



Regulating Residential Care Referral Agencies

When seniors need long-term residential care following illness, accident or other life-altering changes, alternatives include skilled nursing homes, extended-care facilities, and residential care facilities for the elderly (RCFEs). Services – and costs – vary widely, so a referral industry has grown up to help families make this important decision. Most referral agencies are paid by the residential facilities where seniors are placed.

Referral agencies that recommend skilled nursing or intermediate-care facilities have to be licensed by the state Department of Public Health. But this requirement doesn't apply to agencies that only recommend placements in RCFEs, where services are limited to assistance with such daily living activities as meals, bathing and grooming. Unfortunately, referrals to substandard facilities made by agencies eager to earn their fees are all too common.

That's why Consumer Federation of California (CFC) is sponsoring Senate Bill 648 (Mendoza). The bill would:

- Require licensing of placement agencies which refer seniors to RCFEs
- Require referral agencies to notify clients of an agency's most recent tour or visit to a facility it recommends, and to include in the agency's disclosure statement any regulatory violations identified by the most recent state evaluation of the RCFE
- Prohibit a referral agency from holding any property or power of attorney for a client

Forced Arbitration: A Sneaky Rip-Off

BY RICHARD HOLOBER

When a bank or other financial institution engages in unfair, deceptive or downright abusive rip-offs, consumers should get their day in court. Most of the time, we are out of luck.

That's because legal fine print snuck into most consumer contracts forces us to take a complaint before an arbitrator. Arbitration is a private dispute resolution system that is dominated by the company. The rules of courtroom justice don't apply in an arbitration hearing. Arbitrators rarely bite the corporate hands that feed them.

Until a few years ago, California and other states restricted the enforcement of mandatory arbitration clauses if deemed oppressive when a consumer lacks the bargaining power to renegotiate the contract terms. In 2011, a 5-4 majority of the U.S. Supreme Court ruled that an obscure federal law from the 1920s preempts the ability of states to limit the imposition of a

mandatory arbitration clause in a contract.

The case involved a claim that AT&T deceived cell phone customers about a hidden \$30.22 fee. In a class action lawsuit, the total fee dispute could have approached a billion dollars. Consumers would have been assured of an impartial hearing and excellent legal representation. But individually, almost no one would go to the trouble to hire the legal talent to argue the case and maybe recoup a few bucks in a company-defined private hearing. That didn't trouble the Supreme Court majority.

Armed with a get out of jail free card from the Supreme Court in this case and in a subsequent decision, mandatory arbitration clauses have become pervasive in consumer contracts running the gamut from auto purchases to phone and cable TV subscriptions, gym memberships, hospital and nursing home admission agreements,



2016 LEGISLATIVE SUMMARY

Here's a partial list of key bills CFC is working on this session:

CFC-Sponsored Bill

SB 648 (Mendoza) Would improve seniors' assisted-care referrals by requiring licensing for private agencies that refer seniors to residential care facilities for the elderly, as well as disclosure of payments that a referral agency receives from a facility.

CFC-Supported Bills

AB 1580 (Gatto/Irwin) Would help prevent child identity theft by allowing parents to obtain security freezes at the three nationwide credit bureaus for their children's credit reports. Security freezes are not easily obtained for children unless the child has already had his or her credit stolen. Over 20 other states already have implemented child security freeze laws to protect children from identity theft.

AB 2159 (Gonzalez) Would provide that, in civil actions for personal injury or wrongful death, evidence of a person's immigration status is inadmissible and discovery of that status is not permitted. These restrictions would not affect the standards of relevance, admissibility or discovery under other specified provisions of law.

AB 2707 (Ridley-Thomas) Would prohibit a business from using racial profiling to deny or degrade a product or service to a consumer.

AB 2819 (Chiu) Would reform the California Code of Civil Procedure to protect the privacy, credit and reputation of innocent tenants who are involved in eviction lawsuits, safeguarding the ability of these tenants and their families to secure safe and affordable housing. Under current law, if a tenant does not prevail in an eviction lawsuit within 60 days, all court records regarding the case become public, even if the tenant ultimately prevails or a case is dismissed.

