

117TH CONGRESS  
1ST SESSION

# H. R. 3947

To prohibit the inclusion of mandatory predispute arbitration clauses and clauses limiting class action lawsuits in health insurance contracts.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 2021

Ms. PORTER (for herself, Mr. DOGGETT, Ms. SCHAKOWSKY, Ms. DELAURO, and Mr. POCAN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and Education and Labor, 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

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## A BILL

To prohibit the inclusion of mandatory predispute arbitration clauses and clauses limiting class action lawsuits in health insurance contracts.

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 “Justice for Patients  
5 Act”.

1 **SEC. 2. PROHIBITION ON MANDATORY PREDISPUTE ARBI-**  
2 **TRATION AND LIMITATIONS ON CLASS AC-**  
3 **TION LAWSUITS.**

4 (a) PHSA.—Part D of title XXVII of the Public  
5 Health Service Act (42 U.S.C. 300gg–111 et seq.) is  
6 amended by adding at the end the following new section:

7 **“SEC. 2799A–11. PROHIBITION ON INCLUSION OF CERTAIN**  
8 **REQUIREMENTS IN HEALTH INSURANCE**  
9 **CONTRACTS.**

10 “(a) PROHIBITION ON MANDATORY PREDISPUTE AR-  
11 BITRATION.—A group health plan and group or individual  
12 health insurance coverage shall not include any predispute  
13 arbitration clause that requires the arbitration of claims  
14 under such plan or coverage.

15 “(b) PROHIBITION ON LIMITATION OF CLASS AC-  
16 TIONS.—A group health plan and group or individual  
17 health insurance coverage shall not include any limitation  
18 on the ability of an enrollee of such plan or coverage to  
19 engage in a class action lawsuit relating to the administra-  
20 tion of such plan or coverage.

21 “(c) APPLICABILITY.—An issue as to whether this  
22 section applies with respect to a dispute shall be deter-  
23 mined under Federal law. The applicability of this section  
24 to an agreement to arbitrate and the validity and enforce-  
25 ability of an agreement to which this section applies shall  
26 be determined by a court, rather than an arbitrator, irre-

1 spective of whether the party resisting arbitration chal-  
2 lenges the arbitration agreement specifically or in conjunc-  
3 tion with other terms of the contract containing such  
4 agreement, and irrespective of whether the agreement pur-  
5 ports to delegate such determinations to an arbitrator.”.

6 (b) ERISA.—

7 (1) IN GENERAL.—Subpart B of part 7 of sub-  
8 title B of title I of the Employee Retirement Income  
9 Security Act of 1974 (29 U.S.C. 1185 et seq.) is  
10 amended by adding at the end the following new sec-  
11 tion:

12 **“SEC. 726. PROHIBITION ON INCLUSION OF CERTAIN RE-**  
13 **QUIREMENTS IN HEALTH INSURANCE CON-**  
14 **TRACTS.**

15 “(a) PROHIBITION ON MANDATORY PREDISPUTE AR-  
16 BITRATION.—A group health plan or a health insurance  
17 issuer offering group health insurance coverage shall not  
18 include any predispute arbitration clause that requires the  
19 arbitration of claims under such plan or coverage.

20 “(b) PROHIBITION ON LIMITATION OF CLASS AC-  
21 TIONS.—A group health plan or a health insurance issuer  
22 offering group health insurance coverage shall not include  
23 any limitation on the ability of an enrollee of such cov-  
24 erage to engage in a class action lawsuit relating to the  
25 administration of such plan or coverage.

1       “(c) APPLICABILITY.—An issue as to whether this  
 2 section applies with respect to a dispute shall be deter-  
 3 mined under Federal law. The applicability of this section  
 4 to an agreement to arbitrate and the validity and enforce-  
 5 ability of an agreement to which this section applies shall  
 6 be determined by a court, rather than an arbitrator, irre-  
 7 spective of whether the party resisting arbitration chal-  
 8 lenges the arbitration agreement specifically or in conjunc-  
 9 tion with other terms of the contract containing such  
 10 agreement, and irrespective of whether the agreement pur-  
 11 ports to delegate such determinations to an arbitrator.”.

12           (2) CLERICAL AMENDMENT.—The table of con-  
 13 tents in section 1 of such Act is amended by adding  
 14 at the end the following new item:

“Sec. 726. Prohibition on inclusion of certain requirements in health insurance  
 contracts.”.

15       (c) IRC.—

16           (1) IN GENERAL.—Subchapter B of chapter  
 17 100 of the Internal Revenue Code of 1986 is amend-  
 18 ed by adding at the end the following new section:

19       **“SEC. 9826. PROHIBITION ON INCLUSION OF CERTAIN RE-**  
 20                           **QUIREMENTS IN HEALTH INSURANCE CON-**  
 21                           **TRACTS.**

22       “(a) PROHIBITION ON MANDATORY PREDISPUTE AR-  
 23 BITRATION.—A group health plan shall not include any

1 predispute arbitration clause that requires the arbitration  
2 of claims under such plan.

3 “(b) PROHIBITION ON LIMITATION OF CLASS AC-  
4 TIONS.—A group health plan shall not include any limita-  
5 tion on the ability of an enrollee of such plan to engage  
6 in a class action lawsuit relating to the administration of  
7 such plan.

8 “(c) APPLICABILITY.—An issue as to whether this  
9 section applies with respect to a dispute shall be deter-  
10 mined under Federal law. The applicability of this section  
11 to an agreement to arbitrate and the validity and enforce-  
12 ability of an agreement to which this section applies shall  
13 be determined by a court, rather than an arbitrator, irre-  
14 spective of whether the party resisting arbitration chal-  
15 lenges the arbitration agreement specifically or in conjunc-  
16 tion with other terms of the contract containing such  
17 agreement, and irrespective of whether the agreement pur-  
18 ports to delegate such determinations to an arbitrator.”.

19 (2) CLERICAL AMENDMENT.—The table of sec-  
20 tions for such subchapter is amended by adding at  
21 the end the following new item:

“Sec. 9826. Prohibition on inclusion of certain requirements in health insur-  
ance contracts.”.

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