



## **CMS Proposes to Cancel Prohibitions Regarding Pre-Dispute Arbitration Agreements**

On October 4, 2016, the Centers for Medicare & Medicaid Services ("CMS") adopted a final rule (the "Final Rule") which revised the requirements for long-term care (LTC) facilities to participate in the Medicare and Medicaid programs. Among other things, the Final Rule prohibited LTC facilities from entering into pre-dispute arbitration agreements with residents and/or their representatives and from requiring residents to sign arbitration agreements as a condition of admission to a LTC facility.

On June 6, 2017, CMS issued a proposed rule (the "Proposed Rule"), which seeks to revise and remove those provisions of the Final Rule which preclude LTC facilities from entering into pre-dispute agreements for binding arbitration. The Proposed Rule also removes the prohibition which bans LTC facilities from requiring residents to sign arbitration agreements as a condition of admission to the facility and removes all requirements regarding the terms of arbitration agreement. For example, the terms of the arbitration agreement need not include language stating that the agreement was entered into voluntarily, provide for the selection of a neutral arbitrator agreed upon by both parties or provide for selection of a venue convenient to both parties.

In order to protect residents, the Proposed Rule seeks to increase transparency concerning the use of arbitration agreements and provides that all agreements for binding arbitration, including agreements imposed as a condition to admission, must be written in plain language. Consistent with current law, agreements must not include provisions prohibiting or discouraging residents from communicating with any federal, state, or local health department employees and representatives of the Office of the State Long Term Care Ombudsman. LTC facilities will be required to post a notice that describes the facility's policy on the use of binding arbitration agreements in an area that is visible to residents and visitors. The notice must be written in plain language.

Facilities will continue to remain obligated to explain arbitration agreements to residents and/or their representative in a form and manner that he or she understands, and obtain an acknowledgement of the resident's understanding of the agreement. Facilities must also continue to retain copies of all signed arbitration agreements and final arbitration decisions for a period of five (5) years and make such documents available for inspection upon request by CMS or its designee.

CMS will be accepting comments to the proposed rule for a period of sixty (60) days through and including August 7, 2017.

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