



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 483

[CMS-3342-P]

RIN 0938-AT18

Medicare and Medicaid Programs; Revision of Requirements for Long-Term Care Facilities: Arbitration Agreements

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the requirements that Long-Term Care (LTC) facilities must meet to participate in the Medicare and Medicaid programs.

Specifically, it would remove provisions prohibiting binding pre-dispute arbitration and strengthen requirements regarding the transparency of arbitration agreements in LTC facilities. This proposal would support the resident's right to make informed choices about important aspects of his or her health care. In addition, this proposal is consistent with our approach to eliminating unnecessary burden on providers.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on [Insert date **60 days** after date of publication in the **Federal Register**].

ADDRESSES: In commenting, please refer to file code **CMS-3342-P**. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. Electronically. You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. By regular mail. You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services,
Department of Health and Human Services,
Attention: CMS-3342-P
P.O. Box 8010,
Baltimore, MD 21244-1850

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. By express or overnight mail. You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services,
Department of Health and Human Services,
Attention: CMS-3342-P
Mail Stop C4-26-05,
7500 Security Boulevard,
Baltimore, MD 21244-1850

4. By hand or courier. Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC--

Centers for Medicare & Medicaid Services,
Department of Health and Human Services,
Room 445-G, Hubert H. Humphrey Building,
200 Independence Avenue, SW.,
Washington, DC 20201

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD--

Centers for Medicare & Medicaid Services,
Department of Health and Human Services,
7500 Security Boulevard,
Baltimore, MD 21244-1850

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786-9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the

"SUPPLEMENTARY INFORMATION" section.

FOR FURTHER INFORMATION CONTACT:

LTC Regulations Team: Diane Corning, Sheila Blackstock or Lisa Parker at (410) 786-6633.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that website to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

I. Background

On October 4, 2016, we published in the **Federal Register** a final rule entitled “Reform of Requirements for Long-Term Care Facilities” (81 FR 68688) (2016 final rule). The **2016 final rule** amended 42 CFR 483.70(n) to **prohibit** long-term care (LTC) facilities from entering into **pre-dispute arbitration agreements** with any resident or his or

her representative **or requiring** that a resident sign an arbitration agreement **as a condition of admission** to the LTC facility. **Prior to the 2016 final rule**, the Requirements for Long-Term Care Facilities were **silent** on any arbitration requirements. However, the Centers for Medicare & Medicaid Services (CMS) did issue **sub-regulatory guidance that supported arbitration between residents and their facilities**. See *Fairness in Nursing Home Arbitration Act of 2008: Hearing on H.R. 6126 Before the Committee on the Judiciary*, 110th Cong.(2008) (letter from Department of Health and Human Services dated July 29, 2008 opposing the H.R. 6126 that would have made pre-dispute mandatory arbitration agreements between long-term care providers and residents unenforceable); and *Binding Arbitration in Nursing Homes*, Survey and Certification Letter dated January 9, 2003 (S&C-03-10).

The **2016 final rule also requires** that an agreement for **post-dispute** binding arbitration must be entered into by the resident **voluntarily**, that the parties must **agree on** the selection of a **neutral arbitrator**, and that the arbitral **venue must be convenient** to both parties. Under the 2016 final rule, an arbitration agreement could be signed by another individual only if allowed by the relevant state's law, all of the other requirements in this section are met, and that individual had no interest in the facility. In addition, the rule stated that a **resident's right to remain at the facility could not be contingent** upon the resident or his or her representative signing an arbitration agreement. The arbitration agreement also could not contain any language that prohibited or discouraged the resident or anyone else from communicating with federal, state, or local officials, including but not limited to, federal and state surveyors, other federal and state health department

employees, and representatives of the Office of the State Long-Term Care Ombudsman, in accordance with §483.10(k). In addition, when a LTC facility and a resident resolved a dispute through arbitration, a **copy of the signed agreement** for binding arbitration and the arbitrator's final decision was required to be **retained by the facility for 5 years** and be **available for inspection** upon request by the CMS or its designee.

