

TYPES NOT MAPPED YET August 09, 2019 | TTR not mapped yet | Nicole K. Jobe, Sarah E. Larson

CMS issues final rule on pre-dispute arbitration agreements with long-term care facilities

On July 18, 2019, CMS [published a rule](#) that finalized certain requirements for long-term care (“LTC”) facilities using pre-dispute arbitration agreements with residents. The final rule is scheduled to go into effect on September 16, 2019.

Recent history on LTC arbitration agreements

As explained below, CMS’s position on arbitration agreements between LTC facilities and residents has evolved over the past few years.

- In October of 2016, CMS published a final rule that completely prohibited LTC pre-dispute binding arbitration agreements.
- Then, in December of 2016, after the U.S. District Court for the Northern District of Mississippi enjoined enforcement of this prohibition, CMS issued a nationwide instruction to State Survey Agency Directors that directed them not to enforce the 2016 final rule.
- Thereafter, in June of 2017, CMS issued a proposed rule to remove the prohibition on binding pre-dispute arbitration agreements.

Requirements for LTC arbitration agreements

The final rule contains the following specific requirements for LTC arbitration agreements:

- The agreement must state that neither the resident nor his or her representative is required to sign the agreement as a condition of admission to the LTC facility or to continue to receive care.
- The agreement must be explained to the resident (or his or her representative) in a form and manner that he or she understands.
- The agreement must provide for the selection of a neutral arbitrator agreed upon by both parties and a venue that is convenient to both parties.
- The agreement cannot contain any language that prohibits or discourages the resident or anyone else from communicating with federal, state or local officials.
- The agreement must explicitly grant the resident (or his or her representative) the right to rescind the agreement within 30 days of signing.
- The resident (or his or her representative) must acknowledge that he or she understands the agreement.

Next steps for LTC facilities

If an LTC facility chooses to use arbitration agreements with its residents, we recommend the following steps:



- Ensure that the language used in the arbitration agreement meets the requirements listed above. Because the final rule contains requirements that were not included in the proposed rule, the language of any currently-existing arbitration agreements will likely need to be changed.
- Train admissions staff on the new rules.
- Ensure the admission process aligns with the new rules.

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