



192314

LEGISLATIVE ACTION

Senate

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House

The Committee on Health Regulation (Altman) recommended the following:

Senate Amendment (with title amendment)

Delete lines 77 - 183
and insert:
requires a pre-dispute agreement in advance of providing
care, NOW, THEREFORE,

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

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

682.025 Contracts for medical services and nursing home



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13 care; arbitration agreements.-

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

15 (a) "Consumer" means a patient of a provider or a nursing
16 home resident. The term includes a legal guardian of the
17 consumer or any other person who is legally authorized to enter
18 into a pre-dispute agreement or post-dispute agreement with a
19 provider on behalf of a consumer.

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

23 (c) "Provider" means a health care facility licensed under
24 chapter 395, a health care practitioner as defined in s.
25 456.001, or a nursing home facility licensed under part II of
26 chapter 400.

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

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

33 (2) Any pre-dispute agreement or post-dispute agreement
34 between a consumer and a provider which conforms to this chapter
35 is enforceable and consistent with the public policy of this
36 state. An arbitration agreement that violates the requirements
37 of this chapter is voidable at the option of the consumer until
38 the initiation of arbitration.

39 (3) A pre-dispute agreement or post-dispute agreement may
40 not restrict or abolish any substantive or due process right or
41 restrict in any way the damages or remedies available to the



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42 consumer.

43 (4) A pre-dispute agreement or post-dispute agreement must
44 provide an opportunity to select the arbitrators by mutual
45 agreement of the consumer and the provider after the arbitration
46 has been initiated. The pre-dispute agreement and the post-
47 dispute agreement may not restrict the panel from which the
48 arbitrator is selected. The court shall appoint one or more
49 arbitrators who are acceptable to the consumer and provider if
50 the consumer and the provider are unable to reach an agreement
51 selecting the arbitrator.

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

54 (b) A pre-dispute agreement may be rescinded at any time
55 before the initiation of arbitration by the consumer or the
56 provider by notifying the other in writing of the rescission.

57 (c) The pre-dispute agreement must:

58 1. Include the following provision in the arbitration
59 agreement:

60
61 It is understood that any dispute relating to negligence or
62 problems with care, that is as to whether any services that are
63 subject to this agreement were unnecessary or unauthorized or
64 were improperly, negligently, or incompetently rendered, will be
65 determined by submission to arbitration as provided by the law
66 of this state, and not by a lawsuit or resort to court process
67 except as allowed by the law of this state for judicial review
68 of arbitration agreements. Both parties to this contract, by
69 entering into it, are foregoing their constitutional right to
70 have the dispute decided in a court of law before a jury, and



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71 instead are accepting the use of arbitration. The consumer has
72 the right to seek legal counsel concerning this agreement and
73 both the consumer and the provider have the right to rescind
74 this agreement by written notice to the other at any time before
75 the beginning of the arbitration.

76
77 2. Be in a separate document apart from other documents
78 provided to the consumer by the provider and be clearly and
79 conspicuously identified as an arbitration agreement.

80 3. Include the signature of an individual who has witnessed
81 the provider's explanation of the arbitration agreement to the
82 consumer.

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

86
87 NOTICE: BY SIGNING THIS ARBITRATION AGREEMENT, YOU ARE
88 AGREEING TO HAVE ANY DISPUTE DECIDED BY A NEUTRAL ARBITRATOR AND
89 YOU ARE GIVING UP YOUR CONSTITUTIONAL RIGHT TO A JURY OR COURT
90 TRIAL.

91
92 YOU HAVE THE RIGHT TO CONSULT WITH AN ATTORNEY REGARDING
93 THIS AGREEMENT. YOU HAVE THE RIGHT TO RESCIND THIS AGREEMENT IN
94 WRITING AT ANY TIME BEFORE BEGINNING AN ARBITRATION PROCEEDING.

95
96 A PROVIDER MAY NOT REFUSE TO PROVIDE SERVICES TO YOU SOLELY
97 BECAUSE YOU REFUSED TO SIGN THE ARBITRATION AGREEMENT OR
98 RESCINDED AN ARBITRATION AGREEMENT.

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100 (d) The provider must give a copy of the pre-dispute
101 agreement to the consumer at the time it is signed by the
102 consumer and representative of the provider.

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

106 (f) A provider may not submit the pre-dispute agreement to
107 a consumer for signature if the consumer's medical condition
108 requires emergency services and care as defined by s.

109
110

111 ===== T I T L E A M E N D M E N T =====

112 And the title is amended as follows:

113 Delete line 27

114 and insert:

115 rescission; requiring each pre-dispute agreement and