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## **Alert: CMS Bans Pre-Dispute Arbitration Agreements in Nursing Homes**

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-- In a release prior to the release of the new, revised nursing home regulations, the Centers for Medicare and Medicaid Services issued this statement about their new rules regarding arbitration agreements in nursing homes:

"The rule makes important changes to strengthen the rights of residents and families in the event that a dispute arises with a facility. Historically, many facilities require residents to agree to binding arbitration clauses when they are admitted to these facilities. These clauses require the resident to settle any dispute that may arise using arbitration rather than the court system. **Effective (DATE), our final rule will prohibit the use of pre-dispute binding arbitration agreements. This means that facilities may not require residents to sign pre-dispute arbitration agreements as a condition of admission to that long-term care facility.**

**"Facilities and residents will still be able to use arbitration on a voluntary basis at the time a dispute arises. Even then, these agreements will need to be clearly explained to residents, including the understanding that these arbitration agreements are voluntary, and that these agreements should not prevent or discourage residents and families from talking to authorities about quality of care concerns."**

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CMS noted in their comments to the regulations:

**Binding Arbitration Agreements: We are requiring that facilities must not enter into an agreement for binding arbitration with a resident or their representative until after a dispute arises between the parties. Thus, we are prohibiting the use of pre-dispute binding arbitration agreements.**

<https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-23503.pdf>

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