

Pre-Dispute Arbitration Agreements & Nursing Home Admission Contracts

Arbitration is a legal process that uses a private judge, called an arbitrator, to settle disputes. “Pre-dispute” means that you agree to use arbitration for future problems, well before any dispute arises. PDAA are in nursing home admission contracts which means residents & their representatives (residents/rep.) are asked to sign PDAA at an extremely stressful time, when afraid of losing placement in the nursing home, faced with stacks of confusing paperwork, and no time to consult an attorney.

Pre-Dispute Arbitration Agreements Put You at a Great Disadvantage!

- Lose constitutional right to jury trial to seek justice if resident later suffers financial, emotional, or physical harm, even wrongful death.
- Cannot appeal arbitrator’s decision, but can appeal court decision.
- Amount awarded to resident likely to be less than amount awarded by court.
- Arbitration is more expensive than court proceedings – must hire arbitrator in addition to lawyer.
- No public record of PDAA outcomes, so serious medical/abuse & neglect issues hidden from public.

If at all possible --- DO NOT sign Pre-Dispute Arbitration Agreements!

Even though PDAA regulations include safeguards to prevent retaliation, residents/rep. tolerate different levels of risk. Consultation with a knowledgeable attorney is advisable before signing PDAA.

Summary: Pre-Dispute Arbitration Agreement Federal Regulations

Effective 9/16/19

If nursing home asks resident/rep. to execute PDAA, facility must comply with all following criteria.

Facility must:

1. **Not require resident/rep. to sign PDAA** as condition of admission or requirement to continue care.
2. **Explicitly inform resident/rep. of their right not to sign** the PDAA in both situations in 1. above.
3. **Ensure PDAA is explained** to resident/rep. in form, manner, & language he/she understands.
4. **Ensure resident/rep. acknowledges** he/she understands PDAA.
5. **Retain signed PDAA & arbitrator’s final decision when dispute resolved by arbitration:** 5 years & make available for inspection by Centers for Medicare & Medicaid Services (CMS)/designee.

Pre-Dispute Arbitration Agreement must:

1. **Explicitly grant resident/rep. right to rescind agreement within 30 calendar days of signing it.**
2. **Provide for neutral arbitrator** agreed upon by both parties.
3. **Provide for venue convenient** to both parties.
4. **Explicitly state that resident/rep. is not required to sign PDAA as condition** of admission to, or requirement to continue to receive care at nursing home.
5. **Not contain any language prohibiting or discouraging resident, or anyone else,** from communicating with federal, state, or local officials including: federal/state surveyors, various federal/state health department employees, LTC Ombudsman, & others.

Source: Title 42 Code of Federal Regulations: 483.70 (n) - Effective 9/16/19