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## **AG MADIGAN CALLS ON FEDERAL GOVERNMENT TO PRESERVE RIGHTS FOR FAMILIES OF NURSING HOME RESIDENTS**

*Centers for Medicare and Medicaid Services should prohibit binding arbitration clauses in long-term care contracts, say 16 AGs*

**Chicago** — Attorney General Lisa Madigan and 15 other Attorneys General urged the federal Centers for Medicare and Medicaid Services (CMS) to prohibit pre-dispute arbitration clauses in long-term care facility contracts, saying their use erodes the rights of families and gives them little bargaining power when disputes occur. Madigan and her counterparts from 14 other states and the District of Columbia recommended the stronger consumer protections in comments submitted to CMS, which solicited feedback on whether binding arbitration agreements should be prohibited in long-term care facility contracts.

In the comments, the Attorneys General noted that when individuals enter a nursing home or other long-term care facility, those individuals or family members acting on their behalf are often making a significant health care decision under stressful circumstances. Because of that, they are unlikely to be able to anticipate future disputes and make an informed decision about the resolution of such disputes.

“When nursing home contracts include a provision requiring binding arbitration for future disputes, they are taking advantage of families at a time that they are making one of the most difficult health care decisions they will face,” Madigan said. “Those families may not understand they are being asked – in advance – to give up the right to be heard in court if they have issues with the care their loved ones receive, even if their loved ones are abused or neglected in the nursing home.”

In many instances, a nursing home resident or family member discovers the existence of a binding arbitration clause in their nursing home contract only after a dispute or tragic event occurs. The clause typically requires that claims against the nursing home or long-term care facility – even claims involving abuse or neglect – must be brought before a private arbitration provider that is chosen by the facility, prohibiting consumers from filing a lawsuit. Requiring residents and families to sign such clauses upon admission to a nursing home or long-term care facility prevents families from evaluating and deciding how to address specific disputes as they arise.

“Pre-dispute binding arbitration agreements in general can be procedurally unfair to consumers, and can jeopardize one of the fundamental rights of Americans: the right to be heard and seek judicial redress for our claims,” the Attorneys General wrote. “This is especially true when consumers are making the difficult decisions regarding the long-term care of loved ones. These contractual provisions may be neither voluntary nor readily understandable for most consumers.”

The position of the Attorneys General is consistent with that of the American Arbitration Association, which determined in 2003 that it would not administer healthcare arbitrations between patients and service providers related to medical services, unless all parties agreed to arbitration after the dispute occurred.

The use of binding arbitration agreements has other negative consequences for consumers, including lower accountability of the long-term care industry; decreased monetary awards when an arbitrator finds in the consumer’s favor, even in cases of severe negligence or mistreatment; and a reduced incentive for facilities to change unlawful or harmful practices.

A Consumer Financial Protection Bureau study of arbitration agreements in financial services contracts found that consumers were largely unaware about whether their contracts contained an arbitration clause, and that it restricted their ability to sue in court.

Joining Madigan in submitting the comments were the Attorneys General of California, Connecticut, Delaware, Hawaii, Iowa, Maine, Massachusetts, Maryland, Minnesota, New York, Oregon, Rhode Island, Vermont, Washington and the District of Columbia.

The comments can be found on Attorney General Madigan’s website, [www.illinoisattorneygeneral.gov](http://www.illinoisattorneygeneral.gov).

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