



April 21, 2025



RE: [REDACTED] v. [REDACTED]
ACTION NO.: 25-BOR-1586

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Office of the Inspector General and DEPARTMENT OF HUMAN SERVICES. These same laws and regulations are used in all cases to ensure that all persons are treated alike.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson, MLS
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: [REDACTED] – Facility Administrator

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

[REDACTED],

Resident,

v.

Action Number: 25-BOR-1586

[REDACTED],

Facility.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for [REDACTED]. This hearing was held in accordance with the provisions found in Chapter 700 of the Office of Inspector General Common Chapters Manual. This fair hearing was convened on April 2, 2025.

The matter before the Hearing Officer arises from the Facility's February 14, 2025 decision to discharge the Resident.

At the hearing, the Facility was represented by [REDACTED], [REDACTED] Administrator. Appearing as a witness on behalf of the Facility was [REDACTED], Regional Risk Nurse. The Resident appeared by [REDACTED]. Appearing as a witness for the Resident was [REDACTED]. All representatives and witnesses were placed under oath. Each party had the opportunity to submit exhibits.

Facility's Exhibits:

NONE

Resident's Exhibits:

NONE

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Resident resided at [REDACTED] (hereafter, the Facility).

- 2) The Resident has dementia.
- 3) On February 14, 2025, the Facility issued a notice advising that the Resident would be discharged “by March 14, 2025,” because “your medical needs surpass our facility’s capacity. Despite adjusting your care plan, we can’t provide the appropriate care for your specific medical need.”
- 4) The notice was addressed to the Resident.
- 5) The notice did not reflect the address of the recipients.
- 6) The notice did not identify the proposed discharge location.
- 7) The notice did not provide contact information for the Board of Review.
- 8) The notice did not provide the regulations on which the Facility’s decision was based.
- 9) The Resident’s representative did not receive thirty-days advanced notice of the Resident’s proposed discharge.
- 10) The Resident has made attempts to elope from the Facility.
- 11) [REDACTED], the Facility’s sister long-term care facility, has a memory care unit.
- 12) [REDACTED] was willing to accept the Resident as a patient when the discharge decision was made.

APPLICABLE POLICY

Code of Federal Regulations 42 CFR § 483.15(c)(1)(i)(A) (February 2025) *Transfer and Discharge — Facility Requirements* provides that the facility must permit each Resident to remain in the facility and not transfer or discharge the Resident from the facility unless the transfer or discharge is necessary for the resident’s welfare and the resident’s needs cannot be met in the facility.

Code of Federal Regulations 42 CFR §§ 483.15(c)(2) (February 2025) *Transfer and Discharge — Documentation* provide in relevant sections that when the transfer or discharge of a resident is necessary because the resident’s needs cannot be met in the facility, the facility must ensure that the transfer or discharge is documented in the resident’s medical record. Documentation in the resident’s medical record must include:

The basis for the transfer per paragraph (c)(1)(i) of this section, the specific resident needs that cannot be met, the facility’s attempts to meet the resident’s needs, and the service available at the

receiving facility to meet the needs. The documentation must be made by the resident's physician when transfer or discharge is necessary under paragraph (c)(1)(A).

Code of Federal Regulations 42 CFR § 483.15(c)(7) (February 2025) *Orientation for transfer or discharge* provides that a facility must provide and document sufficient preparation and orientation to the resident to ensure safe and orderly discharge from the facility. This orientation must be provided in a form and manner that the resident can understand.

Code of Federal Regulations 42 CFR § 483.21(c)(1)(v) and (February 2025) *Discharge planning — Discharge planning process* provides that the facility must develop and implement an effective discharge planning process that involves the interdisciplinary team in the ongoing process of developing the discharge plan.

West Virginia Code of State Rules (W. Va. Code R.) 64 CSR 13 § 4.13(c)(1) – § 4(13)(d)(3) (July 2021) provides that when a nursing home discharges a resident, the resident's clinical record shall contain the reason for the transfer or discharge. The documentation shall be made by the resident's physician when discharge is necessary under the provisions of this rule.

Before a nursing home transfers or discharges a resident, it shall provide written notice to the resident of the discharge. The notice shall include the reason for the proposed discharge and the location to which the resident is being discharged.

Code of Federal Regulations 42 CFR § 483.15(c)(3)(i) and (iii) (February 2025) *Transfer and Discharge — Notice before transfer* provide that before a facility transfers or discharges a resident, the facility must notify the resident and the resident's representative(s) of the transfer or discharge and the reasons for the move in writing and in a language an manner they understand. The notice must include the items described in paragraph (c)(5) of this section.

