

What Is ADR in Health Care?

1

Alternative dispute resolution, or ADR, is the practice of resolving disputes through processes other than litigation. The most common forms of ADR are mediation and arbitration, but many other forms exist in the Health Care arena to address specific types of disputes and their need for tailored processes for unique situations. Some of these include hearing officers for hospital hearings, referees for discovery disputes, and early neutral evaluation of cases.

Lawyers specializing in the Health Care field are required to utilize many skills, techniques, and methods to resolve disputes for their clients. Health Care lawyers must remain up-to-date on regulatory changes, industry trends, the economic climate, and changes in the law.

Most often, clear communication and proper action by the professionals involved can avoid or resolve antagonistic situations before they escalate to disputes. In many cases, however, the involved parties seek external means for resolution, including litigation, arbitration, or mediation. Disputes resolved using ADR involve hospitals, health systems, health maintenance organizations (HMOs), insurers, managed care companies, physicians and medical experts, government agencies, pharmaceuti-

cal manufacturers, and health information technology providers, among others.

Litigation is a relatively inefficient way to resolve a Health Care dispute. This process can be very costly to both sides not only in the money spent, but also in the time required. Litigation can be a major distraction from the core business of the parties and often prevents them from focusing on the key needs of their organizations.

A. What Is Mediation in Health Care?

Mediation is a facilitated discussion between parties with the aim of reaching a settlement of their dispute.

A key feature of mediation is that the parties remain in control of the process *and* the outcome throughout the entire process. While the mediator(s) will lead the process and guide the discussion, participants are not bound to reveal any information or engage in any discussion with which they are not comfortable. Most important, the parties have complete control over any settlement to which they agree up until the final moment of the mediation process, when a binding and enforceable agreement is produced.

The facilitated discussion aims to narrow the gap between the parties regarding the following:

- Perceived strengths and weaknesses of each side's case;
- Risks involved in not settling the case; and
- Needs of each side in the dispute.

Mediations can take many forms. Most are conducted by a single mediator. This mediator will facilitate the discussions of the parties, either in joint session (with two or more parties, lawyers or combinations thereof together in a discussion) or in caucus (where the parties are separated).

Some more complex cases will utilize multiple mediators to streamline the process or use their specialist skills for different