

# The American Health Care Association

## ***Special Study on Arbitration in the Long Term Care Industry***

*June 16, 2009*

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## Introduction

### Purpose

The American Health Care Association (“AHCA”) has retained Aon Global Risk Consulting (“Aon”) to examine the prevalence, implementation and professional liability (“liability”) claim cost impact of Alternative Dispute Resolution (“ADR” or “Arbitration”) in the Long Term Care industry.

### Scope

Our analysis relies on information collected through a voluntary data call distributed to AHCA and Alliance for Quality Nursing Care (“Alliance”) members. The call consisted of a qualitative 19 item survey and a data request of closed claims.

The qualitative survey responses were used to support conclusions on the prevalence and implementation of ADR.

The claim data were used to examine differences between liability claims closed with and without ADR agreements in place.

\* \* \* \* \*

We performed this analysis using generally accepted actuarial principles and in accordance with all relevant Actuarial Standards of Practice.

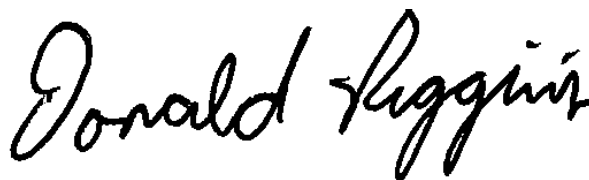
Please contact us if you have any questions regarding this report.

Respectfully submitted,

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## Conditions and Limitations

### Inherent Uncertainty

Actuarial calculations produce estimates of inherently uncertain future contingent events. We believe that the estimates provided represent reasonable provisions based on the appropriate application of actuarial techniques to the available data. However, there is no guarantee that actual future payments will not differ from estimates included herein.

### Extraordinary Future Emergence

Our projections make no provision for the extraordinary future emergence of losses or types of losses not sufficiently represented in the historical data or which are not yet quantifiable.

### Data Reliance

In conducting this analysis, we relied upon the provided data without audit or independent verification; however, we reviewed it for reasonableness and consistency. Any inaccuracies in quantitative data or qualitative representations could have a significant effect on the results of our review and analysis.

### Use and Distribution

Use of this report is limited to the AHCA and the Alliance and their members for the specific purpose described in the Introduction section. Other uses are prohibited without an executed release with Aon.

Distribution by the AHCA and the Alliance is unrestricted. We recognize that this report may be distributed to third parties. We request that Aon be notified of further distribution of this report. The report should only be distributed in its entirety including all supporting exhibits.

# Executive Summary

## Summary of Results

### Background

In recent years, the United States Congress has considered restricting the use of pre-dispute arbitration agreements in nursing home settings. The AHCA has noted the lack of data around the prevalence, implementation and impact on liability associated with Alternative Dispute Resolution (ADR or arbitration) agreements. This study is based on voluntary participation of providers, who submitted answers to a survey and provided closed claim data, with arbitrated outcomes identified.

### Survey Summary

The fourteen respondents to our qualitative survey represent the operators of about 101,000 occupied skilled nursing beds in 2008. Based on CMS data as of December 31, 2008, this translates to about 7% of the skilled nursing occupied beds in the country. The respondents include several large national corporations as well as a few regional or single state providers. Over the past five years, the respondents have operated beds in all states except Alaska, Delaware, Louisiana, Maine, New York and Vermont.

Based on the survey results, we conclude:

- ADR agreements have been offered as part of the admission process since at least 2002.
- All but one provider location was willing to accept residents without a signed ADR agreement.
- Nearly 70% of residents signed ADR agreements.
- No respondents used ADR agreements that attempted to limit awards.
- All respondents informed the applicant that the ADR agreement precluded a jury trial.
- Because nursing homes regularly accept new residents, the percentage of residents who agree to ADR agreements should be expected to rise.
- The providers primarily bear the expense associated with arbitration proceedings.
- While challenges are infrequent, the most common challenges involve the authority and capacity of the signatory to agree.

### Closed Claim Summary

The eleven respondents to our closed claim data call represent the operators of about 70,000 skilled nursing occupied beds in 2008. Based on CMS data as of December 31, 2008, this is approximately 5% of the skilled nursing occupied beds in the country. Respondents provided closed claim information, with arbitration outcomes identified. The results are based on 1,518 claims closed between January 1, 2004 and December 31, 2008.

Based on the closed claim data, we conclude:

- For outcomes where ADR is not contested and outcomes that do not involve ADR, the likelihood of indemnity is the same; the presence or absence of ADR does not seem to impact whether or not indemnity is awarded.

- Average indemnity awards for outcomes subject to ADR agreements tend to be 35% lower than outcomes that are not subject to ADR agreements.
- Average provider expenses for outcomes subject to ADR agreements tend to be 41% lower than outcomes that are not subject to ADR agreements.
- Average provider total costs (indemnity plus expense) for outcomes subject to ADR agreements tend to be 37% lower than outcomes that are not subject to ADR agreements.
- About 23% of the claims with ADR agreements involved challenges to those agreements. The ADR agreements were upheld in over half of those challenges.
- Challenges to arbitration have the highest associated expense. Claims resolved after the ADR agreement is invalidated tend to have much higher total costs than those resolved after the ADR agreement is upheld. As the industry refines its ADR approach, challenges should contribute less to the expense of settlement.

#### **Recommendations for Future Study**

The industry would benefit from improved tracking of ADR as it relates to admissions and asserted claims. This would allow for better estimates of the prevalence of ADR and its impacts on claim costs, both on a national and state specific basis.

It may be useful in future research to examine open claims as well as closed claims. While the costs of these claims will be unresolved, the number of active claims proceeding with and without arbitration may be of interest.

Coding related to the disposition of the claims could not be reliably obtained. In our data call, we had attempted to learn how claims were settled; by arbitrated decision, mediated settlement, court decision, pre-trial settlement, or settlement during trial. Most respondents were unable to provide this information. This coding may have provided insights on the frequency and lifetime of settlement methods. The industry may benefit from tracking the way claims are resolved.

Because the most common challenge to ADR involves the authority and capacity of the signatory, an industry standard approach to determining and documenting authority may indicate best practices for ensuring the validity of the agreements.

## Survey Findings

The respondents have offered ADR agreements as long ago as 1997, although the larger providers have more recent implementations.

We found one location for one provider that required applicants to agree to ADR only if they were transferring from another nursing home. All other locations and providers were willing to negotiate acceptance of an ADR agreement. While ADR is almost universally not a condition of admission, the agreements are offered at admission, and, once accepted, the residents rarely revoke their agreement. Almost 70% of the respondents' residents have signed arbitration agreements. This would suggest that, over time, the percentage of residents who have agreed to ADR will increase.

While all the respondents inform the applicant that the ADR agreement precludes a jury trial for subject disputes, providing additional information about ADR agreements is not common practice. Most respondents used an ADR agreement that was separate from the admission application. Of those that did not use a separate ADR agreement, all but one used special text formatting to bring attention to the agreement within the application. Respondents listed the resident as the primary authority to sign the ADR agreement, with various legal representatives as alternates. The respondents generally relied on admissions staff to verify authority.

None of the ADR agreements included limits on damages. The cost of arbitration proceedings primarily fell on the providers.

Most providers indicated their tracking systems for ADR are not robust. Admission records often include ADR agreements in the paper files. Claims files may include information on ADR agreements, but most commonly this is a text notation and not a coded field.

Per the respondents, challenges to the ADR agreements are rare. Most often, successful challenges involved whether the signatory had the proper authority or capacity to agree to ADR. Other issues cited are pressure to sign based on need for admission and the applicability of the ADR agreement to the decedent's heirs.

### Closed Claim Findings

The respondents provided data on closed claims, coded for arbitration outcomes. The claims were categorized as Arbitrated without Challenge (ADR), Arbitrated-Contested and Found Valid (Upheld ADR), No ADR - Unenforceable ADR (Invalid ADR) and No ADR. We have combined the first two categories as Arbitrated and the second two categories as Not Arbitrated in the tables that follow.

We examined the data by state, by provider, by ADR category, by occurrence year and by year of closure.

### Claim Distribution

We grouped the claims by the size of the indemnity award. This grouping was intended to show differences between claims with and without substantiated damages.

Indemnity Amount	Claims			
	Non-Arbitration		Arbitration	
No Payment	191	20.8%	121	20.2%
\$0 to \$25,000	151	16.4%	151	25.2%
\$25,000 to \$250,000	463	50.4%	291	48.5%
\$250,000 to \$1,000,000	98	10.7%	35	5.8%
Greater than \$1,000,000	15	1.6%	2	0.3%
<b>Total</b>	<b>918</b>	<b>100.0%</b>	<b>600</b>	<b>100.0%</b>
<b>Claims with Payment</b>	<b>727</b>		<b>479</b>	

Just over 1 in 3 claims in our database were resolved under arbitration. It should be noted that more recent closure years have a higher concentration of arbitrated claims than older years. This is indicative of the growing influence of arbitration.

