



New Bill Could Protect Nursing Home Residents from Forced Arbitration

By Levin & Perconti

Senate Bill 2838 could put an end to mandatory arbitration agreements in nursing home contracts.

Arbitration agreements in nursing home resident contracts cut short a resident's rights even though they preserve all remedies for the nursing home management.

Senate Bill 2838 would stop nursing homes from requiring that their residents sign mandatory arbitration agreements.

Here is some information to consider when reviewing this bill.

1. Arbitration clauses in nursing home contracts are usually drafted to be non-mutual. Residents are forced to bring any and all claims against the home in arbitration while the nursing home retains the right to seek fees and collection in courts.

2. Nursing home entry packets usually contain 50-60 pages and are presented to the nursing home resident and their family during a stressful time. The arbitration clause is normally buried in the paperwork, and the nursing home resident may not be literate, may have impaired vision and hearing, or diminished capacity due to medication or trauma that prevents them from understanding the contract. Families are often distracted by emotions.

3. Arbitration agreements for nursing home care limit the ability for residents to seek justice for their injuries and abuse. Some clauses may also limit a family's ability to assert survivor rights when their loved one dies in a nursing home.

4. Illinois legislators had the foresight to protect nursing home residents' trial by jury rights in the Nursing Home Care Act that prohibits residents from written or verbal waivers of their trial by jury right. Mandatory arbitration clauses are contrary to that law. The Illinois Appellate Court agreed in *Carter v. SSC Odin Operating Company LLC* (885 N.E. 2d 1204 (Ill. App. 5th) (2008)), holding that provisions of the Nursing Home Care Act invalidating a resident's waiver of the right to a jury trial were not preempted by federal law.

5. Unlike courtroom litigation, many nursing home arbitration agreements severely limit discovery, duration of process, ability to be represented by counsel, and number of experts and witnesses you can present at the hearing. These agreements can effectively close down someone's ability to plead their case to recover.

6. Many nursing homes rely on the duress of the situation to ensure that prospective residents have no choice but to agree to the arbitration clause. Many homes

do not allow prospective residents to edit their contracts or have their contracts reviewed by counsel; instead, it is a “take it or leave it” offer. This becomes especially difficult for families that must secure immediate specialized care for ailing relatives.

7. Together, courts, state and federal law provide a better solution to protecting nursing home resident rights than arbitration. In court, residents can seek a variety of remedies and may join multiple claims against the home which allows the resident to assert their rights fully.

8. State and federal laws provide better protections and specific regulations that impose fines for nursing home abuse and neglect, allowing the community as a whole to enforce standards on nursing homes. Arbitration forecloses the government’s and community’s ability to punish wrongdoing against seniors.

In our experience, nursing home abuse and neglect lawsuits have helped many of our clients achieve substantial justice for their injuries. It is important that future nursing home residents be able to assert their rights in a court of law and exercise their right to a jury trial if they are hurt at the hands of a nursing home.

For more information, please visit our website at www.levinperconti.com and check our nursing home abuse and neglect blog at www.nursinghomelaw.com for updates.

Levin & Perconti is a nationally renowned law firm concentrating in all types of personal injury, medical malpractice and wrongful death litigation. The lawyers at Levin & Perconti are committed to protecting and vindicating the rights of people who are injured by the negligence of others. Levin & Perconti has achieved substantial justice in nursing home cases, advocating on behalf of the elderly and families of elderly victims of abuse and neglect.