

SAMPLE ARBITRATION CLAUSE LANGUAGE

A. Simple Arbitration Clause

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/American Health Lawyers Association Alternative Dispute Resolution Service] under its [Commercial Arbitration Rules/Healthcare Payor Provider Rules/Rules of Procedure for Arbitration by the American Health Lawyers Association]. The number of arbitrators shall be [one or three]. The place of arbitration shall be [city, state]. [State] law shall apply. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Arbitration of existing disputes may be accomplished by use of the following:

We, the undersigned parties, hereby agree to submit to arbitration administered by the [American Arbitration Association/American Health Lawyers Association Alternative Dispute Resolution Service] under its [Commercial Arbitration Rules/Healthcare Payor Provider Rules/Rules of Procedure for Arbitration by the American Health Lawyers Association] the following controversy: [describe briefly]. We further agree that the above controversy be submitted to [one or three] arbitrator(s). The place of the arbitration shall be [city, state], and [state] law shall apply. We further agree that we will faithfully observe this agreement and the rules, that we will abide by and perform any award rendered by the arbitrator(s), and that a judgment of any court having jurisdiction may be entered on the award.

In transactions likely to require emergency interim relief, the parties may wish to add to their clause the following language:

The parties also agree that the AAA Optional Rules for Emergency Measures of Protection shall apply to the proceedings.

B. Mediate Arbitrate Clause

In the event of any controversy or claim arising out of or relating to this agreement, or a breach thereof, the parties hereto shall first attempt to settle the dispute by mediation, administered by the [American Arbitration Association] under its [Mediation Rules]. If settlement is not reached within sixty days after service of a written demand for mediation, any unresolved controversy or

claim shall be settled by arbitration administered by the [American Arbitration Association/American Health Lawyers Association Alternative Dispute Resolution Service] under its [Commercial Arbitration Rules/Healthcare Payor Provider Rules/Rules of Procedure for Arbitration by the American Health Lawyers Association]. The number of arbitrators shall be [one or three]. The place of arbitration shall be [city, state]. [State] law shall apply. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

C. Standard Arbitration Agreement

1. Any dispute, controversy or claim arising out of or relating in any way to [the agreement/the relationship] including without limitation any dispute concerning the construction, validity, interpretation, enforceability or breach [of the agreement], shall be exclusively resolved by binding arbitration upon a Party's submission of the dispute to arbitration. [In the event of a dispute, controversy or claim arising out of or relating in any way to [the agreement/the relationship], the complaining Party shall notify the other Party in writing thereof. Within thirty (30) days of such notice, management level representatives of both Parties shall meet at an agreed location to attempt to resolve the dispute in good faith. Should the dispute not be resolved within thirty (30) days after such notice, the complaining Party shall seek remedies exclusively through arbitration.] **The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after two years from when the aggrieved party knew or should have known of the controversy, claim, dispute or breach.**
2. This agreement to arbitrate shall be specifically enforceable. A Party may apply to any court with jurisdiction for interim or conservatory relief, including without limitation a proceeding to compel arbitration.
3. The arbitration shall be conducted by [one/three] arbitrator[s]. If the Parties are not able to agree upon the selection of an arbitrator, within [twenty] days of commencement of an arbitration proceeding by service of a demand for arbitration, the arbitrator shall be selected by [the American Arbitration Association/the London Court of International Arbitration/a state/federal court judge in [Colorado]] shall select the arbitrator in accordance with the terms of this agreement. [For three arbitrators, each party shall select an arbitrator within [ten] days of commencement of the arbitration who shall serve as a neutral arbitrator and the two designated arbitrators shall select a third neutral arbitrator within [twenty] days of their selection of the parties cannot agree on a third arbitrator. If the two arbitrators cannot agree on selection of a third arbitrator within [twenty] days of their appointment, [the American Arbitration Association/the London

Court of International Arbitration/a state or federal judge in [Colorado] shall select such arbitrator in accordance with the terms of this agreement.]

