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California Department of Public Health



EDMUND G. BROWN JR.
Governor

August 24, 2015

AFL 15-17

TO: Skilled Nursing Facilities
Intermediate Care Facilities

SUBJECT: Revision for Skilled Nursing and Intermediate Care Facilities Arbitration Agreements

All Facilities Letter (AFL) Summary

- Sections 72516 and 73518 of Title 22 of the California Code of Regulations (CCR) have been revised regarding the text that must be included in proposed arbitration agreements between prospective residents and affected facilities.

As a result of a court order issued on January 16, 2014, Health and Safety Code (HSC) section 1599.81(d), a portion of HSC section 1430(b) related to residents waiving their right to sue, and the regulations clarifying these sections are invalid, unlawful, and preempted by the Federal Arbitration Act to the extent that they bar arbitration of Patient's Bill of Rights claims. (*Valley View Health Care, Inc., et al. v. Ronald Chapman, M.D., et al.* (E.D. Cal. 2014) 992 F.Supp.2d 1016.) Any portion of an arbitration agreement executed by a prospective resident of a skilled nursing facility (SNF) or intermediate care facility (ICF) after January 16, 2014, that contains provisions conflicting with the court decision is unenforceable.

On May 27, 2015, the California Office of Administrative Law (OAL) approved revisions to Title 22, CCR sections 72516(d) and 73518(d). These revisions are effective as of their approval date and change the required text that must be inserted in proposed arbitration agreements presented to prospective SNF and ICF residents. Copies of the two revisions approved by OAL are attached.

Please note that facilities are responsible for following all applicable laws. Any failure of the California Department of Public Health to expressly notify facilities of statutory or regulatory requirements does not relieve facilities of their responsibility for following all laws and regulations. Facilities should refer to the full text of all applicable sections of the HSC, Title 22 of the CCR, and applicable federal law to ensure compliance.

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If you have questions regarding any of the matters discussed in this AFL, please contact your local district office.

Sincerely,

Original signed by Jean Iacino

Jean Iacino
Deputy Director

[Attachment A](#)
[Attachment B](#)