

# Monograph

## Pre-dispute arbitration agreements in provider contracts: What healthcare risk managers should know

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### INTRODUCTION

Healthcare providers have sought to reduce litigation costs and avoid exposure to runaway jury verdicts in medical malpractice trials in recent years by implementing arbitration agreements in healthcare admission contracts.

Arbitration is a private dispute resolution forum that is binding, legally enforceable and often confidential. The rules and procedures of arbitration vary widely. Arbitrators often are legal professionals but can also be laypeople who make a determination out of a sense of fairness. Similarly, an arbitrator may or may not follow the rules of evidence. Attempts to enforce arbitration agreements by healthcare providers have met strong opposition from plaintiff's lawyers seeking to preserve the right to a jury trial in malpractice lawsuits against healthcare providers.

This monograph examines the historical increase in large compensatory awards and punitive damages in jury verdicts in medical malpractice/long-term care cases and the concomitant increase in the costs of defending these claims.

This monograph will also examine the myriad factors a healthcare provider must consider in implementing a successful arbitration program that will withstand judicial scrutiny and reduce exposure to punitive awards and litigation costs.

