



## PRESS RELEASE

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### **Attorney General Frosh Leads Coalition of States in Comments to CMS to Maintain Pre-Dispute Arbitration Clauses in Nursing Home and Long-Term Care Contracts**

**BALTIMORE, MD (August 7, 2017)** –Maryland Attorney General Brian E. Frosh announced today that his office, together with 16 additional states, submitted comments to the Centers for Medicare and Medicaid Services (CMS), recommending that CMS maintain its rule prohibiting pre-dispute arbitration clauses in nursing home and other long-term care contracts.

“Our loved ones in nursing homes are already at their most vulnerable,” said Attorney General Frosh. “Forcing them to arbitrate claims when they are mistreated, robs nursing home patients of fundamental rights. The Trump Administration proposal to reverse the existing rules will cause consumers to suffer and will enrich unscrupulous nursing homes and long-term care facilities that take advantage of them.”

In 2015, Maryland and 15 other states submitted comments to CMS in support of a proposed regulation to bar such pre-dispute arbitration clauses in long-term care contracts. The comments noted that “Pre-dispute binding arbitration agreements in general can be procedurally unfair to consumers, and can jeopardize one of the fundamental rights of Americans; the right to be heard and seek judicial redress for our claims. This is especially true when consumers are making the difficult decisions regarding the long-term care of loved ones.”

In October 2016, CMS issued its final rule, prohibiting the use of pre-dispute arbitration clauses in such agreements, citing the comments of the Attorneys General in support. On October 17, 2016, the American Health Care Association and a group of affiliated nursing homes filed suit against the regulation in the Northern District of Mississippi, which issued a preliminary injunction against enforcement of the prohibition on pre-dispute arbitration clauses. On June 8, 2017, CMS proposed reversing the rule and removing the prohibition on pre-dispute arbitration clauses in long-term care contracts.

The comments filed today urge CMS to maintain the prohibition for the reasons set forth when it issued the regulation. The States’ comments state that, “We believe that the prohibition on pre-dispute arbitration clauses provides an important protection for the consumers of our States at a time when consumers are undertaking a difficult and emotional decision.”

The comments, led by Attorney General Frosh, were supported by the attorneys general of California, Connecticut, Delaware, the District of Columbia, Hawaii’s Attorney General and

Office of Consumer Protection, Iowa, Illinois, Maine, Massachusetts, Minnesota, New York, North Carolina, Oregon, Pennsylvania, Vermont and Washington.

A copy of the submitted comments [can be found here](#).