Claims that were subject to arbitration tended to be more concentrated in the \$0-\$25,000 category.

The population of claims with indemnity awards of over \$1,000,000 is sparse for both arbitrated and non-arbitrated outcomes.

## Indemnity

The average indemnity payment associated with an arbitrated outcome is about \$90,000, about 35% less than the average indemnity payment associated with a non-arbitrated outcome of about \$138,000.

Indemnity Amount	Average Indemnity	
	Non-Arbitration	Arbitration
No Payment	\$-	\$-
With Payment	\$174,097	\$113,120
<b>Total</b>	<b>\$137,874</b>	<b>\$90,308</b>

The tables below show the detail under Non-Arbitration and Arbitration. The Invalid ADR category shows outcomes where the ADR agreement was challenged and unenforceable. The Upheld ADR category shows outcomes where the ADR agreement was challenged and found valid.

Interestingly, claims where ADR is challenged are more likely to result in indemnity amounts, and those amounts tend to be higher than amounts awarded otherwise. The average indemnity amount for claims where ADR was challenged and found unenforceable was more than double any other category.

Indemnity Amount	Average Indemnity			
	Non-Arbitration		Arbitration	
	No ADR	Invalid ADR	ADR	Upheld ADR
No Payment	\$-	\$-	\$-	\$-
With Payment	\$157,500	\$322,791	\$107,184	\$146,680
<b>Total</b>	<b>\$122,188</b>	<b>\$314,183</b>	<b>\$84,379</b>	<b>\$127,240</b>
Number of Claims	843	75	517	83

Challenges to ADR may be more likely when the perceived injury is more serious, and the anticipation of compensation is greater. Conversely, when an injury is perceived to be less serious, the agreement is less likely to be challenged. Interestingly, for both unchallenged ADR and no ADR, plaintiffs are indemnified nearly 80% of the time. In other words, the presence or absence of ADR does not seem to impact whether or not indemnity is awarded.

Indemnity Amount	Frequency of Indemnity			
	Non-Arbitration		Arbitration	
	No ADR	Invalid ADR	ADR	Upheld ADR
No Payment	189	2	110	11
With Payment	654	73	407	72
<b>Total</b>	<b>843</b>	<b>75</b>	<b>517</b>	<b>83</b>
Likelihood of Indemnity	78%	97%	79%	87%

### Expense

The average expense associated with an arbitrated outcome is about \$33,000, while the average expense associated with a non-arbitrated outcome is about \$56,000, a difference of about 41%.

When no indemnity awards are substantiated, the average expenses for arbitrated and non-arbitrated outcomes are very similar, around \$15,000. But when damages are awarded, the expenses are much higher for non-arbitrated outcomes than for arbitrated outcomes.

Indemnity Amount	Average Expense	
	Non-Arbitration	Arbitration
No Payment	\$16,058	\$14,317
With Payment	\$66,353	\$37,371
<b>Total</b>	<b>\$55,888</b>	<b>\$32,722</b>

When an ADR agreement is challenged, the expenses associated with a claim are much higher, even when no damages are substantiated. In fact, average expenses associated with challenged ADR are higher than expenses associated with claims where no ADR was involved.

Indemnity Amount	Average Expense			
	Non-Arbitration		Arbitration	
	No ADR	Invalid ADR	ADR	Upheld ADR
No Payment	\$15,793	\$41,135	\$12,357	\$33,921
With Payment	\$61,907	\$106,179	\$29,690	\$80,788
<b>Total</b>	<b>\$51,569</b>	<b>\$104,445</b>	<b>\$26,002</b>	<b>\$74,577</b>
Number of Claims	843	75	517	83

### Total Cost

When indemnity and expense components are combined, the average total cost of an arbitrated outcome is about \$123,000, while the average cost of a non-arbitrated outcome is about \$194,000, making arbitrated outcomes about 37% less costly.

Indemnity Amount	Average Total Cost	
	Non-Arbitration	Arbitration
No Payment	\$16,058	\$14,317
With Payment	\$240,450	\$150,491
<b>Total</b>	<b>\$193,763</b>	<b>\$123,029</b>

Similar to the breakouts above, unchallenged ADR claims have the lowest total cost. Challenged ADR claims are the highest cost claims.

Indemnity Amount	Average Total Cost			
	Non-Arbitration		Arbitration	
	No ADR	Invalid ADR	ADR	Upheld ADR
No Payment	\$15,793	\$41,135	\$12,357	\$33,921
With Payment	\$219,407	\$428,970	\$136,874	\$227,468
<b>Total</b>	<b>\$173,757</b>	<b>\$418,628</b>	<b>\$110,381</b>	<b>\$201,817</b>
Number of Claims	843	75	517	83

### Challenge Rates

The coding allowed us to examine claims where the ADR agreements were challenged. We found that, of the 675 closed claims that involved ADR, 158, or about 23%, were challenged. Of these, 83, or just over half, were upheld. As noted above, the challenged claims were associated with higher overall costs.

Indemnity Amount	Challenge Rates	
	Counts	Percent of ADR Claims
Claims with ADR Agreements	675	100.0%
Challenged	158	23.4%
Upheld	83	12.3%

### Time to Closure

We found that more recent closure years have a higher concentration of arbitrated resolutions, while older closure years have a higher concentration of non-arbitrated resolutions. This may distort time to closure results, and so we have presented the time to closure stratified by occurrence year.

From the table, there is not a consistent difference in the time to closure between arbitrated and non-arbitrated outcomes.

For older occurrence years, where there are fewer arbitrated outcomes, there is a gap between arbitrated and non-arbitrated outcomes, but this gap is favorable to arbitration for 2001, and unfavorable to arbitration for 2002 and 2003.

For 2004 and forward, the gap is much smaller, but neither arbitrated nor non-arbitrated outcomes are consistently settled more quickly. In addition, the relative number of claims in the non-arbitration dwindles for more recent occurrence years. This may be caused by non-arbitrated claims' taking longer to settle, or by the increased prevalence of arbitration among residents, and therefore claimants.

For future research, it may be worthwhile to examine the age and distribution of active claims, coded for arbitration.

Occurrence Year	Average Occurrence to Close in Days			
	Non-Arbitration		Arbitration	
	Avg Days	Claim Count	Avg Days	Claim Count
2001	1,433	118	1,230	14
2002	1,184	153	1,358	22
2003	852	230	1,030	50
2004	758	166	702	133
2005	593	107	605	152
2006	488	97	566	141
2007	342	42	364	75
2008	203	5	180	13
<b>All Years Combined</b>	870	918	655	600

## Data

The data call for this study was first distributed on April 8, 2009, to AHCA and Alliance members specified by Priscilla Shoemaker and Alan Rosenbloom. Subsequently, the data call was shared with a broader group of risk managers by Dan Moriarty of Kindred Healthcare. A copy of the data call e-mail is attached to this report.

A conference call to discuss the data elements was conducted on April 16, 2009.

A soft close to data collection was established at April 30, 2009, and a hard close was established on May 20, 2009.

The survey data responses were provided by thirteen respondents. The survey questions are provided as part of this report. The respondents answered questions at a state level. All states were represented by at least one respondent except for Alaska, Delaware, Louisiana, Maine, Mississippi, New York and Vermont.

Fifteen data calls were returned. A number of responses were lacking some of the required data elements. We attempted to collect the missing data elements by directly contacting the respondents.

We limited included data in the following ways:

1. Claims closed on or after January 1, 2004. This eliminates uncertainty about the outcomes and limits the impacts of claim cost inflation.
2. Occurrences on or after January 1, 2001. Our data did not include information on ADR claims prior to 2001, and so all claims related to occurrences before January 1, 2001 were excluded to ensure consistency in the claims that were compared.
3. Claims without closed dates or valid arbitration codes were excluded. Without a date of closure, the time to resolve an occurrence could not be calculated. Without a valid arbitration code, the involvement of arbitration could not be determined.

## Analysis

For the survey, responses were aggregated in a spreadsheet by question, respondent and state. Filters were used to isolate non-blank results.

For the closed claim data, the submitted data was examined to ensure that the required coding elements were present. Where data elements were missing, respondents were contacted. Most respondents were able to provide the missing data. The aggregated data was examined to identify occurrence years and closure years that provided the most appropriate comparisons between arbitrated and non-arbitrated outcomes.

## Description of Exhibits

### Survey Exhibits

Exhibit 1 shows the survey questions.

