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Nursing Home Residents Still Vulnerable to Abuse

By THE EDITORIAL BOARD

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People entering [nursing homes](#) need to know that all reasonable safeguards are in place to ensure quality care. But federal rules to be finalized soon fail to hold nursing homes truly accountable to patients, their families or the law.

At issue are arbitration clauses in nursing home contracts that require consumers to settle any disputes that arise over products or services through private arbitration rather than through lawsuits. Corporations of all sorts love forced arbitration because it overwhelmingly tilts in their favor and shields them from liability. But in the process, it denies justice to consumers, investors, patients and others who find they have no legal recourse when wronged.

Forced arbitration is especially problematic in nursing home disputes, which are generally about care, not money. ([Medicare](#) and [Medicaid](#) pay many nursing home bills.) Typical claims involve neglect or abuse leading to broken limbs, [dehydration](#) and untreated pain.

The proposals, by the Centers for Medicare and Medicaid Services, should have banned pre-dispute arbitration clauses in nursing home contracts. Instead, they basically condone them as long as these homes take some legalistic steps to explain and disclose the clauses and do not make signing them a condition of admission. Those provisions skirt the real problem. Prospective patients do not have the necessary information to make a decision about signing the clauses. How could they before a dispute even arises? In essence, families are being asked to anticipate the likelihood of grievous harm and legal ramifications. A nursing home admission is stressful and confusing enough without your being asked to sign away your right to sue.

The proposed rule acknowledges “concerns” about forced arbitration and notes that regulators solicited comment on whether the clauses should be banned. A ban is needed — and if nursing home regulators won’t impose one, the White House Office of Management and Budget, which will review the rule before its scheduled release in September, needs to ask for a revision. If the industry wants to seek private arbitration it should be allowed to do so, but only after a dispute arises, not before.

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