

116TH CONGRESS
1ST SESSION

H. R. 5326

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.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 5, 2019

Ms. SÁNCHEZ (for herself and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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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