

STATE OF RHODE ISLAND OFFICE OF HEALTH AND HUMAN SERVICES
APPEALS OFFICE

[REDACTED]
(Appellant)

DOCKET # 20-104

Vs

[REDACTED]
(Respondent)

DECISION

The above-entitled matter came before a Hearing Officer on March 17, 2020 and was held in accordance with the Administrative Procedures Act, R.I.G.L § 42-35-1 et. seq. and the Rules and Regulations of the Department. A telephonic hearing took place from the [REDACTED] (hereinafter the Facility), located in [REDACTED] Rhode Island. [REDACTED] (hereinafter the Appellant) initiated this appeal under 210-RICR-50-00-7 as a result of a February 12, 2020 discharge notice issued by the Facility. The Appellant is seeking to have the discharge notice rescinded.

PARTIES AND EXHIBITS

At the hearing, the Facility was represented by [REDACTED], Administrator (hereinafter the Administrator) and [REDACTED], Social Service Director (hereinafter the Social Service Director). The Facility submitted copies of the “Pre-Transfer or Pre-Discharge 30 Day Notice” that was dated February 12, 2020 and was labeled as Facility’s Exhibit #1; a copy of an Agreement between the Appellant and the Facility regarding the Appellant not smoking

(hereinafter Agreement) was submitted and was labeled as Facility's Exhibit #2; and a copy of the Appellant's case file notes kept by the Facility was submitted and was labeled as Facility's Exhibit #3.

Appellant was present and testified on his own behalf. Also present was Valentine Cervo (hereinafter Ms. Cervo) from the Alliance for Better Long-Term Care, who also offered testimony.

The Record of Hearing was held open until Friday, March 20, 2020, to allow the Facility to submit a complete copy of the "Pre-Transfer or Pre-Discharge 30-Day Notice" dated February 12, 2020, a signed copy of the "Smoking Rules" and the Facility's "Smoking Policy".

FINDINGS OF FACT

1. The Facility has specific "Smoking Rules", which are stated in the contract that the Appellant signed when he started residing at this Facility.
2. The Social Services Director, the Administrator and other staff members from the Facility told the Appellant on numerous occasions that, due to his need and use of an oxygen tank, he was prohibited from smoking, especially in the facility. It was documented in the Appellant's case file the days that he was informed of this issue.
3. The Facility drafted the Agreement, dated January 13, 2020, which specifically stated that the Appellant "will not smoke with his [oxygen] on and have the tank removed from his person while smoking...[and] will adhere to facility policy and procedure related to smoking as addressed upon his admission." The Agreement was signed by the Appellant.
4. The Appellant continued to smoke while attached to his oxygen tank and, at times, while still inside the facility. This was noted in his case file notes.
5. On February 12, 2020, a "Pre-Transfer/Pre-Discharge 30-Day Notice" issued to the Appellant. The Notice stated that the Appellant "is a smoker [and] has been non-

adherent with removing his [oxygen] prior to a cigarette. [Appellant] has been counseled on numerous occasions however, continues to exhibit unsafe smoking practices.” It stated that the Appellant would be discharged to his prior address, which was his mother’s home, who was 89 years old.

6. Facility staff assist Appellant with his bathroom needs, with getting him dressed and with giving him his medication, as well as with other daily tasks.
7. The Pre-Transfer/Pre-Discharge 30-Day Notice failed to state whether Appellant’s mother had been notified of his possible transfer to her home.
8. The Pre-Transfer/Pre-Discharge 30-Day Notice failed to state whether this discharge/transfer whether the transition of care would be safe.

ISSUE

The issue on appeal is whether the Facility gave the Appellant proper notice of its intent to discharge him. In other words, whether the nursing facility complied with 210 RICR 50-00-7, and specifically Sections 7.4 and 7.6, which lay out the conditions for involuntary discharge and/or transfers of institutional and community-based long-term care residents.

RELEVANT REGULATIONS AND POLICIES

A review of Department Rules and Regulations, including 210-RICR-50-00-7, reveals that before transferring or discharging a resident, a long-term care facility must notify the resident (and, if known, a resident representative) of the transfer or discharge and of the reasons for the discharge in a language and manner they understand. The long-term care facility must also notify the Office of the State Long-Term Care Ombudsman.

