

September, 10, 2008

United States Senate
Washington, DC 20510

Dear Senator:

Binding mandatory arbitration clauses are forcing the elderly and those with disabilities and their families to waive their constitutional right to seek redress in the courts when a nursing home resident suffers harm. These clauses are typically buried in contracts signed by families during one of the most stressful events in their lives – entrusting the care of a vulnerable loved one to strangers – and the clauses effectively compel family members to consent that they will waive the legal rights of a loved one if she or he is injured or dies from neglect or physical abuse while in the facility. The contracts are presented on a take-it-or-leave-it basis, and leave families in the impossible situation of having to sign a contract or forgo nursing home care altogether, a decision that most families are not in the position to make. **The undersigned organizations urge you to support S. 2838, the Fairness in Nursing Home Arbitration Act, which would invalidate pre-dispute mandatory arbitration provisions in nursing home, assisted living, and other long-term care facility contracts.**

Forty percent of nursing home admissions are from a hospital and occur after a medical emergency, such as a stroke or broken hip. Individuals are often pressured to accept the first available bed without any opportunity to evaluate the care provided or consider other possible options, and research conducted at Brown University shows that hospitals are more likely to place African Americans in the worst nursing homes. When they unknowingly sign away their right to sue the facility, most families have had no experience with the severity of injuries their loved one could suffer if the facility neglects its responsibility to protect them – such as pressure sores that lead to infection and amputation of limbs; suffocation on bedrails and other restraining devices; physical and sexual assault; renal failure from dehydration; malnutrition; and death from fires in unsprinklered buildings. Some courts have even enforced arbitration clauses included in contracts signed by nursing home residents who were illiterate or had advanced dementia.

Countless government studies show that in spite of improvements in nursing home regulation and enforcement, state regulators still under-cite the seriousness of deficiencies in which residents are harmed; levy fines that are little more than the cost of doing business; and allow facilities to operate year-after-year with serious, repeat problems. Assisted living is poorly regulated in most states, although assisted living residents often have physical and mental disabilities similar to those of nursing home residents.

Mandatory arbitration clauses only further this crisis by serving to protect providers from accountability for bad care. By allowing the provider to pick the arbitration company with which it routinely does business and the rules of the arbitration, the system is set up to heavily favor the provider and leave the family with little or no hope of obtaining justice for their loved one.

No family should be required to sign a contract containing a pre-dispute mandatory arbitration clause as a condition of admission nor participate in an arbitration process that they have little or no control

over, especially when the dispute involves the suffering and death of their parents and other loved ones. The Fairness in Nursing Home Arbitration Act would end the practice that forces many to do so.

Sincerely,

ACORN National
Alliance for Retired Americans
American Association for Justice
American Federation of State, County and Municipal Employees
Alzheimer's Foundation of America
Assisted Living Consumer Alliance
Consumers for Auto Reliability and Safety
Center for Medicare Advocacy, Inc.
Consumer Action
Consumer Federation of America
Consumers Union
Drum Major Institute for Public Policy
Equal Justice Society
Foundation Aiding the Elderly
Homeowners Against Deficient Dwellings
Home Owners for Better Building
National Academy of Elder Law Attorneys
National Association of Consumer Advocates
National Association of Local Long-Term Care Ombudsman Programs
National Association of Social Workers
National Association of State Long-Term Care Ombudsman Programs
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
National Employment Lawyers Association
National Senior Citizens Law Center
NCCNHR: The National Consumer Voice for Quality Long-Term Care
Service Employees International Union
Public Citizen
Public Justice Center
U.S. Public Interest Research Group
United Food and Commercial Workers International Union
Workplace Fairness

Alabama

Central Alabama Aging Consortium
Long Term Care Ombudsman Program, East Alabama Regional Planning & Development Commission

Arizona

Arizona Consumers Council

Arkansas

Arkansas Advocates for Nursing Home Residents

California

Bet Tzedek Legal Services

California Advocates for Nursing Home Reform

California Long Term Care Ombudsman Association

Consumer Federation of California

Congress of California Seniors

Foundation Aiding the Elderly, California

Kings/Tulare LTC Ombudsman Program K.C.

Long Term Care Ombudsman Services of San Luis Obispo County

National Senior Citizens Law Center - Los Angeles, CA Office

National Senior Citizens Law Center – Oakland Office

Colorado

Colorado Long Term Care Ombudsman Program

District of Columbia

District of Columbia Long-Term Care Ombudsman Program

Florida

Advocates Committed to Improving Our Nursing Homes (ACTION), Florida

Families for Better Care, Florida

Family Advocates for Nursing Home and Home Care Improvement (FANHI), Florida

Florida Consumer Action Network

Georgia

Georgia Council of Community Ombudsmen

Meansville, Georgia Long Term Care Ombudsman Program

Illinois

Illinois Citizens for Better Care

Nursing Home Monitors, Illinois

Indiana

Indiana Office of the Long-Term Care Ombudsman

United Senior Action of Indiana

Kansas

Kansas Advocates for Better Care

Kentucky

Barren River Long-Term Care Ombudsman Program, Kentucky

Kentuckians for Nursing Home Reform

Kentucky Initiative for Quality Nursing Home Standards-The KY IQ Group

Louisiana

Louisiana Long Term Care Ombudsman Program

Maine

Maine Long Term Care Ombudsman Program

Maryland

Baltimore County Department of Aging Ombudsman Program, Maryland

Family Council Springhouse, Silver Spring

Voices for Quality Care, Maryland

Massachusetts

Cape United Elderly

Ethos/Boston Long Term Care Ombudsman Program

Massachusetts Advocates for Nursing Home Reform

Michigan

Michigan Campaign for Quality Care

Michigan Citizens for Better Care

Michigan Long Term Care Ombudsman Program

Minnesota

ElderCare Rights Alliance, Minnesota

Mid Minnesota Legal Assistance

Missouri

Long Term Care Ombudsman Program - St Louis

New Hampshire

Office of the Long Term Care Ombudsman

New York

Empire Justice Center

Family and Children's Long Term Care Ombudservice Program, Hempstead, New York

FRIA, The Voice and Resource for Eldercare with Dignity

Long Term Care Community Coalition

New York State Ombudsman Alliance

North Carolina

North Carolina Long Term Care Ombudsman Program

North Carolina Long Term Care Regional Ombudsman Association

Ohio

Advocates for Basic Legal Equality Long Term Care Ombudsman Program

Ohio Association of Regional Long Term Care Ombudsmen
Ohio Long Term Care Ombudsman Program

Oklahoma

Oklahoma Long-Term Care Ombudsman Program
Oklahoma City Long Term Care Ombudsman Program

Pennsylvania

Center for Advocacy for the Rights and Interests of the Elderly (CARIE)
Pennsylvania State Long-Term Care Ombudsman Program

Tennessee

MCHRA Long-Term Care Ombudsman Program
Tennessee Long-Term Care Ombudsman Program

Texas

Nursing Home Victims Coalition, Texas
Sam Perlin, Long Term Care Consultant, Texas
Texas Advocates for Nursing Home Residents

Utah

Salt Lake County Ombudsman Program

Virginia

Tender Loving Care 4 Long Term Care Residents (TLC4LTCR)
Southern Area Agency on Aging
Virginia Association of Professional Nursing Assistants' Inc.
Virginia Poverty Law Center

Washington

Northwest Women's Law Center, Washington
Washington State Long-Term Care Ombudsman Program
Resident Councils of Washington

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