



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

September 19, 2008

S. 2838

Fairness in Nursing Home Arbitration Act

As ordered reported by the Senate Committee on the Judiciary on September 11, 2008

S. 2838 would make certain pre-dispute arbitration agreements between the operators of long-term care facilities and their residents not valid or enforceable. In a pre-dispute arbitration agreement, the parties agree to arbitrate a potential dispute rather than seek redress through the courts. The bill would apply to any dispute or claim arising on or after the date of the bill's enactment. Under current law, the operators of long-term care facilities can include clauses in contracts with residents that provide for mandatory arbitration if a dispute should arise.

Under the bill, CBO expects that the majority of disputes that could arise between a resident and a facility operator would be litigated in state courts and, therefore, would not substantially affect the caseload of the federal court system. Cases challenging the nullification of a particular arbitration agreement would be addressed in a federal court, but CBO expects that any such cases would have an insignificant effect on the overall workload of the courts. Therefore, CBO estimates that implementing S. 2838 would have no significant cost over the next five years. Enacting the bill would have no effect on direct spending or revenues.

By restricting the provisions that could be included in contracts between long-term care facilities and residents of such facilities (or their representatives), S. 2838 would impose an intergovernmental and private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA). Based on information from industry sources, CBO estimates that the direct cost to comply with the mandate to state, local, and tribal governments and the private sector would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$68 million and \$136 million, respectively, in 2008, adjusted annually for inflation).

On September 2, 2008, CBO transmitted a cost estimate for H.R. 6126, the Fairness in Nursing Home Arbitration Act of 2008, as ordered reported by the House Committee on the Judiciary on July 30, 2008. The two versions of the legislation are similar, and CBO's estimate of the federal costs are the same. In addition, both H.R. 6126 and S. 2838 contain

a mandate by invalidating clauses in agreements made or amended after the date of enactment. However, the mandate in S. 2838 would also apply to existing agreements. The direct cost to comply with the mandates in both bills would fall below the annual thresholds established in UMRA.

The CBO staff contacts for this estimate are Leigh Angres (for federal costs), Melissa Merrell (for the state and local impact), and Paige Piper/Bach (for the private-sector impact). This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.