

The Massachusetts Chapter of the National Academy of Elder Law Attorneys (MassNAELA) is a non-profit organization that was incorporated in 1992, to serve the legal profession and the public with the following mission:

- To provide information, education, networking, and assistance to Massachusetts attorneys, bar organizations, and other individuals or groups advising elderly clients, clients with special needs and their families;
- To promote high standards of technical expertise and ethical awareness among attorneys, bar organizations and other individuals or groups engaged in the practice of advising elderly clients, clients with special needs and their families;
- To develop public awareness and advocate for the benefit of the elderly, those with special needs and their families, by promoting public policies that support our mission; and
- To encourage involvement and enhance membership in, and to promote networking among members of the National Academy of Elder Law Attorneys.

MassNAELA is a voluntary association whose members consist of a dedicated group of elder law and special needs attorneys across the Commonwealth of Massachusetts.

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**ELDER ADVOCATES
SPREAD THE WORD:**

*Just Say
“NO” to
Arbitration!*





Frail nursing home residents and their frazzled family members are routinely asked to sign a stack of densely-printed documents at the time of admission, without adequate time to review them or to consult with counsel, and without realizing that the agreements may include forced arbitration provisions. Arbitration requires residents to waive their fundamental constitutional right to a jury trial, even if they later suffer serious injury, medical malpractice, or wrongful death. Because arbitration is secret and there is no public record of the outcome, it keeps cases of malpractice, abuse and neglect out of the public eye, effectively denying residents and their families access to justice.

A new federal rule from Centers for Medicare and Medicaid Services, effective September 16, 2019, provides that:

- *Residents may not be required to agree to arbitration as a condition of admission to a nursing home.*
- *Residents may not be required to agree to arbitration as a condition of continued stay in a nursing home.*
- *Residents and their representatives have a **30-day right to rescind** the arbitration agreement.*
- *Nursing homes **must explicitly inform residents or their representatives of the right not to sign** an arbitration agreement as a condition of admission to, or right to remain in, the facility.*
- *The arbitration agreement **itself must explicitly state that the agreement is not a condition** of admission to, or right to remain in, the facility.*
- *Facilities must ensure that the agreement is explained to residents and their representatives in a **“form and manner”** that they understand, including in a language they understand.*

Although the new rule does not impose an outright ban on arbitration agreements in nursing homes, it does affirm the right of residents to “just say no” to arbitration clauses in admission agreements. Elder advocates should seize this opportunity to educate residents, their families and representatives, and the public about these critical rights.

