



# THE VOICE

The e-newsletter of National Consumer Voice for Quality Long-Term Care

August 6, 2019

## Residents' Rights and Protections Rolled Back in CMS Rules

Strong, resident focused regulatory standards are critical to addressing and preventing poor care. The July 18, 2019 issuance by the Centers for Medicare and Medicaid Services (CMS) proposing rollbacks to the revised nursing home rules published in 2016 and final rules allowing pre-dispute arbitration are steps in the wrong direction.

### Proposed Rules: Nursing Facility Requirements

CMS states that the goal of the proposed nursing facility rules (81 Fed. Reg. 34737) is to increase provider flexibility and reduce excessively burdensome regulations. The agency believes its proposal balances resident safety and quality of care, with regulatory "relief" for facilities. From Consumer Voice's initial review, however, reduced standards for resident safety, quality care, and resident's rights are the price CMS expects residents to pay for less accountability and transparency.

Comments on these proposed rules are due September 16, 2019.

Consumer Voice will be developing sample comment letters for individuals and groups. Keep an eye on your email for this information in an upcoming action alert.

### Final Rule Allows Pre-Dispute Arbitration Agreements

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## Calendar of Events

**Thursday, August 8:** [Changes to the 2016 Federal Nursing Home Regulations: What's Proposed, What's Final & What to Do About It](#), 4:00pm ET, Consumer Voice webinar

**October:** [Residents' Rights Month](#)

CMS also released a final rule on Long-Term Care Facility Requirements allowing Arbitration Agreements (84 Fed. Reg. 34718).

The final arbitration rule reverses the ban on pre-dispute arbitration agreement mandated in the 2016 rules. Permitting pre-dispute arbitration places consumers at a disadvantage during the admission process, usually a time of crisis and great stress for individuals and families; binds them to arbitration for any dispute – whether it be a financial issue or abuse or neglect; and strips consumers of their constitutional right to have their dispute heard by a jury. Asking individuals and their families to sign these binding agreements, prior to the advent of any disputes, is inherently unfair to consumers.

It is disappointing that the interests of providers were put over residents in the development of these rules. [Read Consumer Voice's full analysis of these rules here.](#)

To make it easier to compare both the proposed and final changes, Consumer Voice has prepared a [side-by-side of the current nursing home regulations](#) and the newly released proposed rules, as well as the final arbitration rules.

To learn more, [register for our webinar](#) on August 8 at 4:00pm ET.

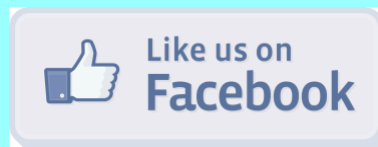
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## Court Rules Healthcare Surrogates Cannot Sign Nursing Home Arbitration Agreements on Behalf of Residents

A Florida appeals court ruled that healthcare surrogates cannot sign nursing home arbitration agreements. The case surrounded a Florida nursing home resident whose son, acting as a healthcare power of attorney, signed an arbitration agreement at admission. Another of the resident's healthcare surrogates filed a lawsuit following the resident's death. The nursing home argued that the lawsuit

**November 3-6, 2019:** [Consumer Voice Annual Conference](#), Crystal Gateway Marriott, Arlington, Virginia

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**Last Week's Most Popular Post:**

**Thursday, August 1:**

[Kentucky Long-Term Care Ombudsmen Sherry Culp and Natalie Brown-Radtke wrote an op-ed in the Courier Journal about the need for more nursing home staff.](#)



**Last Week's Most Popular Tweet:**

**Tuesday, July 30:**

[Consumer Voice friend Toby Edelman of @CMAorg was interviewed by @NBCNews. The NBC News Investigation looked into a nursing home chain collapse amid allegations of unpaid bills and poor care.](#)

was invalid because the arbitration agreement was signed. But, the court ruled that healthcare appointees don't have the power to make non-health-related decisions. The lawsuit can now proceed. For more information, read the [article in McKnight's](#).

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## California Court Rules State Statute Denies Rights to Incapacitated Residents

California Advocates for Nursing Home Reform (CANHR) brought a lawsuit against California's Department of Public Health over a statute in the state health code that allows nursing home staff to decide for incapacitated residents about ongoing medical treatment. The lawsuit came after a nursing home resident was deemed "incapacitated" by a doctor upon admission to the nursing home but only found out about the status months later when she was prohibited from leaving the nursing home for a picnic. During those months, the nursing home administered a medication to her that is typically used to manage mental disorders and can have life-threatening side effects. The court ruled that the state statute deprives incapacitated residents of critical rights and does not include enough checks on nursing home staff. For more information, read the [article in the Sacramento Bee](#).

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## Spotlight on Resources



Consumer Voice and the National Ombudsman Resource Center have a multitude of resources available online covering a wide range of long-term care topics. Visit the [Consumer Voice](#) and [NORC](#)

## Long-Term Care Resources & News

- [Some Nursing Homes Are Shaky: Hearing Witnesses](#), ThinkAdvisor, July 25, 2019

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Read past issues of [The Voice here](#).

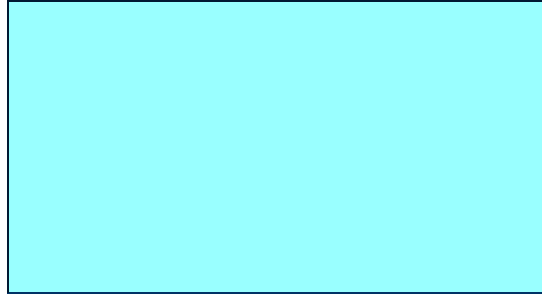
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[websites](#) to explore all the available resources. Check out this week's highlighted resource:

**[Issue Page: Forced Arbitration Agreements in Long Term Care Facility Admission Contracts](#)**

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## About The Voice

The Voice is a weekly e-newsletter, published by the National Consumer Voice for Quality Long-Term Care. If you do not wish to continue receiving this publication, please unsubscribe below. Your contributions and comments are welcome and should be sent to [info@theconsumervoice.org](mailto:info@theconsumervoice.org). Copyright © 2019.

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Consumer Voice is the leading national voice representing consumers in issues related to long-term care, helping to ensure that consumers are empowered to advocate for themselves. We are a primary source of information and tools for consumers, families, caregivers, advocates and ombudsmen to help ensure quality care for the individual. Consumer Voice's mission is to represent consumers at the national level for quality long-term care, services and supports.

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