

Fifth Circuit Judge Blocks Rule That Would Ban Arbitration in Nursing Home Disputes

Article By:

Ameesha Lakhani

A federal district court recently issued a preliminary injunction barring enforcement of a rule prohibiting the use of pre-dispute arbitration agreements with patients in long-term care facilities that participate in **Medicare** and **Medicaid** programs.

The new rule, promulgated by the **Centers for Medicare and Medicaid Services (CMS)**, would have taken effect on November 28, 2016. It would have prohibited (1) entering into pre-dispute arbitration agreements and, (2) requiring the signing of an arbitration agreement as a condition of admission. The injunction was granted by U.S. District Court Judge Michael P. Mills, who sits in the Northern District of Mississippi, at the request of members of the nursing home industry to stop the rule from taking effect while it is being challenged in court. In their lawsuit, the American Health Care Association and four other state and local health care groups are claiming that CMS and the Department of Health and Human Services are overstepping their authority in issuing the rule. Specifically, the plaintiffs contend that Congress has repeatedly rejected legislation to invalidate arbitration agreements, and further argue that the rule isn't necessary to protect the health and safety of nursing home residents.

In entering his order, Judge Mills did concede that the CMS rule does appear to be based on "sound public policy." As some residents of nursing homes suffering from ailments such as dementia and the like might not have the capacity to grasp what an arbitration agreement entails, in addition to the fact that there is stress upon nursing home residents and their families that is inherent to the admissions process, it can be argued that arbitration and the nursing home admissions process do not belong together.

However, in granting the injunction, Judge Mills stated that, as sympathetic as the court may be to the public policy considerations that motivated the rule, it is not willing to allow the federal agency to overstep its executive authority and "engage in a rather unprecedented exercise of agency power. The court is unwilling to play a role in countenancing the incremental 'creep' of federal agency authority beyond that envisioned by the U.S. Constitution."

The nursing home industry has said that arbitration offers a less costly alternative to court. Facilitating more lawsuits, the industry has said, could drive up costs, forcing some nursing homes to close. Lawyers representing residents, however, state that people being admitted to nursing homes are

often at the most stressful juncture of their lives, and are not equipped or capable of understanding what it is they are being asked to sign. Regardless of whether one believes striking down the rule would help the nursing home industry reduce its legal costs, or that the rule assists the families of nursing home residents in getting justice, it is clear that the court's grant of the injunction as well as the impending decision in the underlying case will have an impact upon the future of the nursing home industry.

© 2024 Heyl, Royster, Voelker & Allen, P.C

National Law Review, Volumess VI, Number 362

Source URL:<https://natlawreview.com/article/fifth-circuit-judge-blocks-rule-would-ban-arbitration-nursing-home-disputes>