SB 215 (Leno/Hueso) Would require the California Public Utilities Commission to adopt procedures on disqualification of commissioners due to bias or prejudice similar to those of other state agencies and superior courts.

SB 247 (Lara) Would require all charter buses to provide pre-trip safety briefings to ensure all passengers are aware of the emergency exits and procedures. Would also require important safety features to be built into all future charter buses, such as the inclusion of more than one exit, windows that are easily opened and stay open in case of an emergency exit, visible emergency exit signage, and emergency lighting.

SB 1150 (Leno) Would prohibit a mortgage servicer or lender, upon notification that a borrower has died, from recording a notice of default for at least 30 days after requesting reasonable documentation of the death from the successor in interest. This would clarify a lender's responsibilities under California's Homeowner Bill of Rights when a borrower dies leaving a surviving homeowner who wishes to assume the loan.

SB 1241 (Wieckowski) Would prohibit a seller from forcing a consumer into arbitration outside of California, or into arbitration governed by another state's law, for goods or services purchased in California.

CFC-Opposed Bill

AB 2688 (Gordon) In contrast to California's Confidentiality of Medical Information Act, would establish a parallel and weak set of privacy rules for personal health information collected or stored by allowing the sharing, sale, or disclosure of sensitive medical information derived from wearable health monitoring devices, apps and websites to a third party, so long as the operators of those devices secured a vague authorization from consumers. Would also shield operators of wearable health devices from penalties and liability for intentional or negligent release of consumer medical information.

SB 899: Ban On Gender Price Bias Killed

CFC-sponsored SB 899 (Hueso), a bill that would have ended gender pricing discrimination, was held by the author when it became apparent in June that it did not have the support of a majority of the members of the Assembly Judiciary Committee. Lobbyists for retailers and manufacturers fiercely opposed the bill.

SB 899 would have extended current California law banning pricing discrimination by gender for services, such as

hair styling and dry cleaning, to include disparate gender pricing for substantially similar goods based on the gender of the product's intended user. The bill cited a recent study that the New York City Department of Consumer Affairs conducted, which found that 42% of 800 products surveyed, including toys, clothing, personal care products and senior care products, and items branded or marketed for use by women or girls cost an average of 7% more

than the equivalent product branded or marketed for use by men or boys.

U.S. Rep. Jackie Speier, D-San Mateo, recently introduced similar legislation in Congress. HR 5686: the Pink Tax Repeal Act, would bar gender price bias in both retail goods – as SB 899 would have – and in services, such as dry cleaning and hair-styling. Speier authored the ban on price bias in services in California when she was a state legislator. CFC supports HR 5686.

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- Require specific written notice of any payment the referral agency receives from a facility it recommends for placement, any fee it charges a consumer for its referral services, and a description of the services to be rendered
- Require a referral agency to maintain liability insurance

SB 648 will help give the elderly and their families the information they need to make good decisions in difficult times. They have a right to know whether a placement agency is being paid to promote a particular facility, whether through fees, commissions or other considerations. They have a right to know that a recommendation is based on first-hand observation of a facility. And they have a right to know what qualifies a placement agency to advise them on such a life-changing decision.

Background

Some 7,800 RCFEs operate in California now, with roughly 175,000 beds available, and their numbers are expected to grow as the ranks of the elderly swell with aging baby boomers.

Many of these facilities deliver conscientious care, but others provide poor or even nonexistent service, as seen in the owners' abandonment of 14 sick and elderly patients in a Castro Valley assisted-living facility in 2013. The results can be tragic. The deaths of at least 27 seniors in San Diego County RCFEs between 2008 and 2013 were documented in "Deadly Neglect," a series of reports from the San Diego



Union-Tribune and the California Healthcare Foundation's Center for Health Reporting.

