

United States Senate

WASHINGTON, DC 20510

September 23, 2015

Andy Slavitt
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Ave., S.W.
Washington, DC 20201

Dear Administrator Slavitt:

We are writing regarding the Centers for Medicare and Medicaid Services' (CMS) proposed revisions to the requirements for long-term care facilities participating in Medicare and Medicaid programs. We commend CMS for recognizing the need for reforms to ensure the highest quality of care for residents of long-term care facilities, including many nursing homes. CMS's proposed rule rightly acknowledges the significant negative impact of pre-dispute forced arbitration on residents—many of whom are seniors or are disabled. However, we remain concerned that the criteria CMS proposed to improve resident awareness of these agreements does not adequately protect the rights of residents and improve safety. Therefore, we write to urge CMS to prohibit the use of binding pre-dispute arbitration clauses in long-term care facility contracts.

The decision to admit yourself or a loved one to a long-term care facility can be difficult. Unfortunately, families often have limited choices due to cost and location constraints. Yet, long-term care facilities sometimes force and often encourage potential residents and their families to waive their legal rights *before* any harm has occurred and to agree to a dispute resolution forum that may be biased in favor of the facility. Once signed, pre-dispute arbitration decisions are binding, with a very limited right to appeal an arbitrator's decision. Given the consequences of this decision, pressuring potential residents to make an on-the-spot decision about whether they want to arbitrate any potential future dispute is unfair to residents and their families during the overwhelming and paperwork-intensive nature of the long-term care facility admission process.

While we applaud CMS for taking steps in the proposed rule to help ensure a more level playing field in the arbitration process, including prohibiting facilities from conditioning admission on acceptance of binding arbitration, we remain concerned that the pre-dispute arbitration agreements permitted by the proposed rule could be abused and result in deprivation of important rights for residents of long-term care facilities. For example, while CMS has attempted to establish protections to make sure long-term care facility residents understand the consequences of signing away the right to litigate, we are concerned that these protections are insufficient. During the admissions process, prospective long-term care facility residents and their families are rightly thinking about a loved one's health, wellbeing, and quality of life, not their preferred method for resolving a hypothetical, future legal dispute.

Furthermore, certifying resident understanding of the pre-dispute agreement, while well-intentioned, may make it more difficult for victims to seek fair redress after an injury arises. All too often, only after a resident has suffered an injury or death, do families truly understand the impact of the arbitration agreement they have already signed.

For residents of long term care facilities and their families, only an arbitration agreement that is entered into after an incident has occurred and after a resident has considered all their legal rights can ensure that residents and their families are not deprived of their rights. Therefore, we strongly urge CMS to fully protect residents and their families by banning pre-dispute arbitration clauses in long-term care facility contracts.

Sincerely,



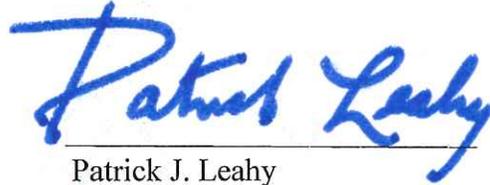
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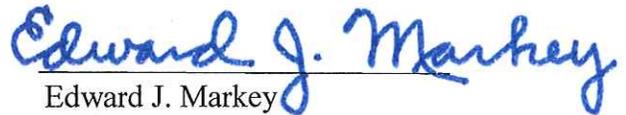
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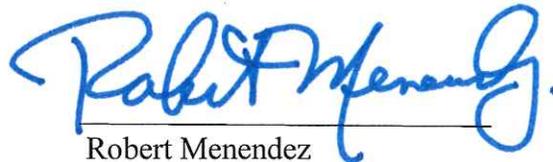


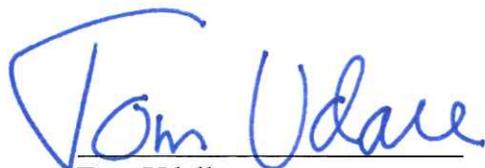
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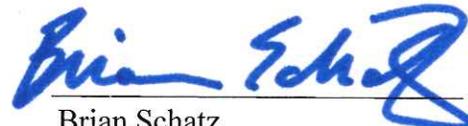

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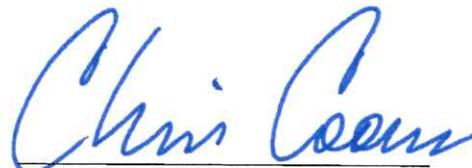

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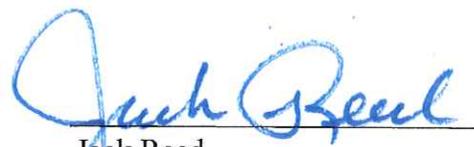

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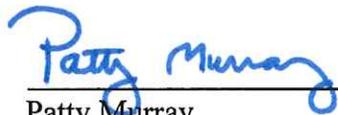

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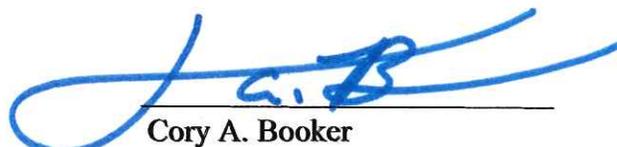

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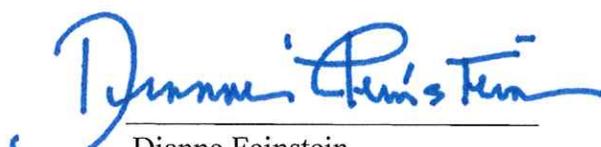

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