



October 1, 2025



RE:

ACTION NO.: 25-BOR-2723

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 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,

Eric L. Phillips
Certified State Hearing Officer
Member, State Board of Review

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

cc: [REDACTED] Resident's Representative
[REDACTED] Administrator

_____;

V.

INTRODUCTION

F-1	Letter to Resident dated August 6, 2025
F-2	Letter to Resident dated July 21, 2025
F-3	Letter to Resident dated July 10, 2025
F-4	Letter to Resident dated June 10, 2025
F-5	Letter to Resident dated May 28, 2025
F-6	[REDACTED] Financial Notes
F-7	Notice of Contribution to the Cost of Care dated July 15, 2025
F-8	[REDACTED] Transaction Report
F-9	Notice of Proposed Discharge dated August 18, 2025

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 was admitted to [REDACTED] (Facility) in April 2025.
- 2) The Resident's monthly contribution to his cost of care is \$3235.37. (Exhibit F-7)
- 3) The Resident has an outstanding balance of his cost of care owed to the Facility in the amount of \$16,835.00.
- 4) On May 28, 2025, the Facility issued notice to the Resident (Exhibit F-5) informing him that his account at the Facility was past due in the amount of \$3,494.88.
- 5) On June 10, 2025, the Facility issued notice to the Resident (Exhibit F-4) informing him that his account at the Facility was past due in the amount of \$3,494.88.
- 6) On July 10, 2025, the Facility issued notice to the Resident (Exhibit F-3) informing him that his account at the Facility was past due in the amount of \$9,071.83.
- 7) On July 21, 2025, the Facility issued notice to the Resident (Exhibit F-2) informing him that his account at the Facility was past due in the amount of \$10,460.11.
- 8) On August 6, 2025, the Facility issued notice to the Resident (Exhibit F-1) informing him that his account at the Facility was past due in the amount of \$13,595.48.
- 9) On August 5, 2025, the Resident made a \$100.00 payment toward his cost of care.
- 10) On August 18, 2025, the Facility issued a proposed thirty-day discharge of the Resident to his private residence due to non-payment for his stay at the Facility.

APPLICABLE POLICY

Code of Federal Regulations 42 CFR § 483.15(c)

(1) Facility requirements —

(i) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—

(A) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(C) The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;

(D) The health of individuals in the facility would otherwise be endangered;

(E) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or

(F) The facility ceases to operate.

(ii) The facility may not transfer or discharge the resident while the appeal is pending, pursuant to [§ 431.230 of this chapter](#), when a resident exercises his or her right to appeal a transfer or discharge notice from the facility pursuant to [§ 431.220\(a\)\(3\) of this chapter](#), unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. The facility must document the danger that failure to transfer or discharge would pose.

(2) **Documentation.** When the facility transfers or discharges a resident under any of the circumstances specified in [paragraphs \(c\)\(1\)\(i\)\(A\) through \(F\)](#) of this section, the facility must ensure that the transfer or discharge is documented in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider.

(i) Documentation in the resident's medical record must include:

(A) The basis for the transfer per [paragraph \(c\)\(1\)\(i\)](#) of this section.

(B) In the case of [paragraph \(c\)\(1\)\(i\)\(A\)](#) of this section, the specific resident need(s) that cannot be met, facility attempts to meet the resident needs, and the service available at the receiving facility to meet the need(s).

(ii) The documentation required by [paragraph \(c\)\(2\)\(i\)](#) of this section must be made by—

(A) The resident's physician when transfer or discharge is necessary under [paragraph \(c\)\(1\)\(A\)](#) or [\(B\)](#) of this section; and

(B) A physician when transfer or discharge is necessary under [paragraph \(c\)\(1\)\(i\)\(C\)](#) or [\(D\)](#) of this section.

(iii) Information provided to the receiving provider must include a minimum of the following:

(A) Contact information of the practitioner responsible for the care of the resident

(B) Resident representative information including contact information.

(C) Advance Directive information.

(D) All special instructions or precautions for ongoing care, as appropriate.

(E) Comprehensive care plan goals,

(F) All other necessary information, including a copy of the resident's discharge summary, consistent with [§ 483.21\(c\)\(2\)](#), as applicable, and any other documentation, as applicable, to ensure a safe and effective transition of care.

(3) ***Notice before transfer.*** Before a facility transfers or discharges a resident, the facility must—

(i) 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 and manner they understand. The facility must send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.

(ii) Record the reasons for the transfer or discharge in the resident's medical record in accordance with [paragraph \(c\)\(2\)](#) of this section; and

(iii) Include in the notice the items described in [paragraph \(c\)\(5\)](#) of this section.

(4) ***Timing of the notice.***

(i) Except as specified in [paragraphs \(c\)\(4\)\(ii\)](#) and [\(8\)](#) of this section, the notice of transfer or discharge required under this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(ii) Notice must be made as soon as practicable before transfer or discharge when—

(A) The safety of individuals in the facility would be endangered under [paragraph \(c\)\(1\)\(i\)\(C\)](#) of this section;

(B) The health of individuals in the facility would be endangered, under [paragraph \(c\)\(1\)\(i\)\(D\)](#) of this section;

(C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under [paragraph \(c\)\(1\)\(i\)\(B\)](#) of this section;

(D) An immediate transfer or discharge is required by the resident's urgent medical needs, under [paragraph \(c\)\(1\)\(i\)\(A\)](#) of this section; or

(E) A resident has not resided in the facility for 30 days.

