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Client Alert

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Federal Court in Arkansas Rules Arbitration Agreement No Consideration for Medicaid Regulations

Medicaid law prohibits nursing homes from requiring "any gift, money, donation, or other consideration" as a precondition of admission to that facility.[1] On May 10, 2011, the United States District Court for the Western District of Arkansas determined that an arbitration agreement as a precondition of admission does not constitute "other consideration" under the Medicaid laws and regulations.

In *Northport Health Servs. Of Ark., LLC v. O'Brien*, No. 2:10-CV-02013 (W.D. Ark. May 10, 2011), the attorney-in-fact of a deceased resident of a nursing home sued the facility in Arkansas state court for a variety of tort claims, including medical malpractice and wrongful death, and also claimed a violation of Arkansas' Long Term Care Resident's Rights Statute. The facility, citing an arbitration agreement and waiver of jury trial signed by the resident, filed a separate motion in federal court to compel arbitration and to enjoin the state court proceedings.

While the District Court noted that several types of challenges to the validity of the arbitration agreement were available, such as estoppel, waiver or unconscionability, the resident's attorney only raised one argument—that the arbitration agreement constituted "additional consideration" and was therefore illegal under the Medicaid provision barring "other consideration" as a precondition to admission.

The District Court rejected this contention. Although it noted that the Centers for Medicare & Medicaid Services (CMS) and the Arkansas Department of Human Services (ADHS) "skillfully skirt the issue of whether a requirement of signing an arbitration agreement as a precondition to admission may be violative of Medicaid regulations," the Court determined that permitting these types of arbitration agreements did not violate prior guidance issued by CMS and ADHS. The Court also noted that most courts that considered the issue found that these types of arbitration agreements did not constitute "additional consideration" under the Medicaid laws. Moreover, the Court concluded that arbitration agreements are not "other consideration" under principles of statutory construction, noting they did not fall in the same class of items as other types of enumerated consideration, i.e., gifts, money and donations.

1 42 U.S.C. § 1396r(c)(5)(A)(iii); 42 C.F.R. § 483.12(d)(3)

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Finally, the Court upheld the appropriateness of arbitration agreements by long-term care facilities. Although the Court acknowledged that one party may have more to gain from the enforcement of the arbitration agreement, "neither side is deprived of an opportunity to adequately air their grievances before an impartial decision-maker." To hold arbitration agreements invalid "would serve only to perpetuate the historical prejudice against arbitration agreements that Congress sought to eradicate through enactment of the [Federal Arbitration Act] over eighty years ago."

This decision further confirms the validity of arbitration agreements related to claims arising from care rendered in nursing homes. While the Plaintiff's Bar will continue to fight the enforcement of arbitration agreements, the argument that they constitute unlawful consideration pursuant to Medicaid regulations does not appear to be viable. We encourage all nursing home operators to ensure that their arbitration agreements are compliant with state and federal law as they will be scrutinized by courts during enforcement proceedings.