

Don't Sign – Say No to Arbitration

You DO NOT HAVE TO SIGN a pre-dispute arbitration agreement when entering a nursing home.

No one enters a nursing home imagining that he or she will be mistreated or neglected there. And everyone wants to get off to a good start with the nursing home staff. Unfortunately, even in the best homes, things can go wrong and, if they do, residents need to protect their right to seek a remedy in court. Even in a good home where staff seem kind and caring, don't sign away your right to a fair trial if you ever need one!

What is a pre-dispute arbitration agreement?

Arbitration agreements take away your right to hold your nursing home accountable in court, for any and all potential negligence or wrongdoing. "Pre-dispute" arbitration agreements require you to give up this right before the harm even occurs so you will never have the chance to decide if going to court is the right option for you.

What counts as a dispute?

"Dispute" includes any event in which you are harmed. Once you sign an arbitration agreement, you can- not bring a lawsuit against your nursing home for any wrongdoing. Examples include:

- Receiving the wrong medication or dosage
- Developing bedsores/pressure ulcers as the result of neglect
- Suffering any injury that results from neglect, including falls and broken bones
- Having money or belongings stolen
- Being physically abused or assaulted by a fellow resident or staff member

Why you should NOT SIGN:

If you sign an arbitration agreement and are later hurt because the facility was negligent or even if you were intentionally injured by a staff member or fellow resident, you will NOT be able to hold the nursing home accountable in court.

There is no advantage to residents in signing pre-dispute arbitration clauses. There are only disadvantages. Here are just a few of the reasons why pre-dispute arbitration does not benefit residents:

- A private arbitrator, instead of a judge, decides the outcome of a dispute.
- There is no jury.

- Arbitration does not have to follow the rules of evidence and can introduce hearsay evidence against the resident.
- Decisions are always final, barring extraordinary circumstances, so you cannot appeal a decision you disagree with
- Decisions are almost always confidential, so that the facility's record of wrongdoing remains secret.
- Arbitration is a business. Arbitrators have a financial incentive to find for the nursing home in the hope that the nursing home will give the arbitrator more business in the future. This hugely disadvantages residents.
- Arbitration can be far more expensive for a resident than a lawsuit in court.

What are your rights?

Residents, when you enter a nursing home, you may be presented with a pre-dispute arbitration agreement. It could be buried within your admission contract or it might be a separate form. Federal regulations give you a number of rights that protect you when confronted with an agreement.

- You have the right to refuse to sign. If it is in your admission contract, CROSS IT OUT. Put your initials and the date next to it. If it is a separate form, DO NOT SIGN IT.
- A nursing home cannot deny you admission or discharge you because you do not sign an arbitration agreement.
- If you signed an arbitration agreement, you must be allowed to rescind (undo) the agreement within 30 days.

Above all, don't feel pressured to sign! You can always decide to seek arbitration later, after a dispute has occurred, if you decide it is in your best interests.

Caution: When reviewing your contract, your nursing home will explain your arbitration agreement to you. They will ask you to acknowledge that you understand the agreement. If they require you to sign that you understand, make sure you are not signing that you agree to the arbitration agreement. If the signature line is the same, DO NOT SIGN.

"I think it is important for families to review all of the documents that are signed at admission and to know that you have the right to question or challenge any of the items. In our case, I struck through the mandatory arbitration and mediation sections. I told the administrator that I preferred to not include those. By doing that, we were able to later pursue a lawsuit in court and did not have to be bound by arbitration. Many times, arbitration is before arbitrators who work frequently with nursing facilities, and I did not feel that we would be guaranteed an impartial decision." - Family member



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