



## **FACT SHEET**

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### **CMS Issues Proposed Revision Requirements for Long-Term Care Facilities' Arbitration Agreements**

The Centers for Medicare & Medicaid Services (CMS) issued proposed revisions to arbitration agreement requirements for long-term care facilities. These proposed revisions would help strengthen transparency in the arbitration process, reduce unnecessary provider burden and support residents' rights to make informed decisions about important aspects of their health care.

#### **Background**

The Reform of Requirements for Long-Term Care Facilities Final Rule published on October 4, 2016 listed the requirements facilities need to follow if they choose to ask residents to sign agreements for binding arbitration. The final rule also prohibited pre-dispute agreements for binding arbitration. The American Health Care Association and a group of nursing homes sued for preliminary and permanent injunction to stop CMS from enforcing that requirement. The court granted a preliminary injunction on November 7, 2016. After that decision, CMS reviewed and reconsidered the arbitration requirements in the 2016 Final Rule.

#### **Proposed Revisions to Arbitration Requirements**

This proposed rule focuses on the transparency surrounding the arbitration process and includes the following proposals:

- The prohibition on pre-dispute binding arbitration agreements is removed.
- All agreements for binding arbitration must be in plain language.
- If signing the agreement for binding arbitration is a condition of admission into the facility, the language of the agreement must be in plain writing and in the admissions contract.

- The agreement must be explained to the resident and his or her representative in a form and manner they understand, including that it must be in a language they understand.
- The resident must acknowledge that he or she understands the agreement.
- 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 federal and state surveyors, other federal or state health department employees, or representatives of the State Long-Term Care Ombudsman.
- If a facility resolves a dispute with a resident through arbitration, it must retain a copy of the signed agreement for binding arbitration and the arbitrator's final decision so it can be inspected by CMS or its designee.
- The facility must post a notice regarding its use of binding arbitration in an area that is visible to both residents and visitors.

For more information, the proposed regulation can be found here: <https://s3.amazonaws.com/public-inspection.federalregister.gov/2017-11883.pdf>

This proposed rule is scheduled to be published in the *Federal Register* on June 8, 2017 and comments are due by August 7, 2017.

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