



Assisted Living  
Federation of America

# POSITION PAPER

## Protect Long-Term Care Residents' Right to Pre-Dispute Arbitration Agreements

**ALFA Urges Senators and Representatives to oppose S. 512 and H.R. 1237:  
the so-called Fairness in Nursing Home Arbitration Act.**

The **Assisted Living Federation of America (ALFA)** is the largest national association for professionally-operated assisted living communities for seniors. ALFA influences public policy at the federal and state level by advocating for informed choice, quality care and accessibility for all Americans seeking assistance with long-term care. On behalf of ALFA and its members we urge your opposition of the Fairness in Nursing Home Arbitration Act (S. 512 / H.R. 1237).

ALFA recognizes that from time-to-time there are honest disputes that arise between senior living providers and the seniors and families they care for. Currently, the most common practice in finding equitable resolution to these disputes is for the provider and consumer to engage in the arbitration process. This legislation, S. 512 & H.R. 1237, would nullify that process thereby stripping the senior living consumer of their right to a less-costly and less-adversarial form of dispute resolution. ALFA opposes this legislation in its current form.

- **Arbitration is not inferior to the jury trial process.**

While some may believe otherwise, the fact stands that arbitration offers the same fundamental protections as a court of law, and arbitrators can award the same damages as can be obtained at trial. In fact, arbitrators tend to be more specialized to the types of disputes they hear, and are trained neutrals, without any ties or connections to the nursing home or assisted living industry. Although perhaps not known, proceeding through an arbitration process is merely a change of forum where evidentiary, procedural and case law, statutes, and regulations are still applied. Therefore, the rights of parties are not lost through the arbitration process.

In many regards, the arbitration process offers benefits to the consumer not seen in the courts as arbitration allows all consumer claims to be heard, not just those of sufficient amount or magnitude such that the consumer can find an attorney who will agree to represent them. Additionally, evidence shows that consumer disputes are resolved in a timelier and less adversarial manner through arbitration rather than traditional litigation.

- **Arbitration is not a trick.**

Just as anti-arbitration forces suggest that arbitration is inferior to the jury trial process, so too do they mislead consumers to believe that arbitration is a trick used by big business to avoid legal responsibility. This too is simply false.

ALFA supports consumer friendly practices when utilizing arbitration agreements such as making use of arbitration agreements between providers and consumers voluntary as opposed to mandatory and presenting them as a stand alone document or highlighted portion of a residency agreement. Additionally, ALFA supports the right of judges to continue to invalidate unlawful arbitration agreements. Recognizing that not everyone is comfortable with the process, ALFA also encourages senior living providers to allow consumers to opt-out of the arbitration agreement within 30-days of formation.

- **An end to the use of the arbitration process in senior living will drive up consumer costs.**

The ultimate reality is that the abolition of pre-dispute arbitration agreements will inevitably lead to higher liability insurance premiums, increased litigation costs and higher costs for residents at a time when affordability and access to necessary long-term health care are more important than ever.

Polling conducted in 2008 by Public Opinion Strategies, one of the nations' leading public opinion research firms; found that 92% of assisted living residents are satisfied with the overall quality of life in their community. It is critical that assisted living providers stay focused on providing high quality care for residents and not be diverted by prolonged and costly litigation expenses. For more information on ALFA's position on arbitration agreements, and to view a consumer-friendly guide to arbitration agreements in senior living, please visit [www.alfa.org](http://www.alfa.org).