

## **ARBITRATION CLAUSE FOR ADMISSION AGREEMENTS**

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Our firm has been contacted by numerous clients who are seeking ways to protect themselves from the tide of frivolous lawsuits that has been enveloping the long-term care industry. In light of recent case law, we believe that one way to attempt to avoid outlandish civil judgments in lawsuits is to agree to arbitrate disputes regarding care issues and resident rights with your residents. Because of the importance that our firm places on the issue of litigation against nursing facilities for the future of our industry, we are providing long-term care providers in Ohio with a sample arbitration clause to consider. We do so, however, with the following admonitions:

- ◆ An arbitration clause is not a “cure all” and will not protect a nursing home from liability for genuine cases of wrongdoing.
- ◆ The use of arbitration clauses in nursing facility admission agreements is relatively untested in Ohio, and facilities that implement them should expect to have them challenged by plaintiffs’ attorneys.
- ◆ The arbitration clause should not be added to an admission agreement without first reviewing the admission agreement as a whole, and determining how it fits into your existing material and relationships, *e.g.*, insurance coverage and managed care arrangements.
- ◆ We do not intend the provision of this clause to be legal advice and it is not such advice. Please consult with legal counsel competent in long-term care laws prior to implementing this or any other arbitration clause in your admission agreements.

### **RESOLUTION OF LEGAL DISPUTES**

- A. Nonpayment of Charges.** Any legal controversy, dispute, disagreement or claim of any kind arising out of, or related to this Agreement, or the breach thereof, regarding nonpayment by Resident for payments due to the Facility shall be adjudicated in a court of law, or arbitrated if mutually agreed to by the parties.
- B. Resident’s Rights.** Any legal controversy, dispute, disagreement or claim arising between the parties after the execution of this Agreement in which Resident or a person on his or her behalf alleges a violation of any right granted Resident under law shall be settled exclusively by binding arbitration as set forth in section .D. below. This provision shall not limit in any way the Resident’s right to file formal or informal grievances with the Facility or the State or Federal government.
- C. All Other Disputes.** Any legal controversy, dispute, disagreement or claim of any kind arising out of, or related to this Agreement, or the breach thereof, (other than those actions addressed in sections .A. and .B. of this Agreement) shall be settled exclusively by binding arbitration as set forth in section .D. below. This arbitration clause is meant to apply to all controversies, disputes, disagreements or claims including, but not limited to, all breach of contract claims, all negligence and malpractice claims, all tort claims, and all allegations of fraud in the inducement or requests for rescission of the contract.
- D. Conduct of Arbitration.** The Resident’s agreement to arbitrate disputes is not a condition of admission. The Resident understands that agreeing to arbitrate legal disputes means that he/she is waiving his/her right to sue in a court of law and to a trial by jury. If the Resident does not wish to agree to arbitration, then he/she should inform Facility. If, however, the Resident agrees to arbitrate disputes by signing this Agreement, then the arbitration will be conducted as follows: Any arbitration conducted pursuant to this Article IV shall be conducted at the Facility in accordance with the American Health Lawyers Association (“AHLA”) Alternative Dispute Resolution Service Rules of Procedure for Arbitration. The award rendered by the arbitrator(s) shall be final, and judgment on the award shall be entered in accordance with applicable law in any court having jurisdiction thereof. The parties understand that arbitration proceedings are not free and that any person requesting arbitration will be required to pay a filing fee to AHLA and other expenses; however, the parties agree to divide the arbitration expenses equally. The issue of whether a party’s claims are subject to arbitration under this Agreement shall be decided through the AHLA arbitration process noted above. If you would like information regarding AHLA’s Alternative Dispute Resolution Service, you may contact AHLA at (202) 833-1100 or Suite 600, 1025 Connecticut Avenue NW, Washington, DC 20036-5405.

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