



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Bill J Crouch  
Cabinet Secretary

Jolynn Marra  
Interim Inspector General

July 10, 2019

[REDACTED]

RE: [REDACTED]  
ACTION NO.: 19-BOR-1782

Dear Mr. [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 Health and Human Resources. These same laws and regulations are used in all cases to assure 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,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

Encl: Resident's Recourse to Hearing Decision  
Form IG-BR-29

cc: Administrator, [REDACTED]

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
BOARD OF REVIEW**

██████████,

**Resident,**

v.

**Action Number: 19-BOR-1782**

████████████████████,

**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 West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on June 25, 2019, on an appeal filed May 29, 2019.

The matter before the Hearing Officer arises from the May 6, 2019 decision by the Facility to propose involuntary discharge of the Resident.

At the hearing, the Facility appeared by ██████████, Assistant Director of Nursing, ██████████. Appearing as a witness for the Facility was ██████████, Interim Social Worker, ██████████. The Resident was represented by ██████████, Regional Ombudsman, ██████████.

All witnesses were sworn and the following documents were admitted into evidence.

**Nursing Facility's Exhibits:**

None

**Resident's Exhibits:**

- R-A Notice of Discharge dated May 6, 2019
- R-B Pre-Admission Screening dated January 2, 2019
- R-C West Virginia Medicaid Manual Section 514.6.3
- R-D Minimum Data Set for Resident
- R-E ██████████ Progress Notes
- R-F Resident's Care Plan
- R-G West Virginia State Code Section 64-13-1
- R-H Code of Federal Regulations Title 42, Sections 483.15 and 483.35

### **FINDINGS OF FACT**

- 1) [REDACTED], hereinafter Facility, provided written notification to the Resident of its intent to initiate involuntary transfer or discharge proceedings on May 6, 2019 (R-A).
- 2) The Notice of Discharge advised the Resident that involuntary discharge from the Facility was necessary because the Facility could not meet the Resident's welfare and needs.
- 3) The Notice of Discharge states that the Resident will be discharged to his home at [REDACTED].
- 4) The Facility contends that the transfer is necessary because the Resident has dementia and exhibits wandering behaviors. As a result, the Facility believes it can no longer meet the Resident's safety needs.
- 5) The physician who completed the Resident's Pre-Admission Screening (PAS) on January 2, 2019 (D-B) specified that the Resident's medical condition would prohibit him from eventually returning home.

### **APPLICABLE POLICY**

Medicaid regulations, found in the Code of State Regulations (64 CSR 13) (R-G) and the Code of Federal Regulations (42 CFR §483.15) (R-H) provide that the nursing facility administrator or designee 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:

- The transfer or discharge is necessary for the resident's welfare when the needs of the resident cannot be met in the facility; or
- The transfer or discharge is appropriate because the health of the resident has improved sufficiently that the individual no longer meets the medical criteria for nursing facility services; or
- The safety of individuals in the facility is endangered; or
- The health of individuals in the nursing facility would otherwise be endangered; or
- The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicaid) a stay at the nursing facility, including but not limited to, the amount of money determined by the financial eligibility evaluation as co-payment for the provision of nursing facility services; or
- The facility ceases to operate.

Physician documentation must be recorded in the resident's medical record regarding the specific reason the resident requires transfer or discharge. Discharge documentation is required regardless of the reason for discharge.

Before the nursing facility transfers or discharges a resident, the administrator or designee must notify the resident and/or the responsible party in writing, in a language that is understandable to the parties, of the intent and reason for transfer or discharge. The same information must be recorded in the resident's medical record, and a copy of this written notice must be sent to the State Long-Term Care Ombudsman or his/her designee. Except in the case of immediate danger to the resident and/or others as documented, the notice of transfer or discharge must be provided at least 30 days prior to the anticipated date of transfer or discharge.

Waiver of this 30-day requirement may be appropriate if the safety of individuals in the facility would be endangered, the immediate transfer is required by the resident's urgent medical needs, or a resident has not resided in the nursing facility for 30 days.

The written notice must include the following:

- The effective date of the transfer or discharge;
- Reason for the discharge;
- The location or person(s) to whom the resident is transferred or discharged;
- A statement that the resident has the right to appeal the action to the State;
- The name, address and telephone number of the State long-term care ombudsman;
- The mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled and mentally ill individuals.

Code of Federal Regulations 42 CFR §483.35(a) (R-H) states that a facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:

- (i) Except when waived under paragraph E of this section, licensed nurses; and
- (ii) Other nursing personnel, including but not limited to nurse aides.

Section 483.35(a)(3) states that the facility must ensure that licensed nurses have the specific competencies and skill sets necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

Section 483.35(a)(4) states that providing care includes but is not limited to assessing, evaluating, planning and implementing resident care plans and responding to residents' needs.

## DISCUSSION

State and federal regulations specify that a nursing facility can involuntarily transfer/discharge an individual if the transfer or discharge is necessary because a facility cannot meet a resident's needs. Documentation must be recorded in the resident's medical record by a physician of the specific reason requiring the transfer or discharge. The Notice of Discharge must include the location to which the resident will be discharged.

The Facility's representative, [REDACTED], testified that the Resident suffers from dementia, has developed wandering behaviors during the past few months, and requires constant supervision. She indicated that the Resident's condition has declined since February 2019. Ms. [REDACTED] stated that the Resident previously shared a bathroom that adjoined a room with female residents. At one point, the Resident became confused, wandered out of the bathroom into the wrong room, and got into bed with a female resident. He has since been moved to a private room with his own bathroom. Ms. [REDACTED] testified that she does not believe the Resident is a physical threat to other patients, but that the Facility does not have sufficient staff to provide one-on-one supervision to guarantee his safety. The Resident's wife is unable to care for him at home, and the Facility attempted to work with her to find the Resident an alternate placement; however, the Resident's wife does not wish to move him outside of the [REDACTED] area. As a result, the Facility has been unable to find suitable placement and listed the Resident's home as the address to which he will be discharged.

[REDACTED], Ombudsman for [REDACTED], indicated that the Resident's wife would be unable to provide care for him at home, and that there is no physician documentation in the Resident's record (Exhibits R-D, R-E and R-F) concerning the specific reason for the transfer or discharge. In addition, Mr. [REDACTED] contended that federal regulations require a facility to provide adequate staff to meet residents' care needs.

## CONCLUSION OF LAW

- 1) State and federal regulations require that physician documentation – including the specific reason a nursing facility resident requires transfer or discharge - must be included in the resident's medical record.
- 2) The Notice of Discharge must include the location to which the resident will be transferred or discharged.
- 3) There is no evidence that a physician documented the reason for the Resident's discharge in his case record.
- 4) A physician specifically documented on the Resident's January 2019 Pre-Admission Screening that the Resident would be unable to return home due to his medical condition, and testimony reveals that the Resident's condition has deteriorated since that time.
- 5) As there is no physician documentation concerning the need for transfer or discharge in the Resident's medical record – and the Resident's PAS clearly states that he cannot return home – the Facility's proposal to discharge the Resident is improper.

**DECISION**

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

**ENTERED this \_\_\_\_\_ Day of July 2019.**

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**Pamela L. Hinzman  
State Hearing Officer**