

The basis for arbitration is accorded under the Federal Arbitration Act, FAA, which Congress enacted in 1925. The FAA was intended to allow parties an alternative forum to efficiently resolve business disputes. But over time, the FAA has expanded into nonbusiness disputes, including those involving nursing homes.

The legislation I am introducing today is in keeping with the FAA's original intent by requiring that agreements to arbitrate nursing home disputes be made after the dispute has arisen—not before prospective residents move in. While this bill won't prevent arbitration from occurring, it will prevent nursing home corporations with greater bargaining power from forcing residents to enter into pre-dispute arbitration through a non-negotiable contract.

The trend we are seeing at far too many nursing homes around the country is an unwarranted intrusion into a vulnerable population's right to access the civil justice system. This bill protects those who are otherwise unprotected, and helps to give their families peace of mind in knowing their loved ones are able to retain their full legal rights should they be abused or injured.

I applaud my colleague, Senator KOHL for recognizing the egregious injustices happening in nursing homes around the Nation, and I urge my colleagues to support this necessary bill.

Mr. KOHL. Mr. President, I rise today with Senator MARTINEZ to introduce the Fairness in Nursing Home Arbitration Act of 2008. This legislation is a narrowly targeted measure that protects nursing home residents, one of our Nation's most vulnerable populations, from losing the right to hold nursing homes accountable in court for negligent and abusive care.

The process of admission to a long-term care facility is traumatic for the prospective resident and their family. Often these facilities are a last resort for families and residents, and many times these decisions are arrived at under desperate, and sometimes emergency, circumstances. Even admission to an assisted-living facility by a relatively healthy senior citizen is a stressful and emotional event. Adding to the difficulty, many families face limited options in nursing care when it comes to both geographic location and the level of care required for their loved one.

During the admissions process, prospective residents and their families have little choice other than to accept the terms of the admission agreement with no ability to negotiate. Many facilities now require residents, or their responsible family members, to sign contracts that include predispute mandatory arbitration agreements. This means that any dispute between the resident and the facility will automatically be subject to arbitration. In other

words, by agreeing to the contract, and before a dispute ever arises, they are unwittingly signing away their constitutional right to have their case heard by an impartial judge or jury.

Unlike other uses of arbitration, arbitration in the nursing home context is usually related to health care and often involves cases of abuse and neglect that result in serious injuries or death. While civil court proceedings are generally open to the public, most arbitration requires that all parts of the process be kept confidential. As a result, long term care facilities are not held publicly accountable for their standard care. Even worse, this potentially lifesaving information may be concealed from current and prospective residents, regulatory agencies, and the public.

Another troubling aspect of arbitration clauses in nursing home admissions agreements is that they are often buried in long contracts and presented on a take-it-or-leave-it basis, without any opportunity to negotiate. While some facilities may attempt to explain the meaning of the arbitration clause and make it seem voluntary, the focus of the admissions process is on the loved one in need of care and not on these technical legal aspects of the agreement. Family members of prospective residents, whether or not they understand the arbitration provision, feel compelled to sign it in order to ensure that their loved one will be admitted and that their care will not be compromised by their refusal.

One of many tragic examples we have learned about is the case of Ella Needham. After being hospitalized with a urinary tract infection, she was taken to a nursing home by her daughter. During the hasty admissions process, her daughter signed a mandatory arbitration agreement. Both were unaware that they were signing away their constitutional right to a jury trial. During Ella's stay, the nursing home staff abused her, failed to adequately hydrate her, and did not adequately treat her illness. As a result of this negligence and abuse, Mrs. Needham died. When her daughter sued the home, she discovered that she was not allowed to go to court because of the arbitration agreement. After months of litigation challenging the agreement, the appeals court upheld the requirement to arbitrate. The daughter was forced to settle her claims of abuse and neglect in arbitration.

It is important to note that our bill does not preclude arbitration as an option for resolving disputes between nursing home residents and long term care facilities. The legislation simply says that families and prospective residents cannot be forced into arbitration through a nonnegotiable contract prior to the dispute. This will ensure that arbitration is a voluntary forum to resolve these unique disputes that can have far reaching consequences.

I urge my colleagues to support this important legislation.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 507—SUPPORTING THE MISSION AND GOALS OF NATIONAL CRIME VICTIMS' RIGHTS WEEK IN ORDER TO INCREASE PUBLIC AWARENESS OF THE RIGHTS, NEEDS, AND CONCERNS OF VICTIMS AND SURVIVORS OF CRIME IN THE UNITED STATES

Mr. SCHUMER submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 507

Whereas 23,000,000 Americans are victims of crime each year, and of those, 5,200,000 are victims of violent crime;

Whereas a just society acknowledges crime's impact on individuals, families, and communities by ensuring that rights, resources, and services are available to help rebuild lives;

Whereas victims' rights are a critical component of the promise of "justice for all", the foundation for our system of justice in the United States;

Whereas although our Nation has steadily expanded rights, protections, and services for victims of crime, too many victims are still not able to realize the hope and promise of these gains;

Whereas we must do better to ensure that services are available for underserved segments of our population, including crime victims with disabilities, victims with mental illness, victims who are teenagers, victims who are elderly, victims in rural areas, and victims in communities of color;

Whereas observing victims' rights and treating victims with dignity and respect serves the public interest by engaging victims in the justice system, inspiring respect for public authorities, and promoting confidence in public safety;

Whereas the United States recognizes that we make our homes, neighborhoods, and communities safer and stronger by serving victims of crime and ensuring justice for all;

Whereas our Nation must strive to protect, expand, and observe crime victims' rights so that there truly is justice for victims and justice for all; and

Whereas National Crime Victims' Rights Week, April 13 through April 19, 2008, provides an opportunity for us to strive to reach the goal of justice for all by ensuring that all victims are afforded their legal rights and provided with assistance as they face the financial, physical, and psychological impact of crime: Now, therefore, be it

Resolved, That the Senate—

(1) supports the mission and goals of National Crime Victims' Rights Week in order to increase public awareness of the impact of crime on victims and survivors of crime, and of the rights and needs of such victims and survivors; and

(2) requests the Secretary of the Senate to transmit an enrolled copy of this resolution to the Office for Victims of Crime in the Department of Justice.