



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Aging and Long-Term Support Administration
PO Box 45600, Olympia, Washington 98504-5600

December 19, 2016

ALTSA NH #2016-042
S&C: 17-12-NH LONG-TERM CARE (LTC) REGULATION: ENFORCEMENT OF RULE PROHIBITING USE OF PRE-DISPUTE BINDING ARBITRATION AGREEMENTS IS SUSPENDED SO LONG AS COURT ORDERED INJUNCTION REMAINS IN EFFECT

Dear Nursing Facility/Home Administrator:

On September 28, 2016, the Federal Register posted the notice of the CMS final rule *Reform of Requirements for Long-Term Care Facilities*. The rule was published in the Federal Register on October 4, 2016, and became effective on November 28, 2016. The published final rule revises the requirements that LTC facilities must meet to participate in the Medicare and Medicaid programs.

One of the new requirements at 42 C.F.R. §483.70(n)(1) prohibits nursing homes receiving Medicare or Medicaid funds from entering into pre-dispute binding arbitration agreements with any resident or resident's representative nor require that a resident sign an arbitration agreement as a condition of admission to the nursing home.

On November 7, 2016, the United States District Court for the Northern District of Mississippi, Oxford Division (Civil Action No. 3:16-CV-00233), issued an order preliminarily enjoining CMS from enforcing section 483.70(n)(1). At this time, CMS will not enforce 483.70(n)(1) until and unless the injunction is lifted. As such, surveyors must not survey facilities for compliance with this new provision until further notified.

The final rule can be accessed via the Federal Register at:

<https://www.federalregister.gov/documents/2016/10/04/2016-23503/medicare-and-medicaid-programs-reform-of-requirements-for-long-term-care-facilities>

Additional information and the S&C memo are available on the CMS website at:

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-17-12.pdf>.

Thank you for your continued commitment to the health and safety of nursing home residents. If you have any questions, please contact your local RCS Field Manager.

Sincerely,

Candace Goehring, Director
Residential Care Services

"Transforming Lives"