

June 3, 2021

Dear Representative,

As organizations that advocate on behalf of our country's 1.3 million nursing home residents, we urge you to co-sponsor the "Fairness in Nursing Home Arbitration Act" (H.R. 2812), introduced by Reps. Linda Sanchez and Jan Schakowsky. This critical legislation would prohibit long-term care facilities from requiring or soliciting residents, their families, or their guardians to enter mandatory, pre-dispute, binding arbitration agreements.

The use of forced arbitration clauses is widespread in the nursing home industry. Nursing home residents and their families sign these agreements, which are often buried inside the facilities' contracts, at the time of admission. This is generally a stressful, difficult, and confusing time for residents and families, who are often under extreme pressure to find nursing home placement. When a person is seeking care for themselves or a loved one, they should be able to focus on the quality and range of services available. No one should be expected to anticipate or contemplate the occurrence of grievous harm or poor care during the admission process.

In addition to taking advantage of nursing home residents when they are most vulnerable, forced arbitration agreements:

- **Prevent informed decision making:** An essential component of any decision-making process is gathering the information needed to make the best decision. Yet nursing homes ask consumers to sign pre-dispute arbitration agreements in a vacuum without any information about the potential dispute. No one can make an informed decision under such circumstances.
- **Are inherently unfair to consumers:** Nursing homes write the arbitration clauses, choose the arbitration provider and the rules under which the forced arbitration will occur, and create the payment terms. The agreements create a system where residents and their families are much less likely to receive justice for the harms they have suffered.
- **Restrict consumer choice:** Prospective consumers and their families often have little actual choice of nursing facilities due to their geographic location, specific needs, or the necessity of immediate placement when facing imminent hospital discharge. Because pre-dispute arbitration agreements are generally offered on a "take it or leave it basis," individuals and families often feel they have no choice but to sign the agreement, or they will not be admitted to the facility and/or receive the care they need.
- **Hide poor care.** Arbitration proceedings and results against long-term care providers usually remain confidential. This fact allows unsafe providers to prolong misconduct and suppress information about dangerous conditions and practices. For instance, without knowledge of a nursing home's substandard care, abuse, or neglect, consumers may choose a nursing home or remain in one and may suffer harm as a result.

Forced arbitration agreements pressure consumers into agreeing to terms that may have a substantial adverse impact on their rights, safety, and health. They also reduce incentives for facilities to improve their quality of care. After a year in which nearly 132,000 nursing home residents died of COVID-19, and countless others suffered from isolation and neglect, enacting additional safeguards for residents is imperative.

We strongly urge you to co-sponsor the "Fairness in Nursing Home Arbitration Act" which would provide those much-needed protections.

To cosponsor the bill, please contact Alejandra Leynez (Alejandra.Leynez@mail.house.gov) in Representative Sanchez's office or Gidget Benitez (Gidget.Benitez@mail.house.gov) in Representative Schakowsky's office.

Thank you for your consideration,

AARP

California Advocates for Nursing Home Reform

Center for Advocacy for the Rights & Interests of the Elderly

Center for Medicare Advocacy

Community Legal Services of Philadelphia

Human Rights Watch

Justice in Aging

Levin & Perconti

Long Term Care Community Coalition

National Academy of Elder Law Attorneys

National Association of Local Long-Term Care Ombudsmen

National Association of Social Workers

National Association of State Long-Term Care Ombudsman Programs

National Consumer Voice for Quality Long-Term Care

National Disability Rights Network

Public Citizen

Rivera & Shackleford, P.C.

Service Employees International Union