

## **MANDATORY ARBITRATION CLAUSES**

**ISSUE:** Residents and family members need to be aware that admission contracts in nursing homes may contain clauses that would prohibit them from pursuing legal recourse in the event of abuse or injury.

### **BACKGROUND:**

Many nursing homes are now adding mandatory arbitration clauses to the admission contracts that residents are asked to sign when entering a nursing facility. Beverly Enterprises, Inc. publicly announced in 2001 that this was their practice. A person who signs such a clause as part of the admission contract agrees to take any dispute with the facility to an arbitrator, whose finding in the matter must be accepted. There is no appeal from an arbitrator's ruling. A resident, by signing such a clause, is forfeiting the right to sue the facility for injury, should they ever wish to do so.

Mandatory arbitration clauses in nursing home admission contracts have been ruled by the Arkansas Attorney General to violate Medicaid rules and the Arkansas Office of Long Term Care has declared them to be a violation of resident's rights. The Center for Medicare and Medicaid Services (CMS) has ruled that a resident cannot be refused admission to a nursing home for refusal to sign a mandatory arbitration clause. As yet, however, the legality of such a clause has not been tested in Arkansas courts.

Residents and their family members are asked to sign many papers at the time of admission. This is almost always a bewildering experience at a time of great stress. Therefore there is great pressure to sign these contracts without carefully reading them. Of course one assumes at admission that one will receive good care. The possibility of needing legal recourse in the future is the farthest thing from anyone's mind at that time. However, if the admission agreement is not carefully read and understood prior to signing, a resident or their family may be forfeiting an important right and should be done only if they understand the ramifications.

### **POLICY IMPLICATIONS:**

Residents and family members, at a time of great anxiety and stress, are presented with a bewildering amount of paperwork. They need to be aware that provisions may be hidden in those pages that are not in their best interests. They need to read things carefully or even have them cleared by an attorney before signing.

### **RECOMMENDATIONS:**

Any action which places restrictions upon the right to apply for redress for injury in a court of law should be vigorously opposed.

The legislature should specifically outlaw mandatory arbitration clauses in nursing home admission contracts.