

What do you mean I can't file a lawsuit against you if you injure my dad in your nursing home?

ARBITRATION – HIDDEN IN NURSING HOME ADMISSION DOCUMENTS

You Look for a Nursing Home

You are told that your loved one needs to go to a nursing home, for rehabilitation or for long term care. You have been thrown into a confusing world of trying to find the best place where your family member will be happy and well cared for. Each facility is different and the hunt seems overwhelming, especially since a decision needs to be made quickly. The process is complex and the family is under stress.

You Sign Lots of Documents

You make your choice and sit down with an admissions person to sign documents, usually lots of documents. You are told generally what each form is for as they are pushed in front of you to sign. What you may not know is that one of the forms you sign may be an agreement to give up the right to sue the facility if it injures your resident.

You May Be Giving Up Important Rights

The right to have a jury decide legal disputes is guaranteed by the Constitution. However, it has become common for nursing homes to include in their admissions documents a form waiving the resident's right to a jury trial. Although Virginia has laws in place to protect a resident's right to a jury trial, these safeguards are not always obvious to the resident or their family. Not surprisingly, the nursing home admissions staff is not likely to explain or even mention those safeguards when the resident is being admitted.

What If The Forms You Must Sign Require Arbitration to Resolve Disputes

But, what do you do if you find an arbitration provision in the admission documents? One option is to refuse to sign the form. However, the nursing home may then refuse to admit you or your family member. Another option is to find a nursing home that does not have an arbitration agreement; however, more and more nursing homes include a mandatory arbitration clause, you may not be able to find a facility that does not include giving up your resident's legal rights.

The last resort is to simply give in and sign the agreement. If you are forced into this position be sure to keep a copy of the document you have signed for your records. Virginia allows residents or their legal guardians to opt out of arbitration agreements within sixty days from the end of receiving care. If you "sit on your rights" and wait too long, you have little chance of getting out of the agreement and your right to a jury trial will be lost.

GET INFORMED

If you or a loved one has signed a nursing home document that requires mandatory arbitration, you should consult a nursing home lawyer. The nursing home has lawyers – they prepared the documents in the first place. You do not want to be the only one who has not consulted a lawyer about your rights even if your resident has not had an injury in the nursing home.

You may want to call the lawyers at Rohrstaff Law Firm, 703-260-6070, to find out what your rights are. Or, contact us through the contact form on the website, or send us an email to Janelle@RohrstaffLaw.com. We will be happy to answer your questions.

READ IT ALL

Regardless of how rushed you feel, READ ALL OF THE FORMS COMPLETELY, specifically looking out for any mention of arbitration. The document that a resident or their family members should look out for is typically entitled the "Business Contract," but it may have any number of different names. Nursing homes prefer arbitration to defending a traditional lawsuit. It is typically more favorable to them in terms of the cost of defense and in the range of outcomes they might expect. In plain language, injured residents typically receive far less compensation through arbitration.