



August 21, 2026

RE: [REDACTED] v. [REDACTED] REHAB AND NURSING
ACTION NO.: 26-BOR-2288

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,

Amy Hayes
State Hearing Officer
Member, State Board of Review

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

cc: Debbie Hill, Facility Administrator

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

██████████
Resident,

v.

Action Number: 26-BOR-2288

██████████ **REHAB AND NURSING,**

Facility.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. 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 August 4, 2026, upon a timely appeal requested on July 13, 2026.

The matter before the Hearing Officer arises from the Facility's July 10, 2026 decision to transfer the Resident, and the Facility's July 13, 2026 decision to stop holding the Resident's bed.

At the hearing, the Facility appeared by Deborah "Debbie" Hill, Facility Administrator. Appearing as a witness for the Facility was Jonathan McClung. The Resident was represented by her daughter, ██████████. The Resident was present and testified on her own behalf. All witnesses were placed under oath and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- | | |
|-----------|---|
| Exhibit 1 | Letter from Deborah A. Hill, RN, LNHA, to ██████████ dated July 13, 2026 |
| Exhibit 2 | ██████████ Rehab and Nursing Notice of Transfer or Discharge dated July 10, 2026 |
| Exhibit 3 | "Resident Census Records" dated July 13, 2026, signed by ██████████ Assistant Administrator, ██████████ Rehab and Nursing |
| Exhibit 4 | Bed Hold Notice dated July 10, 2026 |
| Exhibit 5 | "Resident Progress Notes: ██████████ dated January 9, 2026, to July 10, 2026 |

Appellant'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 a resident of [REDACTED] Rehab and Nursing [REDACTED] hereinafter referred to as Facility.
- 2) A nursing facility may receive Medicaid per diem reimbursement to reserve a resident's bed (bed hold) during their temporary absence from the facility, for a maximum of eighteen (18) calendar days in a year.
- 3) On January 14, 2026, the Resident was transferred to the hospital and returned to the Facility on January 24, 2026. (Exhibit 3)
- 4) The Facility counted ten (10) of the Resident's Medicaid bed hold days as utilized during those dates. (Exhibit 3)
- 5) When the Resident was transferred to the hospital in January, the Facility did not give documentation regarding the utilization of the bed hold days to the Resident.
- 6) On February 11, 2026, the Resident was transferred to the hospital and returned to the Facility on February 17, 2026. (Exhibit 3)
- 7) The Facility counted six (6) of the Resident's Medicaid bed hold days as utilized during those dates. (Exhibit 3)
- 8) When the Resident was transferred to the hospital in February, the Facility did not give documentation regarding the utilization of the bed hold days to the Resident.
- 9) On July 10, 2026, the Resident requested to be transferred to the hospital because she had discomfort in her chest.
- 10) The Resident was in the hospital from July 10, 2026 to July 13, 2026.
- 11) The Facility counted two (2) of the Resident's Medicaid bed hold days as utilized during those dates. (Exhibit 3)

- 12) On or about July 13, 2026, [REDACTED] former Assistant Administrator of the Facility, called the Resident and told her that her eighteen (18) Medicaid bed hold days had been exhausted and that she could pay \$300 per day to continue holding the bed.
- 13) The Resident did not agree to pay the out-of-pocket bed hold rate and the Facility no longer held the Resident's bed.
- 14) On or about July 13, 2026, the Resident was released from the hospital, and there was not an available bed at the Facility.
- 15) On or about July 13, 2026, the Resident was placed at a different nursing facility, [REDACTED] Center.

APPLICABLE POLICY

Code of Federal Regulations (CFR) § 483.15(c) describes the nursing facility administrator or designees must permit each resident to remain in the facility, and not be transferred or discharged from the facility unless one of the following conditions is met, in pertinent part:

(c) Transfer and discharge —

(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.

(d) **Notice of bed-hold policy and return —**

(1) **Notice before transfer.** Before a nursing facility transfers a resident to a hospital or the resident goes on therapeutic leave, the nursing facility must provide written information to the resident or resident representative that specifies—

- (i) The duration of the state bed-hold policy, if any, during which the resident is permitted to return and resume residence in the nursing facility;
- (ii) The reserve bed payment policy in the state plan, under § 447.40 of this chapter, if any;
- (iii) The nursing facility's policies regarding bed-hold periods, which must be consistent with paragraph (e)(1) of this section, permitting a resident to return; and
- (iv) The information specified in paragraph (e)(1) of this section.