Exhibit 2 shows the 2008 bed counts by respondent and state for survey respondents.

Exhibit 3 shows the survey questions and responses for each of the respondents.

### Closed Claim Exhibits

Exhibit 4 summarizes the claims data request

Exhibit 5 shows the 2008 bed count by respondent and state for claims data respondents.

## Exhibits

**AMERICAN HEALTH CARE ASSOCIATION**  
**Arbitration Data Call**  
**Summary of Questions**  
**Company Name**

The survey consists of 19 questions, summarized here.  
You may wish to print this page  
Click on the question to go to the sheet.

1. By state, when were ADR agreements first offered?
2. By state, what percentage of residents signs an ADR agreement (current estimate only)?
3. By state, is the ADR agreement substantially the same? Please note material differences by state.
4. In which states that you offer ADR is the acceptance a condition of admission?
5. In which states that you offer ADR are applicants informed that the agreement is not a condition of admission?
6. In which states that you offer ADR can the applicant revoke the agreement after signing it? What percentage revokes?
7. In which states that you offer ADR is the ADR agreement presented separately from the the admission application?
8. In which states that you offer ADR is the ADR agreement set apart by bold face, larger type or different color than the rest of the application?
9. In which states that you offer ADR do you offer the applicant a separate brochure, video or other educational opportunity related to ADR agreements?
10. In which states that you offer ADR does the ADR agreement expressly define the types of disputes (collection, damaged property, malpractice, etc) that are subject to the ADR process?
11. In which states that you offer ADR is the applicant informed that the ADR agreement precludes a jury trial for subject disputes?
12. In the states that you offer ADR, who has the authority to agree to arbitration? What is your process to ensure authority?
13. In the states that you offer ADR, what are the limits on punitive and economic damages?
14. In the states that you offer ADR, how are arbitrators selected?
15. In the states that you offer ADR, how are the costs of arbitration shared?
16. In the states that you offer ADR, do the admission records identify whether an ADR agreement has been signed?
17. In the states that you offer ADR, do the claims files identify whether an ADR agreement is applicable?
18. In the states that you offer ADR, do the claims files identify unsuccessful challenges to ADR?
19. In the states that you offer ADR, what are the most common successful challenges to ADR?

American Health Care Association  
 Special Study on Arbitration  
 2008 Bed Counts  
 Respondents Included in Survey Data

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Alabama	581		NA			1,509				11,647		651			
Alaska															
Arizona			NA			0	413					153			
Arkansas	894					1,436	85		675						
California					4,460	1,835					3,669	1,197			
Colorado			NA				431					1,030			
Connecticut												1,232			
Delaware															
District of Columbia						0									
Florida	407		NA			0	210		810			1,021			NA
Georgia			NA			1,423						884			NA
Hawaii						0	44								
Idaho			NA				271					708			
Illinois			NA			0	204							NA	
Indiana			NA			2,568	165					182		1,906	
Iowa							1,469		271	NA			76		
Kansas			NA			968	1,017			NA					
Kentucky	440		NA			910	2,447					1,453		164	
Louisiana															
Maine															
Maryland						504						387			
Massachusetts						1,813						1,611			
Michigan			NA			0								85	
Minnesota			NA			1,993							897		
Mississippi						1,024									
Missouri						1,426			540	NA					
Montana							46					409			
Nebraska						1,809	1,349						28		
Nevada			NA								NA				
New Hampshire												910			
New Jersey			NA			125						142			
New Mexico							1,338			NA		792			
New York															
North Carolina			NA			1,140						803			NA
North Dakota															
Ohio	99		NA			412	50	1,656				2,056		748	
Oklahoma			NA									754			
Oregon		1,207					229								
Pennsylvania			NA	945		4,032		736							
Rhode Island												238			
South Carolina			NA			0									NA
South Dakota						1,042	1,082						295		
Tennessee	497		NA			521						628			
Texas	1,286		NA	2,601			441			2,780					
Utah												84			
Vermont															
Virginia			NA			1,534									
West Virginia	143					277	139					654			
Washington		731	NA			0	445								
Wisconsin			NA			2,139									
Wyoming												34			
All States	4,346	1,938	0	3,546	4,460	30,439	11,870	2,392	13,943	6,449	18,012	1,295	2,903	0	

Notes:  
 Provider C is the combination of two systems which recently merged. Each system had independently implemented ADR  
 Provider F implemented ADR in all states except AR on 9/1/02. Subsequently, Provider F has withdrawn from several listed states.  
 Provider O did not submit a survey.

American Healthcare Association  
Special Study on Arbitration  
Survey Responses

1 By state, when were ADR agreements first offered?

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
Alabama	7/1/2007		1/1/2003			9/1/2002				1/1/2002		1/1/2008		
Alaska														
Arizona			1/1/03 & 1/1/2004			9/1/2002	9/1/2005				1/1/2008			
Arkansas	10/1/2004					9/1/2004	9/1/2005			1/1/2002				
California					10+ years	9/1/2002				1/1/2003	1/1/2008			
Colorado			1/1/03 & 1/1/2004				9/1/2005				1/1/2008			
Connecticut											1/1/2008			
Delaware														
District of Columbia						9/1/2002								
Florida	10/1/2004		1/1/2001 & 1/1/03				6/1/2004			1/1/2002	1/1/2008			6/1/2004
Georgia			1/1/03 & 1/1/2004			9/1/2002					1/1/2008			6/1/2004
Hawaii						9/1/2002	9/1/2005							
Idaho			1/1/2004				9/1/2005				1/1/2008			
Illinois			1/1/2003			9/1/2002	9/1/2005							3/1/2009
Indiana			1/1/2004			9/1/2002	9/1/2005				1/1/2008			12/1/1997
Iowa							9/1/2005			4/1/2009		1/1/2003		
Kansas			1/1/2003			9/1/2002	9/1/2005			1/1/2005				
Kentucky	8/1/2005		1/1/2003			9/1/2002	9/1/2005				1/1/2008			12/1/1997
Louisiana														
Maine														
Maryland						9/1/2002					1/1/2008			
Massachusetts						9/1/2002					1/1/2008			
Michigan			1/1/03 & 1/1/2004											4/1/2008
Minnesota			1/1/03 & 1/1/2004			9/1/2002	9/1/2005					1/1/2003		
Mississippi						9/1/2002								
Missouri						9/1/2002				1/1/2002	3/1/2006			
Montana							9/1/2005					1/1/2008		
Nebraska						9/1/2002	9/1/2005					1/1/2003		
Nevada			1/1/03 & 1/1/2004							8/4/2004				
New Hampshire											1/1/2008			
New Jersey			1/1/2004			9/1/2002					1/1/2008			
New Mexico							9/1/2005			9/1/2007	1/1/2008			
New York														
North Carolina			1/1/03 & 1/1/2004			9/1/2002					1/1/2008			6/1/2004
North Dakota							9/1/2005							
Ohio	12/1/2006		1/1/2002 & 1/1/03			9/1/2002	9/1/2005	1/1/1998			1/1/2008		1/1/2005	
Oklahoma			1/1/03 & 1/1/2004								1/1/2008			
Oregon		est. 2004					9/1/2005							
Pennsylvania			1/1/2004	8/26/2003		9/1/2002		1/1/1998						
Rhode Island											1/1/2008			
South Carolina			1/1/03 & 1/1/2004											6/1/2004
South Dakota						9/1/2002	9/1/2005					1/1/2003		
Tennessee	5/1/2006		1/1/03 & 1/1/2004			9/1/2002	9/1/2005				1/1/2008			
Texas	N/A		1/1/03 & 1/1/2004	6/26/2005			9/1/2005			1/1/2002				
Utah											1/1/2008			
Vermont														
Virginia			1/1/03 & 1/1/2004			9/1/2002								
West Virginia	8/1/2007					9/1/2002	9/1/2005				1/1/2008			
Washington		est. 2004	1/1/2004			9/1/2002	9/1/2005							
Wisconsin			1/1/2004			9/1/2002	9/1/2005							
Wyoming											1/1/2008			
All States														

Notes:

Provider C is the combination of two systems which recently merged. Each system had independently implemented ADR  
Provider F implemented ADR in all states except AR on 9/1/02. Subsequently, Provider F has withdrawn from several listed states.

