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Executive Order Barring Forced Arbitration in Government Contracts Highlights Need to Prohibit Similar Clauses in Long-Term Care Facility Agreements

WASHINGTON, DC, July 31st, 2014 – The National Consumer Voice for Quality Long-Term Care (Consumer Voice) commends President Obama for taking an integral first step towards eliminating the wrongful practice of forced, pre-dispute arbitration. This form of arbitration requires consumers to agree in advance to resolve disputes through an arbitration process instead of a court of law. The Fair Pay and Safe Workplaces Executive Order will bar certain government contractors from mandating employees into forced arbitration over sexual harassment and civil rights claims. It is an encouraging development that highlights the need to ban the use of such clauses in all legally binding contracts, particularly in consumer contracts that individuals and their loved ones are generally required to sign upon admission to nursing homes, assisted living facilities or other long-term care settings.

Consumer Voice has continuously urged policymakers to bar the egregious use of forced, pre-dispute arbitration clauses in long-term care facility contracts. Such agreements compel consumers and their family members to resolve any disputes that might arise regarding abuse, neglect or poor care within a facility through an arbitration process as opposed to a court of law, stripping these individuals of their constitutional right to a trial by jury.

Forced, pre-dispute arbitration agreements place long-term care consumers at a distinct disadvantage during the admissions process. A forced arbitration clause may be buried within the fine print of a very lengthy facility admissions agreement and go unnoticed given the huge amount of paperwork that must be signed during the admissions process and the stress that moving to a facility can cause. Consumers may also be coerced into signing a forced arbitration clause since it may be offered by facilities on a “take it or leave it” basis. Should consumers refuse to sign such agreements, they may be denied admission and be required to find another facility right away, which may not be possible. As the use of such agreements becomes more common within long-term care facilities, it is becoming increasingly less likely for consumers to find a nursing home, assisted living facility or other long-term setting that does not require the signing of such an agreement.

According to Robyn Grant, Director of Public Policy & Advocacy, “the Fair Pay and Safe Workplaces Order issued by President Obama is an important call to action for Congress and the Administration to address the widespread use of forced, pre-dispute arbitration clauses within all contracts but, in particular, the harmful and all-too-common inclusion of such clauses within long-term care admissions agreements. Not only do forced, pre-dispute arbitration agreements require consumers to sign away their constitutional right to a trial by jury, they also prevent consumers from holding facilities accountable for abuse, neglect and substandard care through an open and unbiased legal process. This can harm the safety, health and well-being of all long-term care facility residents. We must now work to ensure that the protections afforded to individuals under this Executive Order are extended to our nation’s most vulnerable citizens.”

About the Consumer Voice

The National Consumer Voice for Quality Long-Term Care was formed as the National Citizens' Coalition for Nursing Home Reform in 1975 because of public concern about substandard care in nursing homes. Today, the Consumer Voice is the leading national voice representing consumers on issues related to long-term care, helping to ensure that consumers are empowered to advocate for themselves.