



CMS to Ban Forced Arbitration Clauses in Long Term Care Facility-Resident Contracts

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This is the most significant change to the Federal Centers for Medicare and Medicaid (CMS) rules governing federal funding of long-term care facilities in 20 years. The move will help prevent facilities from blocking various claims due to arbitration clauses.

Parker Waichman LLP, a national law firm long dedicated to protecting the rights of victims of nursing home abuse and neglect, is commenting on a cases initially blocked from court and a new rule that will affect nursing homes and some 1.5 million residents. The new protection is meant to prevent this type of situation, according to a September 28, 2016 The New York Times report.

CMS, an agency that is part of the Health and Human Services (HHS) Department, issued a rule to ban nursing homes that receive federal funding from mandating residents to resolve disputes in arbitration, bypassing court. Nursing home admissions contract clauses have kept issues about quality and safety away from public view. The system enabled a lowering of legal costs in the nursing home industry and hindered residents? families from receiving justice, according to The New York Times. ?The sad reality is that today too many Americans must choose between forfeiting their legal rights and getting adequate medical care,?

Senator Patrick Leahy, a Democrat of Vermont, said in a statement.

The new rule followed a move by officials in 16 states and the District of Columbia who prompted the government to cease nursing home funding that uses the clauses. The group argued that arbitration was not allowing information on cases of abuse, neglect, and harassment to be available to prospective residents and their families, The New York Times noted. Arbitrations are confidential, and no federal database exists that records arbitration outcomes. Meanwhile, The New York Times, as part of a year long investigation, reviewed more than 25,000 arbitration records from 2010 through and 2014 and interviewed hundreds of lawyers, arbitrators, plaintiffs, and judges in 35 states and "found many troubling examples" in which "issues of abuse and potential neglect" were never made public "because they were blocked from court."

"Nursing home abuse is one of the most devastating horrors taking place in the elder community and impacting our older, vulnerable loved ones, who are often unable to defend themselves," said Keith Gitman, Managing Attorney at Parker Waichman.

"This monumental success on behalf of nursing home residents' rights was also achieved with the help of New York's United States Senators and our Attorney General, who signed letters urging CMS to establish this important new requirement," said Edward H. Gersowitz: President, New York State Trial Lawyers Association (NYSTLA).

According to NYSTLA, the move does not allow a facility to enter into a pre-dispute agreement for binding arbitration with a resident or resident's representative and must not mandate that a resident sign an arbitration agreement as a condition of admission to the facility. Should a dispute arise and if a facility asks a resident or his/her representative to enter into a binding arbitration agreement the facility must comply with the requirements in the new rule. The agreement must be explained to the resident and resident representative "in a form and manner that he or she understands, including in a language the resident and their representative understands: and that the resident "acknowledges that he or she understands the agreement.?" A resident's right to remain in the facility "must not be contingent upon the resident or the resident's representative signing a binding arbitration agreement," nor can the agreement contain language that "prohibits or discourages the resident or anyone else from communicating with federal, state, or local officials."

To determine whether your or a loved one may have a claim for alleged nursing home abuse, neglect, harassment, or other injury, please visit the Parker Waichman's website or call 1-800-LAW-INFO (1-800-529-4636).

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