American Healthcare Association  
Special Study on Arbitration  
Survey Responses

2 By state, what percentage of residents signs an ADR agreement (current estimate only)?

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
Alabama	86.0%		90.0%			65.0%				90.0%		53.8%		
Alaska														
Arizona			90.0%			65.0%	75.0%				45.9%			
Arkansas	92.0%					65.0%	75.0%		90.0%					
California					71.0%	65.0%				72.0%	25.4%			
Colorado			90.0%				75.0%				66.2%			
Connecticut											36.0%			
Delaware														
District of Columbia						65.0%								
Florida	94.0%		90.0%			65.0%	75.0%		90.0%		81.7%			90.0%
Georgia			90.0%			65.0%					50.6%			90.0%
Hawaii						65.0%	75.0%							
Idaho			90.0%			75.0%					54.9%			
Illinois			90.0%			65.0%	75.0%						100.0%	
Indiana			90.0%			65.0%	75.0%				82.2%		90.0%	
Iowa						75.0%				80.0%		90.0%		
Kansas			90.0%			65.0%	75.0%			76.0%				
Kentucky	71.0%		90.0%			65.0%	75.0%				56.7%		90.0%	
Louisiana														
Maine														
Maryland						65.0%					23.3%			
Massachusetts						65.0%					62.8%			
Michigan			90.0%			65.0%							95.0%	
Minnesota			90.0%			65.0%	75.0%					90.0%		
Mississippi						65.0%								
Missouri						65.0%			90.0%	64.0%				
Montana							75.0%				56.9%			
Nebraska						65.0%	75.0%					90.0%		
Nevada			90.0%							72.0%				
New Hampshire											48.5%			
New Jersey			90.0%			65.0%					53.3%			
New Mexico							75.0%			93.0%	37.3%			
New York														
North Carolina			90.0%			65.0%					26.9%			90.0%
North Dakota							75.0%							
Ohio	100.0%		90.0%			65.0%	75.0%	100.0%			54.5%		90.0%	
Oklahoma			90.0%								0.0%			
Oregon		50.0%					75.0%							
Pennsylvania			90.0%	58.0%		65.0%		99.9%						
Rhode Island											60.0%			
South Carolina			90.0%			65.0%								90.0%
South Dakota						65.0%	75.0%					90.0%		
Tennessee	77.0%		90.0%			65.0%	75.0%				37.9%			
Texas	N/A		90.0%	0.0%		75.0%				83.0%				
Utah											95.8%			
Vermont														
Virginia			90.0%			65.0%								
West Virginia	47.0%					65.0%	75.0%				50.4%			
Washington		50.0%	90.0%			65.0%	75.0%				49.4%			
Wisconsin			90.0%			65.0%	75.0%							
Wyoming						65.0%					100.0%			
All States														

Notes:

For Provider C, about half of residents sign an admission that contains the ADR agreement, about 80% of the rest sign a separate ADR agreement, Provider K notes that ADR is unenforceable in Oklahoma

### American Healthcare Association Special Study on Arbitration Survey Responses

3 By state, is the ADR agreement substantially the same? Please note material differences by state.

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
Alabama	Same		Same			Same				Same	Same			
Alaska														
Arizona			Same			Same	Same				Same			
Arkansas	Same					Same	Same		Same					
California					Same	Same				Different	Different			
Colorado			Same				Same				Different			
Connecticut											Same			
Delaware														
District of Columbia						Same								
Florida	Different		Same			Same	Same		Same		Same			Different
Georgia			Same			Same					Same			Different
Hawaii						Same	Same							
Idaho			Same			Same	Same				Same			
Illinois			Same			Same	Different						Same	
Indiana			Same			Same	Same				Same		Same	Same
Iowa							Same				Same		Same	
Kansas			Same			Same	Same			Same				
Kentucky	Same		Same			Same	Same				Same		Same	
Louisiana														
Maine														
Maryland						Same					Same			
Massachusetts						Same					Same			
Michigan			Same			Same							Same	
Minnesota			Same			Same	Same						Same	
Mississippi						Same								
Missouri						Same			Same	Same				
Montana							Same				Same			
Nebraska						Same	Same					Same		
Nevada			Same							Same				
New Hampshire											Same			
New Jersey			Same			Same					Same			
New Mexico							Same			Same	Same			
New York														
North Carolina			Same											
North Dakota						Same	Same				Same			Different
Ohio	Same		Same			Same	Same	Same			Same		Same	
Oklahoma			Same											
Oregon		Same					Same							
Pennsylvania			Same	Same		Same		Same						
Rhode Island											Same			
South Carolina			Same			Same								Different
South Dakota						Same	Same					Same		
Tennessee	Different		Same			Same	Same				Same			
Texas			Same	Same			Same			Same				
Utah											Same			
Vermont														
Virginia			Same			Same								
West Virginia	Same					Same	Same				Same			
Washington		Same	Same			Same	Same				Same			
Wisconsin			Same			Same	Same							
Wyoming						Same					Same			
All States														

**Notes:**

Provider A: FL follows Florida Arbitration Code instead of FAA NAF; TN is mediation first

Provider J uses a different form in California

Provider K uses different fonts, colors and bolded emphasis in CA; Colorado has a 90 day revocation period, longer than the standard 20 days period

Provider N forms have substantial differences in each state

American Healthcare Association  
 Special Study on Arbitration  
 Survey Responses

4 In which states that you offer ADR is the acceptance a condition of admission?

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
Alabama		Not		Not			Not			Not		Not		
Alaska														
Arizona				Not			Not	Not				Not		
Arkansas		Not					Not	Not		Yes				
California						Not	Not				Not	Not		
Colorado				Not				Not				Not		
Connecticut												Not		
Delaware												Not		
District of Columbia							Not							
Florida		Not		Not			Not	Not		Yes		Not		Not
Georgia				Not			Not					Not		Not
Hawaii							Not	Not						
Idaho				Not				Not				Not		
Illinois				Not			Not	Not						Not
Indiana				Not			Not	Not				Not		Not
Iowa								Not			Not		Not	
Kansas				Not			Not	Not			Not			
Kentucky		Not		Not			Not	Not				Not		Not
Louisiana														
Maine														
Maryland							Not					Not		
Massachusetts							Not					Not		
Michigan				Not			Not							Not
Minnesota				Not			Not	Not					Not	
Mississippi							Not							
Missouri							Not			Yes	Not			
Montana								Not				Not		
Nebraska							Not	Not					Not	
Nevada				Not							Not			
New Hampshire												Not		
New Jersey				Not			Not					Not		
New Mexico								Not			Not	Not		
New York														
North Carolina				Not			Not					Not		Not
North Dakota								Not						
Ohio				Not			Not	Not	Not			Not		Not
Oklahoma		Not		Not								Not		
Oregon			Not					Not						
Pennsylvania				Not	Not		Not		Not					
Rhode Island												Not		
South Carolina				Not			Not							Not
South Dakota							Not	Not					Not	
Tennessee		Not		Not			Not	Not				Not		
Texas				Not	Not		Not	Not			Not			
Utah												Not		
Vermont														
Virginia				Not			Not							
West Virginia		Not					Not	Not				Not		
Washington			Not	Not			Not	Not				Not		
Wisconsin				Not			Not	Not						
Wyoming							Not					Not		
All States														

Notes:

Provider A notes one facility in AR requires ADR if the applicant was previously a resident in a LTC facility

Provider C notes that the ADR agreement is embedded in about half of its admissions applications, but they are willing to negotiate.

Provider I notes for question 5 that they will negotiate the ADR agreement with applicants.

### American Healthcare Association Special Study on Arbitration Survey Responses

5 In which states that you offer ADR are applicants informed that the agreement is not a condition of admission?

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
Alabama	Yes			Yes			Yes			Yes		Yes		
Alaska														
Arizona				Yes			Yes	Yes				Yes		
Arkansas	Yes						Yes	Yes		Yes				
California						Yes	Yes				Yes	Yes		
Colorado				Yes				Yes				Yes		
Connecticut												Yes		
Delaware														
District of Columbia							Yes							
Florida	Yes			Yes			Yes	Yes		Yes		Yes		Yes
Georgia				Yes			Yes					Yes		Yes
Hawaii							Yes	Yes						
Idaho				Yes				Yes				Yes		
Illinois				Yes			Yes	Yes						Yes
Indiana				Yes			Yes	Yes				Yes		Yes
Iowa								Yes			Yes		Yes	
Kansas				Yes			Yes	Yes			Yes			
Kentucky	Yes			Yes			Yes	Yes				Yes		Yes
Louisiana														
Maine														
Maryland							Yes					Yes		
Massachusetts							Yes					Yes		
Michigan				Yes			Yes							Yes
Minnesota				Yes			Yes	Yes					Yes	
Mississippi							Yes							
Missouri							Yes			Yes	Yes			
Montana								Yes				Yes		
Nebraska							Yes	Yes					Yes	
Nevada				Yes							Yes			
New Hampshire												Yes		
New Jersey				Yes			Yes					Yes		
New Mexico								Yes			Yes	Yes		
New York														
North Carolina				Yes			Yes					Yes		Yes
North Dakota								Yes						
Ohio	Yes			Yes			Yes	Yes	Yes			Yes		Yes
Oklahoma				Yes								Yes		
Oregon				Yes				Yes						
Pennsylvania				Yes	Yes		Yes		Yes					
Rhode Island												Yes		
South Carolina				Yes			Yes							Yes
South Dakota							Yes	Yes					Yes	
Tennessee	Yes			Yes			Yes	Yes				Yes		
Texas				Yes	Yes		Yes	Yes			Yes			
Utah												Yes		
Vermont														
Virginia				Yes			Yes							
West Virginia	Yes						Yes	Yes				Yes		
Washington				Yes	Yes		Yes	Yes				Yes		
Wisconsin				Yes			Yes	Yes						
Wyoming							Yes					Yes		
All States														

**Notes:**

Provider A notes one facility in AR requires ADR if the applicant was previously a resident in a LTC facility  
 Provider I notes that they will negotiate the ADR agreement with applicants.

