

Chairman Cohen, Chairman Conyers, and Ranking Member Franks, thank you so much for allowing me the opportunity to testify today about this very important legislation, which also has deeply a personal meaning to me.

Last Congress, when I chaired this Subcommittee, we held several hearings to investigate the fairness and usefulness of arbitration agreements. We learned, among other things, that arbitration is a very useful alternative to the court system, especially when the parties agreeing to arbitrate have about the same level of knowledge and sophistication regarding it.

On the other hand, we also found that, in certain circumstances, arbitration agreements can be forced on vulnerable parties who have little knowledge about what they are signing, and frankly little choice in the matter.

I want to be clear that I strongly support the principles of arbitration and the arbitration process. Arbitration can clear court dockets, provide swift resolution, and reduce legal fees. But, because it can also limit evidence and damages, and deny the possibility of a jury trial, it must be willingly entered into by both parties, not just the party with greater economic power.

Checking a parent or other relative into a nursing home or other long-term care facility is a perfect example of a time when one party really has no real power or choice in the matter.

For these reasons, I introduced H.R. 1237, the “Fairness in Nursing Home Arbitration Act,” to make pre-dispute, mandatory arbitration clauses in long-term care contracts unenforceable and to restore to residents and their families their full legal rights. This legislation would allow families and residents to maintain their peace of mind as they look for that perfect long-term care facility.

By 2040 the demand for long-term care services will more than double. And the long-term care industry is increasingly requiring patients or their guardians to sign binding, pre-dispute arbitration clauses as a prerequisite to admission.

Unfortunately, the inclusion of such mandatory clauses adds a confusing—and legally binding—complication to an event that is already difficult and even heartbreaking.

For desperate families who are unable to provide adequate care at home, the need for an immediate placement for their loved one makes the “take-it-or-leave-it” choice no choice at all.

Families who are in the midst of the painful decision to place a parent in a nursing home rarely have the time or wherewithal to fully and thoughtfully consider mandatory arbitration clauses.

They are not in a position to adequately determine what agreeing to such a clause will mean for their loved one should the unthinkable happen.

Instead of some future dispute, what's real and immediate is the proper care of a loved one **now**.

The emotional toll and the sense of vulnerability when moving a loved one into the care of strangers at a nursing home is something I am all too familiar with.

My father, who has been struggling with Alzheimer's for a number of years, took a turn for the worse in recent years, to the point where we could no longer provide safe and adequate care at home.

One of the last things I wanted to worry about when searching for that perfect placement was whether he was forgoing his legal rights. Instead, I wanted to focus solely on the quality and range of services the facility would provide him.

As it turned out, my family chose a facility that met our requirements but also had a mandatory, pre-dispute arbitration clause in its contract.

This bill is for the families across the nation who face similar decisions at a time when they are least prepared to make them.

As we learned last year, many average consumers are totally unfamiliar with the concept of arbitration. They may not even be aware of the rights they are signing away. In short, Congress should act to protect these vulnerable families.

Let me also clarify that not all nursing home operators use mandatory, binding arbitration agreements upon admission. Some do try to protect vulnerable families by, for instance, offering arbitration on a voluntary basis. Others admit patients immediately, but give them time to consider whether arbitration is right for them.

This bill is about fairness. It promotes fairness for families experiencing the trauma of a parent in declining health by making unenforceable mandatory, binding arbitration agreements that families were essentially forced to sign whether they wanted to or not.

Fairness demands that parties to a contract should have a legitimate choice, not a forced one, about whether or not to arbitrate their disputes.

I am proud to note that several significant groups who advocate on behalf of seniors and consumers, including the National Senior Citizens Law Center, the Alzheimer's Foundation of America, and the National Association for Consumer Advocates, support H.R. 1237.

I thank you for the opportunity to testify today and hope that you will all join me in supporting this legislation.