We adopted the 2016 final rule after considering a wide range of comments from diverse array of individuals and organizations. For example, we noted that:

Many commenters argued that arbitration was beneficial for residents and their families as well as facilities. Disputes could be resolved more quickly and with less animosity and expense than litigation. Some commenters also argued that prohibiting these agreements would only benefit lawyers, result in protracted litigation, increased costs to the facilities, and increase the burden on an already overwhelmed court system. This would also result in resources for resident care being diverted for litigation. Other commenters argued that prohibiting arbitration could be detrimental to residents.

In response to these comments, we recognized unequivocally that “[t]here are both advantages and disadvantages associated with both pre-dispute arbitration agreements and arbitration itself.” We weighed those advantages and disadvantages when we reversed existing policy through the adoption of the 2016 final rule.

On **October 17, 2016, the American Health Care Association** and a group of affiliated nursing homes filed a complaint in the United States District Court for the Northern District of Mississippi **seeking a preliminary and permanent order enjoining agency enforcement** of the prohibition on pre-dispute arbitration agreements regulation (§483.70(n)(1)). On November 7, 2016, thirty-four days after the issuance of the regulation prohibiting pre-dispute arbitration agreements, the **district court preliminarily**

enjoined enforcement of that regulation. On December 9, 2016, we issued a nation-wide instruction to State Survey Agency Directors, directing them not to enforce the 2016 final rule's prohibition of pre-dispute arbitration provisions during the period that the court-ordered injunction remained in effect (S&C: 17-12-NH)

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-17-12.pdf>.

The district court held that the plaintiffs were likely to prevail in their challenge to the 2016 final rule. It concluded that it would likely hold that the rule's prohibition against LTC facilities entering into pre-dispute arbitration agreements was in conflict with the Federal Arbitration Act (FAA), 9 U.S.C. 1 *et seq.* The court also reasoned that it was unlikely that CMS could justify the rule, or could overcome the FAA's presumption in favor of arbitration, by relying on the agency's general statutory authority under the Medicare and Medicaid statutes to establish rights for residents (sections 1891(c)(1)(A)(xi) and 1919(c)(1)(A)(xi) of the Act) or to promulgate rules to protect the health, safety and well-being of residents in LTC facilities (sections 1819(d)(4)(B) and 1919(d)(4)(B) of the Act).

We have determined that further analysis is warranted before any rule takes effect. We believe that a policy change regarding pre-dispute arbitration will achieve a better balance between the advantages and disadvantages of pre-dispute arbitration for residents and their providers. Additionally, we have reviewed the "Requirements for Long-Term Care Facilities," consistent with the January 30, 2017 Executive Order "Reducing Regulation and Controlling Regulatory Costs (E.O. 13771). We believe that a

ban on pre-dispute arbitration agreements would likely impose unnecessary or excessive costs on providers. We invite comments on our revised approach.

II. Provisions of the Proposed Regulations

We are proposing to revise the provisions related to pre-dispute arbitration at §483.70(n). Specifically, we propose to remove the requirement at §483.70(n)(1) precluding facilities from entering into pre-dispute agreements for binding arbitration with any resident or resident's representative, which we do not believe strikes the best balance between the advantages and disadvantages of pre-dispute arbitration. For the same reason, we also propose removing the prohibition at §483.70(n)(2)(iii) banning facilities from requiring that residents sign arbitration agreements as a condition of admission to a facility. And, we propose removing the provisions at §483.70(n)(2)(ii) regarding the terms of arbitration agreements.

We would retain provisions that protect the interests of LTC residents in situations where a facility chooses to ask a resident or his or her representative to enter into an agreement for binding arbitration (whether pre-dispute or post-dispute). We propose to retain the requirements that the agreement be explained to the resident and his or her representative in a form and manner that he or she understands, including in a language that the resident and his or her representative understands; and the resident acknowledges that he or she understands the agreement. We also propose to retain the requirements that the agreement must not contain any language that prohibits or discourages the resident or anyone else from communicating with federal, state, or local officials, including but not limited to, federal and state surveyors, other federal or state

health department employees, and representatives of the Office of the State Long-Term Care Ombudsman, in accordance with §483.10(k).

Finally, we would retain the requirement that when the facility and a resident resolve a dispute through arbitration, a copy of the signed agreement for binding arbitration and the arbitrator's final decision must be retained by the facility for 5 years and be available for inspection upon request by CMS or its designee.

