

DOs and DON'Ts for Drafting Binding Arbitration Agreements



Consult local attorney

It is important to ensure compliance with nuanced and changing state laws and regulations.

Use easy to understand language

CMS guidelines require this and avoiding legalese increases likelihood of resident understanding terms.

Use at least 12-point font and bold or italicize important provisions

This aides the readability of the agreement and draws attention to provisions.

Include 30-day revocation period

Include within the agreement and verbally explain that there is a revocation period and revoking does not impact care, treatment, etc.

Specify process for selecting arbitrator

Ensure that the selection allows Parties to agree and that arbitrator is neutral.

Designate an area to initial understanding

Require signing as condition of admission or treatment

Language should clearly state that the agreement is voluntary and not condition of treatment or admission.

Hide the Agreement within admission paperwork

The arbitration agreement must be its own document separate from other paperwork.

Miss specifying types of disputes covered

Be clear on the scope and types of disputes covered--include any disputes about the arbitration agreement itself.

Ignore state and local law, statutes, or regulations relating to arbitration

States may have statutes/regulations specifying certain phrases to include and typeface needed.

Prevent communication with federal, state, local officials

Residents or representatives can communicate with federal, state or local officials, including health department representatives/Ombudsman.

Dictate location of the arbitration

Should be mutual decision of Parties and convenient to both.