

The New York Times

The Opinion Pages

The Right to Sue — Restored

By **Teresa Tritch** September 30, 2016 12:33 pm

Starting on Nov. 28, placing yourself or your loved one in a nursing home will no longer require signing away your legal rights.

Under a breakthrough ruling on Wednesday, regulators for Medicare and Medicaid have barred nursing homes that receive federal funding from requiring residents to agree in advance to resolve disputes in arbitration, instead of in court. The end of pre-dispute arbitration clauses in nursing home contracts means the end of a pervasive practice that has long shielded nursing homes from liability for claims involving neglect, abuse, harassment, assault and wrongful death.

In effect, the ruling restores to nursing home residents and their families the basic right of Americans to their day in court — and their shot at justice — when they have been wronged.

Equally important, the ruling creates a tailwind for ending pre-dispute arbitration at other corporations and institutions that receive government support. The Consumer Financial Protection Bureau has proposed a rule that would prevent banks, credit-card companies and other financial firms from using arbitration clauses to bar consumers from joining together in class-action lawsuits. If that rule had been in place when customers at Wells Fargo discovered that sham accounts were being opened in their names, they would have been able to sue as a group. But the pre-dispute arbitration clauses they signed when they opened their real accounts

were deemed to apply to the fraudulent accounts as well, denying them access to the courts.

The Department of Education has proposed a rule that would limit the use of pre-dispute forced arbitration clauses in enrollment contracts at schools that participate in federal direct loan programs. Unlike the nursing-home rule, which clearly states that such clauses are not allowed, the Education Department proposal would permit the clauses as long as schools take some steps to explain them and do not make signing them a condition of admission. The problem, of course, is that predatory schools can easily coerce or mislead students into signing whatever paperwork is presented. Students later wishing to challenge the agreements are out of luck.

The nursing-home rule is a template for ending pre-dispute forced arbitration that other regulators can use to develop similarly strong reforms.

In recent decades, pre-dispute forced arbitration has grown into a separate, secretive and privatized tribunal system governing all manner of contracts. It invariably favors corporations and shields them from accountability. As a result, it allows wrongdoing to persist and flourish.

The nursing-home rule and other efforts by federal agencies to ban forced arbitration are a sign, at long last, that the courthouse door may once again open to ordinary Americans.