

## Insights

### **CMS Issues Final Rule Easing Restrictions On Arbitration Agreements In Long Term Care Setting**

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August 26, 2019

By: Marc T. Quigley and

The Centers for Medicare & Medicaid Services (CMS) published a Final Rule on July 18, 2019 that repealed a prior rule prohibiting Long-Term Care (LTC) facilities from using pre-dispute, binding arbitration agreements. LTC facilities that choose to utilize arbitration agreements must adhere to certain requirements, including:

- The facility must not require any resident or representative to sign an agreement for binding arbitration as a condition of admission to a facility or as a requirement to continue to receive care at a facility;
- The facility must inform any resident or representative of the right to not sign a binding arbitration agreement.
- The facility must explain the agreement in a manner that the resident and representative will understand;
- The resident or representative must acknowledge an understanding of the agreement;
- The agreement must include the option of a neutral arbitrator agreed upon by both parties;
- The agreement must provide for a venue selection convenient to both parties.
- The agreement must include the right for a resident or representative to rescind the agreement within 30 calendar days of signing it;
- The agreement must not prohibit or discourage the resident from communicating with federal, state, or local officials, including representatives of the Office of the State Long-Term Care Ombudsman; and
- The agreement must be retained by the facility for 5 years when there is a dispute between the facility and a resident, along with the arbitrator's final decision.

In publishing the Final Rule, CMS expressed its objective of strengthening the transparency of arbitration agreements and the arbitration process between LTC facilities and residents. Further, CMS has sought to better inform residents about their legal rights within LTC facilities, while addressing the need for LTC facilities to be efficient and cost-effective. The regulations that promulgate the Final Rule will be effective September 16, 2019.

If you or your organization has questions regarding the Final Rule, binding arbitration agreements, or general long-term care related questions, please contact Marc T. Quigley, Alexandria M. Foster, or any other Krieg DeVault attorney in the Health Care or Litigation Practice Groups.