

May 22, 2008

United States Senate  
Washington, DC 20510

Dear Senator:

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 S. 2838, the Fairness in Nursing Home Arbitration Act, which would invalidate pre-dispute mandatory arbitration provisions in nursing home, assisted living, and other long-term care facility contracts.

Almost two-thirds 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.

No family should 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,

AARP

Alliance for Retired Americans

American Association for Justice

American Federation of State, County and Municipal Employees

Alzheimer's Foundation of America

Center for Medicare Advocacy, Inc.

Consumer Action

Consumer Federation of America

Consumers Union

Homeowners Against Deficient Dwellings

Home Owners for Better Building

National Association of Consumer Advocates

National Association of Social Workers

National Consumer Law Center (on behalf of its low income clients)

National Consumers League

National Employment Lawyers Association

National Senior Citizens Law Center

NCCNHR: The National Consumer Voice for Quality Long-Term Care

U.S. Public Interest Research Group