American Healthcare Association  
Special Study on Arbitration  
Survey Responses

6 In which states that you offer ADR can the applicant revoke the agreement after signing it? What percentage revokes?

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
Alabama	Yes			Yes			Yes			Yes		Yes		
Alaska														
Arizona			Yes			Yes	No				Yes			
Arkansas	Yes					Yes	No		No					
California					Yes	Yes					Yes	Yes		
Colorado				Yes			No					Yes		
Connecticut												Yes		
Delaware														
District of Columbia						Yes								
Florida	Yes		Yes			Yes	No		No		Yes			Yes
Georgia			Yes			Yes					Yes			Yes
Hawaii						Yes	No							
Idaho			Yes				No					Yes		
Illinois			Yes			Yes	No							Yes
Indiana			Yes			Yes	No				Yes			Yes
Iowa							No				Yes		Yes	
Kansas			Yes			Yes	No			Yes				
Kentucky	Yes		Yes			Yes	No				Yes		Yes	
Louisiana														
Maine														
Maryland						Yes					Yes			
Massachusetts						Yes					Yes			
Michigan			Yes			Yes							Yes	
Minnesota			Yes			Yes	No						Yes	
Mississippi						Yes								
Missouri						Yes			No		Yes			
Montana							No					Yes		
Nebraska						Yes	No						Yes	
Nevada			Yes								Yes			
New Hampshire												Yes		
New Jersey			Yes			Yes						Yes		
New Mexico							No				Yes	Yes		
New York														
North Carolina			Yes			Yes						Yes		Yes
North Dakota							No							
Ohio	Yes		Yes			Yes	No	Yes			Yes		Yes	
Oklahoma			Yes								Yes			
Oregon			No				No							
Pennsylvania			Yes	Yes		Yes		Yes				Yes		
Rhode Island														
South Carolina			Yes			Yes								Yes
South Dakota						Yes	No						Yes	
Tennessee	Yes		Yes			Yes	No				Yes			
Texas			Yes	Yes			No				Yes			
Utah												Yes		
Vermont														
Virginia			Yes			Yes								
West Virginia	Yes					Yes	No				Yes			
Washington			No	Yes		Yes	No				Yes			
Wisconsin			Yes			Yes	No							
Wyoming						Yes						Yes		
All States														

Notes:  
 Provider B, Provider G and Provider I are the only providers that do not allow the applicant to revoke  
 Provider E had the highest estimated revocation at less than 5%.  
 All other providers listed revocation at 2% or less.  
 Provider F and Provider K do not have systems to track revocations.

### American Healthcare Association Special Study on Arbitration Survey Responses

7 In which states that you offer ADR is the ADR agreement presented separately from the admission application?

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
Alabama	Yes			Yes			Yes			Yes		Yes		
Alaska														
Arizona				Yes			Yes	No				Yes		
Arkansas	Yes						Yes	No		No				
California					Yes		Yes				Yes	Yes		
Colorado				Yes				No				Yes		
Connecticut												Yes		
Delaware														
District of Columbia							Yes							
Florida	Yes			Yes			Yes	No		No		Yes		Yes
Georgia				Yes			Yes					Yes		Yes
Hawaii							Yes	No						
Idaho				Yes				No				Yes		
Illinois				Yes			Yes	No						Yes
Indiana				Yes			Yes	No				Yes		Yes
Iowa								No			Yes		Yes	
Kansas				Yes			Yes	No			Yes			
Kentucky	Yes			Yes			Yes	No				Yes		Yes
Louisiana														
Maine														
Maryland							Yes					Yes		
Massachusetts							Yes					Yes		
Michigan				Yes			Yes							Yes
Minnesota				Yes			Yes	No					Yes	
Mississippi							Yes							
Missouri							Yes			No	Yes			
Montana								No				Yes		
Nebraska							Yes	No					Yes	
Nevada				Yes							Yes			
New Hampshire												Yes		
New Jersey				Yes			Yes					Yes		
New Mexico								No			Yes	Yes		
New York														
North Carolina				Yes			Yes					Yes		Yes
North Dakota								No						
Ohio	Yes			Yes			Yes	No	No			Yes		Yes
Oklahoma				Yes								Yes		
Oregon				Yes				No						
Pennsylvania				Yes	Yes		Yes		No					
Rhode Island												Yes		
South Carolina				Yes			Yes							Yes
South Dakota							Yes	No					Yes	
Tennessee	Yes			Yes			Yes	No				Yes		
Texas				Yes	No			No			Yes			
Utah												Yes		
Vermont														
Virginia				Yes			Yes							
West Virginia	Yes						Yes	No				Yes		
Washington				Yes	Yes		Yes	No				Yes		
Wisconsin				Yes			Yes	No						
Wyoming							Yes					Yes		
All States														

**Notes:**

Provider C notes that about half of its applications contain an embedded ADR agreement.

Provider G uses boldfaced type to highlight the ADR language

American Healthcare Association  
Special Study on Arbitration  
Survey Responses

8 In which states that you offer ADR is the ADR agreement set apart by bold face, larger type or different color than the rest of the application?

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
Alabama	No		No			Yes				Yes		Yes		
Alaska														
Arizona			No			Yes	Yes				Yes			
Arkansas	No					Yes	Yes		Yes					
California					Yes	Yes					Yes	Yes		
Colorado			No				Yes					Yes		
Connecticut												Yes		
Delaware														
District of Columbia						Yes								
Florida	No		No			Yes	Yes		Yes		Yes			No
Georgia			No			Yes					Yes			No
Hawaii						Yes	Yes							
Idaho			No				Yes					Yes		
Illinois			No			Yes	Yes						Yes	
Indiana			No			Yes	Yes					Yes		Yes
Iowa							Yes				No		No	
Kansas			No			Yes	Yes				No			
Kentucky	No		No			Yes	Yes					Yes		Yes
Louisiana														
Maine														
Maryland						Yes						Yes		
Massachusetts						Yes						Yes		
Michigan			No			Yes								Yes
Minnesota			No			Yes	Yes						No	
Mississippi						Yes								
Missouri						Yes			Yes		No			
Montana							Yes					Yes		
Nebraska						Yes	Yes						No	
Nevada			No								No			
New Hampshire												Yes		
New Jersey			No			Yes						Yes		
New Mexico							Yes				No	Yes		
New York														
North Carolina			No			Yes						Yes		No
North Dakota							Yes							
Ohio	No		No			Yes	Yes	No				Yes		Yes
Oklahoma			No									Yes		
Oregon			Yes				Yes							
Pennsylvania				Yes		Yes		No						
Rhode Island												Yes		
South Carolina			No			Yes								No
South Dakota						Yes	Yes						No	
Tennessee	No		No			Yes	Yes					Yes		
Texas			No	No			Yes				No			
Utah												Yes		
Vermont														
Virginia			No			Yes								
West Virginia	No					Yes	Yes					Yes		
Washington			Yes	No		Yes	Yes					Yes		
Wisconsin			No			Yes	Yes							
Wyoming						Yes						Yes		
All States														

Notes:  
Provider G puts the ADR agreement in bold type

American Healthcare Association  
Special Study on Arbitration  
Survey Responses

9 In which states that you offer ADR do you offer the applicant a separate brochure, video or other educational opportunity related to ADR agreements?

