

1 A bill to be entitled
2 An act relating to arbitration agreements governing
3 certain medical negligence claims; creating s. 682.025,
4 F.S.; defining terms; providing that arbitration
5 agreements written in conformity with the Florida
6 Arbitration Code are consistent with the public policy of
7 this state; providing that an arbitration agreement that
8 violates the requirements of the Florida Arbitration Code
9 is voidable at the option of the consumer until the
10 initiation of arbitration; prohibiting an arbitration
11 agreement from restricting or abolishing any substantive
12 or due process right or restricting in any way damages or
13 remedies available to a patient or nursing home resident;
14 requiring each arbitration agreement to include a
15 provision for selecting arbitrators by mutual agreement of
16 the patient or nursing home resident and the health care
17 provider; requiring the court to appoint arbitrators who
18 are acceptable to both parties if the parties are unable
19 to reach an agreement for selecting the arbitrators;
20 requiring the provider to explain the pre-dispute
21 agreement in detail to the consumer; providing that the
22 pre-dispute agreement may be rescinded at any time before
23 the initiation of arbitration by the consumer or the
24 provider by notifying the other in writing of the
25 recession; requiring each pre-dispute agreement and post-
26 dispute agreement to contain certain specified provisions;
27 requiring that the provider give a copy of the pre-dispute
28 agreement to the patient or nursing home resident;

29 | prohibiting a health care provider from refusing to serve
30 | a patient if the patient declines to sign an arbitration
31 | agreement or chooses to rescind the arbitration agreement;
32 | prohibiting a health care provider from presenting
33 | arbitration agreements to patients under certain
34 | circumstances; requiring a provider to give a patient a
35 | specified period of time to review the post-dispute
36 | agreement and to consult an attorney; providing an
37 | effective date.

38 |
39 | WHEREAS, some medical malpractice insurers encourage health
40 | care providers to use arbitration agreements as a condition of
41 | providing medical malpractice insurance to health care
42 | providers, and

43 | WHEREAS, some nursing homes and health care providers
44 | require patients and nursing home residents to execute
45 | arbitration agreements prior to the delivery of services and
46 | medical care, and

47 | WHEREAS, many insurance plans restrict the choice patients
48 | have in choosing health care providers and nursing homes,
49 | leaving patients with no ability to fairly negotiate a contract
50 | for services, and

51 | WHEREAS, the Legislature created a comprehensive statutory
52 | scheme for health care providers in chapter 766, F.S., and for
53 | nursing homes in chapter 400, F.S., to ensure the availability
54 | of health care services in Florida by stabilizing the
55 | availability of liability insurance by statutorily governing the
56 | rights of patients and duties of health care providers and

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57 nursing homes in a comprehensive way, and

58 WHEREAS, contracts for services that change the rights of
 59 the parties affect the stability of the insurance rates and the
 60 health care system and services that are overseen and regulated
 61 by the State of Florida, and

62 WHEREAS, the Legislature intends that an arbitration
 63 agreement be a voluntary agreement between a patient and a
 64 health care provider or nursing home, and not a prerequisite to
 65 medical services or care, and

66 WHEREAS, the Legislature intends that medical malpractice
 67 insurers not require health care providers or others to require
 68 the use of arbitration agreements without certain safeguards
 69 that are designed to protect patients' and nursing home
 70 residents' rights, and

71 WHEREAS, the Legislature intends that health care providers
 72 and nursing homes not require consumers and patients to sign any
 73 contract for services that changes the rights of the consumer or
 74 patient as provided in chapter 766 or chapter 400, F.S., or that
 75 requires a pre-dispute arbitration in advance of providing care,
 76 NOW, THEREFORE,

77

78 Be It Enacted by the Legislature of the State of Florida:

79

80 Section 1. Section 682.025, Florida Statutes, is created
 81 to read:

82 682.025 Contracts for medical services and nursing home
 83 care; arbitration agreements.—

84 (1) As used in this section, the term:

85 (a) "Consumer" means a patient of a provider or a nursing
86 home resident. The term includes a legal guardian of the
87 consumer or any other person who is legally authorized to enter
88 into a pre-dispute agreement or post-dispute agreement with a
89 provider on behalf of a consumer.

90 (b) "Dispute" means a medical negligence claim under
91 chapter 766 or a claim against a nursing home pursuant to the
92 common law, s. 400.023, or s. 400.0233.

93 (c) "Provider" means a health care facility licensed under
94 chapter 395, a health care practitioner as defined in s.
95 456.001, or a nursing home facility licensed under part II of
96 chapter 400.

97 (d) "Pre-dispute agreement" means an arbitration agreement
98 executed by a consumer and a provider before the occurrence of
99 events forming the basis of a dispute.

100 (e) "Post-dispute agreement" means an arbitration
101 agreement executed by a consumer and a provider after the
102 occurrence of events forming the basis of a dispute.

103 (2) Any pre-dispute agreement or post-dispute agreement
104 between a consumer and a provider which conforms to this chapter
105 is enforceable and consistent with the public policy of this
106 state. An arbitration agreement that violates the requirements
107 of this chapter is voidable at the option of the consumer until
108 the initiation of arbitration.

