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Ban on Nursing Home Arbitration Agreements Lifted, Raising New Concerns for Residents and Their Families

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On September 16, 2019, a new rule proposed by the Centers for Medicare & Medicaid Services (CMS) will go into effect, again allowing nursing homes to enter into pre-dispute arbitration agreements with residents. Such agreements allow residents and nursing homes to use arbitration agreements rather than court proceedings to settle a wide range of disputes relating to every aspect of a nursing home resident's life and care.

In 2017, CMS prohibited such agreements in nursing homes that accept Medicare and Medicaid, indicating that resolving disputes between the nursing home and the resident through private arbitration was detrimental to the health and safety of the residents. This prohibition was challenged by the nursing home industry, and an injunction was issued by the District Court, effectively prohibiting the rule from going into effect.

The new rule will allow nursing homes to enter into such agreements but prohibits the requirement of such agreements as a condition for admission. In addition, the new rule provides residents with a 30-day period within which they can rescind the agreement.

Patient advocacy groups believe that asking a resident to sign a pre-dispute arbitration agreement is unfair because of the traumatic and time sensitive circumstances under which many, if not most, residents enter nursing homes. This too often results in the resident or his or her representative signing the agreement without a complete understanding of the implications.

If you have any questions or require additional information, please contact any member of Schenck, Price, Smith & King's Elder and Special Needs Law Practice Group: Shirley B. Whitenack, Crystal West Edwards, Regina M. Spielberg, Gary Mazart, Meredith L. Grocott, Lauren I. Mechaly and Jordan M. Wassel.

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