

## **CMS FINALIZES ROLLOBACK OF PRE-DISPUTE ARBITRATION PROTECTIONS**

In 2016, the Obama Administration promulgated [regulations](#) prohibiting pre-dispute arbitration agreements between nursing homes residents (or their representative) and facilities. On July 18, 2019, the Trump Administration published a [Final Rule](#) rolling back certain features of the 2016 resident protection. Most notably, the Final Rule removes the requirement prohibiting facilities from entering into pre-dispute arbitration agreements with residents, while maintaining the 2016 ban on requiring residents to agree to arbitration as a condition of admission or as a requirement for continued care.

### **Additionally, the Final Rule includes the following protections:**

- Facilities must explicitly inform residents that signing an arbitration agreement is not a requirement and include that language in the agreement;
- Arbitration agreements must be in a form and manner that the resident can understand and residents must acknowledge that they understand the agreement;
- Residents have the right to rescind the arbitration agreement within 30 calendar days of signing the agreement;
- Arbitration agreements cannot contain language that prohibits or discourages any individual from contacting federal, state, or local officials;
- Facilities must retain copies of the signed arbitration agreement and the arbitrator's decision for five years and make them available to Centers for Medicare & Medicaid Services (CMS) for inspection; and
- Both parties must agree upon the selection of the neutral arbitrator and the venue.

The Centers for Medicare & Medicaid Services's (CMS) decision to roll back the 2016 ban on pre-dispute arbitration agreements is troubling. The Final Rule unnecessarily burdens residents with deciding whether arbitration is the right form of dispute resolution for them before even knowing what the dispute is about or when it might occur.

Our organizations believe that CMS should reverse its decision to allow facilities to enter into pre-dispute arbitration agreements with residents and reinstate the 2016 regulations. At the very least, CMS must promulgate regulations allowing residents and their representatives to also rescind an arbitration agreement within 30 calendar days *after* the incident giving rise to the dispute occurred. Residents and their families must be fully informed before consenting to arbitration.

To learn more about the rights and protections of nursing home residents, please visit [www.NursingHome411.org](http://www.NursingHome411.org) & [www.MedicareAdvocacy.org](http://www.MedicareAdvocacy.org)