August 7, 2017

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Ave. S.W.
Washington, D.C. 20201

Re: Medicare and Medicaid Programs; Revision of Requirements for Long-Term Care Facilities: Arbitration Agreements
CMS-3342-P
RIN 0938-AT18

Sent electronically to http://www.regulations.gov

Dear Administrator Verma:

On behalf of the Center for Advocacy for the Rights and Interests of the Elderly (CARIE), thank you for the opportunity to provide comments regarding the above referenced proposed regulatory revision concerning nursing facilities and consumer arbitration agreements. Founded in 1977, CARIE, is a non-profit advocacy organization working to improve the well-being, rights and autonomy of older adults. CARIE routinely helps older adults and their caregivers understand and resolve problems related to Medicare, Medicaid, and long-term services and supports. In addition, CARIE currently serves as a local ombudsman in Philadelphia and through this capacity serves residents in nursing facilities. Through our work, we are acutely aware of the needs, issues and problems that nursing facility residents and their families encounter.

We are writing to express our opposition to the proposed regulatory revision and urge the Centers for Medicare & Medicaid Services (CMS) to withdraw it. The existing regulation, which was finalized in October 2016, allows for the use of a binding arbitration agreement by a nursing home only if the agreement is signed after the date of the incident in dispute. The proposed changes to this regulation however would allow for nursing homes to require a resident to sign a pre-dispute binding arbitration agreement as a condition of admission. This change is not fair for residents and their families and will diminish residents’ rights, safety, and quality of care. The interests of nursing facilities should not be at the expense of residents.
It is typically stressful and overwhelming when an individual needs to access nursing home care. Both consumers and family members are in a vulnerable position and often sign paperwork without understanding what they are signing, and when they do, they often believe they have no other recourse for admission. By signing, a consumer or their family may not realize they are agreeing to pay the costs of arbitration which can be very expensive, that the nursing facility will more than likely be selecting the arbitrator, that since there are limitations to discovery needed answers to egregious circumstances may never be known, and that they will lose appeal rights offered by the courts.

Since court proceedings are public and arbitration is essentially secret with the results only to the parties involved, resolving disputes in the courts, benefits other residents and the public at large as it is more likely systemic improvements would be made.

In conclusion, CARIE strongly urges CMS to withdraw the changes to the proposed regulatory revision as the change would cause harmful situations for nursing home residents and the consumers seeking nursing home care.

Sincerely,

Diane A. Menio
Executive Director