



Centers for Medicare and Medicaid Services (“CMS”) Issues Revised Arbitration Rules

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On July 18, 2019, the Centers for Medicare and Medicaid Services (“CMS”) issued its revised rules governing the use of pre-dispute arbitration agreements in long-term care facilities. The revised rules, effective beginning September 16, 2019, repeal the prohibition on the use of pre-dispute arbitration agreements. The current rules, found at 42 CFR § 483.70, et seq., now permit the use of the arbitration agreements by long-term care facilities, subject to certain requirements:

- The facility is prohibited from requiring the execution of an arbitration agreement as a condition for admission or to continue to receive care at the facility and the arbitration agreement must explicitly state that the resident is not required to sign the agreement as a condition for admission or for continued care at the facility. In addition, the facility must specifically inform the resident of his or her right not to sign the agreement.
- The facility must ensure that: 1) the agreement is explained to the resident in a form and manner that he or she understands, including in a language the resident understands; 2) the resident

acknowledges that he or she understands the agreement; 3) the agreement provides for the selection of a neutral arbitrator; and 4) the venue for the arbitration is convenient for both parties.

- The agreement must give the resident the right to rescind the agreement within thirty calendar days of execution.
- The agreement may not prohibit or discourage residents from communicating with federal, state or local officials, including the State Long-Term Care Ombudsman's Office, the state health department or state surveyors.

Finally, when the facility and a resident resolve a dispute through arbitration, the facility must retain a copy of the signed arbitration agreement and the arbitrator's final decision for five years after the resolution of the dispute and such documents must be available for inspection upon request by CMS or its designee.

When drafting and implementing arbitration agreements, long-term care facilities must also be mindful of their state's laws and regulations regarding the use of pre-dispute arbitration agreements.

Additional Information

For more information, please contact **JANET K. FELDKAMP**, **JENNIFER M. TURK**, or any member of Benesch's [Health Care & Life Sciences Group](#).

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