



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Aging and Long-Term Support Administration
PO Box 45600, Olympia, WA 98504-5600

October 24, 2014

AL TSA: NH 2014- 023
USE OF ARBITRATION AGREEMENTS

Dear Nursing Home Administrators and Interested Parties:

Recently, providers have asked questions about the legal requirements concerning the use of arbitration agreements. This letter serves two purposes:

- 1) It serves as a brief review of the state and federal requirements concerning arbitration agreements; and
- 2) It provides guidance on their use with residents.

Previously, Residential Care Services (RCS) issued a letter to administrators on this topic on March 1, 2006. This communication supersedes [NH #2006-008](#).

Arbitration agreements are legal in Washington State and the Uniform Arbitration Act was adopted in 2005 by the legislature in RCW chapter 7.04A.

There are several state and federal requirements that should be observed in the use of arbitration agreements in SNFs:

- Facilities are required to encourage and assist residents in the exercise of their rights as residents of the facility and as citizens or residents of the United States. CFR 483.10(a)(1), RCW 74.42.050(1) and WAC 388-97-0180.
- Facilities must not request or require residents to sign waivers of their rights (that might be contained in an arbitration agreement). RCW 70.129.105
- Facilities must not request or require residents to sign waivers of potential liability for injuries or losses of personal property. RCW 70.129.105
- Vulnerable adults who have been abused, neglected, abandoned or financially exploited while residing in long-term care facilities may sue the provider for damages for injuries, pain and suffering, and lost property. RCW 74.34.200

To safeguard against the possibility that a resident might unknowingly sign an arbitration agreement, RCS offers this guidance to SNFs:

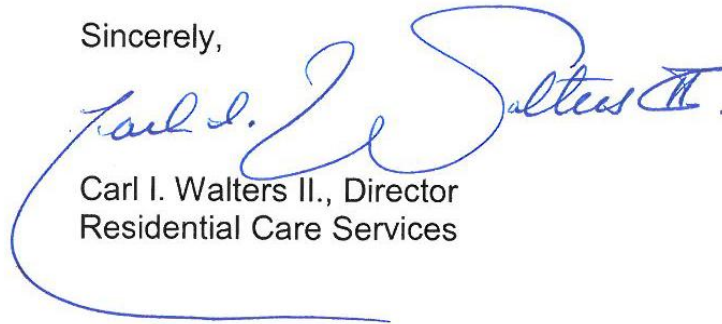
- Residents and their representatives should not be presented with arbitration agreements at the time of their admission because the resident may be too overwhelmed to understand the implications of the agreement, and may erroneously conclude that the agreement needs to be signed in order to be admitted to the facility.
- SNFs may provide a copy of arbitration agreements to residents or their representatives for information purposes, but, if the agreement includes a waiver of a jury trial, attorney's fees and related costs, or other rights, the SNF may not ask or require the resident or their representative to sign it.

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- At the time a resident signs an arbitration agreement, the resident must be able to understand what he or she has signed and must understand the agreements potential impact on his or her rights.
- If you intend to use arbitration agreements in your facility and have any questions, you may want to consult with your attorney.
- SNFs should encourage residents to consult with their attorney or the state Long-Term Care Ombuds before they sign an arbitration agreement.

Thank you for your continued commitment to nursing home residents. If you have any questions, please contact your RCS Field Manager.

Sincerely,

A handwritten signature in blue ink that reads "Carl I. Walters II." The signature is stylized and cursive, with a large loop at the end. A horizontal line extends from the bottom of the signature to the left.

Carl I. Walters II., Director
Residential Care Services

"Transforming Lives"