109 (3) A pre-dispute agreement or post-dispute agreement may
110 not restrict or abolish any substantive or due process right or
111 restrict in any way the damages or remedies available to the
112 consumer.

113 (4) A pre-dispute agreement or post-dispute agreement must
 114 provide an opportunity to select the arbitrators by mutual
 115 agreement of the consumer and the provider after the arbitration
 116 has been initiated. The pre-dispute agreement and the post-
 117 dispute agreement may not restrict the panel from which the
 118 arbitrator is selected. The court shall appoint one or more
 119 arbitrators who are acceptable to the consumer and provider if
 120 the consumer and the provider are unable to reach an agreement
 121 selecting the arbitrator.

122 (5) (a) Each pre-dispute agreement must be explained in
 123 detail to the consumer by the provider.

124 (b) A pre-dispute agreement may be rescinded at any time
 125 before the initiation of arbitration by the consumer or the
 126 provider by notifying the other in writing of the recession.

127 (c) The pre-dispute agreement must:

128 1. Include the following provision in the arbitration
 129 agreement:

131 It is understood that any dispute relating to
 132 negligence or problems with care, that is as to
 133 whether any services rendered under this agreement
 134 were unnecessary or unauthorized or were improperly,
 135 negligently, or incompetently rendered, will be
 136 determined by submission to arbitration as provided by
 137 the law of this state, and not by a lawsuit or resort
 138 to court process except as allowed by the law of this
 139 state for judicial review of arbitration agreements.
 140 Both parties to this contract, by entering into it,

141 are foregoing their constitutional right to have the
 142 dispute decided in a court of law before a jury, and
 143 instead are accepting the use of arbitration. The
 144 consumer has the right to seek legal counsel
 145 concerning this agreement and has the right to rescind
 146 this agreement by written notice to the provider at
 147 any time before the beginning of the arbitration.

148
 149 2. Be in a separate document apart from other documents
 150 provided to the consumer by the provider and be clearly and
 151 conspicuously identified as an arbitration agreement.

152 3. Include the signature of an individual who has
 153 witnessed the provider's explanation of the arbitration
 154 agreement to the consumer.

155 4. Include, immediately before the signature line provided
 156 for the consumer, the following statement in at least 16-point
 157 bold red type:

158
 159 NOTICE: BY SIGNING THIS ARBITRATION AGREEMENT, YOU ARE
 160 AGREEING TO HAVE ANY DISPUTE DECIDED BY A NEUTRAL
 161 ARBITRATOR AND YOU ARE GIVING UP YOUR CONSTITUTIONAL
 162 RIGHT TO A JURY OR COURT TRIAL.

163
 164 YOU HAVE THE RIGHT TO CONSULT WITH AN ATTORNEY
 165 REGARDING THIS AGREEMENT. YOU HAVE THE RIGHT TO
 166 RESCIND THIS AGREEMENT IN WRITING AT ANY TIME BEFORE
 167 BEGINNING AN ARBITRATION PROCEEDING.

168

169 A PROVIDER MAY NOT REFUSE TO PROVIDE SERVICES TO YOU
 170 SOLELY BECAUSE YOU REFUSED TO SIGN THE ARBITRATION
 171 AGREEMENT OR RESCINDED AN ARBITRATION AGREEMENT.

172
 173 (d) The provider must give a copy of the pre-dispute
 174 agreement to the consumer at the time it is signed by the
 175 consumer and representative of the provider.

176 (e) A provider may not refuse to provide services to any
 177 consumer solely because the consumer refused to sign the pre-
 178 dispute agreement or exercised the right of rescission.

179 (f) A provider may not submit the pre-dispute agreement to
 180 a consumer for approval if the consumer's medical condition
 181 requires emergency treatment services and care as defined by s.
 182 395.002 or the condition prevents the consumer from making a
 183 rational decision whether or not to execute the pre-dispute
 184 agreement.

185 (6) (a) A provider must give the consumer 72 hours to
 186 review a post-dispute agreement and to consult with an attorney,
 187 if necessary, before signing the post-dispute agreement.

188 (b) The post-dispute agreement must:

189 1. Be in a separate document apart from other documents
 190 provided to the consumer by the provider and be clearly and
 191 conspicuously identified as an arbitration agreement.

192 2. Include, immediately before the signature line provided
 193 for the consumer, the following statement in at least 16-point
 194 bold red type:

195
 196 NOTICE: BY SIGNING THIS ARBITRATION AGREEMENT, YOU ARE

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197 AGREEING TO HAVE A DISPUTE DECIDED BY A NEUTRAL
198 ARBITRATOR AND YOU ARE GIVING UP YOUR CONSTITUTIONAL
199 RIGHT TO A JURY OR COURT TRIAL.

200
201 YOU HAVE THE RIGHT TO REVIEW THIS AGREEMENT FOR 72
202 HOURS BEFORE SIGNING THE ARBITRATION AGREEMENT AND TO
203 CONSULT WITH AN ATTORNEY REGARDING THE ARBITRATION
204 AGREEMENT IF YOU BELIEVE IT NECESSARY TO DO SO.

205 Section 2. This act shall take effect July 1, 2010.