



Consumer Voice Commends CMS on Prohibiting Pre-Dispute Arbitration Clauses

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In newly released final regulations for nursing homes, the Centers for Medicare and Medicaid Services (CMS) banned facilities from requiring residents and families to sign pre-dispute arbitration clauses in admissions contracts. This prohibition is a victory for consumers by preserving their right to seek justice in the court system in the event of abuse, neglect, or serious injury.

For years, long-term care facilities have sought to limit consumer access to the courts by forcing them, at the time of admission, to sign an agreement that they would waive their rights to sue the facility if an adverse event were to occur, and instead submit any disputes to arbitration. The facility generally selects arbitrator, and the process is usually confidential and secretive.

Calling these agreements “unconscionable,” CMS recognized that these agreements are often made when the resident is “physically and possibly mentally impaired,” and, in some cases, limited in options due to “geographic and financial restrictions.” They recognized the significant difference in bargaining power between a long-term care facility and residents and family members. According to CMS, “...LTC residents should have a right to access the court system if a dispute with a facility arises, and that any agreement to arbitrate a claim should be knowing and voluntary.”

“This new requirement is an important victory for residents and families,” said Lori Smetanka, Executive Director of the Consumer Voice. “It is patently unfair to require consumers to waive their rights during the emotional, stressful, and often chaotic admission process. Residents deserve the ability to resolve their disputes with facilities, many of which involve incidences of mistreatment or neglect, in the court system.”

This new requirement goes into effect November 28, 2016.

For more information about this provision, or other provisions of the Final Rule, go to www.theconsumervoice.org.

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