

## Should California Patients...

- be forced to give up their right to go to court just to sign up for HMO coverage?
- be forced into secret proceedings, controlled by private lawyers and retired judges who depend on repeat business from the HMOs, where cases are screened far from the open forum of public opinion?

Today, California patients can be forced into mandatory, binding arbitration as a condition of joining an HMO or managed care health plan prior to any dispute arising.

Courts, the place where the average person who is wronged can take on the rich and powerful corporation, have increasingly been replaced with a private judiciary, presided over by private lawyers, not judges and juries.



*Commercial Justice Report:*

## The Private HMO Justice System for Injured California Patients

*Is It Fair?*

*prepared by:*

**Foundation for Taxpayer and Consumer Rights**

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**F**orced arbitration can be lengthy, costly and unfair. It also conceals quality of care violations from public scrutiny.

- Arbitrators often depend on repeat business from HMO corporations and are more likely to rule in their favor.
- Patients complain of abuse by attorneys that are not subject to discipline by judges.
- Arbitrators generally charge \$100-\$400 per hour, compared to \$350 per day for court costs.
- None of the abuses or documents uncovered in the arbitration process can be made public.
- There is no jury of one's peers, publicly accountable judge or media scrutiny.
- There is judicial review only in cases of outright fraud, not judicial error.\*

### Is Pre-Dispute, Binding Arbitration Unfair?

In 1998, a joint commission of the American Bar Association, the American Medical Association and the American Arbitration Association concluded, *"In disputes involving patients, binding forms of dispute resolution should be used only where parties agree to do so after a dispute arises."*

\*"Thus even though an error of law appears on the face of an arbitration award and causes substantial injustice it is not subject to judicial review." *Moncharsh v. Blase*, California Supreme Court, No. S-02099-7.

### Nation's largest HMO sets up arbitration system to delay.

In 1997, the California Supreme Court, ruling in the case of lung cancer patient Wilfredo Engalla, found, *"There is evidence that Kaiser established a self-administered arbitration system in which delay for its own benefit and convenience was an inherent part, despite express and implied contractual representations to the contrary."*\*

Other HMOs in California have comparable arbitration systems and many of their patients have reported similar abuses to the Foundation for Taxpayer and Consumer Rights (FTCR). Assembly Bill 1751 (Kuehl), sponsored by FTCR, would end pre-dispute, binding arbitration for California patients.

To stay involved in the fight, please email or call with your name and address:

ftcr@consumerwatchdog.org  
(310) 392-0522 ext. 308

\**Nida Engalla et al. v. The Permanente Medical Group, Inc.*, California Supreme Court, No. S-04881-1, 1997.

## What you can do:

### 1. Find your state legislator at:

- [www.sen.ca.gov/~newsen/senators/yoursenator.htm](http://www.sen.ca.gov/~newsen/senators/yoursenator.htm) or (916) 653-6814 (Secretary of State for the California Senate)
- [www.assembly.ca.gov/acs/acsframeset9text.htm](http://www.assembly.ca.gov/acs/acsframeset9text.htm) or (916) 653-6814 (Secretary of State for the California Assembly)

### 2. Write Gov. Davis and your state legislator asking for their support of AB 1751 (Kuehl):

- Governor Gray Davis  
State Capitol  
Sacramento, CA  
95814
- The Honorable \_\_\_\_\_  
California State Senate  
P.O. Box 942848  
Sacramento, CA  
94248-0001
- The Honorable \_\_\_\_\_  
California State Assembly  
P.O. Box 942849  
Sacramento, CA  
94249-0001

Ask Gov. Davis and your state legislator to pass AB 1751 (Kuehl) during the 2000 legislative session.