We propose to add a requirement that the facility must ensure that the agreement for binding arbitration is in plain language. If an agreement for binding arbitration is a condition of admission, it must be in plain writing in the admission contract. We also propose to require facilities to post a notice in plain language that describes its policy on the use of agreements for binding arbitration in an area that is visible to residents and visitors. We believe this revised approach is consistent with the elimination of unnecessary and excessive costs to providers while enabling residents to make informed choices about important aspects of his or her healthcare.

The provisions contained in this document are authorized by the Secretary of the Department of Health and Human Services (Secretary) general rulemaking authority under sections 1102 and 1871 of the Act. In those provisions, the Congress granted the Secretary broad authority to promulgate regulations as may be necessary to administer Medicare and Medicaid programs.

The agency has statutory authority to issue these rules under the authority granted by the Congress in the Nursing Home Reform Act, part of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87), Pub. L. No. 100-203, 101 Stat. 1330 (1987). That

statute amended sections 1819 and 1919 of the Act, authorizing the agency to promulgate regulations that are “adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.” (Sections 1819(f)(1) and 1919(f)(1) of the Act). In addition, the Social Security Act authorizes the Secretary to impose “such other requirements relating to the health and safety [and well-being] of residents as [he] may find necessary.” (Sections 1819(d)(4)(B) and 1919(d)(4)(B) of the Act). Under sections 1819(c)(1)(A)(xi) and 1919 (c)(1)(A)(xi) of the Act, the Secretary may also establish “other right[s]” for residents, in addition to those expressly set forth in the statutes and regulations, to “protect and promote the rights of each resident.” This proposed rule does not purport to regulate the enforceability of any arbitration agreement, and does not pose any conflict with the language of the FAA.

As noted, we have reconsidered whether a complete ban on pre-dispute arbitration agreements does, in fact, promote efficiency and fairness. Upon reconsideration, we believe that arbitration agreements are, in fact, advantageous to both providers and beneficiaries because they allow for the expeditious resolution of claims without the costs and expense of litigation. This conclusion is reinforced by comments we received in response to the July 16, 2015 proposed rule (80 FR 42168). In those comments, a number of commenters pointed out the advantages of arbitration for residents and facilities. Specifically, commenters noted that the amount of time and expense associated with arbitration is less than that for litigation in most cases. To view public comments received on the Reform of Requirements for Long-Term Care Facilities proposed rule (80 FR 42167), visit <http://www.regulations.gov>. Enter the Docket ID: “CMS-2015-

0083” in the search bar and follow the links provided. For additional assistance with viewing public comments, follow the search instructions on that website.

A number of commenters also noted that **disputes resolved through arbitration could be resolved more quickly than those that go through the litigation process.** Between the trial and appeals, it could take years for a case to go through the court system. For an elderly resident, this could mean no resolution in their lifetime. In addition, although there are costs associated with arbitration, litigation can also be costly for a resident.

We are also **concerned about the effect that judicial litigation could have on residents who continue to reside in the same facility.** Judicial actions are necessarily adversarial. Arbitrations may be less adversarial. Since arbitration is something that the parties have already agreed to, and since it has the potential to resolve a dispute faster and more efficiently than litigation, we believe it is **likely to place less strain on the relationship between the facility and the residents** (and their families).

Upon reconsideration and subsequent review of the comments we received from facilities responding to the July 2015 proposed rule, we also believe that the 2016 final rule **may have underestimated the financial burdens placed on providers** who are forced to litigate claims in court. **These commenters pointed out that arbitration is often less financially burdensome than a court case, and that facilities who must litigate claims in court must devote scarce resources to defending cases.**

We **acknowledge comments received in response to our earlier rulemaking expressing concern** about the use of arbitration agreements in LTC facilities. The commenters stated that, given their age and/or physical or mental condition, many

residents may be signing these agreements **without fully understanding their terms.**

Commenters also expressed concern that **confidentiality clauses may prohibit** the resident and others from **discussing any incidents with individuals outside the facility**, such as surveyors and representatives of the Office of the State Long-Term Care Ombudsman because these restrictions could create barriers for surveyors and other responsible parties to obtain information related to serious quality of care issues.

