

# Arbitration Programs and Enforcement

Arbitration is a streamlined process for resolving disputes. The parties present their dispute to one or more arbitrators, who issue a final decision, with only limited opportunities for appeal. Some of the key benefits include:

- arbitration is less expensive than litigation;
- arbitration awards are, on average, less than in litigation;
- arbitration offers much faster resolution than litigation;
- the parties can select arbitrators with expertise in the area;
- the process and the records thereof are confidential; and
- there are greater controls on discovery.

## **Saving Money – The Proof is in the Empirical Data:**

A recent national study concluded that arbitration awards are approximately 35% lower than recoveries in the court systems. Moreover, attorney's fees for defending arbitration actions average about 41% less than in the courts. The General Accounting Office found that arbitration hearings typically require only two to four days, compared with several weeks for court trials.

These efficiencies equate to significantly lower defense costs and less disruption of a facility's operations. Implementation costs are low, and the return on investment can reach several multiples. Arnall Golden Gregory LLP has a team of dedicated attorneys who are here to help guide you through the arbitration implementation and enforcement process. Here are a few keys to a successful arbitration program:

### **1 Create an Arbitration Agreement that is Fair and Reasonable**

The purpose of an arbitration agreement is to mandate that disputes be resolved by arbitration rather than litigation. Where arbitration agreements have gone too far beyond this purpose—for example, by limiting the arbitrator's power to make an award or by shortening the time for claimants to file a claim—courts have not hesitated to declare the agreement unconscionable and unenforceable. Providers should take care that the arbitration agreement does not preclude claims that would otherwise be available in litigation or unduly burden claimants in pursuing claims through arbitration.

### **2 Choose an Arbitration Service that Is Willing to Administer the Arbitration**

One of the bases that plaintiffs have used to avoid arbitration agreements is that the arbitral forum referenced in the arbitration agreement is unavailable. Courts are split on whether a substitute arbitrator can be appointed to replace an unavailable arbitrator. Don't leave the enforceability of your arbitration agreement to chance. Make sure that any designated forum is available and willing to administer arbitrations, and include a back-up plan in the agreement in the event the designated forum becomes unavailable.

### **3 Obtain the Appropriate Signatures**

A well-drafted arbitration agreement is extremely important. But it is only one part of an arbitration program. What good is the arbitration agreement, if it is not signed by the right person? The individuals who are authorized to bind a resident to an arbitration agreement vary from state to state. While there are many equitable bases to enforce an arbitration agreement even without the “best” signature, save yourself the trouble and expense of making these arguments. Make sure that your admissions staff know who may sign an arbitration agreement in your state.

### **4 Promptly Act to Enforce the Arbitration Agreement**

Failure to demand arbitration promptly can result in a finding that the right to compel arbitration has been waived. When you learn of a dispute covered by an arbitration agreement, make sure that the plaintiff (or potential plaintiff) is aware of the arbitration agreement at the earliest possible opportunity, and seek to enforce the arbitration agreement as early as possible.

### **5 Be Prepared to Move the Arbitration to a Final Hearing**

Arbitration is not litigation. The state or federal rules of procedure do not apply unless the parties have made those rules applicable by incorporating them into the arbitration agreement. Discovery is typically more narrow and streamlined, and the final hearing will occur more quickly than in litigation. Know the rules of the arbitral forum and make sure that you follow them.

### **6 Remember: Arbitration is Less Formal Forum; But Substantive Law Still Governs the Claims and Defenses**

Arbitration is less formal than litigation. Nevertheless, most arbitration agreements require the arbitrator to apply the applicable state or federal law, and most arbitrators take this obligation seriously. In some jurisdictions awards can be overturned in the very rare instances where the arbitrator has demonstrated a “manifest disregard” of the law. While some view arbitration as a form of mediation where the arbitrator simply imposes a settlement rather than issuing a reasoned decision based on the evidence and applicable law, this is not always or even often the case. Therefore, in presenting a claim or defense, you should (and you should expect your opponent to) prove each required element of the claim or defense asserted.

### **7 Post-Award: Seeking to Confirm or to Vacate or Modify an Award**

Typically, arbitration awards are not self-enforcing, though the parties certainly may voluntarily comply with the award. Absent voluntary compliance, in order to enforce the award, it must first be confirmed to a judgment in an appropriate court. The grounds for avoiding confirmation of the award are extremely limited and generally involve problems such as corruption or bias on the part of the arbitrator or exceeding the powers granted by the arbitration agreement. A simple error of law generally is insufficient to overturn an arbitration award, though in an extreme case “manifest disregard” of the law may suffice.

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#### **About Arnall Golden Gregory**

Arnall Golden Gregory LLP is a law firm with offices in Atlanta and Washington D.C., that serves the business needs of growing public and private companies. Its areas of focus include real estate, healthcare, corporate, litigation, international, employment, life sciences, global logistics, privacy and intellectual property law. With the help of Arnall Golden Gregory’s experienced attorneys, clients across a broad range of industries and around the globe turn legal challenges into business opportunities.