

Arbitration Clauses Unfair to Nursing Home Residents

A great injustice is taking place in this country: the use of pre-dispute binding arbitration clauses in nursing home admissions contracts by the nursing home industry. ***These clauses provide that victims of abuse and neglect in nursing homes give up their right to a jury trial.*** This right is a right granted to citizens under the Constitution. This directly undermines the spirit and intent of the Nursing Home Reform Act of 1987: to improve the quality of care and clinical outcomes for our most vulnerable citizens.

Elderly nursing home residents and their spouses are being pressured or misled into signing arbitration clauses, frequently when they lack the mental capacity, authority or true willingness to do so. If arbitration was a level playing field and fair to both sides without any negative repercussions to the resident or family, does anyone really believe that the nursing home industry would feel the need to so aggressively enforce them and seek to bury these provisions within 50 pages of admissions materials?

Arbitration provisions lead to protracted litigation, not faster results or less expensive resolution of cases. The nursing home industry uses them to stall cases, take appeals and delay justice. An elderly surviving spouse may not live long enough to see justice when nursing home corporations take this approach.

In my experience as an attorney who has represented victims of abuse and neglect in nursing homes, arbitration provisions lead to the provision of poor care. Residents who have not signed arbitration provisions typically receive better care because the facility has a greater incentive to meet their needs. Arbitration clauses insulate the nursing home industry from liability, and with that protection, nursing home corporations feel free to cut costs, reduce staffing and sacrifice the quality of care.

There is only one way that arbitration can be fair and truly voluntary: that is to prohibit the use of pre-dispute binding arbitrations altogether. In other words, if and when a dispute arises, the parties may thereafter choose to arbitrate the case if they so desire.

The Centers for Medicare & Medicaid Services (CMS) is considering changes to the Federal Regulations that govern the operation of nursing homes, including a proposal regarding arbitration. CMS, in seeking to protect our elders and promote the quality of care in nursing homes, should ban pre-dispute binding arbitration clauses. It is the fair and equitable thing to do.

Reed Law is actively involved in the fight to change the laws to prohibit the use of pre-dispute binding arbitrations. If you are considering admitting your loved one to a nursing home, do not sign any document which contains the words "Arbitration

Agreement.” Nursing homes cannot refuse admission to a person who refuses to sign an Arbitration Agreement. If you or your loved one has already unwittingly signed an Arbitration Agreement, ask the nursing home for a copy of the agreement to see what steps you can take to withdraw your consent.

We Are Here to Help!

For more information about how Nebraska’s Nursing Home Abuse and Neglect Attorneys can assist you in protecting your rights,

call (402) 933-0588.