We believe that this proposed rule **would sufficiently address these concerns** because it **would strengthen the requirements necessary to ensure the transparency of arbitration agreements** in LTC facilities, and **would ensure that arbitration agreements did not contain language discouraging interested parties from communicating** with federal, state, or local officials.

Furthermore, in light of the protections for residents that we are proposing to include in this rulemaking, our reconsideration of the conclusions of the rule discussed above, and subsequent review of the public comments that we received on the July 16, 2015 proposed rule (80 FR 42168) expressing support of arbitration in LTC settings, **we now believe that an outright ban on pre-dispute arbitration agreements and the further restrictions on post-dispute arbitration agreements do not strike the best policy balance. An outright prohibition of arbitration agreements would significantly increase the cost of care, and would require facilities to divert scarce resources from the care of their residents to the defense of expensive litigation.**

In short, upon reconsideration, **we believe that a ban on pre-dispute arbitration agreements is not the appropriate policy for all residents. Residents or their**

representatives should be able to make the decision to sign a pre-dispute arbitration agreement as long as there is transparency in the arbitration process. Furthermore, we believe this proposed rule is consistent with the FAA. Therefore, we are proposing to modify the 2016 final rule.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Omnibus Budget Reconciliation Act of 1987 Waiver

Ordinarily, we are required to estimate the public reporting burden for information collection requirements for this regulation in accordance with chapter 35 of title 44, United States Code. However, sections 4204(b) and 4214(d) of the Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-204 (OBRA '87) provide for a

waiver of Paperwork Reduction Act (PRA) requirements for this regulation. Thus, we have not provided an estimate for any paperwork burden related to these proposed revisions and additions.

If you comment on this information collection, that is, reporting, recordkeeping or third-party disclosure requirements, please submit your comments electronically as specified in the “**ADDRESSES**” section of this proposed rule.

Comments must be received on/by [Insert date 60 days after date of publication in the Federal Register].

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

A. Statement of Need

The **district court’s decision** in granting the preliminary injunction against enforcement of the prohibition on pre-dispute arbitration agreements **indicated that CMS would at a minimum face some substantial legal hurdles from pursuing the arbitration policy** set forth in the 2016 final rule. We have reviewed the provisions and determined that the arbitration requirements should be revised. **We believe that the protections for residents that we are proposing in this rulemaking strike a better balance of competing**

policy concerns. The revisions to these requirements in this proposed rule will increase transparency in LTC facilities that chose to use arbitration.

B. Overall Impact

Posting a Notice Regarding the Facility's Use of Arbitration Agreements

We are **proposing that LTC facilities post a notice regarding the use of arbitration agreements in an area that is visible to residents and visitors.** This would require the facility to develop a notice and post it in a conspicuous area. We believe that notices concerning facility practices are periodically developed, reviewed, and updated as a standard business practice. **We also believe that facilities that are already using arbitration agreements post some type of notice.** Thus, there is no burden associated with the posting of this notice.

C. Summary of Impacts

As discussed above, we believe that developing and posting a notice regarding a facility's practices is standard business practice. Thus, we have not estimated a cost for those activities.

D. Cost to the Federal Government

In the 2016 final rule (81 FR 68688 and 68844), we anticipated that the initial federal start-up costs for the entire rule would be between \$10 and \$15 million. Once the rule was implemented, improved surveys to review the new requirements would require an estimated \$15 to \$20 million annually in federal costs. Any costs to federal government regarding arbitration requirements were accounted for in the estimates set

forth in the 2016 final rule. We do not believe that these revisions would impose any additional costs.

E. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that seventy-five percent (75%) of the affected entities will proactively review this proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this rule. It is possible that not all of those affected entities will read this proposed rule, or that there may be more than one individual reviewing the rule for some of the affected entities. For these reasons we thought that 75 percent of affected entities would be a fair estimate of the number of reviewers of this rule. We welcome any comments on the approach in estimating the number of entities which will review this proposed rule. We also recognize that different types of entities are in many cases affected by mutually exclusive sections of some proposed rules, or that some entities may not find it necessary to fully read each rule, and therefore for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule. We seek comments on this assumption.