Referral agencies are paid by the RCFE for a successful placement. This may lead to collusion between those agencies and assisted-living operators:

- In San Bernardino, a one-man operation reportedly referred seniors who had just been discharged from a hospital to unlicensed care facilities – part of a larger alleged scheme to temporarily place seniors in high-quality facilities during family visits and then move them to lower-quality, unlicensed facilities after the visitors left.
- In San Luis Obispo, there are reports of referral agencies intentionally making bad placements for profit, only to refer seniors to a second or even a third facility – collecting a commission every step of the way.

- In San Diego, a referral agency representative allegedly pressured a blind woman in her hospital bed to use the agency's services and give over power of attorney.

SB 648 would provide seniors who seek the services of placement referral agencies with basic consumer protections by requiring the agencies to meet disclosure standards regarding any financial interest in a placement.

"I want to ensure that seniors and their families are not taken advantage of by strengthening the licensing and financial disclosure requirements for referral agencies. This will help protect against referral agencies that engage in unscrupulous business practices," said Senator Tony Mendoza in introducing SB 648. SB 648 passed the Senate and is now on the Assembly Floor.

Strong Privacy Rules Sought For Broadband Internet Users

Nearly 6,000 people answered the call from CFC and its Privacy Revolt! campaign to flood the Federal Communications Commission (FCC) with comments demanding strong regulations to protect the privacy of people who go online via broadband Internet access service (BIAS) providers like

AT&T, Verizon and Comcast.

The FCC began its rulemaking process on broadband Internet privacy this past spring and is expected to adopt formal rules by the end of the year.

In addition to gathering brief individual comments, CFC filed lengthy comments with the FCC calling for

strong rules that give consumers control over information sharing under a voluntary opt-in process. CFC also urged the FCC to ban any practice that charges a consumer a fee for broadband privacy, or that disadvantages a consumer for asserting a privacy preference.

ABOUT US

The Consumer Federation of California (CFC) is a nonprofit advocacy organization. Since 1960, CFC has been a powerful voice for consumer rights, campaigning for state and federal laws that place consumer protection ahead of corporate profit. Each year, CFC testifies before the California legislature on dozens of bills that affect millions of our state's consumers and appears before state agencies in support of consumer regulations.

Contributions are not tax deductible.

KEEP IN TOUCH

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mortgages, loans and bank accounts, and virtually every other consumer service or big-ticket purchase. General Mills tried to impose mandatory arbitration on any customer who bought a box of Cheerios and “liked” the product on Facebook, and only backed down after widespread public ridicule.

For most services, acquiescing to the company’s mandatory dispute arbitration terms is a “take it or leave it” reality. In the financial services arena, if you refuse to agree to mandatory arbitration of any unknown complaint that may arise in the future, it means that you can’t get a mortgage, bank account, credit card or automobile loan. Richard Cordray, Director of the Consumer Financial Protection Bureau (CFPB), called mandatory arbitration a “contract gotcha that effectively denies groups of consumers the right to seek justice and relief for wrongdoing.”

Here’s the good news: After an exhaustive study of the extent and effects of these contract clauses, the CFPB has proposed a new rule that would ban most instances of mandatory arbitration for consumer financial services. Instead of a deck stacked against us, the CFPB proposal allows consumers who are wronged to band together and file a class action lawsuit. The CFPB can do this despite the bad Supreme Court rulings because the Dodd-Frank Act specifically granted the agency this authority. The proposed rule would restore our right to a fair hearing for our complaints against banks.

Consumer Federation of California has joined with 163 other public interest groups to urge the CFPB to adopt the strongest possible prohibition on forced arbitration.

! PRIVACY REVOLT

The Privacy Revolt Has Begun!

Protecting your personal right to privacy is a priority at Consumer Federation of California. Now we’ve doubled down on those efforts through a new campaign, Privacy Revolt! We’re building a grassroots movement through the campaign’s website – privacyrevolt.com – where you can take action against the invasion of privacy by corporate profilers and governmental snoops.

Calls to action are displayed on the home page. Please join the revolt on the website, and follow it on Facebook and Twitter: [facebook.com/PrivacyRevolt](https://www.facebook.com/PrivacyRevolt), [@privacyrevolt](https://twitter.com/privacyrevolt)