

## Arbitration Ruling Raises Questions

The U.S. Supreme Court agreed in June that an Illinois law that negates nursing facility arbitration agreements overrides the Federal Arbitration Act, creating a bit of legal limbo in the state.

Many nursing facilities have residents or family members sign arbitration agreements upon admission. These require legal disputes to be handled by an arbitration process versus the traditional court system.

In the case of *SSC Odin Operating Co. v. Carter*, which involved the alleged wrongful death of Joyce Gott, a former resident of Odin Healthcare Center in Odin, Ill., the Illinois Court of Appeals, Fifth District, decided in April 2008 that the Illinois Nursing Home

Care Act prohibited the facility from enforcing an arbitration agreement signed by Gott at the time of her admission.

**The court found the *Carter* case “was wrongly decided.”**

The Illinois Supreme Court and the U.S. Supreme Court both decided not to hear the case, in essence agreeing with the state court’s decision that the state law supersedes the Federal Arbitration Act.

This came just after the Illinois Court of Appeals, Second District, decided that the Federal Arbitration Act actually preempts the Nursing Home Care Act, so a facility can use arbitration to resolve disputes—the exact opposite of what the Fifth District had ruled.

In the case of *Marie Folser v. Midwest Care Center II*, Folser filed suit against the

facility, claiming negligence. The facility answered the complaint with a motion to enforce Folser’s pre-admission arbitration agreement, arguing that she had waived her right to sue. Lawyers for Folser, however, cited the *Carter* case as the basis to argue for Folser’s right to sue.

The court decision, filed on May 8, 2009, found that the *Carter* case “was wrongly decided and that, therefore, the trial court erred in denying the motion to compel arbitration.”

Kimber Latsha, attorney with the Pennsylvania firm Latsha, Davis, Yohe, and McKenna, explained at the American Health Lawyers Association meeting in July that another appellate court in the state will have to make a decision to find common ground between the two cases.

—Suzanne Struglinski

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## Senate Panel Addresses Disaster Preparedness

Government agencies must do a better job of recognizing and addressing the needs of long term care

facilities in disaster planning and preparedness activities, LuMarie Polivka-West, senior vice president of the Florida Health Care Association, told the

Senate Special Committee on Aging.

Polivka-West described many of the tragic consequences during the 2005 hurricane season of inadequate coordination with long term care facilities and planning failures in key areas such as communication, transportation, and utility service restoration.

“Long term care providers were not incorporated into existing emergency response systems and plans at the federal, state, or local levels,” she said.

—Lynn Wagner