U.S. Supreme Court Again Upholds Arbitration Clauses

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The United States Supreme Court has again upheld the enforceability of arbitration clauses in skilled nursing facility admissions agreements. The underlying facts of this recent decision also call into question an Illinois Supreme Court decision regarding whether such arbitration clauses also cover wrongful death actions.

In *Kindred Nursing Centers v. Clark*, the U.S. Supreme Court held that a wrongful-death action brought by two deceased residents’ relatives, each of whom were the power of attorney for their deceased family member, had to be arbitrated, not litigated in court. Those relatives had signed the admission agreements with the nursing home in their capacity as power of attorney, and those agreements included a clause requiring the parties to arbitrate such cases.

The power of attorney documents in question, however, did not expressly confer upon the person who held the power of attorney the right to enter into arbitration agreements. The Kentucky Supreme Court therefore held that the arbitration agreements could not be enforced, because the powers of attorney did not have authority to bind the resident to such arbitration.

In keeping with a now-long line of decisions, however, the U.S. Supreme Court reversed, holding that the Federal Arbitration Act, which states that no federal or state law can make it harder to enforce an arbitration clause in a contract than to enforce any other clause in a contract, applies.

Based upon this latest U.S. Supreme Court decision, nursing home owners should certainly consider including an arbitration clause in their admissions agreements.

The *Kindred* case may prove to be especially important to owners of Illinois skilled nursing facilities. In a 2012 case issued by the Illinois Supreme Court, *Carter v. SSC Odin Operating Company*, the Illinois Supreme Court held that although arbitration clauses in nursing home admissions agreements are enforceable regarding any negligence actions, the Illinois wrongful death statute gave only a resident’s survivors the right to bring a wrongful death action. The Illinois Supreme Court reasoned that because neither the resident nor any relative, power of attorney, or guardian of the resident was a “survivor” of the resident at the time of admission (because the resident was then still alive), wrongful death actions were not subject to arbitration because one does not become a “survivor” until after the resident dies.

The Illinois Supreme Court’s decision in *Carter* is causing problems for Illinois nursing facilities because a complaint that contains negligence claims and a wrongful death count has to either be fought on two different fronts — the negligence claims in arbitration, and the wrongful death claim in court — or both claims have to be litigated in court, thereby frustrating the intent of the arbitration provision. But the *Kindred* case from the U.S. Supreme Court, holding that even wrongful death actions are subject to the arbitration provision, opens the door for Illinois facilities to argue that the *Carter* decision is no longer good law, and that even wrongful death actions are subject to arbitration. That issue will almost surely be litigated in the future.

In the interim, however, nursing facilities everywhere should also note that after the U.S. Supreme Court decided *Kindred*, the Centers for Medicare and Medicaid Services withdrew its proposed rule banning arbitration agreements from nursing home admission agreements. Arbitration clauses in admission agreements are here to