

CMS Prohibits Long Term Care Facilities from Using Arbitration Agreements at Intake and Prior to Disputes

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Last week, the Centers for Medicare and Medicaid (“CMS”), a part of the Department of Health and Human Services, issued a new Final Rule applicable to all long term care facilities that accept Medicare and Medicaid funds.

This Final Rule included a number of provisions, but one of the most-talked about is a new requirement that **prohibits** facilities that receive Medicare and/or Medicaid funds from using pre-dispute arbitration agreements. This means facilities may no longer request or require that residents or their representatives sign an arbitration agreement prior to an incident occurring, for example during the admissions process.

This rule goes into effect on November 28, 2016. For agreements already in place prior to the effective date, this Final Rule will have no effect on the enforceability of the agreements. However, after this date, facilities receiving Medicare and Medicaid funds may **not** enter into an arbitration agreement with a resident or his or her representative at any time prior to the occurrence of an incident.

Facilities and their residents will **not** be prevented from entering into an agreement to arbitrate a dispute after an incident occurs – such as when a resident has a fall.

The CMS Press Release on the Final Rule can be read here:

<https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2016-Press-releases-items/2016-09-28.html>

Please feel free to contact our firm to further discuss how this new Final Rule may affect your facility.

Danielle Dietrich is an elder law and long term care attorney in Tucker Arensberg’s Long Term Care Practice Group. She is licensed to practice law in Pennsylvania, Ohio and West Virginia. Danielle can be reached via email, telephone: 412-594-5605 or on Twitter at @DLDietrich.