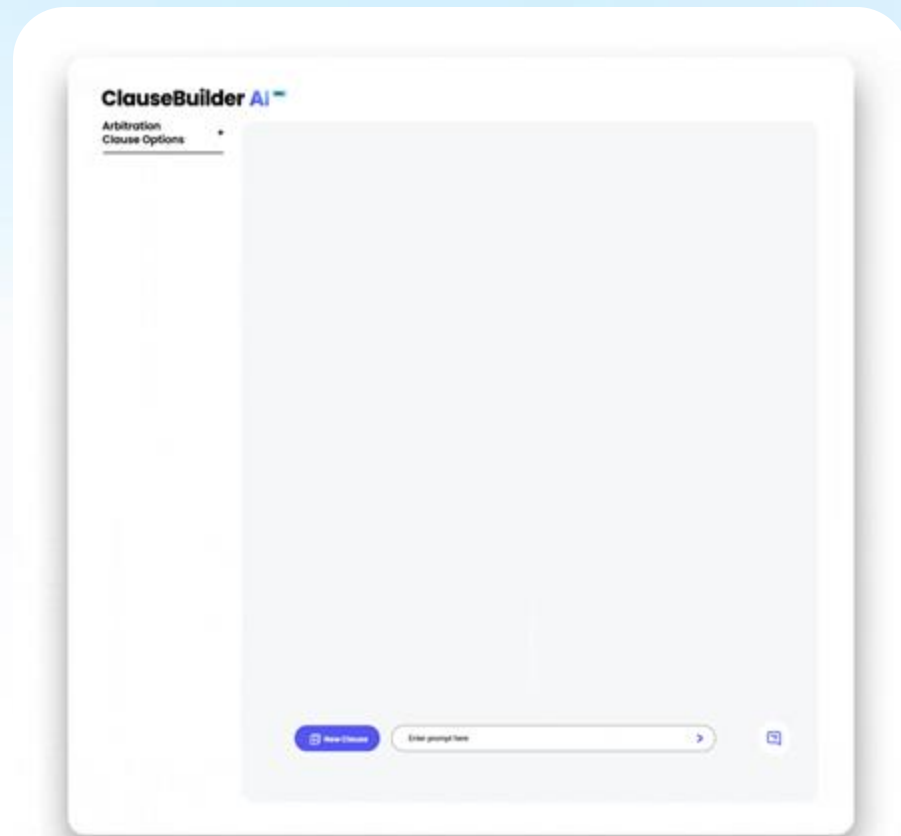
*Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.*

◀ Previous | **Finish and Choose this Clause** | Proceed to Other Options ▶



# ClauseBuilder AI

<https://clausebuilder.ai/>





# 05. AAA Panel Recruitment

# AAA Panel Recruitment

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- Criteria/Qualifications – avail at <https://www.adr.org/aaa-panel>
- Prefer industry expertise
- Familiarity with Mediation and or Arbitration

## Considerations:

- Start early – don't wait for retirement
- Advocacy experience is a plus
- Stay abreast with arbitration procedures, rules



# 06.

## AAA Innovations & Technologies

# AAA Innovation & Technologies

- AAAiLab
- Deposition and Hearing Services
- CaseShield by AAA-ICDR
- ClauseBuilder AI
- AAA-ICDR Mobile Apps
- Arbitrator Search Platform
- Online Fee Calculator
- ODR Platform



INTERNATIONAL CENTRE  
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INNOVATION



**07.**

# **AAA Healthcare Payor Provider Arbitration Rules Overview**

# Healthcare Payor Provider Rules, October 1, 2022

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## Payor-Provider Rules

- Various tracks & amount in controversy does not determine track
- A single arbitrator is the default
- National Healthcare Roster of arbitrators
- Discovery and special initial disclosures
- Rules encourage efficient and early resolution where possible



# Healthcare Payor Provider Rules, October 1, 2022

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## **R-1 (d) Administrative Track Designation (No language change)**

Track 1- Desk/Telephonic (D-1 – D-6)

Track 2 – Regular Track (R-1 – R-62)

Track 3 – Complex Track (C-1 – C-5)

Default track is Regular Track.

*Parties choose the track and not driven by monetary claim.*



# Healthcare Payor Provider Rules, October 1, 2022

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## **R-13 Number of Arbitrators (No language change to (a))**

- (a) Unless the parties agree otherwise, the disputes will be heard and determined by one arbitrator regardless of the amount in controversy.
  
- (b) Clarify the terms such as “the arbitrator”, “an arbitrator” or the “arbitrators” in the arbitration agreement, without further specifying the number of arbitrators, shall not be deemed by the AAA to reflect an agreement as to the number of arbitrators.





# Healthcare Payor Provider Rules, October 1, 2022

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## **Appointment from National Healthcare Roster Rule R-14 (former Rule R-13)**

- In contrast to the Commercial Rules, this rule specifies the AAA provide arbitrator list drawn from the National Healthcare Roster
- Additionally, added language to R-14 (c) authorizing the AAA to limit the number of strikes



# Healthcare Payor Provider Rules, October 1, 2022

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## R-22 Meet and Confer, Preliminary Hearing and Scheduling Order

- This rule revision adds the requirement that the parties meet and confer on the topics outlined in R-22 (d) - (j) prior to the preliminary hearing.
- **Rule 22** requires parties to meet and confer at least 5 days before the preliminary hearing and encourages each party with affirmative claims to share a spreadsheet of disputed claims prior to the meet and confer.
- **Rule 22** includes a list of special payor-provider dispute topics to be discussed with the arbitrator at the preliminary hearing, and recent rule amendment added possible use of statistical sampling as a discussion topic.



# Healthcare Payor Provider Rules, October 1, 2022

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## R-23 Discovery (No Language Change)

### Desk/Telephonic Track – D-4

- Absent extraordinary circumstances and a finding of good cause by the arbitrator that depositions or other methods of discovery are necessary to prevent an unfair or unjust result, no additional discovery shall occur, and the dispute shall be resolved based on the documents and briefs submitted.

### Regular Track – R-23

- The parties shall each be limited to one deposition unless otherwise agreed to by the parties or ordered by the Arbitrator for good cause shown.

### Complex Track - C-4

- The parties shall each be limited to two depositions unless otherwise agreed to by the parties or ordered by the Arbitrator for good cause shown.



# Healthcare Payor Provider Rules, October 1, 2022

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## New Rules and Major Rule Amendments

1. Consolidation and Joinder
2. Appointment from National Healthcare Roster
3. Administrative Review Council
4. Discovery
5. Cybersecurity, Privacy and Data Protection





## **Michelle Skipper**

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