

Nursing Home Transparency & Improvement Act Arbitration Fairness Act

Senate and House leaders' goals to pass their versions of health care reform before Congress recesses in August were abandoned last week (July 20, 2009). The good news is that draft legislation in both houses still includes the Nursing Home Transparency and Improvement Act, preserving the possibility that transparency will be in any health reform bill that is finally voted on this fall.

The Senate Health, Education, Labor and Pensions (HELP) Committee approved its health care bill, the Affordable Health Choices Act, on July 15, 2009. Democrats on the Senate Finance Committee, however, are still trying to reach an agreement with enough Republicans to report out their bill, which includes the nursing home transparency provisions. Committee staff has stated that the nursing home provisions are secure as chairman Max Baucus (D-MT) attempts to pass a bill in his committee before the scheduled August 7th recess.

Binding mandatory arbitration was turned on its ear this past week when the two largest national arbitration firms announced that they would no longer handle consumer arbitrations. The effect of their actions on nursing home and assisted living arbitration cases, either future or past, is not entirely clear; but leading consumer experts on predispute arbitration contracts say it will have a profound impact. National organizations that have been fighting forced arbitration in consumer contracts also agree that it is still necessary to pass the Fairness in Nursing Home Arbitration Act and the Arbitration Fairness Act to guarantee that consumers will not have to give up their right to sue as a precondition of purchasing a service or product.

Ed Mierzwinski of U.S. PIRG predicted in the Wall Street Journal that in the long run, he thinks this is the beginning of the end of forced arbitration in all consumer contracts, from credit cards to nursing homes to cell phones. Paul Bland of Public Justice stated that the collapse of the National Arbitration Forum that agreed to get out of the consumer arbitration business should really shake up the nursing home arbitration system.