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
Alabama	No		No			No				No	Yes			
Alaska														
Arizona			No			No	Yes				Yes			
Arkansas	No					No	Yes		No					
California					No	No					No	Yes		
Colorado			No				Yes					Yes		
Connecticut												Yes		
Delaware														
District of Columbia						No								
Florida	No		No			No	Yes		No		Yes			Yes
Georgia			No			No					Yes			Yes
Hawaii						No	Yes							
Idaho			No				Yes					Yes		
Illinois			No			No	Yes							No
Indiana			No			No	Yes					Yes		No
Iowa							Yes				No		Yes	
Kansas			No			No	Yes				No			
Kentucky	No		No			No	Yes					Yes		No
Louisiana														
Maine														
Maryland							No					Yes		
Massachusetts							No					Yes		
Michigan			No			No								No
Minnesota			No			No	Yes						Yes	
Mississippi						No								
Missouri						No				No	No			
Montana							Yes					Yes		
Nebraska							No	Yes					Yes	
Nevada			No								No			
New Hampshire												Yes		
New Jersey			No			No						Yes		
New Mexico							Yes				No	Yes		
New York														
North Carolina			No			No						Yes		Yes
North Dakota							Yes							
Ohio	No		No			No	Yes	Yes				Yes		No
Oklahoma			No									Yes		
Oregon			No					Yes						
Pennsylvania				Yes		No		Yes						
Rhode Island												Yes		
South Carolina			No			No								Yes
South Dakota						No	Yes						Yes	
Tennessee	No		No			No	Yes					Yes		
Texas			No	Yes			Yes				No			
Utah												Yes		
Vermont														
Virginia			No			No								
West Virginia	No					No	Yes					Yes		
Washington			No	No		No	Yes					Yes		
Wisconsin			No			No	Yes							
Wyoming						No						Yes		
All States														

Notes:  
Provider F refers applicants to the NAF website for more information.  
Provider K offers a separate brochure

American Healthcare Association  
 Special Study on Arbitration  
 Survey Responses

10 In which states that you offer ADR does the ADR agreement expressly define the types of disputes (collection, damaged property, malpractice, etc) that are subject to the ADR process?

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
Alabama	Yes			Yes			Yes			No		Yes		
Alaska														
Arizona			Yes				Yes	Yes				Yes		
Arkansas	Yes						Yes	Yes		No				
California					Yes		Yes				Yes	Yes		
Colorado				Yes				Yes				Yes		
Connecticut												Yes		
Delaware														
District of Columbia							Yes							
Florida	Yes			Yes			Yes	Yes		No		Yes		Yes
Georgia				Yes			Yes					Yes		Yes
Hawaii							Yes	Yes						
Idaho				Yes				Yes				Yes		
Illinois				Yes			Yes	Yes						Yes
Indiana				Yes			Yes	Yes				Yes		Yes
Iowa								Yes			Yes		No	
Kansas				Yes			Yes	Yes			Yes			
Kentucky	Yes			Yes			Yes	Yes				Yes		Yes
Louisiana														
Maine														
Maryland							Yes					Yes		
Massachusetts							Yes					Yes		
Michigan				Yes			Yes							Yes
Minnesota				Yes			Yes	Yes					No	
Mississippi							Yes							
Missouri							Yes			No	Yes			
Montana								Yes				Yes		
Nebraska							Yes	Yes					No	
Nevada				Yes							Yes			
New Hampshire												Yes		
New Jersey				Yes			Yes					Yes		
New Mexico								Yes			Yes	Yes		
New York														
North Carolina				Yes			Yes					Yes		Yes
North Dakota								Yes						
Ohio	Yes			Yes			Yes	Yes	Yes			Yes		Yes
Oklahoma				Yes								Yes		
Oregon			Yes					Yes						
Pennsylvania				Yes	Yes		Yes		Yes					
Rhode Island												Yes		
South Carolina				Yes			Yes							Yes
South Dakota							Yes	Yes					No	
Tennessee	Yes			Yes			Yes	Yes				Yes		
Texas				Yes	Yes			Yes			Yes			
Utah												Yes		
Vermont														
Virginia				Yes			Yes							
West Virginia	Yes						Yes	Yes				Yes		
Washington			Yes	Yes			Yes	Yes				Yes		
Wisconsin				Yes			Yes	Yes						
Wyoming							Yes					Yes		
All States														

Notes:  
 Provider F and Provider I note that collections are defined in their agreements.

American Healthcare Association  
 Special Study on Arbitration  
 Survey Responses

11 In which states that you offer ADR is the applicant informed that the ADR agreement precludes a jury trial for subject disputes?

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
Alabama	Yes		Yes			Yes				Yes		Yes		
Alaska														
Arizona			Yes			Yes	Yes				Yes			
Arkansas	Yes					Yes	Yes		Yes					
California					Yes	Yes					Yes	Yes		
Colorado			Yes				Yes					Yes		
Connecticut												Yes		
Delaware														
District of Columbia						Yes								
Florida	Yes		Yes			Yes	Yes		Yes		Yes			Yes
Georgia			Yes			Yes					Yes			Yes
Hawaii						Yes	Yes							
Idaho			Yes				Yes					Yes		
Illinois			Yes			Yes	Yes							Yes
Indiana			Yes			Yes	Yes					Yes		Yes
Iowa							Yes				Yes		Yes	
Kansas			Yes			Yes	Yes				Yes			
Kentucky	Yes		Yes			Yes	Yes				Yes		Yes	
Louisiana														
Maine														
Maryland						Yes						Yes		
Massachusetts						Yes						Yes		
Michigan			Yes			Yes							Yes	
Minnesota			Yes			Yes	Yes						Yes	Yes
Mississippi						Yes								
Missouri						Yes			Yes		Yes			
Montana							Yes					Yes		
Nebraska						Yes	Yes						Yes	
Nevada			Yes								Yes			
New Hampshire												Yes		
New Jersey			Yes			Yes						Yes		
New Mexico							Yes				Yes	Yes		
New York														
North Carolina			Yes				Yes					Yes		Yes
North Dakota							Yes							
Ohio	Yes		Yes			Yes	Yes	Yes			Yes		Yes	
Oklahoma			Yes								Yes			
Oregon			Yes					Yes						
Pennsylvania			Yes	Yes		Yes		Yes						
Rhode Island												Yes		
South Carolina			Yes			Yes								Yes
South Dakota						Yes	Yes						Yes	
Tennessee	Yes		Yes			Yes	Yes				Yes			
Texas			Yes	Yes			Yes				Yes			
Utah												Yes		
Vermont														
Virginia			Yes			Yes								
West Virginia	Yes					Yes	Yes				Yes			
Washington			Yes	Yes		Yes	Yes				Yes			
Wisconsin			Yes			Yes	Yes							
Wyoming						Yes						Yes		
All States														

Notes:  
 Every provider includes this.  
 Provider A, Provider F and Provider I note that this is bolded text.

American Healthcare Association  
Special Study on Arbitration  
Survey Responses

12 In the states that you offer ADR, who has the authority to agree to arbitration? What is your process to ensure authority?

	Authority	Process
A	Power of Attorney or Guardianship; Resident; Responsible Party	
B	Resident/Legal Representative	Applicable party to provide copy of appropriate POA or other guardianship documents.
C	Resident/Legally Authorized Representative	Obtain paperwork such as POA/Guardianship documents showcasing authority to sign.
D	Resident or Legal Representative	Ensure that we have the legal document from a Power of Attorney or Guardian indicating Authorized Representation
E	patient &/or legally qualified individual	
F		
G	RESIDENT OR LEGAL REPRESENTATIVE	
H	resident or representative	resident or representative signs, no process in place to ensure their legal authority
I	Resident, POA Legal Representative, Responsible Party, Spouse, Child-Sponsor.	Education of admission coordinators
J	Admissions	Training
K	Admitted Resident/Patient Legal Representative	Admission Coordinator reviews authenticating documents
L	Entity's option to compel	We reserve the only right to compel arbitration
M	Resident/POA/HCP/POA	Legal documentation
N	guardian, DPOAHC, POA, next of kin	order of priority on policy, verified at time of execution

Notes:

## American Healthcare Association Special Study on Arbitration Survey Responses

13 In the states that you offer ADR, what are the limits on punitive and economic damages?

Notes:

This question was reworded for subsequent distribution to read:

In the states that you offer ADR, does the ADR agreement limit punitive and/or economic damages beyond the state's legislated limits?

None of the respondents limits recovery to less than statutory limits.

