

December 4, 2019

The Honorable Linda T. Sanchez
U. S. House of Representatives
2329 Rayburn House of Building
Washington, DC 20515

The Honorable Jan Schakowsky
U. S. House of Representatives
2367 Rayburn House Office Building
Washington, DC 20515

Dear Representatives Sanchez and Schakowsky,

The undersigned organizations write to express our strong support for the Fairness in Long-Term Care Arbitration Act of 2019, which would not allow federally-certified providers of long-term care services and supports to obtain pre-dispute arbitration agreements from consumers. This prohibition would apply whether these services were provided in nursing facilities or community-based settings such as individuals' homes or assisted living facilities.

We appreciate your leadership in introducing legislation that will protect residents, other consumers, and their loved ones. The use of pre-dispute arbitration agreements is fundamentally unfair, and facilities and home and community-based services (HCBS) providers that receive federal Medicaid and/or Medicare funding should not be permitted to impose them on consumers.

Nursing facility admission is a difficult and confusing time for residents and their families, who are often under extreme pressure to find nursing facility placement. 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 and range of services available. No one should be expected to anticipate or contemplate the occurrence of grievous harm or poor care when these agreements are signed upon admission or when one is about to begin receiving services.

Pre-dispute arbitration agreements are forcing the elderly, those with disabilities, and their loved ones to waive their constitutional right to have their case heard by a jury when they suffer harm, even when severe neglect, serious injuries or death occurs. Pre-dispute arbitration agreements are typically buried in contracts, which are presented on a take-it-or-leave-it basis, and leave consumers and/or families in the impossible situation of surrendering their legal rights by "agreeing" to arbitrate all disputes prior to an adverse event occurring. As a result, consumers or their family members may not understand that they are waiving access to the many rights and protections that are afforded by the courts, or that they will have limited ability to appeal an arbitrator's decision, even in egregious cases of serious bodily harm or death.

In 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, on July 18, 2019, CMS reversed course, allowing providers to continue to use these agreements. These regulations became effective September 16.

The Fairness in Long-Term Care Arbitration Act of 2019 will ensure that this does not happen. It will protect residents of long-term care facilities, individuals receiving Medicaid funded HCBS and

their families from being forced into arbitration or terms that may have a substantial adverse impact on their rights. This legislation is also important because it would provide uniform, nationwide protection.

Again, thank you for your leadership in advancing this critically important issue. We look forward to working with you to see this legislation advance in the 116th Congress.

Sincerely,

AARP

California Advocates for Nursing Home Reform

Caring Across Generations

Center for Medicare Advocacy

Justice in Aging

Long Term Care Community Coalition

National Academy of Elder Law Attorneys

National Association of Local Long Term Care Ombudsman (NALLTCO)

National Association of Social Workers (NASW)

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

National Consumer Voice for Quality Long-Term Care

Public Citizen

Service Employees International Union (SEIU)