



Mediation and arbitration for facilitators

August 16, 2022

TDI | A quick review

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.

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 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.).

TDI | 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.

TDI | 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.

TDI | Deadlines

- 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.

TDI | 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.

TDI | 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.

TDI | Mediation topics

- 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.

TDI | 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?
