

Facility Binding Arbitration Agreement Checklist



The following two pages should be presented to the resident when introducing the arbitration agreement. Use these sections to address any questions the resident may have about arbitration agreements and ensure their understanding.

The resident or resident's responsible party should initial the items and the facility should retain a copy with the resident's admission paperwork.

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ARBITRATION GENERALLY & FAQs

- Arbitration is defined as: the out-of-court resolution of a dispute between parties which is decided by an impartial third-party called an arbitrator or a panel of arbitrators, instead of a judge or jury

- The Federal Arbitration Act: was enacted in 1925 to ensure the validity and enforcement of arbitration agreements in any contract involving commerce, which for the Facility means its day-to-day business where it receives federal Medicare funds and purchases items that may be made or sold outside of this state where the Facility is located



- Arbitrator(s) have the sole authority. The arbitrator/arbitration panel are the only ones who can hear and resolve disputes between the parties, including wrongful death claims, and disputes about the Binding Arbitration Agreement, such as its validity and enforceability.

- You are waiving your right to a judge, jury and trial. There are no appeals unless allowed by state law. By signing this Agreement you agree that you do not want a judge, jury or trial to hear future disputes, and instead agree that the arbitrators will be the ones to hear the issue. This is called waiving your right to a judge, jury and trial. State law governs whether you have appeal rights of the final binding decision.

- How do we decide who hears the dispute? You and the Facility will agree upon a neutral arbitrator and venue convenient to both parties. If the parties do not wish to select, or cannot agree, then the American Health Lawyers Association (AHLA) will administer the Arbitration.



- What comes next? The arbitration process will follow a timeline called a scheduling order that ends with a hearing before the arbitrators. The hearing will held at a mutually agreeable location convenient for both parties.

- Arbitration outcome: the decision will be confidential and include the arbitrator(s)' findings, conclusions and award any damages. The state where the facility is located will be the law that applies. This means that our state's laws about time limits to bring a claim or limitations on damages will apply to any arbitration.

- Who pays for arbitration? The expenses will be paid as described in the arbitration decision and award.

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ARBITRATION PROVISIONS

- You and the Facility are allowed to have a lawyer or lawyers.

The Binding Arbitration Agreement is voluntary. You, the Resident and/or your Representative, are not required to sign this Binding Arbitration Agreement. It is

- voluntary and not a condition for admission to, or continued treatment, at the Facility, and you will be allowed to live in the Facility and receive care and treatment even if you decide not to sign it.

Our respective duties are as follows: If you have a dispute, you need to demand arbitration and give the Facility an idea of the issue and what resolution you would like.

- The Facility will do the same if it has a dispute against you. If either party accidentally files a case in court, the other party may correct the issue and force the dispute to be moved into arbitration, up until what would be day one of trial in the court system.

There are issues, called grievances, that do not fall under this Agreement. These issues include general complaints about the Facility that you can discuss with state or federal agencies, and the person tasked with advocating for residents in nursing homes, the long-term care ombudsman. If the Facility issues you a notice of involuntary discharge or transfer, you can appeal that notice to an administrative law judge as required by state and federal laws and regulations.

- Everything about this process, from the fact finding between the parties, the arbitration process and the decision and award, is confidential.

What happens if an arbitrator decides there's a problem with this agreement? If that

- happens, that issue will be resolved, but the rest of the agreement will remain as written with no changes.

How long is this agreement in effect? This agreement applies to this admission in the Facility, any future admissions, and even if your Admission Agreement with the Facility is terminated for whatever reason.

- If you sign this agreement, you can change your mind. You can rescind the agreement by sending a written cancellation to the Facility within thirty (30) days of your signature.

- What happens if I don't sign? You can still live here, and will still receive the same quality care and treatment. The is also true if you rescind the agreement within 30 days.



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The following page is for internal use only by the facility to implement the arbitration agreement process.

A copy of the completed checklist should be retained with the rest of the arbitration paperwork and placed in the resident's admission file.

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FACILITY PROCESS

- Ask the Resident/Representative if they have any questions.
- Confirm that the agreement was explained to Resident/Representative in a manner and form they understand.
- Confirm the Resident/Representative understand the agreement.
- Encourage the Resident/Representative to talk with an attorney or a trusted advisor.
- Explain again that the Resident may revoke the agreement within thirty days of his/her signature, by providing written notice of revocation. Written notice can just be the agreement with the word "cancelled" written on it with the Resident/Representative's signature and sent via certified mail.
- If the Resident is his/her own responsible party, he/she may sign the agreement, if he/she chooses.
- If the Resident is not his/her own responsible party, the Legally Authorized Representative may sign the agreement, if they choose. Ask for paperwork to support that person's authority--for guardians this would be called letters of appointment and for other individuals it would be power of attorney paperwork.
- Make a copy of the Legally Authorized Representative's paperwork.
- The Facility representative has signed the agreement.
- Provide a signed copy of the Agreement to the Resident/Representative.
- Retain a signed copy of the Agreement in the Resident's Business Office file.
- Explain that if the Facility and Resident resolve a dispute through arbitration, a copy of the signed agreement for binding arbitration and the arbitrator's final decision will be retained by the facility for five (5) years after the resolution and be available for inspection upon request by CMS or its designee.



EXECUTION

Signature of Arbitration Agreement Educator

Date