

ETHICAL CONSIDERATIONS
AND THE CURRENT STATUS OF
ARBITRATION AGREEMENTS



**ETHICAL CONSIDERATIONS AND
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Q: What do you call an Honest Lawyer?

A: An Oxymoron

Q: How many Lawyers does it take to screw a light bulb?

A: One, but it has to have a good case

Q: Why does New Jersey have all the lawyers and California have all the toxic waste dumps?

A: California got first pick

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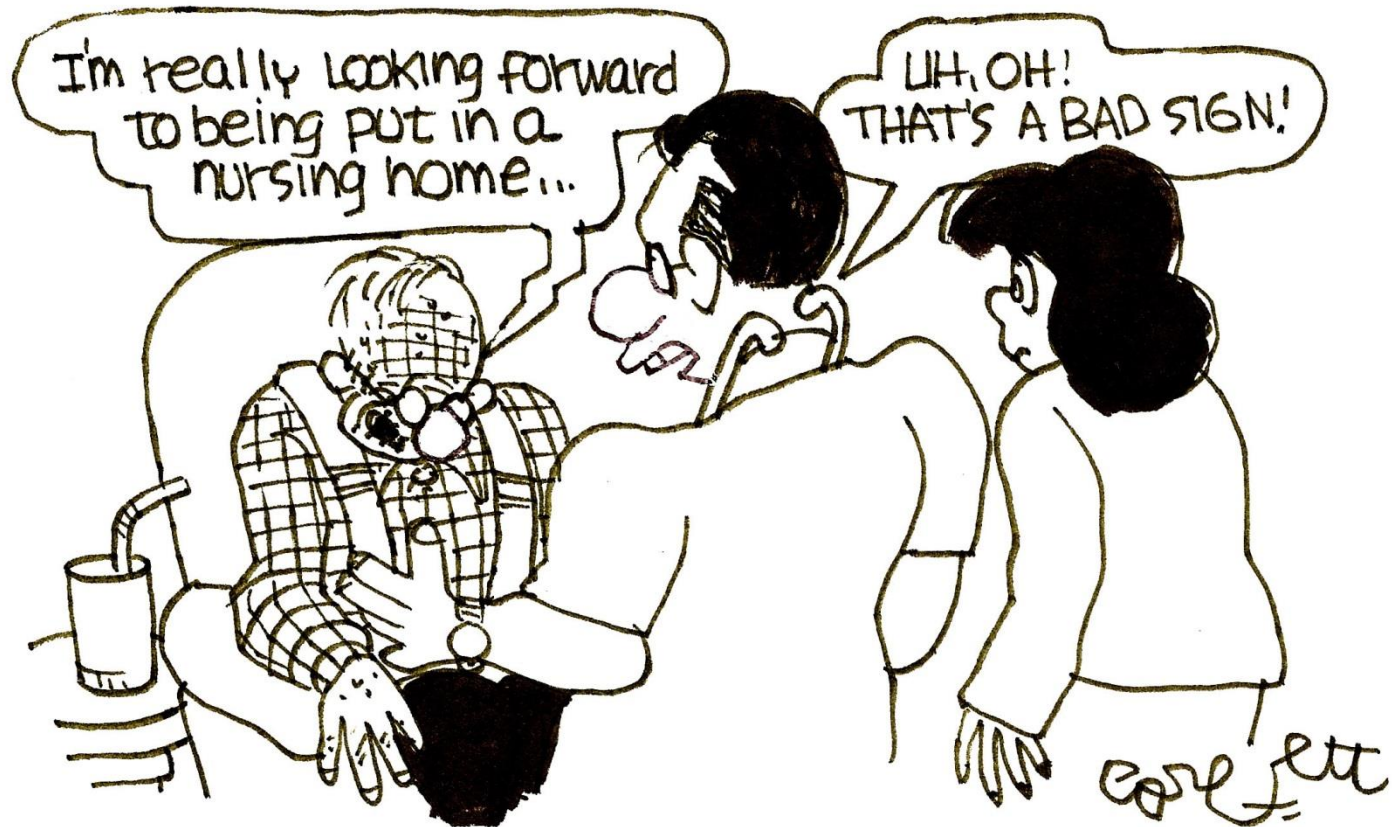
LAWYERS ARE THE BAD GUYS




