



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
Raleigh County District
407 Neville Street
Beckley, WV 25801

Jolynn Marra
Interim Inspector General

January 15, 2020

[REDACTED]

RE: [REDACTED] v. [REDACTED]
ACTION NO.:19-BOR-2813

Dear Ms. [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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: [REDACTED], [REDACTED]

- F-12 Assignment of General, Durable Power of Attorney dated September 9, 2019
- F-13 Assignment of Medical Power of Attorney dated September 9, 2019
- F-14 Notice of Account Balance dated November 25, 2019
- F-15 Notice of 3-Day Discharge dated November 25, 2019
- F-16 Patient Account Details for December 2019

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) on February 22, 2019.
- 2) The Resident became a private pay patient in June 2019 once her nursing facility benefits through Medicare had been exhausted.
- 3) The Resident has a savings account with a credit union in [REDACTED] and a checking account with [REDACTED] in West Virginia (Exhibit F-3).
- 4) The Resident's daughter, [REDACTED], has been unsuccessful in accessing the Resident's funds from the [REDACTED] credit union to pay towards her cost of care at the Facility.
- 5) Ms. [REDACTED] applied for Long-Term Care Medicaid for the Resident in October 2019, which as of the date of the hearing, was pending for complete information regarding the Resident's assets.
- 6) On November 25, 2019, the Facility issued a 30-Day Discharge Notice to Ms. [REDACTED] advising that the Resident would be discharged due to non-payment (Exhibit F-15).
- 7) The Resident's account balance with the Facility is \$83,198 as of January 1, 2020 (Exhibit F-16).

APPLICABLE POLICY

Code of Federal Regulation Title 42 §483.15 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:

(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.

The facility may not transfer or discharge the resident while the appeal is pending, when a resident exercises his or her right to appeal a transfer or discharge notice from the facility, 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.

(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 permit the involuntary discharge of an individual if the individual has failed, after reasonable and appropriate notice, to pay for a stay at a nursing facility. Notice of the proposed discharge must be made 30 days in advance and must include the location to which the resident is to be discharged.

The Facility notified the Resident's representative on November 25, 2019, that the Resident would be discharged to the "first appropriate place" on December 25, 2019 due to non-payment.

The Facility's representative, [REDACTED], testified that the Facility has made numerous attempts with the Resident's son and daughter to receive payment on the Resident's outstanding balance.

Ms. [REDACTED] stated the Facility has assisted the Resident's family with the Long-Term Care Medicaid application process as well as offering to become payee of the Resident's Social Security and pension benefits. Ms. [REDACTED] stated that the Resident has not made any payments towards her cost of care.

[REDACTED] testified that the Resident's credit union in [REDACTED] will not recognize her Power of Attorney documents and she cannot access her mother's money to pay the Facility. Ms. [REDACTED] contended that she has consulted an attorney and an Ombudsman but has not received any assistance or guidance on how to resolve the issue. Ms. [REDACTED] stated that her brother, [REDACTED], receives the bank statements for her mother's two accounts, and it is Mr. [REDACTED] that has information regarding her mother's assets that is needed to complete the Medicaid application. Ms. [REDACTED] purported that she has cooperated fully with the Facility regarding her mother's account, but without access to her mother's money, she does not know how to proceed.

Pursuant to federal regulations, physician documentation must be recorded in a nursing facility resident's medical record regarding the specific reason the resident requires a transfer or discharge. Discharge documentation is required regardless of the reason for discharge. Federal regulations require that notice of an involuntary discharge must include the location in which the resident is being transferred or discharge.

The Facility failed to provide documentation to verify that the reason for the Resident's discharge had been documented in her medical record and failed include the specific location to which the Resident would be discharged.

CONCLUSIONS OF LAW

- 1) Federal regulations require that documentation regarding the reason a nursing facility resident requires a transfer or discharge must be included in the resident's medical record.
- 2) There is no evidence that a physician documented the reason for the Resident's discharge in her medical record.
- 3) Federal regulations require that notice of the discharge must include the location to which a nursing facility resident will be discharged.
- 4) The Resident's notice of discharge did not specify a location where the Resident will be discharged.
- 5) Whereas the Facility failed to follow federal regulations regarding physician documentation of the reason for the Resident's discharge and failed to provide adequate notice of discharge, the Facility's proposal to discharge the Resident cannot be affirmed.

DECISION

It is the decision of the State Hearing Officer to **reverse** the proposal of [REDACTED] to involuntarily discharge the Resident from its facility.

ENTERED this 15th day of January 2020.

**Kristi Logan
State Hearing Officer**