

National and State Organization Letter Supporting The Fairness in Nursing Home Arbitration Act (H.R. 1237, S. 512)

March 5, 2009

U.S. House of Representatives
Washington, DC 20515

Dear Representative:

Binding mandatory arbitration clauses are forcing the elderly and those with disabilities and their families to waive their constitutional right to seek redress in the courts when a nursing home resident suffers harm. These clauses are typically buried in contracts signed by families during one of the most stressful events in their lives – entrusting the care of a vulnerable loved one to strangers – and the clauses effectively compel family members to consent that they will waive the legal rights of a loved one if she or he is injured or dies from neglect or physical abuse while in the facility. The contracts are presented on a take-it-or-leave-it basis, and leave families in the impossible situation of having to sign a contract or forgo nursing home care altogether, a decision that most families are not in the position to make. The undersigned organizations urge you to support the Fairness in Nursing Home Arbitration Act of 2009 (S. 512/H.R. 1237), which would invalidate pre-dispute mandatory arbitration provisions in nursing home, assisted living, and other long-term care facility contracts.

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 accept the first available bed without any opportunity to evaluate the care provided or consider other possible options, and research conducted at Brown University shows that hospitals are more likely to place African Americans in the worst nursing homes. When they unknowingly sign away their right to sue the facility, most families have had no experience with the severity of injuries their loved one could suffer if the facility neglects its responsibility to protect them – such as pressure sores that lead to infection and amputation of limbs; suffocation on bedrails and other restraining devices; physical and sexual assault; renal failure from dehydration; malnutrition; and death from fires in unsprinklered buildings. Some courts have even enforced arbitration clauses included in contracts signed by nursing home residents who were illiterate or had advanced dementia.

Countless government studies show that in spite of improvements in nursing home regulation and enforcement, state regulators still under-cite the seriousness of deficiencies in which residents are harmed; levy fines that are little more than the cost of doing business; and allow facilities to operate year-after-year with serious, repeat problems. Assisted living is poorly regulated in most states, although assisted living

residents often have physical and mental disabilities similar to those of nursing home residents.

Mandatory arbitration clauses only further this crisis by serving to protect providers from accountability for bad care. By allowing the provider to pick the arbitration company with which it routinely does business and the rules of the arbitration, the system is set up to heavily favor the provider and leave the family with little or no hope of obtaining justice for their loved one.

Families should not be required to sign a contract containing a pre-dispute mandatory arbitration clause as a condition of admission nor participate in an arbitration process that they have little or no control over, especially when the dispute involves the suffering and death of their parents and other loved ones. The Fairness in Nursing Home Arbitration Act would end the practice that forces many to do so.

Sincerely,

National Organizations

Alliance for Retired Americans
Alzheimer's Foundation of America
American Association for Justice
American Federation of State, County, and Municipal Employees
Assisted Living Consumer Alliance
Communications Workers of America
Consumer Federation of America
Center for Medicare Advocacy
Citizen Works
Consumer Action
Consumers for Auto Reliability and Safety
Consumers Union
Hartford Institute for Geriatric Nursing
Homeowners Against Deficient Dwellings
Home Owners for Better Building
Leadership Conference on Civil Rights
National Academy of Elder Law Attorneys
National Consumer Law Center (on behalf of its low income clients)
National Employment Lawyers Association
National Association of Consumer Advocates
National Association of Local Long-Term Care Ombudsmen
National Association of Social Workers
National Association of State Long-Term Care Ombudsman Programs
National Women's Health Network
NCCNHR: The National Consumer Voice for Quality Long-Term Care
National Senior Citizens Law Center
Neighborhood Economic Development Advocacy Project
Public Citizen

Service Employees International Union
U.S. Public Interest Research Group

State Organizations

Alabama

Long Term Care Ombudsman Program of Jefferson County
Central Alabama Aging Consortium

Arkansas

Arkansas Advocates for Nursing Home Residents

California

California Advocates for Nursing Home Reform
Foundation Aiding The Elderly
Long Term Care Services of Ventura County
Ombudsman Services of San Mateo County
Riverside County Long Term Care Ombudsman Program

Delaware

Delaware Long-Term Care Ombudsman Program
Citizens for Long Term Care

District of Columbia

Office of the D.C. Long-Term Care Ombudsman Program

Florida

ACTION: Advocates Committed to Improving Our NursingHomes
FANHI: Family Advocates for NursingHome and HomeCare Improvement

Georgia

Georgia Office of the State Long-Term Care Ombudsman

Idaho

Idaho Long Term Care Ombudsman program

Illinois

Illinois Citizens for Better Care
Illinois Office of the Long Term Care Ombudsman

Indiana

Indiana Long Term Care Ombudsman Program
Long Term Care Ombudsman, Area 12
United Senior Action of Indiana

Kansas

Kansas Advocates for Better Care

Kentucky

Barren River Area Development District Area Agency on Aging

Kentuckians for Nursing Home Reform

Kentucky - Barren River District Long Term Care Ombudsman

Kentucky Protection & Advocacy

KIPDA District Long-Term Care Ombudsman Program

Nursing Home Ombudsman Agency of the Bluegrass

Louisiana

Advocacy Center

Louisiana Long Term Care Ombudsman Program

Maryland

Manor Care Chevy Chase Family Council

Montgomery County MD Long Term Care Ombudsman Program

Voices for Quality Care

Massachusetts

Massachusetts Advocates for Nursing Home Reform

Wynn Gerhard, Managing Attorney, Elder Law Unit, Greater Boston Legal Services,
on behalf of our clients

Ombudsman Program, Consumer Advocates for Better Care of
Montachusett Home Care Corp.

SeniorCare, Inc./Long Term Care Ombudsman Program

Michigan

Citizens for Better Care

Michigan Campaign for Quality Care

Michigan Long-Term Care Ombudsman Program

Minnesota

ElderCare Rights Alliance

Families Against Nursing Home Abuse, Albert Lea

Mid Minnesota Legal Assistance

Office of Ombudsman for Long-Term Care

Missouri

Missouri Long-Term Care Ombudsman Program

St. Louis Long Term Care Ombudsman Program

New Hampshire

New Hampshire Office of the Long-Term Care Ombudsman

New Jersey

Bergen Regional Medical Center Long Term Care Family Council, Paramus NJ

New Mexico

New Mexico Long Term Care Ombudsman Program

New York

The Coalition of Institutionalized Aged and Disabled
FRIA, The Voice and Resource for Eldercare with Dignity
Long Term Care Community Coalition
New York State Ombudsman Alliance

North Carolina

Friends of Residents in Long Term Care
North Carolina Long Term Care Ombudsman Program

Ohio

Dayton Long Term Care Ombudsman Program
Ohio Office of the State Long-Term Care Ombudsman

Oklahoma

A Perfect Cause
Oklahoma Long Term Care Ombudsman Program

Pennsylvania

CARIE
Pennsylvania Long-Term Care Ombudsman Program

Rhode Island

Rhode Island Long Term Care Ombudsman Program

Tennessee

Tennessee State Long-Term Care Ombudsman

Texas

NHVC, Inc.
Texas Advocates for Nursing Home Residents

Vermont

Regional Long Term Care Ombudsman, Vermont Legal Aid, Rutland

Virginia

TLC 4 Long Term Care Residents

Washington

Alzheimer's Association, Western and Central WA Chapter
Resident Councils of Washington
Washington State Long Term Care Ombudsman

Wisconsin

Coalition of Wisconsin Aging Groups
Wisconsin Long-Term Care Ombudsman Program

Wyoming

Wyoming Long-Term Care Ombudsman Program