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ATTORNEYS AT LAW



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WHAT IS THE CURRENT STATUS OF ARBITRATION AGREEMENTS

WHAT NEEDS TO BE IN THEM

HOW DO WE GET NURSING STAFF TO UNDERSTAND THE IMPORTANCE

ETHICAL CONSIDERATIONS AND THE CURRENT STATUS OF ARBITRATION AGREEMENTS

CMS Issues Proposed Revision Requirements for Long-Term Care Facilities' Arbitration Agreements

| | |
|---------|---|
| Date | 2017-06-05 |
| Title | CMS Issues Proposed Revision Requirements for Long-Term Care Facilities' Arbitration Agreements |
| Contact | press@cms.hhs.gov |

CMS Issues Proposed Revision Requirements for Long-Term Care Facilities' Arbitration Agreements

The Centers for Medicare & Medicaid Services (CMS) issued proposed revisions to arbitration agreement requirements for long-term care facilities. These proposed revisions would help strengthen transparency in the arbitration process, reduce unnecessary provider burden and support residents' rights to make informed decisions about important aspects of their health care.

Background

The Reform of Requirements for Long-Term Care Facilities Final Rule published on October 4, 2016 listed the requirements facilities need to follow if they choose to ask residents to sign agreements for binding arbitration. The final rule also prohibited pre-dispute agreements for binding arbitration. The American Health Care Association and a group of nursing homes sued for preliminary and permanent injunction to stop CMS from enforcing that requirement. The court granted a preliminary injunction on November 7, 2016. After that decision, CMS reviewed and reconsidered the arbitration requirements in the 2016 Final Rule.

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REQUIREMENTS UNDER THE CMS PROPOSED RULE

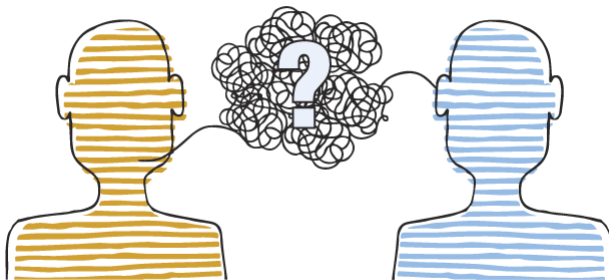
- All Agreements must be in plain language
- If signing the agreement is a condition of admission, the language must be in plain writing



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REQUIREMENTS UNDER THE CMS PROPOSED RULE

- The Agreement must be explained to the resident in a language that they understand
- The resident must acknowledge that he or she understands the agreement



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REQUIREMENTS UNDER THE CMS PROPOSED RULE

- No prohibition against communication with federal, state, or local officials (i.e. ombudsman and surveyors)
- Arbitration Agreements from resolved disputes are subject to inspection by CMS
- The facility must post a notice regarding its use of binding arbitration in an area that is visible to both residents and visitors

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IMPORTANCE OF ARBITRATION CLAUSES



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LITIGATION COSTS

In 2017, it was projected that a skilled nursing center with 100 occupied beds can expect to pay around \$235,000 in liability expenses.



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PROFESSIONAL REPUTATION OF STAFF

- Nursing staff are often named as Defendants
- Under the Cullen Act, being a party to a Medical Malpractice case triggers a reporting obligation
- This can be avoided through Arbitration

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BURDENSOME DISCOVERY REQUESTS E-MAIL DISCOVERY

1. Production, in a searchable format, of all emails, email conversations, email strings and email attachments that were authored and/or received by the facility's Regional Director of Operations, Regional/Corporate/Clinical Nurse Consultant, and Administrator and Director of Nursing. This request is limited to emails written during [REDACTED] period of residency, one year prior, and one month subsequent, [REDACTED]
terms:

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BURDENSOME DISCOVERY REQUESTS

EMPLOYEE PERSONNEL FILES

20. All documentation maintained by defendants for each employee of defendants who provided any care or service to [REDACTED] at the nursing home/care center, including but not limited to the following information:

