

The recently enacted medical liability reform legislation - SB 281 - included arbitration language that can be utilized in the State of Ohio. Ohio Revised Code § 2711.21–24 authorizes health care providers to enter into an agreement to resolve future medical malpractice claims through binding arbitration. However, it is important to note that there are specific points to be followed when utilizing the arbitration agreement. This brochure outlines how to use the model arbitration agreement in Ohio and includes a copy of the form.

USING A BINDING ARBITRATION AGREEMENT IN OHIO

Ohio Revised Code § 2711.21–24 authorizes health care providers to enter into an agreement to resolve future medical malpractice claims through binding arbitration. Health care providers who choose this option should be aware of the following restrictions:

- The agreement must be in writing and entered into before the commencement of the patient's diagnosis, treatment or care.
- The agreement must be a separate document. It cannot be combined with any other form, including a consent form.
- A patient or the patient's legal representative can cancel the agreement by giving written notice within 30 days of the date it was signed. If the patient does not cancel the agreement within 30 days of signing it, the agreement becomes valid, irrevocable and fully enforceable. The patient must be furnished with two (2) copies of the agreement.
 - The agreement must contain a separately stated notice that clearly informs the patient of his or her right to cancel the agreement within 30 days;
 - The husband or wife of a competent patient cannot cancel the agreement on the patient's behalf;
 - If a patient files a claim within 30 days of signing the agreement, the patient is deemed to have cancelled the agreement.
- The agreement must state, and the health care provider must abide by the following:
 - Care, diagnosis or treatment of the patient will be provided whether or not the patient signs the agreement;

- The decision whether or not to sign the agreement is solely a matter for the patient's determination without any influence;
- The agreement should specify that if a patient signs it, he or she is waiving the right to a trial in court or a trial by jury;
- Arbitration expenses will be divided equally between the parties to the agreement.

- The arbitration panel must consist of three people, no more than one of whom may be a physician or a representative of the health care provider.
- Health care providers are prohibited from presenting the agreement for a patient's approval when the patient's condition prevents the patient from making a rational decision whether or not to agree.
- If the agreement follows the form provided in Revised Code § 2711.24 and is **printed in 10-point type (a sample has been provided to you with this summary), then the law presumes that it is valid and enforceable.** If a health care provider designs its own agreement, there is no presumption of validity.
- If a patient proves any of the following, then the agreement is not enforceable:
 - The patient was induced to sign by fraud;
 - The patient signed as a direct result of the willful or negligent disregard of a health care provider of the patient's right not to sign; or
 - The patient was unable to effectively communicate in spoken or written English, or any other language in which the agreement was written.

Legal issues with respect to the new arbitration law should be addressed to your legal counsel. Other questions or concerns can be addressed to AMC/NOMA EVP/CEO, Elayne R. Biddlestone at 216-520-1000 X321 or at ebiddlestone@amcnoma.org, or by mail to:

AMC/NOMA
6000 Rockside Woods Blvd., Suite 150
Cleveland, OH 44131-2352
216-520-0999 fax

Model Arbitration Agreement



THE ACADEMY OF MEDICINE
CLEVELAND



Northern Ohio Medical Association

AGREEMENT TO RESOLVE FUTURE MALPRACTICE
CLAIM BY BINDING ARBITRATION

In the event of any dispute or controversy arising out of the diagnosis, treatment, or care of the patient by the healthcare provider, the dispute or controversy shall be submitted to binding arbitration.

Within fifteen days after a party to this agreement has given written notice to the other of demand for arbitration of said dispute or controversy, the parties to the dispute or controversy shall each appoint an arbitrator and give notice of such appointment to the other. Within a reasonable time after such notices have been given the two arbitrators so selected shall select a neutral arbitrator and give notice of the selection thereof to the parties. The arbitrators shall hold a hearing within a reasonable time from the date of notice of selection of the neutral arbitrator.

Expenses of the arbitration shall be shared equally by the parties to this agreement.

The patient, by signing this agreement, also acknowledges that the patient has been informed that:

- (1) Care, diagnosis, or treatment will be provided whether or not the patient signs the agreement to arbitrate;
- (2) The agreement may not even be submitted to a patient for approval when the patient's condition prevents the patient from making a rational decision whether or not to agree;
- (3) The decision whether or not to sign the agreement is solely a matter for the patient's determination without any influence;
- (4) The agreement waives the patient's right to a trial in court for any future malpractice claim the patient may have against the healthcare provider;
- (5) The patient must be furnished with two copies of this agreement.

PATIENT'S RIGHT TO CANCEL
AGREEMENT TO ARBITRATE

The patient, or the patient's spouse or the personal representative of the patient's estate in the event of the patient's death or incapacity, has the right to cancel this agreement to arbitrate by notifying the healthcare provider in writing within thirty days after the patient's signing of the agreement. The patient, or the patient's spouse or representative, as appropriate, may cancel this agreement by merely writing "cancelled" on the face of one of the patient's copies of the agreement, signing the patient's name under such word, and mailing, by certified mail, return receipt requested, the copy to the healthcare provider within the thirty-day period.

Filing of a medical claim in a court within the thirty days provided for cancellation of the arbitration agreement by the patient will cancel the agreement without any further action by the patient.

Date:

Signature of Provider of Medical Services

Signature of Patient