Arbitration Rule Change Raises Risks for Nursing Homes


Harry Nelson was quoted in an article by the Wall Street Journal titled "Arbitration Rule Change Raises Risks for Nursing Homes".

A rule change enacted by the U.S. Department of Health and Human Services will prevent nursing homes and long-term care facilities from forcing arbitration upon patients when there are disputes. That means these elder care businesses should expect to spend more on compliance and would be wise to provide additional training to employees, said one expert.

Giving patients and family members the right to sue nursing homes and not have to go through arbitration—the favored approach of facility operators to settle claims–will put operators on the hook for higher compliance costs, settlement fees, trial costs and attorney's bills, said Harry Nelson, managing partner at law firm Nelson Hardiman.

"In general, nursing homes will have to find a different approach to using arbitration agreements with residents," he said. While some states such as California already had significant limitations on the arbitration agreement process, the new rule "makes this national for states that didn't previously have any controls over arbitration agreements."

That said, elder care facility operators will still try to find a way to use some aspects of arbitration, as the process saves them money and often keeps them out of the media spotlight, where stories of horrible treatment can lead to serious reputational damage. The change also will prompt operators to spend more time on improving compliance procedures and controls related to patients escaping from facilities, a problem Mr. Nelson said has become more of a concern the past few years.

FULL ARTICLE

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