- a. Any and all applications for employment;
- b. Copies of any and all documentation obtained by the nursing home/care center about the employee from any third source such as employment verification information from other employers, reports from any law enforcement or state administrative agency or any abuse reporting agency where such document is not privileged by the state or Federal law creating the abuse reporting agency;
- c. Copies of any and all licensing certification for the employee;
- d. Any and all documents which would contain disciplinary information of the employee by the nursing home, including letters of reprimand, or complaints by outside persons;
- e. Any and all documents submitted by the employee or recorded by the facility, concerning complaints registered by the employee;
- f. Any and all performance evaluations completed for the employee;
- g. Any and all forms, letters, or notes relating to termination of the employee's service at the nursing home/care center, including writings completed by the

employee or any other member of the nursing home's/care center's staff or administration.

- h. All exit interviews or employee questionnaires which are completed when employees are terminated, transferred, or when they leave the defendant's employment for any reason.
- i. All agreements, contracts, or other documents provided to defendants' employees and which purport to require such employees to not disclose events occurring at the facility.

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BURDENSOME DISCOVERY REQUESTS
INCIDENT REPORTS

9. All records of accidents or unusual incidents occurring at [REDACTED]
[REDACTED] during the residency of [REDACTED] and thirty days prior thereto and which describe
accidents or incidents similar to those described in Plaintiff's Complaint.

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BURDENSOME DISCOVERY REQUESTS
INFORMATION REGARDING OTHER RESIDENTS

17. Provide the names and addresses of all responsible parties for each resident that was in the defendant's facility (EHHC) during the period of the Plaintiff's residency from [REDACTED] [REDACTED] as set forth in this Complaint.

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BURDENSOME DISCOVERY REQUESTS

- Budgeting
- Staffing
- Payroll
- Census data
- Resident Satisfaction Information
- Medicare and Medicaid Cost Report



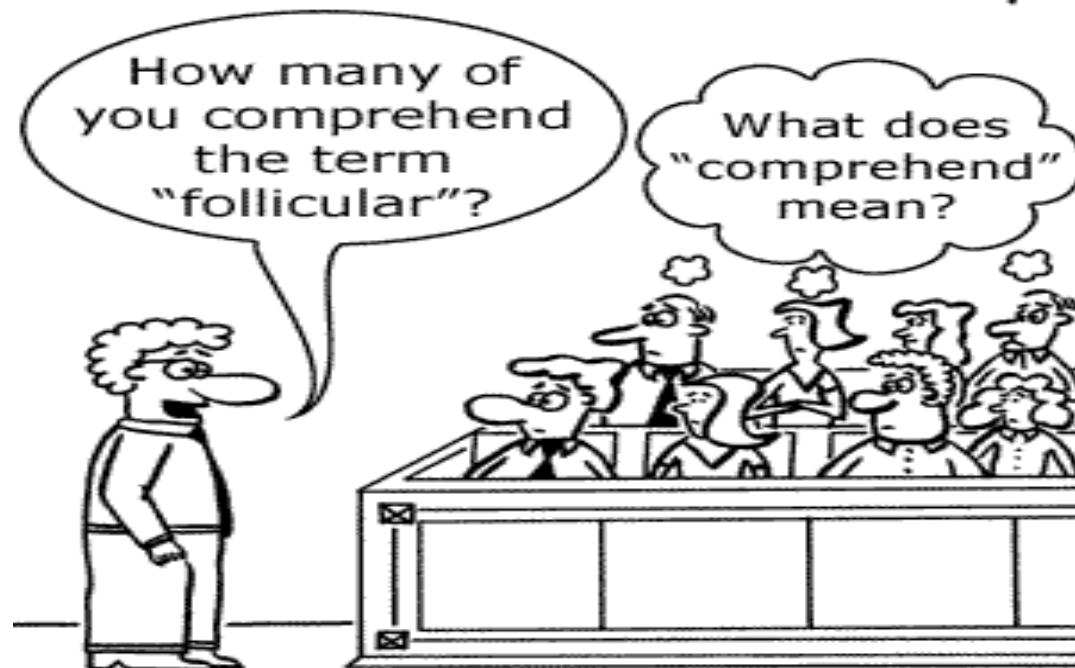
FISHING EXPEDITION!!!!!!!

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JURY TRIALS

Stu's Views

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The End