

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

█  
█  
V.

DOCKET No. 26-2178

█  
█

**DECISION**

**I. INTRODUCTION**

A telephonic hearing on the above-titled matter was held on April 9, 2026. The Appellant, █  
█ waived his right to a video hearing. The Appellant initiated this matter to appeal the 30-Day Discharge Notice (30-Day Notice) issued by █ at █, a 24/7 Nursing Facility (Facility), on April 2, 2026. The notice stated that the Appellant's ongoing inappropriate behaviors cause a danger to himself and the welfare of others in the residence and refusal to pay the facility. The Appellant disagrees with the facility and is seeking to have the discharge rescinded so he may remain at the facility. For the reasons discussed in more detail below, the Administrative Hearing has been decided in favor of the Appellant.

**II. JURISDICTION**

The Executive Office of Health and Human Services (EOHHS) is authorized and designated by R.I.G.L. 42-7.2-6.1 and EOHHS regulation 210-RICR-10-05-2 to be the entity responsible for appeals and hearings related to transfers or discharges for all residents of Nursing Facilities, regardless of whether Medicare, Medicaid or private parties pay for a resident's stay. The Administrative Hearing was held in accordance with the Administrative Procedures Act, R.I.G.L. 42-35-1 et. seq. and EOHHS regulation 210-RICR-10-05-2.

### **III. ISSUE**

The issue is whether there is sufficient evidence to permit the involuntary discharge of the Appellant from a long-term care facility and/or whether the notification of the intent to discharge from a long-term care facility was in accordance with the State and Federal regulations, as set forth below.

### **IV. STANDARD OF PROOF**

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, unless otherwise specified, a preponderance of the evidence is generally required to prevail. This means that for each element to be proven, the factfinder must believe that the facts that are asserted by the proponent are more probably true than false. (2 Richard J. Pierce, *Administrative Law Treatises* 10.7 (2002) & see *Lyons v. Rhode Island Pub. Employees Council* 94, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases).

### **V. PARTIES AND EXHIBITS**

The Facility Administrator [REDACTED] (Administrator) attended the hearing and provided testimony relevant to the Appellant’s involuntary discharge. The Facility’s Substance Abuse Counselor [REDACTED] [REDACTED], also attended the hearing. The Facility offered the following evidence as full exhibits at the hearing:

- Facility Exhibit #1 – Athena Health Care Systems policy
- Facility Exhibit #2 – Department of Health, Center for Health Facilities Regulation Nursing Facility Required Reporting, dated March 30, 2026.
- Facility Exhibit #3 – Multiple case notes, various dates.
- Facility Exhibit #4 – Clinical Operations, Smoking Policy.
- Facility Exhibit #5 – [REDACTED] discharge notes, dated April 1, 2026.
- Facility Exhibit #6 – Multiple notes written by [REDACTED]
- Facility Exhibit #7 – Agreement to discharge to a hotel, dated March 25, 2026.

The Appellant, [REDACTED], attended the hearing and testified on his own behalf. Also in attendance, the Alliance for Better Long-Term Care Ombudsman Beth Mantia (Ombudsman). The Appellant and the Ombudsman offered the following evidence as full exhibits at hearing:

- Exhibit #1: Rhode Island Department of Human Services Pre-Transfer or Pre-Discharge 30 Day Notice, dated April 2, 2026.
- Exhibit #2 – Print out of 210-RICR-50-00-7 regulation.

## **VI. RELEVANT LAW/REGULATIONS**

Pursuant to 210-RICR-50-00-7.4, entitled “Discharge Criteria”, states in part that a resident can be discharged if the safety of individuals in the long-term care facility is endangered due to the clinical or behavioral status of the resident or if the health of individuals in the long-term care facility would otherwise be endangered. Pursuant to 210-RICR-50-00-7.4(A), entitled “Pre-Transfer/Discharge Notice”, states “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” Additional authority is derived from 42 C.F.R. § 483.15(c)(3)(i), entitled, Notice before transfer, which states in part, “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.”

Pursuant to 210-RICR-50-00-7.7 (C) entitled Resident Appeal Rights, The long-term care 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 long-term care facility.

## **VII. FINDINGS OF FACT**

The Appellant has resided at the facility for more than five years. The Facility issued a 30-Day Notice to Appellant on April 2, 2026; however the notice was drafted on March 25, 2026, with an effective date of April 24, 2026. The Ombudsman testified that the Administrator failed to provide the 30-Day Notice to the Ombudsman and to the Department of Health (DOH). The Administrator conceded that she failed to do so. The Appellant testified that he did not receive a copy of the Notice, nor did he receive any appeal rights. The Appellant testified that he was “forced” to sign the Facility Exhibit #7, which stated “I agree after the 30-day notice that I will discharge to a hotel which will be paid for by [REDACTED] for two weeks.” The Appellant testified that he felt forced because the Administrator entered his room and advised him that he has to sign the agreement or he would have to leave the facility. He stated that he understood that to mean that he would have to vacate that day, so he signed the agreement.