American Healthcare Association  
Special Study on Arbitration  
Survey Responses

14 In the states that you offer ADR, how are arbitrators selected?

Provider	States	Process
A	Alabama	Arbitrator will be an individual selected jointly by the Resident or the Resident's Representative and the Facility in accordance with the procedures set forth in the National Arbitration Forum's Code of Procedure.
A	Arkansas	If the parties cannot agree upon a single, neutral arbitrator, then each side shall choose a single non-neutral arbitrator (a total of two), who will then choose a third arbitrator.
A	Florida	If the parties cannot agree upon a single, neutral arbitrator, then each side shall choose a single non-neutral arbitrator (a total of two), who will then choose a third arbitrator.
A	Kentucky	If the parties cannot agree upon a single, neutral arbitrator, then each side shall choose a single non-neutral arbitrator (a total of two), who will then choose a third arbitrator.
A	Ohio	The arbitrator(s) shall be mutually selected by the parties in accordance with the procedures established by the Arbitration Services Provider.
A	Tennessee	The parties shall work together in good faith to select a mutually agreeable Arbitration Service Provider. If they cannot select one, the National Arbitration Forum shall conduct the arbitration of all claims. Any arbitrator shall be an attorney licensed to practice law, neutral and free from bias or interest in the claim, and knowledgeable of the issues presented in the claim.
A	West Virginia	Arbitrator(s) shall be mutually selected by the parties in accordance with the procedures established by the Arbitration Services Provider.
B	All States	JAMS, a private arbitration service, per the ADR agreement.
C	All States	Mutual selection by both parties.
D	Pennsylvania	Select from a listing by the American Arbitration Association
D	Texas	via a mediator
E	California	Through either an Arbitration Panel/Service or by Agreement of the Parties
F	All States	
G	All States	BY NAF RULES
H	All States	Our form offers three arbitrators, opposing legal counsel agrees on the selection
I	All States	Arbitrators may be selected by mutual consent of the parties. Arbitration vendors are also specified in the agreements.
J	All States	JAMS
K	All States	The arbitration shall be conducted by only one (1) arbitrator (the "Arbitrator"). If the Parties cannot reach an agreement on selection of the Arbitrator within 20 days after the Demand then, on the 21st day, each Party shall select one arbitrator (the "Selected Arbitrators"). The Selected Arbitrators shall choose the final arbitrator (the "Final Arbitrator"), and the Final Arbitrator shall serve as the sole Arbitrator for this dispute.
L	All States	Both parties must agree on 3 chosen from list of 10 potential supplied by AAA. If cannot agree there would be appt from National Roster
M	All States	National Arbitration Forum (stated in the Agreement)
N	Florida	only one arbitrator unless parties cannot agree on one within 30 days, then each party selects an arbitrator each and those arbitrator select a 3rd to create a panel
N	Georgia	Panel of 3 arbitrators, one each selected by the parties and the 3rd selected by a 3rd party the parties agree upon;
N	North Carolina	only one arbitrator unless parties cannot agree on one within 30 days, then each party selects an arbitrator each and those arbitrator select a 3rd to create a panel
N	South Carolina	only one arbitrator unless parties cannot agree on one within 30 days, then each party selects an arbitrator each and those arbitrator select a 3rd to create a panel

Notes:

**American Healthcare Association  
Special Study on Arbitration  
Survey Responses**

15 In the states that you offer ADR, how are the costs of arbitration shared?

Provider	States	Process
A	Alabama	Any National Arbitration Forum fee in excess of \$50, including compensation paid to the arbitrator for hearing arbitration, will be paid by Facility, unless the Resident (or Representative) objects. If the Resident objects, then the fees will be borne equally by the Facility and the Resident (or Representative)
A	Arkansas	Any initial administrative fees related to the commencement of arbitration shall be paid by the facility; any additional administrative fees and costs, including the fees of the arbitrator, shall be split with the Facility paying 2/3 and the Resident paying 1/3.
A	Florida	Any initial administrative fees related to the commencement of arbitration shall be paid by the facility; any additional administrative fees and costs, including the fees of the arbitrator, shall be split with the Facility paying 2/3 and the Resident paying 1/3.
A	Kentucky	Any initial administrative fees related to the commencement of arbitration shall be paid by the facility; any additional administrative fees and costs, including the fees of the arbitrator, shall be split with the Facility paying 2/3 and the Resident paying 1/3.
A	Ohio	Any filing or administration fees in excess of \$100, as well as any compensation owed to the arbitrator(s) shall be paid by the Facility, unless another party objects and wishes to share equally in such costs.
A	Tennessee	Any initial fee charged by the Arbitration Service Provider in excess of \$100 shall be paid by the Facility. All other fees, including compensation to the arbitrators, incurred in the course of the arbitration, shall be paid in equal parts by the parties unless otherwise agreed upon in writing.
A	West Virginia	Any filing or administration fees in excess of \$100, as well as any compensation owed to the arbitrator(s) shall be paid by the Facility, unless another party objects and wishes to share equally in such costs.
B	All States	Facility pays 100%, unless Facility is prevailing party, in which case costs are split 50/50.
C	All States	By both parties.
D	Pennsylvania	Facility shall pay all of the expenses and fees of the neutral arbitrator, together with other expenses of the arbitration incurred or approved by the neutral arbitrator. However, each Party shall pay for its own Party arbitrator, counsel fees, witness fees, or other expenses incurred by a Party for such Party's own benefit.
D	Texas	the person requesting the ADR has the burden of cost
E	California	Each party covers their own costs & expenses
F	All States	At present, fees are governed by the NAF rules. Plaintiff pays to file. NAF can shift fees to defendant on motion, which happens with some regularity. We will agree to an arbitrator outside NAF if plaintiff agrees.
G	All States	NAF Rules
H	All States	split 50/50
I	All States	Typically the insured pays all arbitrations costs. Few offer sharing of the fees
J	All States	50/50
K	All States	Fees and costs are divided equally among the parties
L	All States	Operating Entity Pays
M	All States	If family not represented, we pay. If represented, costs are split.
N	All States	provider pays up to 5 days of the cost of the arbitration service and proceedings then costs are split; each provider pays their own atty fees

Notes:

American Healthcare Association  
 Special Study on Arbitration  
 Survey Responses

16 In the states that you offer ADR, do the admission records identify whether an ADR agreement has been signed?

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
Alabama		No		Yes			Yes			Yes		No		
Alaska														
Arizona			Yes			Yes	Yes					No		
Arkansas		No				Yes	Yes		Yes					
California					No	Yes					Yes	No		
Colorado			Yes				Yes					No		
Connecticut												No		
Delaware														
District of Columbia						Yes								
Florida		No	Yes			Yes	Yes		Yes			No		Yes
Georgia			Yes			Yes						No		Yes
Hawaii				Yes		Yes	Yes							
Idaho			Yes				Yes					No		
Illinois			Yes			Yes	Yes							No
Indiana			Yes			Yes	Yes					No		No
Iowa							Yes				Yes		Yes	
Kansas			Yes			Yes	Yes				Yes			
Kentucky		No	Yes			Yes	Yes					No		No
Louisiana														
Maine														
Maryland							Yes					No		
Massachusetts							Yes					No		
Michigan			Yes			Yes								No
Minnesota			Yes			Yes	Yes						Yes	
Mississippi						Yes								
Missouri						Yes			Yes		Yes			
Montana							Yes					No		
Nebraska						Yes	Yes						Yes	
Nevada			Yes								Yes			
New Hampshire												No		
New Jersey			Yes			Yes						No		
New Mexico							Yes				Yes	No		
New York														
North Carolina			Yes				Yes					No		Yes
North Dakota							Yes							
Ohio		No	Yes			Yes	Yes	Yes				No		No
Oklahoma			Yes									No		
Oregon			Yes				Yes							
Pennsylvania			Yes	No		Yes		Yes						
Rhode Island												No		
South Carolina			Yes			Yes								Yes
South Dakota						Yes	Yes						Yes	
Tennessee		No	Yes			Yes	Yes					No		
Texas			Yes	Yes			Yes				Yes			
Utah												No		
Vermont														
Virginia			Yes				Yes							
West Virginia		No				Yes	Yes					No		
Washington			Yes	Yes			Yes	Yes				No		
Wisconsin			Yes			Yes	Yes							
Wyoming						Yes						No		
All States														

Notes:  
 Provider D indicated in Pennsylvania the ADR is a separate document that is maintained separately from the medical record.  
 Provider F has started an electronic record of whether and ADR has been signed, but is not confident in the recordkeeping yet.  
 Provider F requires a letter to opt out of the ADR agreement, which is kept on file.

