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

Ms. Sánchez introduced the following bill; which was referred to the Committee on ____________________

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. PROHIBITING PRE-DISPUTE ARBITRATION AGREEMENTS.

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

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

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

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

“(C) NO VALIDITY OR ENFORCEMENT.—A pre-dispute arbitration agreement shall not be valid or specifically enforceable against a resident or former resident of a skilled nursing facility, without regard to whether the agreement was made prior to or after the effective date of this paragraph.
“(D) Definition of pre-dispute arbitration agreement.—In this paragraph, the term ‘pre-dispute arbitration agreement’ means any agreement to arbitrate a dispute when the dispute has arisen after such agreement has been made.

“(E) Judicial review.—A determination as to whether and how this paragraph applies to an arbitration agreement shall be determined under Federal law by a court of competent jurisdiction, rather than an arbitrator, without regard to whether the party opposing arbitration challenges such agreement specifically or in conjunction with any other term of the contract containing such agreement.”.

(b) Medicaid.—

(1) Home and community-based services and home health care services.—Section 1915 of the Social Security Act (42 U.S.C. 1396n) is amended by adding at the end the following new subsection:

“(m) Prohibiting pre-dispute arbitration agreements.—

“(1) In general.—For home and community-based services or home health care services provided
under a waiver under this section, section 1902(a)(10)(D), or any other provision authorizing the provision of home and community-based services or home health care services under this title, the provider of such services (and any employee, agent, related entity, or affiliate of such provider) may not require, solicit, accept, or move to enforce a pre-dispute arbitration agreement from or on behalf of any individual receiving such services, whether the agreement is made before, during, or after the first date on which services are received. A pre-dispute arbitration agreement between such a provider (or entity or person) and an individual receiving services (or who formerly received services) shall not be valid or enforceable, without regard to whether such agreement was made prior to the effective date of this subsection.

“(2) Definition of pre-dispute arbitration agreement.—The term ‘pre-dispute arbitration agreement’ means any agreement to arbitrate a dispute when the dispute has arisen after such agreement has been made.

“(3) Judicial review.—A determination as to whether and how this subsection applies to an arbitration agreement shall be determined under Federal
law by a court of competent jurisdiction, rather than
an arbitrator, without regard to whether the party
opposing arbitration challenges such agreement spe-
cifically or in conjunction with any other term of the
contract containing such agreement.”.

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

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

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

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

“(C) NO VALIDITY OR ENFORCEMENT.—A
pre-dispute arbitration agreement shall not be
valid or specifically enforceable against a resi-
dent or former resident of a nursing facility,
without regard to whether the agreement was made prior to or after the effective date of this paragraph.

“(D) Definition of pre-dispute arbitration agreement.—In this paragraph, the term ‘pre-dispute arbitration agreement’ means any agreement to arbitrate a dispute when the dispute has arisen after such agreement has been made.

“(E) Judicial review.—A determination as to whether and how this paragraph applies to an arbitration agreement shall be determined under Federal law by a court of competent jurisdiction, rather than an arbitrator, without regard to whether the party opposing arbitration challenges such agreement specifically or in conjunction with any other term of the contract containing such agreement.”.

SEC. 3. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

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