



KAISER PERMANENTE®
Kaiser Foundation Health Plan, Inc., Hawaii
Arbitration Agreement

Associate Name _____
(Printed)

Associate Date of Birth _____

For a complete description of arbitration information, please see below, as excerpted from your Kaiser Permanente Hawaii's Guide to Your Health Plan (Guide).

A. Binding Arbitration. Except as provided below, any and all claims, disputes, or causes of action arising out of or related to this (Guide), its performance or alleged breach, or the relationship or conduct of the parties, including but not limited to any and all claims, disputes, or causes of action based on contract, tort, statutory law, or actions in equity, shall be resolved by binding arbitration as set forth in this (Guide).

(1) This includes but is not limited to any claim asserted:

- (a) By or against a Member, a patient, the heirs or the personal representative of the estate of the Member or patient, or any other person entitled to bring an action for damages, arising from or related to harm to the Member or patient as permitted by applicable federal or Hawaii state law existing at the time the claim is filed ("Member Parties"). For purposes of this section 8, all family members of the Member or patient who have derivative claims arising from such harm, shall also be deemed "Member Parties" and bound to these arbitration terms;
- (b) On account of death, bodily injury, physical ailment, mental disturbance, or economic loss arising out of the rendering or failure to render medical services or the provision or failure to provide benefits under this (Guide), premises liability, or arising out of any other claim of any nature, irrespective of the legal theory upon which the claim is asserted; and
- (c) By or against one or more of the following entities or their employees, officers or directors ("Kaiser Permanente Parties"):
 - (i) Kaiser Foundation Health Plan, Inc.,
 - (ii) Kaiser Foundation Hospitals,
 - (iii) Hawaii Permanente Medical Group, Inc.,
 - (iv) The Permanente Federation, LLC,
 - (v) Any individual or organization that contracts with an organization named in (i), (ii), (iii), (iv) or (v) above to provide medical services to Health Plan Members, when such contract includes a provision requiring arbitration of the claim made.

(2) Notwithstanding any provisions to the contrary in this (Guide), the following claims shall not be subject to mandatory arbitration:

- (a) claims for monetary damages within the jurisdictional limit of the Small Claims Division of the District Courts of the State of Hawaii;
- (b) actions for appointment of a legal guardian of a person or property subject to probate laws;
- (c) purely injunctive orders reasonably necessary to protect Kaiser Permanente's ability to safely render medical services under this (Guide) (such as temporary restraining orders, and emergency court orders);
- (d) for members of Groups, claims for benefits under Section 502(a)(1)(B) of the Employee Retirement Income Security Act (ERISA); and equitable claims for third party liability lien rights under Section 502(a)(3) of ERISA;
- (e) for Medicare members, claims subject to the Medicare appeals process.

B. Initiating Arbitration. A demand for arbitration shall be initiated by sending a registered or certified letter to each named party against whom the claim is made, with a notice of the existence and nature of the claim, the amount claimed and a demand for arbitration. Any Kaiser Permanente Parties shall be served by registered or certified letter, postage prepaid, addressed to the Kaiser Permanente Parties in care of the Health Plan at the address set forth in section 10-G of this (Guide). The arbitrators shall have jurisdiction only over persons and entities actually served.

C. Arbitration Proceedings.

- (1) Within 30 days after the service of the demand for arbitration, the parties shall agree on a panel of arbitrators from which to select arbitrators or shall agree on particular arbitrators who shall serve for the case. If the parties cannot agree on any panel of arbitrators or particular arbitrators within the 30 days, then the panel of arbitrators shall be that of Dispute Prevention and Resolution, Inc. ("DPR"). Unless the parties agree to any other



KAISER PERMANENTE®
Kaiser Foundation Health Plan, Inc., Hawaii
Arbitration Agreement

arbitration service and rules, DPR shall administer the arbitration and its arbitration rules shall govern the arbitration (including rules for selection of arbitrators from a panel of arbitrators, if the parties have not already agreed upon particular arbitrators to serve). Kaiser Permanente shall notify DPR (or such other arbitration service as may be chosen by the parties) of the arbitration within 15 days following the expiration of the 30-day period noted above.

- (2) Within 30 calendar days after notice to Dispute Prevention and Resolution, Inc., the parties shall select a panel of three arbitrators from a list submitted to them by the arbitration service. In all claims seeking a total monetary recovery less than \$25,000.00, and in any other case where the parties mutually agree, a panel of one arbitrator selected by both parties from a list submitted to them by the arbitration service will be allowed. The arbitrator(s) shall arrange to hold a hearing in Honolulu (or such other location as agreed by the parties) within a reasonable time thereafter.
- (3) Limited civil discovery shall be permitted only for
 - (a) production of documents that are relevant and material,
 - (b) taking of brief depositions of treating physicians, expert witnesses and parties (a corporate party shall designate the person to be deposed on behalf of the corporation) and a maximum of three other critical witnesses for each side (i.e., respondents or claimants), and
 - (c) independent medical evaluations.The arbitrator(s) shall resolve any discovery disputes submitted by any party, including entry of protective orders or other discovery orders as appropriate to protect a party's rights under this paragraph.
- (4) Any payment for the fees and expenses of the arbitration service and the arbitrator(s) shall be borne one-third by the Member Parties and two-thirds by the Kaiser Permanente Parties.
- (5) Each party shall bear their own attorney's fees, witness fees, and discovery costs.
- (6) The arbitrator(s) may decide a request for summary disposition of a claim or particular issue, upon request of one party to the proceeding with notice to all other parties and a reasonable opportunity for the other parties to respond. The standards applicable to such request shall be those applicable to analogous motions for summary judgment or dismissal under the Federal Rules of Civil Procedure.
- (7) In claims involving benefits and coverage due under this (Guide) or disputes involving operation of the Plan, Health Plan's determinations and interpretations, and its decisions on these matters are subject to de novo review.
- (8) The arbitration award shall be final and binding. The Member Parties and Kaiser Permanente Parties waive their rights to jury or court trial.
- (9) With respect to any matter not expressly provided for herein, the arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. Chapter 1.

