



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB0238

Introduced 1/11/2017, by

SYNOPSIS AS INTRODUCED:

210 ILCS 45/2-202.5 new
210 ILCS 46/2-202.5 new
210 ILCS 47/2-202.5 new
210 ILCS 49/3-101.5 new

Amends the Nursing Home Care Act, MC/DD Act, ID/DD Community Care Act, and Specialized Mental Health Rehabilitation Act of 2013. Provides that a facility must not enter into a pre-dispute agreement for binding arbitration with any resident or consumer, or the resident's representative or consumer's guardian, nor require that a resident or consumer sign an arbitration agreement as a condition of admission to the facility. Provides that after a dispute arises, a facility may ask a resident or consumer, or his or her representative or guardian, to enter into an agreement for binding arbitration if the facility and agreement meets specified requirements.

LRB100 00066 MJP 10070 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Nursing Home Care Act is amended by adding
5 Section 2-202.5 as follows:

6 (210 ILCS 45/2-202.5 new)

7 Sec. 2-202.5. Binding arbitration agreements.

8 (a) A facility must not enter into a pre-dispute agreement
9 for binding arbitration with any resident or resident's
10 representative nor require that a resident sign an arbitration
11 agreement as a condition of admission to the facility.

12 (b) If, after a dispute between a facility and a resident
13 arises, and the facility chooses to ask a resident or his or
14 her representative to enter into an agreement for binding
15 arbitration, the facility must comply with all of the
16 requirements in this subsection.

17 (1) The facility must ensure that:

18 (A) the agreement is explained to the resident and
19 his or her representative in a form and manner that he
20 or she understands, including in a language the
21 resident and his or her representative understands;
22 and

23 (B) the resident acknowledges that he or she

1 understands the agreement.

2 (2) The agreement must:

3 (A) be entered into by the resident voluntarily;

4 (B) provide for the selection of a neutral
5 arbitrator agreed upon by both parties; and

6 (C) provide for selection of a venue convenient to
7 both parties.

8 (3) A resident's continuing right to remain in the
9 facility must not be contingent upon the resident or the
10 resident's representative signing a binding arbitration
11 agreement.

12 (4) The agreement must not contain any language that
13 prohibits or discourages the resident or anyone else from
14 communicating with federal, State, or local officials,
15 including, but not limited to, federal and State surveyors,
16 other federal or State health department employees, and
17 representatives of the Office of State Long Term Care
18 Ombudsman, in accordance with 42 CFR 483.10(k).

19 (5) The agreement may be signed by another individual
20 if:

21 (A) allowed by State law;

22 (B) all of the requirements in this subsection are
23 met; and

24 (C) that individual has no interest in the
25 facility.

26 (6) When the facility and a resident resolve a dispute

1 with arbitration, a copy of the signed agreement for
2 binding arbitration and the arbitrator's final decision
3 must be retained by the facility for 5 years and be
4 available for inspection upon request by the Centers for
5 Medicare and Medicaid Services or its designee.

6 Section 10. The MC/DD Act is amended by adding Section
7 2-202.5 as follows:

8 (210 ILCS 46/2-202.5 new)

9 Sec. 2-202.5. Binding arbitration agreements.

10 (a) A facility must not enter into a pre-dispute agreement
11 for binding arbitration with any resident or resident's
12 representative nor require that a resident sign an arbitration
13 agreement as a condition of admission to the facility.

14 (b) If, after a dispute between a facility and a resident
15 arises, and the facility chooses to ask a resident or his or
16 her representative to enter into an agreement for binding
17 arbitration, the facility must comply with all of the
18 requirements in this subsection.

19 (1) The facility must ensure that:

20 (A) the agreement is explained to the resident and
21 his or her representative in a form and manner that he
22 or she understands, including in a language the
23 resident and his or her representative understands;
24 and

1 (B) the resident acknowledges that he or she
2 understands the agreement.

3 (2) The agreement must:

4 (A) be entered into by the resident voluntarily;

5 (B) provide for the selection of a neutral
6 arbitrator agreed upon by both parties; and

7 (C) provide for selection of a venue convenient to
8 both parties.

9 (3) A resident's continuing right to remain in the
10 facility must not be contingent upon the resident or the
11 resident's representative signing a binding arbitration
12 agreement.

13 (4) The agreement must not contain any language that
14 prohibits or discourages the resident or anyone else from
15 communicating with federal, State, or local officials,
16 including, but not limited to, federal and State surveyors,
17 other federal or State health department employees, and
18 representatives of the Office of State Long Term Care
19 Ombudsman, in accordance with 42 CFR 483.10(k).

