

Arbitration Agreements Threaten Residents' Legal Rights

Arbitration Agreements Harm Consumers

In a nursing home arbitration agreement, a resident waives the right to sue the nursing home in court, and instead agrees to have any future disputes handled by a private arbitrator. Arbitration agreements are generally considered bad for nursing home residents and other consumers. Arbitration can be expensive, and arbitrators are likely to favor the nursing home over the resident, since the nursing home may have ongoing business with the arbitrator. Also, the resident generally has no appeal rights, even if the arbitrator's decision is clearly wrong.

In 2016, under the previous presidential administration, the federal Centers for Medicare & Medicaid Services (CMS) released [regulations](#) that prevented a nursing home from obtaining arbitration agreements from residents at the time of admission. CMS noted that arbitration is generally not a good option for residents, and that residents and their families cannot make reasoned decisions about arbitration in the chaos that often accompanies a resident's admission to a nursing home. Also, residents during admission do not know what type of dispute may arise in the future. Disputes can be extremely serious and include lawsuits against abuse and neglect.

Administration Proposes Reversing the Ban on Arbitration Agreements

Under the current administration, CMS has proposed [new regulations](#) that would reverse the ban on arbitration agreements. Worse, the proposed regulation would, for the first time, authorize a nursing home to require arbitration as a condition of admitting a person. Up until now, mandatory arbitration agreements have generally been considered improper under state consumer protection laws.

This policy alert is part of a series that highlights how the current administration in Washington is weakening protections for nursing home residents, at great risk to their health and well-being. This series is produced by Justice in Aging, The National Consumer Voice for Long-Term Care, The Center for Medicare Advocacy, California Advocates for Nursing Home Reform, and the Long Term Care Community Coalition.