



ISSUE BACKGROUND

Nursing Homes

Mandatory Pre-Dispute Nursing Home Arbitration Clauses

Binding pre-dispute mandatory arbitration clauses force nursing home residents 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 included in contracts signed by residents and their families during the admission process, and effectively waive the legal rights of the resident if s/he is injured or dies from neglect or physical abuse while in the facility. The contracts are often presented on a take-it-or-leave-it basis, and leave residents and families in the impossible situation of having to sign a contract or forgo nursing home care altogether.

NAELA supports 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. Families and residents 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 in which the power of the parties involved is so grossly mismatched. These clauses are especially egregious because when a dispute arises, it usually concerns the suffering or death of the resident.

Sixty percent of nursing home residents are admitted to the nursing home from a hospital 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. Countless 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 which are so low they have little deterrent effect; and allow facilities to operate year-after-year with serious, repeat problems. Mandatory pre-dispute arbitration clauses only worsen this crisis by protecting providers who provide bad care.

NAELA encourages Congress to amend S. 512/H.R. 1237 to include its provisions in a new chapter of the Federal Arbitration Act rather than amending Chapter 1 of the Act.

Nursing Home Transparency and Improvement

The Nursing Home Transparency and Improvement Act of 2009 (S. 647), sponsored by Senator Chuck Grassley (R-IA) and Senator Herb Kohl (D-WI), would improve the transparency of information on nursing homes and clarify and improve the targeting of the enforcement of requirements for nursing homes.

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