



Center for Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 17-12-NH

DATE: December 09, 2016

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Long-Term Care (LTC) Regulation: Enforcement of Rule Prohibiting Use of Pre-Dispute Binding Arbitration Agreements is Suspended so Long as Court Ordered Injunction Remains in Effect

Memorandum Summary

Enforcement Suspended Until and Unless Injunction is Lifted: The Centers for Medicare & Medicaid Services (CMS) will not enforce the new rule prohibiting skilled nursing facilities, nursing facilities and dually-certified facilities from using pre-dispute binding arbitration agreements while there is a court-ordered injunction in place prohibiting enforcement of this provision.

Background

On September 28, 2016, the Federal Register posted the notice of the CMS final rule *Reform of Requirements for Long-Term Care Facilities*. The rule was published in the Federal Register on October 4, 2016, and became effective on November 28, 2016.

The published final rule revises the requirements that LTC facilities must meet to participate in the Medicare and Medicaid programs. One of the new requirements at 42 C.F.R. §483.70(n)(1) prohibits nursing homes receiving Medicare or Medicaid funds from entering into pre-dispute binding arbitration agreements with any resident or resident's representative nor require that a resident sign an arbitration agreement as a condition of admission to the nursing home.

On November 7, 2016, the United States District Court for the Northern District of Mississippi, , Oxford Division (Civil Action No. 3:16-CV-00233), issued an order preliminarily enjoining CMS from enforcing section 483.70(n)(1). At this time, CMS will not enforce 483.70(n)(1) until and unless the injunction is lifted. As such, surveyors must not survey facilities for compliance with this new provision until further notified.

Contact: For questions about the program please contact the CMS mailbox at NHSurveyDevelopment@cms.hhs.gov.

Effective Date: Immediately. This policy should be communicated with all survey and certification staff, their managers and the State/Regional Office training coordinators within 30 days of this memorandum.

/s/
David R. Wright

cc: Survey and Certification Regional Office Management