California Federal Court Invalidates Skilled Nursing Arbitration Restrictions in Patients' Bill of Rights Act act.

By Paul Gordon and Tomek Koszylko

Hanson Bridgett Senior Housing and Care Practice Group

HANSONBRIDGETT.COM

HansonBridgett

On January 16, 2014, Judge Lawrence O'Neill of the U.S. District Court, Eastern District of California, ruled that the Federal Arbitration Act (FAA) preempts certain arbitration provisions in the California Patients' Bill of Rights Act (the Act).

The case, *Valley View Health Care, Inc., et al. v. California Dept. of Public Health*, was brought by six skilled nursing facilities (SNFs) and the California Association of Health Facilities (CAHF) – a nonprofit group representing licensed SNFs – on behalf of its members. The plaintiffs challenged portions of the Act and subsequent DPH regulations which provide that, if a contract for admission to a SNF contains an arbitration clause, it must contain express language stating that the resident is not waiving his or her right to sue the facility in court for violations of the Act. The Act further provides that any agreement that attempts to waive this right is void as contrary to public policy. In practice, this required SNFs to "carve out" claims under the Act in their arbitration agreements with residents.

After concluding that the Court had jurisdiction over the case and that the plaintiffs had standing to sue the California Department of Public Health (DPH), the Court held that the FAA, which applies to arbitration agreements involving interstate commerce, applies to the SNF agreements in question. The court observed that because SNFs overwhelmingly accept federal reimbursement from Medicare and Medi-Cal programs, and because SNFs use a vast array of out-of-state vendors to supply goods and services in their operations, the interstate commerce requirement is satisfied for the purposes of the FAA.

Under the legal doctrine of "preemption," when federal law and state law conflict, the state law is preempted and must give way to the federal law. The Court held that the Patient Bill of Rights Act prohibits the arbitration of a particular type of claim that would otherwise be enforceable under the FAA, which applies to all interstate arbitration agreements. Because the Act's arbitration restrictions conflict with the FAA, the Court held that the restrictions are invalid, and issued a permanent injunction against DPH's enforcement of the Act's arbitration provisions. In making its decision, the Court cited both the U.S. Supreme Court and the

federal Ninth Circuit, both of which have observed that the FAA reflects a strong federal policy in favor of the resolution of disputes through arbitration, and rejects state attempts to limit the scope of arbitration agreements.

The holding marks a victory for CAHF and its members, who objected to the arbitration restrictions when DPH final rules were issued in 2011, but who nevertheless complied with the requirements to avoid potential disciplinary action by the agency.

While the holding is a victory for California SNFs, the battle is likely not over. Under the federal rules, DPH has the right to appeal the Court's decision to the Ninth Circuit within 30 days after entry of the judgment, and we may see California courts address this issue further in the future.

For more info, please contact:

Paul Gordon
Partner
pgordon@hansonbridgett.com

Tomek Koszylko
Associate
tkoszylko@hansonbridgett.com

SAN FRANCISCO
425 Market Street, 26th floor
San Francisco, CA 94105
TEL 415-777-3200
FAX 415-541-9366

NORTH BAY
Wood Island
80 E. Sir Francis Drake Blvd., Ste. 3E
Larkspur, CA 94939
TEL 415-925-8400
TEL 707-546-9000
FAX 415-925-8409

SACRAMENTO
500 Capitol Mall, Ste. 1500
Sacramento, CA 95814
TEL 916-442-3333
FAX 916-442-2348

SILICON VALLEY
950 Tower Lane, Ste. 925
Foster City, CA 94404
TEL 650-349-4440
FAX 650-349-4443

EAST BAY
1676 N. California Blvd., Ste. 620
Walnut Creek, CA 94596
TEL 925-746-8460
FAX 925-746-8490