New Obstacles to Arbitration

While arbitration agreements remain alive and well in the health care setting, the scope of their enforceability changed in 2010.

It is common practice in long term care and other health care facilities for a resident or a resident's family member to sign an arbitration agreement upon admission. Such agreements require the resident to arbitrate any dispute that may arise out of his or her stay or care received at the facility. Arbitration agreements have proven to be a cost-effective and efficient method for resolving disputes.

Arbitration agreements have long been favored under Washington state law. However, in May 2010, the Washington Court of Appeals in the Woodall case limited enforcement to claims asserted by the resident and/or statutory beneficiaries who actually signed the agreement. Prior to this, courts routinely enforced arbitration agreements in total by virtue of the resident's signature, even as to claims asserted by non-signatory heirs. As a result, Washington courts are now splitting up, or bifurcating, claims asserted in lawsuits against health care providers.

In Woodall, nursing home resident Henry Woodall, 86, voluntarily signed a "resident and facility arbitration agreement," in which he agreed to submit to binding arbitration in the event of a dispute. The arbitration agreement bound "all persons," including "any spouse, children or heirs" of Mr. Woodall. After Mr. Woodall died in July 2007, his son sued the nursing home, bringing survivorship claims on behalf of his father and wrongful death claims on behalf of Mr. Woodall's heirs. When the nursing home requested that the trial court compel Mr. Woodall's son to participate in arbitration pursuant to the clear language of the arbitration agreement, the court denied the request, in part.

The court upheld the arbitration agreement, holding that Mr. Woodall's survivorship claims, meaning those that he could assert on his own behalf had he survived, must be arbitrated because he signed the arbitration agreement. However, the wrongful death claims asserted by his surviving heirs who did not sign the agreement were not subject to arbitration.

The Court of Appeals upheld the trial court's ruling, beginning with this basic principle: "[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." With that principle in mind, the court held that: (1) because the survival claim was essentially Mr. Woodall's own claim, it was covered by Mr. Woodall's arbitration agreement with the nursing home; and (2) the wrongful death was a separate cause of action that belonged exclusively to Mr. Woodall's heirs. Since Mr. Woodall's heirs were not parties to the arbitration agreement, the court concluded that the wrongful death claims were not subject to binding arbitration.

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The holding in Woodall reflects that arbitration agreements are indeed enforceable. However, the Woodall ruling has resulted in a cumbersome outcome. The claims of the resident and statutory heirs who signed the agreement are being tried in private arbitration, while the claims of the heirs who did not sign the agreement will be tried separately in the court system. Despite the court's acknowledgment that public policy favors arbitration and resolution of claims in one forum, it determined that such a consideration does not overcome the policy that one who is not a party to an agreement to arbitrate cannot generally be required to arbitrate.

Providers must be aware that the traditional outcome of these agreements—arbitrating the claims of all plaintiffs in a wrongful death or personal injury lawsuit at one time—is not achievable at this time absent all potential heirs signing an arbitration agreement with the health care provider. While this process is not perfect, the advantages to arbitrating claims against health care providers still outweigh these new obstacles.

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