

LK Alert

September 29, 2003

Littman Krooks LLP

Nursing Home Issues

- NURSING HOME ADMISSION AGREEMENTS - BINDING ARBITRATION PROVISIONS

Pursuant to such a binding arbitration provision, the resident relinquishes his or her right to sue the facility regarding any issue and, instead, agrees to submit to binding arbitration. While Courts have upheld binding arbitration provisions in nursing home admission agreements, facilities should be aware of the risks of using such a provision as a condition of admission or continued stay at the nursing home.

The Centers for Medicare and Medicaid Services stated its position regarding placing a binding arbitration term in a nursing home admission agreement in a memorandum sent to state survey agency directors. The memorandum specifically addressed the use of admissions agreements which require disputes between a nursing home resident and the facility to be resolved through binding arbitration **as a condition of admission or continued stay at the nursing home.**

According to the policy set forth in the memorandum, a nursing home may not discharge, transfer or retaliate against a resident for failure to sign or comply with an admission agreement with a binding arbitration term. In particular, there are no circumstances under the federal regulations (see 42 CFR §483.12(a)(2)) which would permit a nursing home to discharge, transfer or retaliate against a resident based upon the resident's failure to sign or comply with the terms of a binding arbitration agreement. If a nursing home retaliates against a resident, it may be subject to an enforcement action based upon its failure to furnish an abuse free environment as required under 42 CFR §483.13(b), and also based upon the facility's obligation to provide quality care to all residents. In addition, if a nursing home discharges a resident or retaliates because of resident's failure to sign or comply with a binding arbitration agreement, the State may initiate an enforcement action based upon a violation of the rules that govern resident discharge or transfer.

Please contact our office if you would like any additional information regarding this issue.

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Speakers

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