4. The arbitrator[s] shall have [ten] years of experience in [designate a particular area] [and also shall have served as an arbitrator at least [three] times prior to their service as an arbitrator in this arbitration.]
5. The arbitration shall be conducted in accordance with [the then existing Commercial Rules of the American Arbitration Association/the then existing rules of the Judicial Arbitration Group/the then existing Federal Rules of Civil Procedure/ the Healthcare Payor Provider Rules/the Rules of Procedure for Arbitration by the American Health Lawyers Association].
6. The arbitration shall be conducted in [Denver, Colorado].
7. The laws of the [State of Colorado] shall be applied in any arbitration proceedings, without regard to principles of conflict of laws.
8. It is the intent of the parties that, barring extraordinary circumstances, arbitration proceedings will be concluded within [one hundred and twenty] days from the date the arbitrator[s] are appointed. The arbitrator[s] may extend this time limit in the interests of justice. Failure to adhere to this time limit shall not constitute a basis for challenging the award.
9. Except as may be required by law, neither a party nor its representatives may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of [all/both] parties.
10. The Parties shall [not] be entitled to discovery in the arbitration [except that any Party shall be entitled to request [no more than [1000] pages of documents and to take [three] depositions not to exceed [eight] hours for each such deposition]. [Any Party shall be entitled to depose any expert who will testify in the arbitration proceeding but shall pay the regular hourly rate of such expert during such deposition.] [In addition to the foregoing, any Party shall be entitled to take the deposition of a witness who will testify at the arbitration but who is unavailable to testify at the hearing to preserve such witness' testimony for the arbitration hearing.]
11. The Parties shall exchange a copy of all exhibits for the arbitration hearing and shall identify each witness who will testify at the arbitration, with a summary of the anticipated testimony of such witness [ten] days before the arbitration hearing.
12. The arbitrator[s] shall have no authority to award [punitive/consequential/special/indirect] damages. The arbitrators shall [not] be entitled to issue injunctive and other equitable relief. The arbitrator[s] shall award interest from the time of the breach to the time of award at the rate of [___%] [prejudgment interest under Colorado law.]

13. The cost of the arbitration proceeding and any proceeding in court to confirm or to vacate any arbitration award, as applicable (including, without limitation, reasonable attorneys' fees and costs), shall be borne by the unsuccessful party, as determined by the arbitrators, and shall be awarded as part of the arbitrator's award. It is specifically understood and agreed that any party may enforce any award rendered pursuant to the arbitration provisions of this Section by bringing suit in any court of competent jurisdiction. The parties agree that the arbitrator shall have authority to grant injunctive or other forms of equitable relief to any party. This Section shall survive the termination or cancellation of this Agreement.
14. Each party shall pay its own proportionate share of arbitrator fees and expenses [plus the fees and expenses of the arbitrator it designated (if there are three arbitrators)] and the arbitration fees and expenses of [the American Arbitration Association/the Judicial Arbitrator Group]. The arbitrator[s] shall be entitled to award the foregoing arbitration and administrative fees and expenses as damages in his/her discretion].

D. Mandatory Arbitration Language for Medical Service Providers

Pursuant to the Colorado Health Care Affordability Act (C.R.S. §13-64-403), all arbitration agreements between health care provider and patients must include the following statement as part of the agreement:

It is understood that any claim of medical malpractice, including any claim that medical services were unnecessary or unauthorized or were improperly, negligently, or incompetently rendered or omitted, will be determined by submission to binding arbitration in accordance with the provisions of part 2 of article 22 of this title, and not by a lawsuit or resort to court process except as Colorado law provides for judicial review of arbitration proceedings. The patient has the right to seek legal counsel concerning this agreement, and has the right to rescind this agreement by written notice to the physician within ninety days after the agreement has been signed and executed by both parties unless said agreement was signed in contemplation of the patient being hospitalized, in which case the agreement may be rescinded by written notice to the physician within ninety days after release or discharge from the hospital or other health care institution. Both parties to this agreement, by entering into it, have agreed to the use of binding arbitration in lieu of having any such dispute decided in a court of law before a jury.