Code of Federal Regulations 42 CFR § 483.15(c)(4) (February 2025) *Transfer and Discharge — Timing of the notice* provides:

- (i) The notice of transfer or discharge must be made by the facility at least 30 days before the resident is transferred or discharged except as specified in paragraphs (c)(4)(ii) and (8) of this section.
- (ii) (A) through (E): Notice must be made as soon as practicable before transfer or discharge when the health or safety of individuals in the facility would be endangered; the resident's health improves sufficiently to allow a more immediate transfer or discharge; an immediate transfer or discharge is required by the resident's urgent medical needs; or the resident has not resided in the facility for 30 days.

Code of Federal Regulations 42 CFR § 483.15(c)(5) (February 2025) *Transfer and Discharge — Contents of the notice* instructs that the written notice must include:

- (i) The reason for the transfer or discharge;
- (ii) The effective date of transfer or discharge;
- (iii) The location to which the resident is transferred or discharged;

- (iv) A statement of the resident's appeal rights, including the name, address (mailing and email), and telephone number of the entity which receives such requests; and information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request;
- (v) The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman;
- (vi) For nursing facility residents with intellectual and developmental disabilities or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities ...
- (vii) For nursing residents with a mental disorder or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with a mental disorder ...

DISCUSSION

On February 24, 2025, the Facility issued a notice to the Resident advising that she would be discharged because the Facility was unable to meet the Resident's specific medical needs. The Resident's representative argued that she did not receive adequate notice of the proposed discharge.

Facility Ability to Meet the Resident's Needs

The regulations permit a facility to transfer or discharge a resident when their needs cannot be met in the facility. Pursuant to the regulations, when a resident is discharged for this reason, documentation in the resident's medical record must include the basis for discharge, the specific resident's needs that cannot be met, the facility's attempts to meet the resident's needs, and the services available at the transfer or discharge location to meet the resident's needs. The regulations specify that the documentation must be made by the resident's physician.

During the hearing, testimony presented by the Facility indicated the Resident has a history of elopement behaviors. The Resident's representative agreed that the Resident required a safer environment. The Facility's representative testified that multiple interventions were attempted to meet the Resident's security needs but were unsuccessful. The Facility's representative asserted that the Facility does not have a memory care unit and therefore, the Facility is unable to provide the care a memory unit would provide. The Resident's representative agreed that the Resident requires a memory care unit.

Documentation:

The Facility bears the burden of proof and had to demonstrate by a preponderance of the evidence that at the time of the February 14, 2025 decision to discharge the Resident, the Resident's medical record reflected the required physician documentation, that the Resident's needs could not be met by the Facility, the specific needs of the Resident that could not be met at the Facility, the Facility's attempts to meet the Resident's needs, and the services available at the proposed discharge location to meet the Resident's needs.

The submitted evidence did not reflect any documentation by the Resident's physician that indicated the basis for the discharge. Without a preponderance of reliable evidence that the Resident's record reflected the required documentation at the time of the discharge decision, the Facility's decision to discharge the Resident cannot be affirmed.

Notice

The Resident's representative testified that she received a phone call and was advised the Resident would be discharged the next day. The Resident's representative testified that she did not receive a thirty-day advanced notice of the Facility's decision to discharge the resident.

The federal regulations require the Facility to include the interdisciplinary team in the ongoing process of developing the discharge plan. When a resident is involuntarily discharged, the Facility is required to assist the Resident in finding a reasonably appropriate alternative placement before the proposed discharge and include the location on the discharge notice.

During the hearing, the Facility's representative testified that [REDACTED], a sister facility, had a memory care unit that would meet the Resident's needs. The Facility's representative testified that [REDACTED] was willing to accept the Resident as a patient at the time the discharge decision was made. Although the Facility's representative testified that a discharge location was identified when the discharge decision was made, the notice did not include a proposed discharge location as required by the regulations.

The notice issued by the Facility was insufficient. However, the issues of discharge location and inadequate notice are moot because the preponderance of evidence failed to affirm the basis of the Facility's decision to discharge the Resident.

CONCLUSIONS OF LAW

- 1) The Facility may transfer or discharge a resident when the Resident's needs cannot be met in the facility.
- 2) The facility must ensure that the resident's medical record includes physician documentation of the basis for the discharge, the specific resident's needs that cannot be met, the facility's attempts to meet the resident's needs, and the services available at the transfer or discharge location to meet the resident's needs.
- 3) The preponderance of evidence failed to demonstrate that the reason for discharging the resident was documented in the Resident's medical record by a physician.
- 4) The Facility failed to prove by a preponderance of evidence that the Facility was unable to meet the Resident's needs.
- 5) Because the Facility failed to prove that the Resident was eligible for discharge, the matter of discharge notice and location of discharge are moot.

- 6) The Facility incorrectly acted to discharge the Resident.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Facility's decision to discharge the Resident.

ENTERED this 21st day of April 2025.

Tara B. Thompson, MLS
State Hearing Officer