



Expiration Date: Until Withdrawn

**DEPARTMENT OF MANAGED HEALTH CARE
980 Ninth Street, Suite 500
Sacramento, CA 95814**

January 22, 2003

DEPARTMENT ADVICE NO. 03-01

TOPIC: Required Disclosures and Conditions of Binding Arbitration

Subject Matter:

Health and Safety Code section 1363.1 prescribes the disclosure language required if a plan uses binding arbitration and an enrollee gives up his or her right to a jury trial. In Imbler v. PacifiCare of California, Inc., the California Court of Appeal held that section 1363.1 is not preempted by the Federal Arbitration Act and that the specific arbitration language was not “prominently displayed” as required by section 1363.1, subdivision (b). In fact, the Court found that the required disclosure was in the “same font as the rest of the paragraph, and was not bolded, underlined or italicized” and, therefore, “[t]he disclosure sentence neither stood out nor was readily noticeable.”

Action:

The Department advises licensed health care service plans that require binding arbitration must comply completely with all the conditions of section 1363.1 including the requirements that the disclosure be **prominently** displayed in a separate article immediately before the signature line.

Further information:

Authority: Health and Safety Code section 1363.1; Imbler v. PacifiCare of California, Inc., (2002) 103 Cal.App.4th 567, 579.

If you have further questions, please contact G. Lewis Chartrand, Jr., Assistant Deputy Director, at the Office of Legal Services (916) 322-6727.