

118TH CONGRESS  
2D SESSION

# S. 4087

To amend titles XVIII and XIX of the Social Security Act to prohibit skilled nursing facilities and nursing facilities from using pre-dispute arbitration agreements with respect to residents of those facilities under the Medicare and Medicaid programs, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 9, 2024

Mr. BLUMENTHAL (for himself and Ms. HIRONO) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To amend titles XVIII and XIX of the Social Security Act to prohibit skilled nursing facilities and nursing facilities from using pre-dispute arbitration agreements with respect to residents of those facilities under the Medicare and Medicaid programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness in Nursing  
5 Home Arbitration Act”.

1 **SEC. 2. PROHIBITING PRE-DISPUTE ARBITRATION AGREE-**  
2 **MENTS.**

3 (a) **MEDICARE.**—Section 1819(c) of the Social Secu-  
4 rity Act (42 U.S.C. 1395i–3(c)) is amended by adding at  
5 the end the following new paragraph:

6 “(7) **PROHIBITION ON USE OF PRE-DISPUTE**  
7 **ARBITRATION AGREEMENTS.**—

8 “(A) **IN GENERAL.**—A skilled nursing fa-  
9 cility may not require, solicit, accept, or move  
10 to enforce a pre-dispute arbitration agreement  
11 from or on behalf of any resident, whether the  
12 agreement is made before, during, or after the  
13 resident’s admission to the facility.

14 “(B) **APPLICATION.**—This paragraph shall  
15 apply to the skilled nursing facility and to any  
16 other business or person providing or respon-  
17 sible for providing skilled nursing services to  
18 the resident.

19 “(C) **NO VALIDITY OR ENFORCEMENT.**—A  
20 pre-dispute arbitration agreement shall not be  
21 valid or specifically enforceable against a resi-  
22 dent or former resident of a skilled nursing fa-  
23 cility, without regard to whether the agreement  
24 was made prior to or after the effective date of  
25 this paragraph.

1           “(D) DEFINITION OF PRE-DISPUTE ARBI-  
 2           TRATION AGREEMENT.—In this paragraph, the  
 3           term ‘pre-dispute arbitration agreement’ means  
 4           any agreement to arbitrate a dispute when the  
 5           dispute has arisen after such agreement has  
 6           been made.

7           “(E) JUDICIAL REVIEW.—A determination  
 8           as to whether and how this paragraph applies  
 9           to an arbitration agreement shall be determined  
 10          under Federal law by a court of competent ju-  
 11          risdiction, rather than an arbitrator, without re-  
 12          gard to whether the party opposing arbitration  
 13          challenges such agreement specifically or in  
 14          conjunction with any other term of the contract  
 15          containing such agreement.”.

16          (b) MEDICAID.—

17           (1) HOME AND COMMUNITY-BASED SERVICES  
 18          AND HOME HEALTH CARE SERVICES.—Section 1915  
 19          of the Social Security Act (42 U.S.C. 1396n) is  
 20          amended by adding at the end the following new  
 21          subsection:

22          “(m) PROHIBITING PRE-DISPUTE ARBITRATION  
 23          AGREEMENTS.—

24           “(1) IN GENERAL.—For home and community-  
 25          based services or home health care services provided

1 under a waiver under this section, section  
2 1902(a)(10)(D), or any other provision authorizing  
3 the provision of home and community-based services  
4 or home health care services under this title, the  
5 provider of such services (and any employee, agent,  
6 related entity, or affiliate of such provider) may not  
7 require, solicit, accept, or move to enforce a pre-dis-  
8 pute arbitration agreement from or on behalf of any  
9 individual receiving such services, whether the agree-  
10 ment is made before, during, or after the first date  
11 on which services are received. A pre-dispute arbitra-  
12 tion agreement between such a provider (or entity or  
13 person) and an individual receiving services (or who  
14 formerly received services) shall not be valid or en-  
15 forceable, without regard to whether such agreement  
16 was made prior to the effective date of this sub-  
17 section.

18 “(2) DEFINITION OF PRE-DISPUTE ARBITRA-  
19 TION AGREEMENT.—The term ‘pre-dispute arbitra-  
20 tion agreement’ means any agreement to arbitrate a  
21 dispute when the dispute has arisen after such  
22 agreement has been made.

23 “(3) JUDICIAL REVIEW.—A determination as to  
24 whether and how this subsection applies to an arbi-  
25 tration agreement shall be determined under Federal

1 law by a court of competent jurisdiction, rather than  
 2 an arbitrator, without regard to whether the party  
 3 opposing arbitration challenges such agreement spe-  
 4 cifically or in conjunction with any other term of the  
 5 contract containing such agreement.”.

6 (2) NURSING FACILITIES.—Section 1919(c) of  
 7 the Social Security Act (42 U.S.C. 1396r(c)) is  
 8 amended by adding at the end the following new  
 9 paragraph:

10 “(9) PROHIBITION ON USE OF PRE-DISPUTE  
 11 ARBITRATION AGREEMENTS.—

12 “(A) IN GENERAL.—A nursing facility may  
 13 not require, solicit, accept, or move to enforce  
 14 a pre-dispute arbitration agreement from or on  
 15 behalf of any resident, whether the agreement  
 16 is made before, during, or after the resident’s  
 17 admission to the facility.

18 “(B) APPLICATION.—This paragraph shall  
 19 apply to the nursing facility and to any other  
 20 business or person providing or responsible for  
 21 providing nursing services to the resident.

22 “(C) NO VALIDITY OR ENFORCEMENT.—A  
 23 pre-dispute arbitration agreement shall not be  
 24 valid or specifically enforceable against a resi-  
 25 dent or former resident of a nursing facility,

1 without regard to whether the agreement was  
2 made prior to or after the effective date of this  
3 paragraph.

4 “(D) DEFINITION OF PRE-DISPUTE ARBI-  
5 TRATION AGREEMENT.—In this paragraph, the  
6 term ‘pre-dispute arbitration agreement’ means  
7 any agreement to arbitrate a dispute when the  
8 dispute has arisen after such agreement has  
9 been made.

10 “(E) JUDICIAL REVIEW.—A determination  
11 as to whether and how this paragraph applies  
12 to an arbitration agreement shall be determined  
13 under Federal law by a court of competent ju-  
14 risdiction, rather than an arbitrator, without re-  
15 gard to whether the party opposing arbitration  
16 challenges such agreement specifically or in  
17 conjunction with any other term of the contract  
18 containing such agreement.”.

19 **SEC. 3. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

20 This Act, and the amendments made by this Act,  
21 shall take effect on the date of the enactment of this Act.

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