

CMS Issues Final Rule-09/28/16: Skilled Nursing Facilities Pre-Dispute Arbitration Agreements and More

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On September 28, 2016, the Centers for Medicare and Medicaid Services (CMS) released a final rule that revises the conditions of participation for Skilled Nursing Facilities (SNF). The new regulations by CMS will be phased in over a three (3) year time period.

The CMS final rule includes new definitions, revised regulations and new regulations addressing such matters as, resident right protections, physician-nursing services, staff and employee competency requirements, discharge planning, person-centered care plans issued within 48 hours of admission, nourishing and palatable dietary options and QAPI programs.

Additionally, under the new CMS Final Rule, SNF providers are **prohibited** from entering into pre-dispute arbitrations agreements. Accordingly, a SNF may not enter into an arbitration agreement with a resident at the time of admission nor make the entering into an arbitration agreement a condition of admission or continued stay at a facility. This prohibition becomes effective on November 28, 2016. However, it is

crucial to note, that after a dispute arises the resident and the SNF may voluntarily enter into a binding arbitration agreement if both parties agree. The final rule does not affect or render unenforceable existing arbitration agreements that were entered into by a SNF and a resident before the implementation of the new CMS regulations.

For more information about the new CMS Final Rule regulations, please contact Patrick Formato, Esq. or any Abrams Fensterman Healthcare attorney at (516) 328-2300.

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