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## **To Sign or Not: How to Size Up Arbitration Clauses**

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Nursing homes' handling of arbitration clauses varies from company to company and from state to state, a confusing situation for prospective residents.

Some homes won't admit a resident unless they sign. Others make clear it's voluntary, to better withstand court challenges. Still others mount a strong pitch for arbitration when patients enter, but let them opt out within a brief initial period.

### **MORE ON ARBITRATION**

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Lawyers say patients should question admissions personnel closely. If an arbitration agreement is mandatory, they say, patients should write on the contract that they're being given no choice. "Write on the page, 'I'm signing this, because I was told I have to' " for admission, says Cleveland plaintiffs lawyer Blake Dickson, to try to make it easier to challenge an agreement in court.

Court cases in different states have forced nursing homes to make adjustments. Tennessee-based National HealthCare Corp., for example, rewrote its agreement in 2003 to make clear that patients were giving up their right to a jury trial, and in 2004 it added a right to revoke the agreement for 10 days, according to notes for a presentation given by a company official in 2004. The revocation clause "caused biggest concern" to the company, the notes said, but even after the changes, only around 1% of clients rejected arbitration. Patients must sign the contract

before they can use their right to revoke the clause, the company says.

A brochure about arbitration by the Evangelical Lutheran Good Samaritan Society, which operates about 240 nursing homes in 24 states, makes no mention of incoming patients having a choice. "Typically you will agree to arbitration through documents presented to you at the time of admission or prior to receiving healthcare services," it says, adding that people "receive as much compensation in arbitration as they do in court." But the actual agreement stipulates it isn't mandatory, says Tom Kapusta, the company's chief legal officer. He estimates about 60% to 80% of people accept the agreement, but the company says it doesn't have exact figures.

Skilled Healthcare Group Inc., which operates 74 nursing homes in six states, uses voluntary agreements in five states but mandatory ones for incoming residents in New Mexico, where the company interprets local case law to allow that. Sea Crest Healthcare Management LLC in Florida, according to a spokesman, doesn't use arbitration agreements in some of its homes at all, but does in others; the company wouldn't discuss why.

Some homes with voluntary agreements seek to make that clear. Agreements used by Golden Living, which operates 331 nursing homes in 22 states, stipulate in bold letters that arbitration is voluntary and give patients 30 days to back out if they send a written notice. The company said it worked to maximize the agreement's prospects to stand up in court.

--Nathan Koppel