Under 210-RICR-50-00-7, the written notice must include the following:

1. The reason for transfer or discharge;

2. The effective date of transfer or discharge;
3. The location to which the resident is transferred or discharged;
4. A statement of the resident's appeal rights, including the name, address (mailing and email), and telephone number of the entity that receives such requests; and information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request;
5. The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman.

210-RICR-50-00-7.4, entitled "Discharge Criteria", states in pertinent part:

- A. The long-term care facility must permit each resident to remain in the long-term care facility, and not transfer or discharge the resident from the long-term care facility unless: ...
 3. The safety of individuals in the long-term care facility is endangered due to the clinical or behavioral status of the resident; ...,
- B. In instances of a resident's transfer, information provided to the receiving provider/facility must include a minimum of the following:
 1. Contact information of the practitioner responsible for the care of the resident;
 2. Resident representative information including contact information;
 3. Advance Directive information;
 4. All special instructions or precautions for ongoing care, as appropriate;
 5. Comprehensive care plan goals;
 6. All other necessary information, including a copy of the resident's discharge summary, and any other documentation, as applicable, to ensure a safe and effective transition of care.

DISCUSSION

The Facility specifically indicated in the 30-Day Discharge Notice that: “The health and/or safety of the resident is endangered by remaining in the facility, or the discharge or transfer from the facility is necessary for medical reasons.” The Appellant’s continued behavior of smoking while in possession of his oxygen tank is a hazard, to himself, the other residents at the Facility and the staff.

The Appellant admitted at the hearing that he had violated the Facility’s smoking rules but stated that he has smoked for over 37-years and has great difficulty fighting the urge to smoke. When he smoked while having his oxygen still attached, it was only because he forgot about his oxygen. He testified that he no longer goes outside in order to avoid seeing other smokers smoke. This was done so he does not get the urge to smoke. He loves the Facility and does not want to be forced to leave. The Appellant testified that, if he was discharged, it would be to his 89-year old mother’s home. The Appellant’s mother is not capable of providing the Appellant with the care he needs. Facility staff assist him in the bathroom, get him dressed and give him his medication, as well as assist with other daily tasks. His mother would not be able to assist him with any of those tasks. Although he has two siblings, one is disabled also and the other is out of state. Therefore, neither sibling could provide care for him. The representative from the Alliance for Better Long-Term Care questioned the safety of the transfer of the Appellant to his mother’s home.

210-RICR-50-00-7.5(B)(6) requires the Facility to provide the “party” accepting the Appellant health care provider information, advance directive information, special instruction and information for on-going care, comprehensive care plan goals and all other necessary information, including a copy of the resident's discharge summary, and any other documentation,

as applicable, to ensure a safe and effective transition of care. There was no evidence presented at hearing that indicated that the Facility did any outreach to even see if the Appellant's mother knew of his possible return to her home. There was also no evidence that the Facility had addressed the issue of whether an 89-year old would be capable of providing the level of care required for the Appellant. Due to the Appellant's physical and medical limitations, discharging the Appellant to the care of his 89-year old mother would not be a "safe discharge" and therefore is not acceptable.

CONCLUSION

Based on the testimony, the exhibits submitted, as well as the above stated Policy, the Facility is ordered to rescind the February 12, 2020 "Pre-Transfer or Pre-Discharge 30-Day Notice." In order to discharge Appellant, the Facility for example would need to locate another facility capable of providing the level of care that the Appellant requires or set up homecare for the Appellant at the level of care that he is currently receiving when he is placed at his mother's home.

