



September 12, 2024

[REDACTED]

RE: [REDACTED]
ACTION NO.: 24-BOR-2827

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 Inspector General and 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
State Hearing Officer
Member, State Board of Review

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

cc: [REDACTED]

- 1) The Resident has been a patient at [REDACTED] Center for approximately 15 months.
- 2) On June 28, 2024, the Facility proposed a thirty-day discharge of the Resident.
- 3) The Resident appealed the proposed discharge on July 31, 2024.
- 4) The Resident has an outstanding balance of \$8424.00 with the Facility. (Exhibit F-1)

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

Federal regulations allow the involuntary discharge of an individual from a Long-Term Care facility when the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility. Federal regulations dictate that any notice of transfer or discharge must be made by the facility at least 30 days before the resident is transferred or discharged and contents of such notice must include the reason for the transfer or discharge, the effective date of transfer or discharge, the location to which the resident is transferred or discharged, a statement of the resident's appeal rights along with contact information for the Office of the State Long-Term Care Ombudsman.

On June 28, 2024, the Facility proposed the discharge of the Resident due to unmet financial obligations to the facility. The Facility must demonstrate by a preponderance of the evidence that the Resident failed, after reasonable and appropriate notice, to pay for his stay at the facility. The Resident contends that the Facility's proposed notice of discharge fails to document the reason for his discharge, a discharge location, and his discharge plan. Based on the improper discharge notice, the Resident appeals the Facility's decision.

Non-Payment

The Facility representatives contend that the Resident failed to make payment for his stay at the ██████████ Center. The Facility representatives indicated there have been numerous conversations with the Resident regarding his monthly financial obligations but those conversations yielded no satisfactory payment. After issuance of the discharge notice, both parties agreed to a promissory note, effective September 3, 2024, for the Resident to pay 15% of his obligation or \$476.00 per month. As of that date, the Resident has continued to fail to provide payment. The Facility provided a transaction report (Exhibit F-1) which documents the Resident's remaining patient liability of \$8424.00 from July 1, 2023 through September 1, 2024.

The Resident does not refute his obligation to pay for his stay at the facility and confirmed the Facility's attempts to recoup payment. The Resident provided testimony on the multiple hardships he has faced during his admission to the Facility and his financial burdens due to his health condition.

Basis for Discharge

The Resident contends that he received improper notice of his discharge from the facility because the notice failed to include the basis for his discharge. The Facility refutes the Resident's claim concerning the improper notice citing that the notice includes a statement indicating that "the Resident has failed after reasonable and appropriate notice to pay for a stay at the center."

Discharge Location

The Resident contends that the notice of discharge fails to document a discharge location according to the requirements of the Code of Federal Regulations. The Facility indicated that the discharge notice documented the Resident's discharge location as "To Be Determined" because the Resident was a candidate for the Take Me Home program and he did not have appropriate housing. The

Facility purported that they were in contact with the Resident's ex-spouse and the homeless shelter for the Resident's discharge location and those locations were adequate for the Resident's discharge.

Discharge Plan

The Resident contends that the notice of discharge fails to document a discharge plan according to the requirements of the Code of Federal Regulations. The Resident indicated that due to his health condition he still requires care and assistance for daily activities. The Facility contends that patients at the facility are allowed to sign out for community involvement and, at times, the Resident signs out of the facility to be with his ex-spouse. The Facility believed that care and assistance for the Resident was being provided while he was not at the facility.

The Board of Review can only determine if the Facility's discharge decision was conducted according to the governing regulations. The Facility provided testimony concerning the basis of the Resident's discharge involving non-payment for his stay at the Facility. However, the Facility failed to provide basic supporting documentation, including the notice of discharge, to demonstrate that the Resident was provided an appropriate reason, effective date of discharge, discharge plan or even a discharge location. By the Facility's own admission, the notice of discharge documented a "To Be Determined" discharge location which fails to adhere to the Federal Regulations concerning the contents of a discharge notice to include the location to which a resident is discharged. Without proper examination of the discharge document, there is no way to confirm whether the Resident was provided adequate notice concerning his discharge from the Facility. Because the Facility failed to prove by a preponderance of the evidence that it provided an accurate notice of discharge to the Residents, the Facility's proposal to discharge the Resident cannot be affirmed.

CONCLUSIONS OF LAW

- 1) A Facility may involuntarily discharge a resident when the resident has failed after reasonable and appropriate notice to pay for a stay at the facility.
- 2) Before a facility discharges a resident, the facility must notify the resident and their representatives, in writing, of the discharge and the corresponding reasons for the discharge.
- 3) A Resident must receive notice of discharge at least thirty (30) days prior to the effective date of discharge. The written notice must include the basis of the discharge, effective date of discharge, the discharge location, a statement of appeal rights, and contact information of the State Long-Term Care Ombudsman.
- 4) The preponderance of evidence failed to demonstrate that the Facility properly notified the Resident of the proposed discharge.

- 5) Because the Facility failed to provide an appropriate notice of discharge, the Facility incorrectly acted to involuntarily 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 ____ day of September 2024.

Eric L. Phillips
State Hearing Officer