(5) ***Contents of the notice.*** The written notice specified in [paragraph \(c\)\(3\)](#) of this section must include the following:

(i) The reason for 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 established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 ([Pub. L. 106-402](#), codified at [42 U.S.C. 15001](#) *et seq.*); and

(vii) For nursing facility 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 established under the Protection and Advocacy for Mentally Ill Individuals Act.

(6) ***Changes to the notice.*** If the information in the notice changes prior to effecting the transfer or discharge, the facility must update the recipients of the notice as soon as practicable once the updated information becomes available.

(7) ***Orientation for transfer or discharge.*** A facility must provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. This orientation must be provided in a form and manner that the resident can understand.

(8) ***Notice in advance of facility closure.*** In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to the State Survey Agency, the Office of the State Long-Term Care Ombudsman, residents of the facility, and the resident representatives, as well as the plan for the transfer and adequate relocation of the residents, as required at [§ 483.70\(k\)](#).

(9) ***Room changes in a composite distinct part.*** Room changes in a facility that is a composite distinct part (as defined in [§ 483.5](#)) are subject to the requirements of [§ 483.10\(e\)\(7\)](#) and must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another of the composite distinct part's locations.

DISCUSSION

On August 18, 2025, the Facility issued a notice to the Resident informing him of his proposed involuntary discharge from the [REDACTED], effective September 18, 2025. The Facility cited in the notice (Exhibit F-8) that the discharge was result of:

The resident has failed, after reasonable and appropriate notice to pay for (or have paid under Medicaid or Medicare) a stay at the center. Non-payment applies if the resident does not submit necessary paperwork for a third-party payment or after a third party, including Medicare or Medicaid, denies that claim and the resident refuses to pay for his or her stay. For a resident who becomes eligible for Medicaid after admission to the center, the center may charge a resident only allowable charges under Medicaid.

The Resident, along with his representatives, protest the proposed discharge citing that a payment

arrangement had been entered effective August 5, 2025. The Facility must demonstrate by a preponderance of the evidence that the proposed involuntary discharge of the Resident was warranted in accordance with Federal regulations.

In April 2025, the Resident entered the [REDACTED]. The Appellant receives assistance to pay for nursing home care from the West Virginia Department of Human Services but he is responsible for a monthly contribution amount to the Facility of \$3235.37. (Exhibit F-7) As of the hearing date, the Resident has a total outstanding balance owed to the Facility of \$16385.00. On a monthly basis, the Facility has attempted to collect the outstanding balance, by issuing delinquent notices to the Resident from May 2025 through August 2025. (Exhibit F-1 through Exhibit F-5) On August 6, 2025, the Facility issued a final notice (Exhibit F-1) documenting a current outstanding balance of \$13,959.48. On August 18, 2025, the Facility issued a proposed thirty-day discharge of the Resident, effective September 19, 2025, to his private residence after his failure to pay due to the Appellant's failure to pay for care at the Facility after reasonable and appropriate notice.

The Facility provided their own administration records (Exhibit F-6) which document the outstanding balances and payments made to the Facility through Medicaid. This exhibit documents that on August 8, 2025, the Facility attempted to propose the thirty-day discharge with the Social Worker. It was noted that the Social Worker "not comfortable issuing a notice for a nonclinical reason." On the same date, the Regional Social Worker confirmed the concerns indicating "she agrees with the Social Worker because of patient advocacy and believes this should be a BOM [Business Office Manager] function." [REDACTED] Business Office Manager, later issued the proposed thirty-day discharge to the Resident.

The Resident, along with his representatives, provided testimony relating to the care offered at the Facility and the termination of therapy services. [REDACTED], the Appellant's representative and son testified that he assumed that his father had entered into a payment agreement with the Facility when he privately paid \$100.00. The Facility noted in their administration records (Exhibit F-6) that the payment was received on July 30, 2025, but the collection process continued due to the "full patient liability was not paid for the current month." Additionally, the Resident's represented purported that their father should not be discharged due to the Social Worker indicating that she was not comfortable with the discharge as evidenced in the administration records. (Exhibit F-6) The Resident's representatives also noted concerns with how their father's medical needs would be met if he was discharged to a homeless shelter or his private residence.

There is no question that the Resident has failed to pay for his continuing care at the Facility. The private minimal payment did not absolve his full patient liability or demonstrate a payment agreement which allowed his continued stay at the Facility. However, pursuant to federal regulations, when a facility transfers or discharges a resident, under any circumstances, the facility must ensure that the transfer or discharge is documented in the resident's medical record and information is communicated to the receiving health care institution or provider. While the Facility provided numerous collection notices, ledgers, and administration records to document the Resident's failure to pay for his care at the center, the Facility failed to provide evidence to demonstrate that the Resident's proposed discharge was documented into his medical records. Because the Facility failed to demonstrate by a preponderance of evidence that the reason for the

discharge/transfer was noted in the Resident's medical record, it's decision to involuntarily discharge/transfer the Resident cannot be affirmed.

CONCLUSIONS OF LAW

- 1) Federal and state regulations require that documentation regarding the reason a nursing facility resident requires a transfer or discharge be included in the resident's medical record.
- 2) The Facility failed to demonstrate by a preponderance of evidence that the reason for the Resident's discharge was documented in his medical record; therefore, the proposed discharge/transfer of the Resident cannot be affirmed.

DECISION

It is the decision of the State Hearing Officer to REVERSE the Facility's August 18, 2025, proposal to discharge the Resident.

ENTERED this _____ day of October 2025.

Eric L. Phillips
Certified State Hearing Officer