Using the wage information from the Bureau of Labor Statistics (BLS) for medical and health service managers (Code 11-9111), we estimate that the cost of reviewing this rule is \$90.16 per hour, including overhead and fringe benefits https://www.bls.gov/oes/2015/may/naics4_621100.htm. Assuming an average reading

speed, we estimate that it would take 0.14 hours for the staff to review half of this proposed rule. We previously estimated that there were 15,653 LTC facilities (81 FR 68832). For each facility that reviews the rule, the estimated cost is \$12.62 (0.14 hours x \$90.16). Therefore, we estimate that the total cost of reviewing this regulation is \$148,155 ($\$12.62 \times 15,653 \times 0.75$).

F. Benefits of the Rule

The proposed revisions in this rule will maintain the requirements in the 2016 final rule that provide for transparency in the arbitration process for LTC residents. Specifically, we are proposing to maintain that the agreement must be explained to the resident or his or her representative in a form and manner they understand and that the resident acknowledges that he or she understands the agreement. We are also proposing to retain the requirement that the agreement must not contain any language that prohibits or discourages the resident or anyone else from communicating with federal, state, or local officials. This proposed rule will also increase transparency by adding a requirement that a facility must post a notice regarding its use of agreements for binding arbitration in an area that is visible to residents and visitors. With this increased transparency, we believe that many stakeholder concerns regarding the fairness of arbitration in LTC facilities will be addressed. We believe this proposal is consistent with our approach to eliminating unnecessary burden on providers, and supports the resident's right to make informed choices about important aspects of his or her healthcare.

G. Alternatives Considered

As discussed above, the district court granted a preliminary injunction against enforcement of the prohibition against pre-dispute agreement for arbitration. The district court's opinion clearly indicated that the court questioned CMS' authority to regulate arbitration. We considered proposing to remove all of the arbitration requirements and return to the position in the previous requirements, that is, the requirements would be silent on arbitration. However, we believe that transparency between LTC facilities and their residents in the arbitration process is essential, and that CMS may properly exercise its statutory authority to promote the health and safety of LTC residents by requiring appropriate measures to ensure that LTC residents receive adequate disclosures of their facility's arbitration policies. Removing all of the provisions related to arbitration would reduce transparency. Therefore, we have proposed retaining those requirements that provide for transparency and adding that the facility must post a notice regarding its use of arbitration in an area that is visible to residents and visitors. We believe the requirements we are proposing to retain, as well as the proposed revisions, will provide sufficient transparency to protect residents and alleviate many of the residents and advocates concerns about the arbitration process.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget. This proposed rule is not expected to lead to an action subject to Executive Order 13771 (82 FR 9339, February 3, 2017) because our estimates indicate that its finalization would impose no more than de minimis costs.

List of Subject in 42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102, 1128I, 1819, 1871 and 1919 of the Social Security Act (42 U.S.C. 1302, 1320a-7, 1395i, 1395hh and 1396r).

2. Section 483.70 is amended by revising paragraph (n) to read as follows:

§483.70 Administration.

* * * * *

(n) Binding arbitration agreements. If a facility chooses to ask a resident or his or her representative to enter into an agreement for binding arbitration, the facility must comply with all of the requirements in this section.

- (1) The facility must ensure that:

- (i) The agreement for binding arbitration is in plain language. If an agreement for binding arbitration is a condition of admission, it must be included in plain language in the admission contract;

- (ii) The agreement is explained to the resident and his or her representative in a form and manner that he or she understands, including in a language the resident and his or her representative understands; and

- (iii) The resident acknowledges that he or she understands the agreement.

- (2) The agreement must not contain any language that prohibits or discourages the

resident or anyone else from communicating with federal, state, or local officials, including but not limited to, federal and state surveyors, other federal or state health department employees, and representatives of the Office of the State Long-Term Care Ombudsman, in accordance with §483.10(k).

(3) When the facility and a resident resolve a dispute through arbitration, a copy of the signed agreement for binding arbitration and the arbitrator's final decision must be retained by the facility for 5 years and be available for inspection upon request by CMS or its designee.

(4) A notice regarding the use of agreements for binding arbitration must be posted in an area that is visible to residents and visitors.

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CMS-3342-P

Dated: May 2, 2017

Seema Verma,
Administrator,
Centers for Medicare & Medicaid Services.

Dated: May 4, 2017

Thomas E. Price,
Secretary,
Department of Health and Human Services.

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