

CMS Rules To Allow Nursing Homes To Use Arbitration Agreements, But Adds Certain Requirements

Articles July 17, 2019

After several years of debate and turmoil, late yesterday afternoon CMS issued a new Final Rule on the use of arbitration agreements by nursing homes.

History:

In 2016, CMS issued a Final Rule applicable to all long-term care facilities that accept Medicare and Medicaid funds. This Rule, in part, prohibited facilities that receive Medicare and/or Medicaid funds from using pre-dispute arbitration agreements. This meant that the facilities could not request or require that residents or their representatives sign an arbitration agreement during the admissions process. I blogged about the Final Rule [here](#)

Just over a month later, a federal judge in Mississippi granted a preliminary injunction to prohibit the rule from taking effect in a detailed, 40-page opinion. I blogged about the preliminary injunction [here](#):

New Rule:

The new rule allows the use of pre-dispute binding arbitration agreements (i.e. agreements entered into before an incident happens, such as signing an arbitration agreement during the admissions process), but puts additional requirements on nursing homes to allow residents choose their method of dispute resolution.

Nursing homes now cannot require residents to sign binding arbitration agreements as a condition for receiving care. Facilities will be required to inform the residents and their families that they are not required to sign a binding arbitration agreement. The arbitration agreements also cannot include language preventing anyone from contacting federal, state or local officials.

A copy of the CMS press release can be found [here](#):

A copy of the Rule can be found [here](#):

Please feel free to contact the author to discuss a review of your facility's arbitration agreement and admissions process.

For additional information contact Mike Cassidy.