



## **Long Term Care and Senior Housing Hot Sheet -- Breaking Developments in Long Term Care and Senior Housing Law**

**03.29.2005**

### **DSHS Recognizes the Validity of Arbitration Agreements with Long Term Care and Senior Housing Residents**

The Department of Social and Health Services (“DSHS”) has finally recognized the validity of arbitration agreements in the context of long term care facility disputes. By letter to Washington State Representative Brendan Williams, Joyce Pashley Stockwell, Acting Director of Residential Care Services for DSHS, stated that long term care residents have “the same right as every citizen to establish contracts or arbitration agreements.”

Although Washington courts have not yet faced the issue of arbitration agreements in the long term care setting, they have considered arbitration agreements in other contexts. *See Zuver v. Airtouch Communications*, \_\_\_ Wn.2d. \_\_\_, 103 P.3d 753 (2004); *Mendez v. Palm Harbor Homes, Inc.*, 111 Wn. App. 446, 45 P.3d 594 (2002); *Tjart v. Smith Barney, Inc.*, 107 Wn. App. 885, 28 P.3d 823 (2001). These cases, along with cases from other jurisdictions, demonstrate the importance of drafting arbitration agreements in a manner that clearly evidences the intent of the resident. Such efforts should be made to ensure that arbitration agreements are not challenged as procedurally or substantively unconscionable.

The following guidelines should therefore be adhered to:

- Include a disclosure in bold letters stating that parties waive their right to have any claim decided in a court of law before a judge and jury;
- Use large fonts to accommodate for the possibility of poor eyesight;
- Make the arbitration agreement a separate document rather than a provision of the admission agreement;
- Include a disclosure that the execution of the arbitration agreement is not a precondition to the furnishing of services to the resident by the facility;
- Provide the resident a 30-day rescission period; and
- To the extent possible, use plain, easy to understand language.

For a sample arbitration agreement, please contact Lane Powell's Long Term Care and Senior Housing Practice Group:

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