20 (5) The agreement may be signed by another individual
21 if:

22 (A) allowed by State law;

23 (B) all of the requirements in this subsection are
24 met; and

25 (C) that individual has no interest in the
26 facility.

1 (6) When the facility and a resident resolve a dispute
2 with arbitration, a copy of the signed agreement for
3 binding arbitration and the arbitrator's final decision
4 must be retained by the facility for 5 years and be
5 available for inspection upon request by the Centers for
6 Medicare and Medicaid Services or its designee.

7 Section 15. The ID/DD Community Care Act is amended by
8 adding Section 2-202.5 as follows:

9 (210 ILCS 47/2-202.5 new)

10 Sec. 2-202.5. Binding arbitration agreements.

11 (a) A facility must not enter into a pre-dispute agreement
12 for binding arbitration with any resident or resident's
13 representative nor require that a resident sign an arbitration
14 agreement as a condition of admission to the facility.

15 (b) If, after a dispute between a facility and a resident
16 arises, and the facility chooses to ask a resident or his or
17 her representative to enter into an agreement for binding
18 arbitration, the facility must comply with all of the
19 requirements in this subsection.

20 (1) The facility must ensure that:

21 (A) the agreement is explained to the resident and
22 his or her representative in a form and manner that he
23 or she understands, including in a language the
24 resident and his or her representative understands;

1 and

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

4 (2) The agreement must:

5 (A) be entered into by the resident voluntarily;

6 (B) provide for the selection of a neutral
7 arbitrator agreed upon by both parties; and

8 (C) provide for selection of a venue convenient to
9 both parties.

10 (3) A resident's continuing right to remain in the
11 facility must not be contingent upon the resident or the
12 resident's representative signing a binding arbitration
13 agreement.

14 (4) The agreement must not contain any language that
15 prohibits or discourages the resident or anyone else from
16 communicating with federal, State, or local officials,
17 including, but not limited to, federal and State surveyors,
18 other federal or State health department employees, and
19 representatives of the Office of State Long Term Care
20 Ombudsman, in accordance with 42 CFR 483.10(k).

21 (5) The agreement may be signed by another individual
22 if:

23 (A) allowed by State law;

24 (B) all of the requirements in this subsection are
25 met; and

26 (C) that individual has no interest in the

1 facility.

2 (6) When the facility and a resident resolve a dispute
3 with arbitration, a copy of the signed agreement for
4 binding arbitration and the arbitrator's final decision
5 must be retained by the facility for 5 years and be
6 available for inspection upon request by the Centers for
7 Medicare and Medicaid Services or its designee.

8 Section 20. The Specialized Mental Health Rehabilitation
9 Act of 2013 is amended by adding Section 3-101.5 as follows:

10 (210 ILCS 49/3-101.5 new)

11 Sec. 3-101.5. Binding arbitration agreements.

12 (a) A facility must not enter into a pre-dispute agreement
13 for binding arbitration with any consumer or consumer's
14 guardian nor require that a consumer sign an arbitration
15 agreement as a condition of admission to the facility.

16 (b) If, after a dispute between a facility and a consumer
17 arises, and the facility chooses to ask a consumer or his or
18 her guardian to enter into an agreement for binding
19 arbitration, the facility must comply with all of the
20 requirements in this subsection.

21 (1) The facility must ensure that:

22 (A) the agreement is explained to the consumer and
23 his or her guardian in a form and manner that he or she
24 understands, including in a language the consumer and

1 his or her guardian understands; and

2 (B) the consumer acknowledges that he or she
3 understands the agreement.

4 (2) The agreement must:

5 (A) be entered into by the consumer voluntarily;

6 (B) provide for the selection of a neutral
7 arbitrator agreed upon by both parties; and

8 (C) provide for selection of a venue convenient to
9 both parties.

10 (3) A consumer's continuing right to remain in the
11 facility must not be contingent upon the consumer or the
12 consumer's guardian signing a binding arbitration
13 agreement.

14 (4) The agreement must not contain any language that
15 prohibits or discourages the consumer or anyone else from
16 communicating with federal, State, or local officials,
17 including, but not limited to, federal and State surveyors,
18 other federal or State health department employees, and
19 representatives of the Office of State Long Term Care
20 Ombudsman, in accordance with 42 CFR 483.10(k).

21 (5) The agreement may be signed by another individual
22 if:

23 (A) allowed by State law;

24 (B) all of the requirements in this subsection are
25 met; and

26 (C) that individual has no interest in the

1 facility.

2 (6) When the facility and a consumer resolve a dispute
3 with arbitration, a copy of the signed agreement for
4 binding arbitration and the arbitrator's final decision
5 must be retained by the facility for 5 years and be
6 available for inspection upon request by the Centers for
7 Medicare and Medicaid Services or its designee.