

## **Recent Blows to the Use of Forced Arbitration Agreements by Florida Nursing Homes**

The Florida Supreme Court and the Centers for Medicaid and Medicare Services (“CMS”) recently dealt two blows to the use of arbitration agreements by nursing homes for any disputes they may have with their residents in Florida as well as nationwide. On September 22, 2016, the Florida Supreme Court ruled in the case of *Mendez v. Hampton Court Nursing Center, LLC* that a former nursing home resident’s estate was not bound by a forced arbitration clause in an agreement which was signed by the former nursing home resident’s son when his father was first admitted to the nursing home. In *Mendez*, the Florida Supreme Court determined the estate could not be bound by such an agreement when the nursing home attempted to enforce the agreement and force the estate’s negligence claim based upon an eye infection that eventually resulted in the loss of the former nursing home resident’s eye into arbitration after it was originally filed in Florida state court. In making its ruling, the Florida Supreme Court noted that the former nursing home resident had neither agreed to nor signed the arbitration agreement himself. The court specifically noted that Florida law does not permit enforcement of a contract which is signed under duress or a threat, and therefore should not permit enforcement of a contract which the former nursing home resident did not even sign on his own behalf. The court also rejected the nursing home’s argument that the arbitration agreement should be enforced under the third party beneficiary doctrine, because the father on whose behalf the son had sued them, did not benefit from the agreement in question the nursing home sought to enforce against him.

The decision clarified a split that had emerged between Florida’s District Courts of Appeal, with the First and Third Districts having held that a nursing home resident was bound by an arbitration agreement regardless of whether the resident had signed the contract or whether the party that signed the contract had the resident’s authority to act on his or her behalf. The Second, Fourth and Fifth District Courts of Appeal had held to the contrary. This decision also came shortly before CMS, an agency within the U.S. Department of Health and Human Services, issued rules prohibiting nursing homes from including forced arbitration agreements on September 28, 2016. In promulgating the rule, CMS noted the increasing frequency with which nursing homes were utilizing such forced arbitration clauses in the admissions agreements nursing home residents or their representatives are required to sign upon admission and expressed concerns about the ability of nursing home residents and their families to obtain meaningful relief through arbitration. This rule will go into effect on November 28, 2016.

Taken in conjunction, these two developments will certainly change the way claims against nursing homes in Florida are adjudicated in the future.