A Powerful New Tool For Ensuring Speedy and Efficient Arbitrations in the Healthcare Industry

Henry R. Chalmers

A powerful new tool has just been created for companies seeking quick, efficient, and private resolution of business disputes. The Delaware Rapid Arbitration Act (DRAA or the Act), enacted in April 2015, streamlines the process for initiating an arbitration, sets tight deadlines for concluding it, automatically confirms the arbitration award, and provides speedy resolution of any challenge directly to the Delaware Supreme Court. The DRAA cleverly ensures quick completion of the process by imposing financial penalties *on the arbitrator* if a final decision is not issued within 120 days of commencement. If this sounds appealing, consider including DRAA provisions in your future contracts.

The DRAA is available for almost any dispute involving at least one business organized under Delaware law or with its principal place of business in Delaware. To invoke the Act's benefits, the parties must agree in writing that their arbitration will be governed by the DRAA, and true to its purpose as a business dispute resolution mechanism, it may not be used for consumer or homeowner disputes, nor is it available for most shareholder actions.

The DRAA eliminates many of the strategies parties use to halt arbitration proceedings or impose unnecessary expense and delay. For example, under the DRAA, the arbitrator has exclusive power to determine the scope of the arbitration, and courts are divested of jurisdiction to enjoin the process or entertain interim challenges. Parties also are relieved of the obligation to initiate legal proceedings to confirm their arbitration awards, as they are automatically confirmed within twenty days. Also, any challenges to an award are limited either to a private, arbitral appellate body or to a narrow and final appeal directly to the Delaware Supreme Court.

Within this tight framework, however, the parties are given great freedom to structure the arbitration as they see fit: selecting attorney or lay arbitrators; locating the hearing anywhere in the world they choose; using any, or no, organization to administer the proceedings; limiting the scope of discovery and allowing or prohibiting third-party depositions; barring motion practice and defining the scope of available remedies.

Healthcare companies have long complained that the benefits of arbitration are being lost to ever-expanding and costly proceedings that can become indistinguishable from full-blown litigation. The DRAA solves many of these problems, restoring speed and efficiency to the private dispute resolution process.

If you would like help evaluating whether the DRAA is right for your company, or if you need assistance drafting an arbitration provision that will successfully invoke the DRAA and effectively take advantage of the Act's flexibility to give you maximum advantage when a dispute arises, please contact Henry Chalmers at 404.873.8646 or henry.chalmers@agg.com.

About Henry Chalmers
Mr. Chalmers co-chairs Arnall Golden Gregory's Litigation Group and has two decades of experience representing clients in litigation and arbitration. He also is a certified Arbitrator with the American Arbitration Association (AAA), through which he presides over disputes throughout the United States. Mr. Chalmers has written and lectured extensively on the arbitration and litigation process. He also regularly works with clients to evaluate whether to include arbitration provisions in contracts and how to draft the provisions to best promote their interests.

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