

Arbitration: Nephew Had No Legal Authority To Sign, Agreement Thrown Out.

Many healthcare facilities are turning to arbitration in an effort to stem litigation costs and to avoid large civil jury verdicts.

An arbitration case is heard out of court by a single arbitrator or panel of arbitrators, usually attorneys who practice in the particular field of law, who hand down a decision which cannot be appealed in court except in rare circumstances.

Valid Arbitration Agreement Is Essential

Only if the patient or a proper surrogate decision-maker has agreed to arbitration will arbitration keep a patient's or deceased patient's family's claim for damages against a healthcare facility from going before a jury in civil court.

That means the patient must sign an arbitration agreement at the time of admission if the patient is a mentally competent adult, or a proper legal surrogate decision-maker must sign if the patient is an incompetent adult or a minor.

In a recent case the Supreme Court of Mississippi threw out the arbitration agreement signed by a now-deceased resident's nephew when he put her in a nursing home.

The family's wrongful death lawsuit will go before a jury in civil court. As yet there has been no court ruling on the negligence claims they are making against the nursing home.

Legal Surrogate Decision-Maker Can Sign For an Incompetent Adult

First in line is the person the patient, while still mentally competent, had named in a durable power of attorney or living will. If there is no such person, the patient's spouse is next in line.

If there is no living spouse, an adult child is next in line, then a parent, then an adult brother or sister. If none of the above is available any adult will suffice who is close enough to the patient to be familiar with the patient's wishes.

The nursing home had no way to prove that the nephew had any legal authority to sign for arbitration and thereby give up the right to jury trial on the resident's behalf. Nephews are not mentioned in the healthcare-surrogate decision-maker statute and he could not honestly say he knew his late aunt's views on arbitration. Compere's Nursing Home, Inc. v. Estate of Farish, ___ So. 2d ___, 2008 WL 2139548 (Miss., May 22, 2008).