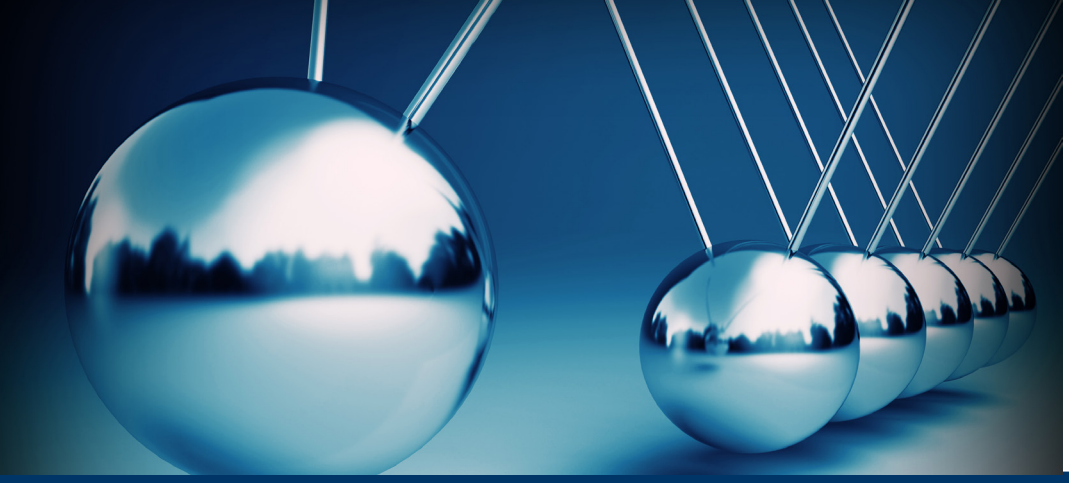

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LONG-TERM CARE GROUP NEWS

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NURSING HOME MEGA RULE FINALIZED: PRE-DISPUTE ARBITRATION AGREEMENTS NOT PERMITTED

By Heather O. Berchem and Dena M. Castricone

In the final rule overhauling skilled nursing facility federal regulations for the first time since 1991, CMS prohibits all arbitration agreements at the time of admission. According to CMS, such pre-dispute agreements are "fundamentally unfair" because "it is almost impossible for residents or their decision-makers to give fully informed and voluntary consent to arbitration before a dispute has arisen." Once a dispute arises, a facility and a resident may enter into a binding arbitration agreement so long as several requirements are met including voluntary participation by the resident/decision-maker and resident/decision-maker acknowledgment of understanding of the agreement after the facility fully explains it. For providers with existing pre-dispute arbitration agreements, those agreements will not be impacted by this final rule.

The arbitration portion of the final rule takes effect on November 28, 2016. The complete 712-page rule can be found here.

Should you have any questions regarding this or other areas of long-term care law, please contact:
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