

September 9, 2019

The Honorable Jerrold Nadler  
Chairman  
U.S. House Committee on the Judiciary  
2132 Rayburn House Office Building  
Washington, DC 20515

The Honorable Doug Collins  
Ranking Member  
U.S. House Committee on the Judiciary  
2142 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Nadler and Ranking Member Collins,

The undersigned organizations write to express our support for the Forced Arbitration Injustice Repeal (FAIR) Act, H.R. 1423, legislation which would make forced arbitration agreements between consumers and corporations illegal. **As groups that represent long-term care consumers and their families, we especially appreciate that this bill would prohibit providers of these services from enforcing pre-dispute arbitration agreements in situations where consumers have been harmed.**

When abuse or neglect causes serious injuries or even death, forced arbitration clauses deprive consumers and their families of their right to seek justice in court before an impartial judge or jury. Forced arbitration clauses are usually hidden in the fine print of “take-it-or-leave-it” agreements, such as nursing home admission forms. They require disputes to be resolved through private arbitration providers, rather than in court. Information in arbitration proceedings against long-term care providers are usually confidential, which allows unsafe providers to prolong misconduct and suppress information about dangerous conditions and practices. The proceedings are final, with few rights to appeal. For these and other reasons, nursing homes and other long-term care providers, such as assisted living communities, should be prohibited from imposing them on the very individuals who depend on these caregivers for their survival.

Admission into a nursing facility is a difficult and confusing time for residents and their families, who are often under extreme pressure to find nursing facility placement for a loved one. Often, they are no longer able to care for their loved ones and have nowhere else to turn. Consumers seeking access to an assisted living residence or services at home or in the community are generally also in a stressful position to find care and services quickly. When a person is seeking care for themselves or a loved one, they should be able to focus on the quality of care and range of services available, not on whether their legal rights will still exist in the event of future abuse or neglect.

In September 2016, the Centers for Medicare & Medicaid Services (CMS) issued a rule updating long-term care facility regulations which included language barring nursing homes from using pre-dispute arbitration agreements prospectively. Unfortunately, CMS subsequently completely reversed course. On July 18, 2019, the agency published a final rule that rolls back the ban and once again permits providers to use these agreements.

The FAIR Act will rightfully protect nursing home residents and other individuals receiving long-term services and supports from being forced into arbitration that may have a substantial adverse

impact on their rights. We look forward to working with this Committee to pass this important legislation.

Sincerely,

California Advocates for Nursing Home Reform

Caring Across Generations

Justice in Aging

Long Term Care Community Coalition

National Association of Local Long Term Care Ombudsman (NALLTCO)

National Association of State Long-Term Care Ombudsman Programs (NASOP)

National Consumer Voice for Quality Long-Term Care

Waccamaw Regional Council of Government

Cc: Members of the House Judiciary Committee