



Oklahoma State Department of Health
Creating a State of Health

March 20, 2006

To: LTC Nursing Facilities

Re: Provider Letter 06-02
Binding Arbitration Agreements

Dear Administrator:

This letter is to clarify the issue of facilities that are requiring a binding arbitration agreement as part of the admission requirements. It has come to the attention of the Department of Health that some facilities have implemented this as a mandatory requirement. This is in violation of §63-1-1939.D.E, and subject to citation and enforcement remedy as a nursing facility licensee of the State of Oklahoma.

Pursuant to: §63-1-1939. Liability to residents - Injunctive and declaratory relief - Damages - Waiver of rights - Jury trial - Retaliation against residents - Immunity - Report of abuse or neglect.

D. *Any waiver by a resident or the legal representative of the resident of the right to commence an action under this section, whether oral or in writing, shall be null and void, and without legal force or effect.* (Emphasis added.)

E. Any party to an action brought under this section shall be entitled to a trial by jury and any waiver of the right to a trial by a jury, whether oral or in writing, prior to the commencement of an action, shall be null and void, and without legal force or effect.

The State Department of Health, Long Term Care, takes the following position in regard to compliance.

(1) Clearly articulated Oklahoma statute prohibits mandatory arbitration or otherwise forcing residents to waive their right to civil judicial process; and

(2) To date, there have not been any precedential judicial ruling or holding that this statute violates either the Oklahoma Constitution or other federal law; hence, the statute is presently in force and effect and is entitled to be enforced -- these clauses, if they exist are violative of statute and against articulated public policy.

It will be the expectation of the State Department of Health, Long Term Care that all facilities adhere to this statute in admission policies and agreements.

Regards,

Dorya Huser,
Chief, Long Term Care
Protective Health Services

C: DHS Aging Services Division, State LTC Ombudsman
Oklahoma Association of Health Care Providers
Oklahoma Association of Homes and Services for the Aging
Oklahoma Health Care Authority
Oklahoma State Board of Examiners of Nursing Home Administrators
OSDH/Legal Division/Mary Womack