

March 3, 2017

The Honorable Al Franken  
United States Senate  
Washington, DC 20510

Dear Senator Franken:

The National Consumer Voice for Quality Long-Term Care (Consumer Voice) would like to express our support for your reintroduction of the Arbitration Fairness Act. The Consumer Voice and its members oppose pre-dispute arbitration clauses in nursing home admissions contracts. Such clauses prevent long-term care facility residents from obtaining justice in many instances of negligence, abuse, or violations of residents' rights.

Nursing home contracts with pre-dispute arbitration clauses are unfair and disadvantageous to nursing home residents. When consumers sign an arbitration clause, they sign away forever their constitutional right to a trial by jury. Choosing arbitration or a trial is a very important decision, and should be given careful consideration. Yet, pre-dispute arbitration agreements force individuals to make a decision before a dispute arises, even in cases of alleged severe neglect, serious injuries or death. And once a decision is issued, consumers typically cannot appeal as they can in court. To make matters worse, residents and their families are required to decide at the time of admission – a time generally of great stress.

Sixty percent of nursing home admissions are from a hospital and occur after a medical emergency, such as a stroke or broken hip. Individuals are often pressured to quickly leave the hospital and accept the first available nursing home bed without any opportunity to evaluate the care provided or consider other possible options. And, when they unknowingly sign away their right to bring a lawsuit, most families do not expect, nor have any experience with, the severity of injuries their loved one may experience, including pressure sores that lead to infection, suffocation on bedrails and other restraining devices, and physical and sexual assault.

As the [New York Times](#) writes, "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

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*The National Consumer Voice for Quality Long-Term Care (formerly NCCNHR) is a 501(c)(3) nonprofit membership organization founded in 1975 by Elma L. Holder that advocates for quality care and quality of life for consumers in all long-term-care settings.*

ramifications. A nursing home admission is stressful and confusing enough without your being asked to sign away your right to sue.”

Mandatory arbitration clauses serve only to protect providers from accountability for bad care. Any pre-dispute arbitration agreement is unfair to residents and should not be allowed. Forced arbitration directly hinders the rights of long-term care consumers who seek nothing more than fair treatment and justice.

Thank you for once again sponsoring the Arbitration Fairness Act to end this practice. The Consumer Voice looks forward to working with you to pass this important bill.

Sincerely,

A handwritten signature in cursive script that reads "Lori Smetanka". The signature is written in black ink and is positioned below the word "Sincerely,".

Lori Smetanka, J.D.  
Executive Director