



LONG TERM CARE & SENIOR LIVING BLOG

# CMS Final Rule – Section 483.70 Administration

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Perhaps the greatest attention of the CMS final rule changes has focused on the **arbitration provision** (§483.70(n)). Beginning November 28, 2016, all facilities enrolled in the Medicaid and Medicare program are prohibited from entering into pre-dispute arbitration agreements with any resident or resident's representative.

This provision creates a pre-condition to participation in the Medicare or Medicaid programs. Any existing arbitration agreements entered into before November 28, 2016 are excluded from the prohibition. In essence, each facility must stop using arbitration agreements as of the date of implementation, November 28, 2016, or risk being barred from CMS.

The final rule does not bar post-incident arbitration agreements if fully explained to the resident in understandable language. Further, the resident must acknowledge he or she understands the agreement and has entered into it voluntarily.

Of note, this provision of the final rule is currently being challenged, see *American Healthcare Association, et al. v. Sylvia Matthews Burwell*, N.D. Miss., No. 16-CV-233, filed 10/17/16.

We will continue to update you with any rulings challenging the arbitration agreement prohibition.

Please check often, as our blog will be updated frequently!