Thomas Bucacci
Hearing Officer
EOHHS

APPENDIX

210-RICR-50-00-7

INVOLUNTARY DISCHARGE FROM A LONG-TERM CARE FACILITY

7.2 Legal Authority

- A. State authorities: These rules are promulgated pursuant to the authority set forth in R.I. Gen. Laws Chapter 40-8, “Medical Assistance”; R.I. Gen. Laws Chapter 40-6, “Public Assistance Act”; R.I. Gen. Laws § 23-17-19.1, “Rights of Patients”; R.I. Gen. Laws Chapter 23-17.5, “Rights of Nursing Home Patients”; R.I. Gen. Laws § 23-17.5-17, “Transfer to Another Facility”; R.I. Gen. Laws Chapter 23-17.4, “Assisted Living Residence Licensing Act”; R.I. Gen. Laws § 23-17.4-16, “Rights of Residents.”
- B. Federal authorities: Additional authority is derived from 42 C.F.R. § 483 Subpart B, “Requirements for Long Term Care Facilities”; Title XIX of the Social Security Act; 42 U.S.C. § 1396r, “An Act to Amend Title XIX of the Social Security Act to Prohibit Transfers or Discharges of Residents of Nursing Facilities as a Result of a Voluntary Withdrawal from Participation in the Medicaid Program”; the State’s Medicaid State Plan; and the Rhode Island Comprehensive Section 1115 Demonstration, as approved in final form on February 25, 2014, and as subsequently amended.

7.4 Discharge Criteria

- A. The long-term care facility must permit each resident to remain in the long-term care facility, and not transfer or discharge the resident from the long-term care facility unless:
 - 1. The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the long-term care facility;
 - 2. 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 long-term care facility;
 - 3. The safety of individuals in the long-term care facility is endangered due to the clinical or behavioral status of the resident;
 - 4. The health of individuals in the long-term care facility would otherwise be endangered;
 - 5. 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.
 - a. 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.

b. For a resident who becomes eligible for Medicaid after admission to a long-term care facility, the long-term care facility may charge a resident only allowable charges under Medicaid; or

6. The long-term care facility ceases to operate.

- B. Each long-term care facility must display a notice which identifies these transfer and discharge criteria and informs residents of their appeal rights. The notice should be prominently posted along with the Resident's Bill of Rights.
- C. This information must be provided to the individual both verbally and in a prominent manner in writing on a separate page at the time of admission. A written acknowledgment of the receipt of the notice, signed by the individual must be obtained.

7.5 DOCUMENTATION REQUIREMENTS

- A. In instances where a resident is being transferred or discharged, the long-term care facility must document in the resident's clinical record the basis for the transfer or discharge. The resident's physician must document as follows:
 - 1. The transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the long-term care facility;
 - 2. 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 long-term care facility;
 - 3. The health of individuals in the long-term care facility would otherwise be endangered.
- B. In instances of a resident's transfer, information provided to the receiving provider/facility must include a minimum of the following:
 - 1. Contact information of the practitioner responsible for the care of the resident;
 - 2. Resident representative information including contact information;
 - 3. Advance Directive information;
 - 4. All special instructions or precautions for ongoing care, as appropriate;
 - 5. Comprehensive care plan goals;
 - 6. All other necessary information, including a copy of the resident's discharge summary, and any other documentation, as applicable, to ensure a safe and effective transition of care.

7.6 PRE-TRANSFER/ DISCHARGE NOTICE

- A. Before transferring or discharging a resident, a long-term care facility must notify the resident (and, if known, a resident representative) of the transfer or discharge and of the reasons for the discharge in a language and manner they understand. The long-term care facility must also notify the Office of the State Long-Term Care Ombudsman.
- B. The written notice must include the following:
1. The reason for transfer or discharge;
 2. The effective date of transfer or discharge;
 3. The location to which the resident is transferred or discharged;
 4. A statement of the resident's appeal rights, including the name, address (mailing and email), and telephone number of the entity that receives such requests; and information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request;
 5. The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman;
 6. 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; and
 7. 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.
- C. The long-term care facility must notify the resident at least thirty (30) days in advance of the resident's transfer or discharge.
- D. At the time the resident receives the discharge notice, s/he must receive a notice of appeal rights.
- E. Thirty (30) days advance notice is not required under the following circumstances:
1. In the event of danger to the safety or health of the individuals in the long-term care facility;
 2. When the resident's health improves sufficiently to allow a more immediate transfer or discharge;

3. Where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs;
4. When the resident has not resided in the long-term care facility for a period of at least thirty (30) days.
5. In the case of such exceptions (as above), notice must be given as many days before the date of the move as is practicable, and include all of the information set forth in § 7.6(B) of this Part.

CERTIFICATION

I hereby certify that I mailed, via regular mail, postage prepaid, a true copy of the
foregoing to [REDACTED],
[REDACTED] – Administrator, [REDACTED],
[REDACTED], Social Service Director, [REDACTED]
[REDACTED] on this _____ day of _____ 2020.

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.