(2) **Bed-hold notice upon transfer.** At the time of transfer of a resident for hospitalization or therapeutic leave, a nursing facility must provide to the resident and the resident representative written notice which specifies the duration of the bed-hold policy described in paragraph (d)(1) of this section.

(e)

(1) **Permitting residents to return to facility.** A facility must establish and follow a written policy on permitting residents to return to the facility after they are hospitalized or placed on therapeutic leave. The policy must provide for the following.

(i) A resident, whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, returns to the facility to their previous room if available or immediately upon the first availability of a bed in a semi-private room if the resident

(A) Requires the services provided by the facility; and

(B) Is eligible for Medicare skilled nursing facility services or Medicaid nursing facility services.

(ii) If the facility determines that a resident who was transferred with an expectation of returning to the facility cannot return to the facility, the facility must comply with the requirements of paragraph (c) as they apply to discharges.

West Virginia Bureau for Medical Services Provider Manual Chapter 514 describes Therapeutic Leave of Absence, in pertinent part:

For rate periods beginning October 1, 2024, a nursing facility may receive Medicaid per diem reimbursement to reserve a resident's bed (bed hold) during their temporary absence from the facility, for a maximum of 18 days (for all types of leave). This is paid at the facility's non-acuity adjusted reimbursement rate.

A day of leave is defined as a continuous 24-hour period. At the time the resident leaves the facility, the primary payer for services must be Medicaid. Bed reservation days may be for acute care hospitalization or a therapeutic leave.

The resident whose bed is reserved is to be accepted by the facility immediately upon return from leave. Placement is to be in the same bed and living space occupied by the resident prior to the leave of absence unless the resident's physical condition upon returning to the facility prohibits access to the bed previously occupied. If the nursing facility discharges a resident and return is not anticipated, as indicated on the MDS, the facility cannot charge the State for a Medicaid bed hold.

When all leave days have been used by a Medicaid resident, a facility may charge a resident to reserve a bed only when there are no vacancies and there is a current waiting list. Families that are willing and able are free to pay these charges, and the amount paid is not considered as a resource or income for Medicaid purposes.

Personal needs allowance may be used to reserve a bed only with the resident/member or responsible party's written consent. The resident's contribution to the cost of care (resource) may not be used to pay to reserve a bed. After a hospitalization or a leave of absence for which there was no bed hold, a former resident has the right to be readmitted to the first available bed in a semi-private room in the nursing facility from which he or she came if the resident requires the services provided by the nursing facility and has not been out of the facility for more than 30 days.

DISCUSSION

Federal Regulations permit the involuntary discharge or transfer of a resident if the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility. The Resident resided at the Facility, and the Facility transferred the Resident to the hospital on July 10, 2026.

The Resident was represented by [REDACTED], her daughter [REDACTED]. The Resident testified on her own behalf and stated that she requested to go to the hospital on July 10, 2026, because she was feeling discomfort in her chest and thought there was fluid in her lungs. However, the Resident contends that she was not transferred to the hospital due to chest pain, but because she refused to take a shower. The Resident and her daughter also contend that the Resident is being retaliated against because she had previously complained about being made to take a shower when she did not want to. [REDACTED] contends that the Resident was inappropriately “dumped” because of her refusal to take a shower.

Deborah “Debbie” Hill, facility administrator (hereinafter Ms. Hill), testified that Facility policy is not to send a resident to the hospital if they will not take a shower. Ms. Hill stated that policy is to address a resident’s refusal to shower through other mechanisms, or if the refusal to shower is causing health or hygiene problems, the Facility could issue a 30-day intent to discharge. Ms. Hill contends that the Resident told staff that she was having chest pains and requested to go to the hospital. The preponderance of the evidence showed that the Resident requested to go to the hospital on July 10, 2026, and was transferred there due to her description of chest discomfort. Thus, the transfer was necessary for the Resident’s welfare and because her needs could not be met in the Facility.