D. General Provisions. All claims based upon the same incident, transaction or related circumstances regarding the same Member or same patient shall be arbitrated in one proceeding (for example, all Member Parties asserting claims arising from an injury to the same Health Plan Member, shall be arbitrated in one proceeding). A claim for arbitration shall be waived and forever barred if on the date notice thereof is received, the claim, if it were then asserted in a civil action, would be barred by the applicable Hawaii statute of limitations. All notices or other papers required to be served or convenient in the conduct of arbitration proceedings following the initial service shall be mailed, postage prepaid, to such address as each party gives for this purpose. If the Federal Arbitration Act or other law applicable to these arbitration terms is deemed to prohibit any term in this (Guide) in any particular case, then such term(s) shall be severable in that case and the remainder of this (Guide) shall not be affected thereby. Class actions and consolidation of parties asserting claims regarding multiple Members or patients are prohibited. The arbitration provisions in this (Guide) shall supersede those in any prior (Guide).

E. Confidentiality. Neither party nor the arbitrator(s) may disclose the substance of the arbitration proceedings or award, except as required by law or as necessary to file a motion regarding the award pursuant to the Federal Arbitration Act, in any federal or state court of appropriate jurisdiction within Hawaii, and in that event, the parties shall take all appropriate action to request that the records of the arbitration be submitted to the court under seal.

F. Special Claims.



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Arbitration Agreement**

- (1) **Medical Malpractice Claims.** Prior to initiating any arbitration proceedings alleging medical malpractice, Member Parties shall first submit the claim to a Medical Inquiry and Conciliation Panel pursuant to Chapter 671, Hawaii Revised Statutes, Sections 11-19. If the claim has not been withdrawn or settled, Member Parties shall serve a demand for arbitration on Kaiser Permanente Parties as specified above.
- (2) **ERISA Claims.** If the Member Party has a claim for benefits that is denied or ignored (in whole or in part), the Member Party may request external review, as discussed below, and/or file suit in federal court under Section 502(a)(1)(B) of ERISA. If a suit is filed, the court will decide who should pay court costs and legal fees. If the Member Party is successful, the court may order the person or entity the Member Party has sued to pay these costs and fees. If the Member Party loses, the court may order the Member Party to pay these costs and fees, for example, if it finds the Member Party's claim is frivolous. If the Member Party has any questions about the Member Party's plan, the Member Party should contact the plan administrator, i.e., the Member Party's employer or group sponsor.

Although benefit-related claims subject to ERISA are not required to be resolved by binding arbitration pursuant to this section, Member Parties may still make a voluntary election to use binding arbitration to resolve these claims, instead of court trial, by filing a demand for arbitration upon Kaiser Permanente Parties pursuant to the provisions of section 8-B above. If a voluntary election to use binding arbitration is made by a Member Party, the arbitration shall be conducted pursuant to this section 8.

- (3) **External Appeal of Internal Adverse Benefit Decisions.** If Member disagrees with Kaiser Permanente's final internal determination, Member shall request binding arbitration pursuant to the procedures in this (Guide) subject to Section 8.F.2 regarding ERISA claims. In addition to the arbitration procedures set forth in this (Guide), Hawaii Revised Statutes Chapter 432E also creates certain external review rights for Members of state or county employee Groups, certain employee disability or qualified church plans, and employer Groups subject to ERISA to submit a request for external review to the State Insurance Commissioner within one hundred thirty days from the date of Kaiser Permanente's final internal determination. These rights are subject to the limitations noted at the end of this subsection, and subject to the requirements and limitations in Hawaii Revised Statutes Chapter 432E (including exhaustion of Kaiser Permanente's internal claims and appeals procedures before requesting external review, except as specified in Chapter 432E for situations when simultaneous external review is permitted to occur or Kaiser Permanente has failed to comply with federal requirements regarding its claims and appeals process). A complete description of Kaiser Permanente's claims and appeals procedures is described in the Group Member Handbook.

Chapter 432E external reviews are limited to situations where (a) the complaint is not for allegations of medical malpractice, professional negligence or other professional fault by health care providers, and (b) the complaint relates to an adverse action as defined in Hawaii Revised Statutes Chapter 432E. An adverse action is a Health Plan determination that a health care service that is a covered benefit has been reviewed and denied, reduced or terminated because it does not meet Health Plan's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness. Health Plan objects to external reviews under Chapter 432E which do not meet these criteria and reserves its full rights and remedies in this regard. The recitation of state law provisions shall not be deemed to constitute any waiver of such objections.

- (4) **Senior Advantage Member Claims.** Complaints and appeals procedures for Senior Advantage Members are described in the Kaiser Permanente Senior Advantage Evidence of Coverage. The arbitration provisions of this (Guide) apply only to Senior Advantage Member claims asserted on account of medical malpractice or a violation of a legal duty arising out of this (Guide), irrespective of the legal theory upon which the claim is asserted.

I acknowledge that I have read and understood the information in the **Kaiser Foundation Health Plan Hawaii Arbitration Agreement** (above) and agree that I, on behalf of myself, all applicants, and all family members, agree to binding arbitration and give up our constitutional rights to a jury or court trial.

Signature Required for all Kaiser Permanente Plans

Date