

# LONG TERM CARE COMMUNITY COALITION

*Advancing Quality, Dignity & Justice*

## **CONSUMER FACT SHEET: PRE-DISPUTE ARBITRATION AGREEMENTS**

### **WHAT IS A PRE-DISPUTE ARBITRATION AGREEMENT?**

A pre-dispute arbitration agreement means that both parties have contracted to resolve any future dispute through an arbitrator rather than through a court proceeding. While the dispute is resolved outside of court, the arbitrator's decision is binding and enforceable. **In the nursing home or assisted living setting, it means that that resident (or the resident's family if the resident has died) can never sue the facility for abuse, neglect, or, even, wrongful death.**

LTCCC believes pre-dispute arbitration agreements are inherently unfair to residents and families. When a resident enters a facility, they are not likely to be in a position to truly consider what future problems may occur. Most people are overwhelmed by the situation and trust that the nursing home is providing them with paperwork to sign that is both necessary and in the resident's best interest. Nobody knowingly enters a nursing home expecting that they will be abused or neglected.

In 2016, the Obama Administration promulgated regulations prohibiting pre-dispute arbitration agreements between nursing homes residents (or their representative) and facilities. On July 18, 2019, the Trump Administration published a Final Rule rolling back certain features of the 2016 resident protection. Most notably, the Final Rule removes the requirement prohibiting facilities from entering into pre-dispute arbitration agreements with residents, while maintaining the 2016 ban on requiring residents to agree to arbitration as a condition of admission or as a requirement for continued care.

Following is information on resident protections in the new rule (effective September 16, 2019) and some tips for residents and families.

### **WHAT PROTECTIONS DO RESIDENTS HAVE?**

- Nursing homes CANNOT require residents to sign an arbitration agreement as a condition of admission or as a requirement for continued care;
- Residents have the right to rescind the arbitration agreement within 30 calendar days of signing the agreement;
- Facilities must explicitly inform residents, and include language in the agreement, that signing a pre-dispute arbitration agreement is voluntary;
- Both parties must agree upon the selection of a neutral arbitrator and venue;
- Arbitration agreements must be in a form and manner that the resident can understand and residents must acknowledge that they understand the agreement;

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- Arbitration agreements cannot contain language that prohibits or discourages any individual from contacting federal, state, or local officials; and
- Facilities must retain copies of the signed arbitration agreement and the arbitrator's decision for five years and make them available to the Centers for Medicare & Medicaid Services (CMS) for inspection.

### **WHAT SHOULD I DO IF I AM PRESENTED WITH A PRE-DISPUTE ARBITRATION AGREEMENT?**

- **Do not sign the pre-dispute arbitration agreement!** Nursing homes cannot require residents and their representatives to sign a pre-dispute arbitration agreement in order for the resident to be admitted into the facility or for the resident to continue receiving care at the facility.

### **WHAT SHOULD I DO IF I HAVE SIGNED A PRE-DISPUTE ARBITRATION AGREEMENT?**

- **Rescind the pre-dispute arbitration agreement!** Residents and their representatives have the right to rescind a pre-dispute arbitration agreement within 30 calendar days of signing the agreement.

### **WHAT SHOULD I DO IF I CAN NO LONGER RESCIND MY AGREEMENT?**

- **Consult an attorney!** There may be a claim for why the pre-dispute arbitration agreement is invalid.

For more information about nursing home care and residents' rights, please visit:

[www.NursingHome411.org](http://www.NursingHome411.org)