



Prohibit Pre-Dispute Arbitration Agreements in Long-Term Care Facility Admission Contracts

What is Pre-Dispute Arbitration?

Arbitration is a legal process in which a dispute is settled by one or more arbitrators who decide the outcome instead of a jury made up of members of the community. “Pre-dispute” arbitration means that the consumer must agree to arbitration before any dispute arises.

Pre-dispute arbitration agreements are increasingly included in nursing home and other long-term care facility admission contracts that consumers or their families must sign in order for the consumer to be admitted as a resident. Once signed, these agreements bar consumers from seeking legal action in court should they suffer harm or injury while residing in the facility. The Supreme Court has upheld the right for such agreements to be included under the Federal Arbitration Act.

Why is Prohibiting Pre-Dispute Arbitration Agreements

Important to Long-Term Care Consumers?

Pre-dispute arbitration agreements:

- *Place consumers at a disadvantage during the admissions process*
 - Nursing home admissions are usually unplanned and often happen when individuals and their families are under pressure to enter into facility care as quickly as possible. Pre-dispute arbitration agreements are generally offered on a ‘take it or leave it’ basis by facilities. Consumers may be forced into signing an arbitration agreement because “leaving it” and trying to find another place right then and there is not an option.
 - Arbitration agreements can often be buried within the fine print of admission contracts and may go unnoticed by many consumers given the huge amount of paperwork that must be signed during the admissions process.

- *Strip consumers of their constitutional right to a trial by jury*
 - When consumers sign an arbitration agreement, they sign away forever their constitutional right to a trial by jury. Such a decision should be given careful consideration. However, individuals and their families are pressured into signing blanket arbitration agreements in advance, without having any idea what they might be arbitrating and with only the information the facility chooses to give them about what arbitration is about. No one can make an informed decision under such circumstances!
- *Deny consumers the benefits of a court of law*
 - Unlike judges, arbitrators are private individuals who may be chosen by the nursing home – not publicly elected or appointed officials.
 - In arbitration, residents and families not only have to hire a lawyer, they generally have to pay a part of the arbitrator's fee. This is like paying the judge – which consumers don't have to do in court.
 - Arbitration can be very costly and is usually far more expensive than court. As a result, arbitration may not be possible for many residents and families – leaving them with no legal recourse.
 - The amount awarded to residents and families through arbitration is likely to be less than it would be in court.
 - Consumers typically cannot appeal the arbitrator's decision as they can in the court system.

The Consumer Voice urges Congress to Pass Legislation Barring the Use of Pre-Dispute Arbitration Agreements in Long-Term Care Facility Admission Contracts

For more information on this issue,

please visit <http://www.theconsumervoice.org/advocate/arbitration>

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