American Healthcare Association  
 Special Study on Arbitration  
 Survey Responses

17 In the states that you offer ADR, do the claims files identify whether an ADR agreement is applicable?

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
Alabama	Yes		Yes			Yes				Yes		Yes		
Alaska														
Arizona			Yes			Yes	Yes				Yes			
Arkansas	Yes					Yes	Yes		Yes					
California					Yes	Yes					Yes	Yes		
Colorado			Yes				Yes					Yes		
Connecticut												Yes		
Delaware														
District of Columbia						Yes								
Florida	Yes		Yes			Yes	Yes		Yes		Yes			Yes
Georgia			Yes			Yes					Yes			Yes
Hawaii						Yes	Yes							
Idaho			Yes				Yes					Yes		
Illinois			Yes			Yes	Yes							Yes
Indiana			Yes			Yes	Yes				Yes			Yes
Iowa							Yes				Yes		Yes	
Kansas			Yes			Yes	Yes				Yes			
Kentucky	Yes		Yes			Yes	Yes				Yes		Yes	
Louisiana														
Maine														
Maryland						Yes						Yes		
Massachusetts						Yes						Yes		
Michigan			Yes			Yes								Yes
Minnesota			Yes			Yes	Yes						Yes	
Mississippi						Yes								
Missouri						Yes			Yes		Yes			
Montana							Yes					Yes		
Nebraska						Yes	Yes						Yes	
Nevada			Yes								Yes			
New Hampshire												Yes		
New Jersey			Yes			Yes						Yes		
New Mexico							Yes				Yes	Yes		
New York														
North Carolina			Yes			Yes						Yes		Yes
North Dakota							Yes							
Ohio	Yes		Yes			Yes	Yes	Yes			Yes		Yes	
Oklahoma			Yes								Yes			
Oregon			Yes				Yes							
Pennsylvania			Yes	No		Yes		Yes						
Rhode Island												Yes		
South Carolina			Yes			Yes								Yes
South Dakota						Yes	Yes						Yes	
Tennessee	Yes		Yes			Yes	Yes				Yes			
Texas			Yes	No			Yes				Yes			
Utah												Yes		
Vermont														
Virginia			Yes			Yes								
West Virginia	Yes					Yes	Yes				Yes			
Washington			Yes	Yes		Yes	Yes				Yes			
Wisconsin			Yes			Yes	Yes							
Wyoming						Yes						Yes		
All States														

Notes:

American Healthcare Association  
 Special Study on Arbitration  
 Survey Responses

18 In the states that you offer ADR, do the claims files identify unsuccessful challenges to ADR?

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
Alabama	No		Yes			Yes				Yes		Yes		
Alaska														
Arizona			Yes			Yes	Yes				Yes			
Arkansas	Yes					Yes	Yes			Yes				
California					No	Yes					No	Yes		
Colorado			Yes				Yes					Yes		
Connecticut												Yes		
Delaware														
District of Columbia						Yes								
Florida	Yes		Yes			Yes	Yes			Yes		Yes		Yes
Georgia			Yes			Yes						Yes		Yes
Hawaii						Yes	Yes							
Idaho			Yes				Yes					Yes		
Illinois			Yes			Yes	Yes							Yes
Indiana			Yes			Yes	Yes					Yes		Yes
Iowa							Yes				No		No	
Kansas			Yes			Yes	Yes				No			
Kentucky	Yes		Yes			Yes	Yes					Yes		Yes
Louisiana														
Maine														
Maryland						Yes						Yes		
Massachusetts						Yes						Yes		
Michigan			Yes			Yes								Yes
Minnesota			Yes			Yes	Yes						No	
Mississippi						Yes								
Missouri						Yes				Yes	No			
Montana							Yes					Yes		
Nebraska						Yes	Yes						No	
Nevada			Yes								No			
New Hampshire												Yes		
New Jersey			Yes			Yes						Yes		
New Mexico							Yes				No	Yes		
New York														
North Carolina			Yes			Yes						Yes		Yes
North Dakota							Yes							
Ohio	No		Yes			Yes	Yes	Yes				Yes		Yes
Oklahoma			Yes									No		
Oregon			No				Yes							
Pennsylvania			Yes	No		Yes		Yes						
Rhode Island												Yes		
South Carolina			Yes			Yes								Yes
South Dakota						Yes	Yes						No	
Tennessee	No		Yes			Yes	Yes					Yes		
Texas	Yes		Yes	No			Yes				No			
Utah												Yes		
Vermont														
Virginia			Yes			Yes								
West Virginia	No					Yes	Yes					Yes		
Washington			No	Yes		Yes	Yes					Yes		
Wisconsin			Yes			Yes	Yes							
Wyoming						Yes						Yes		
All States														

Notes:  
 Most providers indicated that have never received a challenge  
 Provider J indicated they will begin tracking these in the future.  
 Provider A has not attempted to enforce an ADR agreement  
 Provider K has coding to track challenges, but has not had any challenges to arbitration.  
 Provider F is working to improve tracking

## American Healthcare Association Special Study on Arbitration Survey Responses

19 In the states that you offer ADR, what are the most common successful challenges to ADR?

Provider	States	
A	Alabama	For each state, the company's most difficult challenge is the arbitration agreement is often signed by someone without authority to waive a resident's right to a jury trial, such as a responsible party signing the admission paperwork who does not have a valid POA or guardianship.
B	All States	N/A
C	All States	That the Agreements were not signed appropriately or that the Agreement is unconscionable.
D	All States	unknown
E	California	Intent, understanding &/or capacity of the executing party
F	All States	
G	All States	Wrong person signed the form
H	All States	Pressure to sign based on the need for admission
I	All States	Signatory Challenges based upon who has the right to bind the resident, or signatory can not waive a jury trial
J	All States	Not signed by the appropriate person.
K	All States	No successful challenges to date
L	All States	Have not had a challenge
M	All States	Defective agreement
N	Florida	not enough experience to make determination
N	Georgia	authority of person signing the document to bind the patient/estate; authority of person signing the document to bind heirs (even when the person signing is the only heir); whether state law or FAA applies (pretty settled it is FAA); had one upheld when patient himself signed and was still alive, had another upheld because plaintiff's lawyer did not have our medical records at the time suit was filed so the expert affidavit was questionable and judge seemed to dismiss to binding arbitration to avoid the affidavit issue.
N	North Carolina	not enough experience to make determination
N	South Carolina	whether state law or FAA applies; authority of person signing

**Notes:**

Provider K noted that ADR agreements are unenforceable in Oklahoma

# AMERICAN HEALTH CARE ASSOCIATION

## Arbitration Data Call Claims and Exposure Detail Instructions

Please provide the following for **all claims closed since January 1, 2004:**

1. Paid indemnity, paid expense, occurrence date, report date, closed date, geographical state, claim ID.

2. An arbitration code to represent whether ADR applied:

A1: ADR / Uncontested

A2: ADR / Contested and Valid

N1: No ADR

N2: ADR / Unenforceable

3. A disposition code that best describes the ultimate settlement of the claim:

A: Arbitrated decision,

M: Mediated settlement,

C: Court decision,

S: Settled before proceedings,

T: Settled during trial

We can accept item 1 as a carrier loss run, Excel document, Adobe document, or other electronic document.

Items 2 and 3 can be provided with item 1, or as separate tables listing identifying claims numbers and the applicable arbitration and disposition code.

Respondents were also asked to provide:

Occupied Bed Count or Licensed Bed Count with Occupancy Rates

By State

By Bed Type (Skilled Nursing, Assisted Living, Independent Living, Home Health, Other)

For 2004 and subsequent

American Health Care Association  
 Special Study on Arbitration  
 2008 Bed Counts  
 Respondents Included in Claim Data

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Alabama	581									11,647					585
Alaska															
Arizona															820
Arkansas	894									675					
California						4,460					3,669				3,356
Colorado															483
Connecticut															872
Delaware															
District of Columbia															
Florida	407									810					
Georgia															681
Hawaii															
Idaho															769
Illinois															
Indiana													1,906		4,333
Iowa										271					
Kansas															
Kentucky	440													164	2,029
Louisiana															
Maine															948
Maryland															
Massachusetts															5,492
Michigan														85	
Minnesota															
Mississippi															
Missouri										540					293
Montana															280
Nebraska															
Nevada															217
New Hampshire															640
New Jersey															
New Mexico															
New York															
North Carolina															2,649
North Dakota															
Ohio	99								1,656					748	2,133
Oklahoma															
Oregon		1,207													232
Pennsylvania									736						129
Rhode Island															249
South Carolina															
South Dakota															
Tennessee	497														1,336
Texas	1,286										2,780				
Utah															548
Vermont															204
Virginia															764
West Virginia	143														
Washington			731												800
Wisconsin															2,224
Wyoming															424
All States	4,346		1,938			4,460			2,392	13,943	6,449			2,903	33,493

Notes:  
 Provider C was unable to provide bed counts  
 Provider D was unable to provide closed dates and was excluded  
 Provider F was able to provide 25 arbitrated outcomes out of 1,555 closed claims. Provider F has been excluded as a measure of industry representation  
 Provider G was unable to provide arbitration coding  
 Provider K was able to provide 1 arbitrated outcome out of 940 closed, coded claims. Provider K has been excluded as a measure of industry representation  
 Provider L provided 1 non-zero closed claim and was excluded  
 Provider N did not provide bed counts  
 Provider O did not submit a survey