

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 822

Short Title: Regulate Arbitration Agrmts/LTC Facilities. (Public)

Sponsors: Representatives Ball, Earle, and White (Primary Sponsors).

*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Rules, Calendar, and Operations of the House

April 13, 2017

1 A BILL TO BE ENTITLED  
2 AN ACT REGULATING ARBITRATION AGREEMENTS BETWEEN RESIDENTS AND  
3 CERTAIN LONG-TERM CARE FACILITIES BY PROHIBITING PRE-DISPUTE  
4 BINDING ARBITRATION AGREEMENTS AND ESTABLISHING STANDARDS FOR  
5 POST-DISPUTE BINDING ARBITRATION AGREEMENTS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Part 1 of Article 6 of Chapter 131E of the General Statutes is  
8 amended by adding a new section to read:

9 "**§ 131E-114.10. Regulation of pre-dispute and post-dispute arbitration agreements in**  
10 **long-term care facilities.**

11 (a) Definitions. – As used in this section, the following definitions apply:

12 (1) Long-term care facility. – All of the following:

13 a. A skilled nursing facility as defined in 42 C.F.R. § 1819.

14 b. A facility licensed under this Part that is subject to 10A NCAC 13D.

15 c. A nursing facility as defined in 42 C.F.R. § 1919.

16 d. A facility licensed under Part 1 of Article 1 of Chapter 131D of the  
17 General Statutes that is subject to 10A NCAC 13F.

18 (2) Pre-dispute binding arbitration agreement. – An agreement between the  
19 facility and a resident or the resident's representative to use binding  
20 arbitration to resolve a dispute between the parties, which is entered into  
21 before a dispute arises between parties.

22 (3) Post-dispute binding arbitration agreement. – An agreement between the  
23 facility and a resident or the resident's representative to use binding  
24 arbitration to resolve a dispute between the parties, which is entered into  
25 after a dispute arises between the parties.

26 (b) Pre-Dispute Binding Arbitration Agreements Prohibited. – A long-term care facility  
27 shall not enter into a pre-dispute binding arbitration agreement with any resident or the  
28 resident's representative or require that a resident or the resident's representative sign a  
29 pre-dispute arbitration agreement as a condition of admission to the facility.

30 (c) Post-Dispute Binding Arbitration Agreements Allowed. – After a dispute between a  
31 long-term care facility and a resident arises, the facility may request the resident or the  
32 resident's representative to enter into a post-dispute binding arbitration agreement if all of the  
33 following requirements are met:

34 (1) The long-term care facility explains the agreement to the resident and the  
35 resident's representative in a form and manner that the resident and the



1 resident's representative understand, including in a language that the resident  
2 and the resident's representative understand.

3 (2) The resident acknowledges that he or she understands the agreement.

4 (3) The agreement satisfies all of the following criteria:

5 a. Is entered into by the resident voluntarily.

6 b. Provides for the selection of a neutral arbitrator agreed upon by both  
7 parties.

8 c. Provides for selection of a venue convenient to both parties.

9 d. Does not contain any language that prohibits or discourages the  
10 resident or any other person from communicating with federal, State,  
11 or local officials, including federal and State surveyors, other federal  
12 or State health department employees, and representatives of the  
13 Department of Health and Human Services and the State Office of  
14 Long-Term Care Ombudsman.

15 (d) Residents' Rights Not Conditioned Upon Agreement to Arbitrate. – A resident's  
16 continuing right to remain in a long-term care facility is not contingent upon the resident or the  
17 resident's representative signing a binding arbitration agreement.

18 (e) Individuals Authorized to Sign Arbitration Agreements on Behalf of Residents.  
19 – An individual other than the resident of a long-term care facility may sign a binding  
20 arbitration agreement on behalf of a resident if all of the following requirements are met:

21 (1) Such signature is otherwise allowed by State law.

22 (2) All of the requirements of this section are met.

23 (3) The individual signing the agreement on behalf of the resident has no  
24 interest in the facility.

25 (f) Facility Must Retain Copies of Arbitration Agreements. – For at least five  
26 years from the date a long-term care facility and a resident resolve a dispute with binding  
27 arbitration, the facility shall retain on its premises and have available for inspection upon  
28 request of the federal Centers for Medicare and Medicaid Services or the Department a copy of  
29 the signed binding arbitration agreement and the final decision of the arbitrator."

30 **SECTION 2.** This act is effective when it becomes law and applies to binding  
31 arbitration agreements entered into by residents of long-term care facilities, as defined in  
32 G.S. 131E-114.10, as enacted by this act, on or after that date.