West Virginia Bureau for Medical Services policy states that a nursing facility may receive Medicaid per diem reimbursement to reserve a resident’s bed (bed hold) during their temporary absence from the facility, for a maximum of eighteen (18) calendar days per year. The Facility stopped holding the Resident’s bed when she utilized all of her Medicaid bed hold days for the calendar year and did not agree to pay out-of-pocket to continue the bed hold.

Ms. Hill testified that the Resident went to the hospital from January 14 to January 24, 2026, which was ten (10) days, from February 11 to February 17, 2026, which was six (6) days, and on July 10 and July 11, 2026, which was two (2) days. Ms. Hill testified that these hospital stays utilized eighteen (18) Medicaid bed hold days. Ms. Hill contends that the Resident was given the opportunity to pay out-of-pocket to continue to hold her bed, but she did not agree to do so. Due to the use of all eighteen (18) of the Medicaid bed hold days and the Resident not agreeing to pay for a bed hold, the Facility did not hold the Resident’s bed. When the Resident was released from the hospital on or about July 13, 2026, her bed was not available, and she was placed at a different facility.

Federal regulations require, *at the time of transfer* of a resident for hospitalization or therapeutic leave, that the Facility provide written notification *to the Resident* of any applicable bed-hold policy and the duration during which the resident is permitted to return and resume residence in

the nursing facility.

The Resident testified that she was not notified about the bed hold policy at the time of her transfers in January and February. She credibly testified that, if a packet of papers was sent with her to the hospital, it was not given physically to her, and she never saw it and was never made aware of it. [REDACTED] also testified that she was not notified via mail about the Medicaid bed hold policy. The Resident testified that she received a phone call from [REDACTED] during her hospital visit in July 2026, which was the first time she was made aware that days counted per the Medicaid bed hold policy were being exhausted.

Ms. Hill contends that the Facility notified the Resident of the utilization of bed hold days. The testimony of Ms. Hill was that bed hold documentation was in a packet that was sent out with the Resident each time she was transferred to the hospital. Additionally, Ms. Hill argues that the Resident had capacity to make decisions for herself, so the Facility was not required to notify [REDACTED] of the bed hold policy. The Facility presented a document titled "Bed Hold Notice" dated July 10, 2026, for the hearing. However, the Facility did not present any January or February notices at the hearing. There was no documentation presented to show that the Facility provided notice to the Resident of the duration of the bed hold during the Resident's January and February hospitalizations.

Ms. Hill also testified that the Resident was given the bed hold policy as part of her admission packet when she was admitted to the Facility. However, this document was also not produced at the hearing. In addition, federal regulations require notice of the bed hold utilization to be given to the Resident at the time of admission *and at the time of each transfer*.

CONCLUSIONS OF LAW

- 1) A resident may be transferred involuntarily if transfer is necessary for the resident's welfare and the resident's needs cannot be met in the facility. The Resident was properly transferred to the hospital on July 10, 2026, because she requested to go to the hospital due to chest pains.
- 2) A nursing facility must notify a resident of the duration of a bed hold policy at the time of transfer for hospitalization or therapeutic leave, and the Facility did not give notice to the Resident that her bed hold utilization days were being counted while she was hospitalized in January and February 2026.
- 3) Sixteen (16) days of the Resident's Medicaid bed hold were counted as utilized during her January and February 2026 hospitalizations without proper notification.
- 4) The Facility failed to follow federal regulations in its failure to notify the Resident of the duration of the bed hold and of the duration during which the Resident was permitted to return and resume residence in the Facility at the time of her January and February 2026 transfers to the hospital.

- 5) The Facility showed by a preponderance of evidence that it followed federal regulations in notifying the Resident of the duration of the bed hold and of the duration during which the Resident was permitted to return and resume residence in the Facility at the time of her July 2026 transfer to the hospital.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the actions of the Facility in counting the utilization of sixteen (16) Medicaid bed hold days, during her January and February 2026 hospital stays, against the Resident in the 2026 calendar year without proper notification.

ENTERED this 21st day of August 2026.

**Amy Hayes
State Hearing Officer
Member, Board of Review**