

## **CMS ISSUES GUIDANCE SUSPENDING ENFORCEMENT OF RULE PROHIBITING USE OF PRE-DISPUTE BINDING ARBITRATION AGREEMENTS WHILE COURT ORDERED INJUNCTION REMAINS IN EFFECT**

This is another article in a series discussing the complete overhaul of Part 483 to Title 42 of the Code of Federal Regulations, the Requirements for States and Long-Term Care Facilities ("Final Regulations") by the Centers for Medicare & Medicaid Services ("CMS").

### **BACKGROUND**

On September 28, 2016, CMS released a complete overhaul of Part 483 to Title 42 of the Code of Federal Regulations, the Requirements for States and Long-Term Care Facilities. CMS's Final Regulations cover many regulatory requirements for long-term care facilities and create new compliance obligations for providers. The Final Regulations seek to target rehospitalizations, facility-acquired infections, overall quality and resident safety.

Recently, Hall Render published an [overview](#) of Final Regulations components as well as Parts 1, 2, 3 and 4 in the series, which are located [here](#), [here](#), [here](#) and [here](#).

### **BINDING ARBITRATION AGREEMENTS - SEC. 483.70**

The Final Regulations provide new requirements for facilities that use binding arbitration agreements in Sec. 483.70. The Final Regulations contain a provision requiring that a facility must not enter into a pre-dispute agreement for binding arbitration with any resident or resident's representative nor require that a resident sign an arbitration agreement as a condition of admission to the facility.

### **COURT ISSUED ORDER GRANTING AHCA A PRELIMINARY INJUNCTION AGAINST CMS**

On November 7, 2016, the U.S. District Court for the Northern District of Mississippi granted a preliminary injunction in favor of the American Health Care Association ("AHCA") in AHCA's case against CMS. AHCA's complaint asserted that the arbitration ban in Sec. 483.70 violates the Federal Arbitration Act and exceeded CMS's statutory authority under the Medicare and Medicaid Acts. The complaint further asserted that the ban will needlessly deprive both facilities and their residents of the benefits of arbitration. The U.S. District Court for the Northern District of Mississippi held a hearing on December 3, 2016. Judge Michael P. Mills wrote the opinion and stated that it is likely that CMS will have presented insufficient justification for banning nursing home arbitration in this case. The Hall Render blog post about this decision is located [here](#).

### **CMS ISSUES GUIDANCE ON ENFORCEMENT OF RULE PROHIBITING**

On December 9, 2016, CMS released a [Survey and Certification Memo](#) ("S&C Memo") on enforcement of the rule prohibiting use of pre-dispute binding arbitration agreements. The S&C Memo states that CMS enforcement of Sec. 483.70(n)(1) is suspended until and unless the injunction is lifted. The S&C Memo also states that surveyors must not survey facilities for compliance with this new provision until further notified.

### **PRACTICAL TAKEAWAYS**

The enforcement of the rule prohibiting use of pre-dispute binding arbitration agreements is suspended until and unless the injunction is lifted. Further, surveyors must not survey facilities for compliance with this new provision.

If you have questions or would like additional information about this topic, please contact:

- [Todd Selby](#) at (317) 977-1440 or [tselby@hallrender.com](mailto:tselby@hallrender.com);
- [Brian Jent](#) at (317) 977-1402 or [bjent@hallrender.com](mailto:bjent@hallrender.com);
- [Sean Fahey](#) at (317) 977-1472 or [sfahey@hallrender.com](mailto:sfahey@hallrender.com); or
- Your regular Hall Render attorney.