On April 8, 2026, the Ombudsman contacted the EOHHS Appeals Office and requested an expedited appeal as she testified that the Administrator advised her on April 7, 2026, that she was going to discharge the Appellant to a hotel on Friday, April 10, 2026. The telephonic hearing was held on Thursday, April 9, 2026. During the hearing, the Administrator provided a copy of the 30-Day Notice to the Ombudsman and to the EOHHS Appeals Office. After reviewing the 30-Day Notice, it informed the Appellant that he was being discharged on April 24, 2026, because of his behavior, specifically he continues to sign himself out on leave of absence (LOA) and has returned to the facility intoxicated. The Notice continues to say that the Appellant is a danger to himself and others, and that the Appellant also refuses to pay facility and collects money from state/ refuses to sign over funds. During the hearing, the Facility did not testify, nor provide evidence that supported their claims that the Appellant failed and/or refused to pay the facility.

The Administrator testified that the Appellant is a danger to other residents and that it is her responsibility to ensure their safety. She testified about an incident where the Appellant was observed to have his hands around another resident’s neck, however no pressure was used and no injuries were

reported. The Facility's Exhibit #2 documented this incident, however; the Ombudsman was unaware of this incident as the Administrator failed to provide a copy of the incident report to the RI LTC Ombudsman. Also on this report, under section entitled "Alleged Perpetrator Information" The Appellant's name is listed and then there's a questions that reads "Has the victim and/or Abuser been involved in previous reportable incidents? If yes, please describe." Nothing was filled out in this section, it was left blank. Furthermore, according to Facility's Exhibit #2, a follow up written report is required within five days after the examination, as defined in Rhode Island General Law 23-17.8-3.1. The record lacked evidence to show that a follow-up report was completed.

The Ombudsman raised concerns as to how the Administrator planned to discharge the Appellant to a hotel on April 10, 2026, before the Appellant exercised his right to a fair hearing process. The Administrator testified more than once that she previously advised the Ombudsman over the phone that they will issue a 30-Day Notice and could not explain why she failed to provide a copy of the notice to the Ombudsman.

The Administrator testified that the Appellant leaves the facility and returns intoxicated. Such incidents were eluded too in Facility Exhibits #3+6. [REDACTED] and Administrator testified that the Appellant signed a No Harm Agreement due to his behavior, however the agreement was not provided as evidence, so this Hearing Officer does not know what the agreement entailed.

It was undisputed that the Appellant has consumed alcohol while off campus and has returned intoxicated. However, the record lacked sufficient evidence to prove what the Facility's policy for alcohol use entails, as they only provided their Smoking Policy, which only outlined their smoking restrictions.

## **VIII. DISCUSSION**

The record consists of evidence from the Administrator and [REDACTED], as well as the Appellant and Ombudsman. Per State Law, Federal regulations, and EOHHS regulations, a nursing facility may involuntarily transfer/discharge a resident when the resident's continued presence in the Facility

endangers the safety of other individuals in the Facility. The Administrator testified that the Appellant is a danger to other residents, however the record lacked sufficient evidence to prove this. Facility Exhibit #2 documented an incident that occurred between the Appellant and another resident, however the record lacked evidence to show the outcome of that investigation. Furthermore, the Administrator did not indicate whether the Appellant had been involved in previous reportable incidents, therefore, the record lacked sufficient evidence to show how the Petitioner is a danger to other residents.

Prior to the transfer/discharge, the Facility must provide the resident with a formal written notice of intent to transfer/discharge; provide a copy of that notice to the Office of the State Long Term Care Ombudsman; and have the reasons for the transfer/discharge documented in the resident's medical record by a physician. A full review of the record of hearing finds that a Pre-Transfer/Pre-Discharge 30 Day Notice was signed by the Appellant as being received by him on April 2, 2026. The Notice informed the Appellant that he would be discharged on April 24, 2026, however, it was established on the record that the Administrator failed to provide the Ombudsman a copy of the 30-Day Notice, which is required.

In Summary, although the Appellant conceded to consuming alcohol while on LOA and returning intoxicated, the Administrator failed to follow guidelines surrounding properly discharging the Appellant, as outline in both Code of Federal Regulation 42 C.F.R 483.15(c)(3)(i) and in Rhode Island Code of Regulations 210-RICR-50-00-7.6(A), therefore the 30-Day Notice, which was signed by the Appellant on April 2, 2026, is not a valid notice.

#### **IX. CONCLUSION OF LAW**

As to the Facility's issuance of the 30-Day Notice, this Hearing Officer finds that the Notice is invalid. Shall the Facility wish to discharge the Appellant in the future, a new 30-Day Notice with Appeal Rights must be issued to the Appellant and to the Ombudsman, as set forth in Code of Federal Regulations and RI Code of Regulations.

**X. DECISION**

Based on the foregoing findings of fact, conclusions of law, evidence, and testimony it is found that a final order be entered that the Rhode Island Department of Human Services Pre-Transfer or Pre-Discharge 30 Day Notice, dated April 2, 2026, is not a valid notice. The Appellant's request to rescind the 30-Day Notice is thereby granted.

**APPEAL GRANTED**

/s/Jenna Vilardo

Appeals Officer

**NOTICE OF APPELLATE RIGHTS**

This decision is a final order under R.I.G.L. § 42-35-12. Under R.I.G.L. § 42-35-15, this Order may be appealed to court within thirty (30) days of the mailing of this decision. Such appeal, if taken, must be completed by filing a complaint in 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.

Appeals are generally filed in the Providence County Superior Court. However, appeals affecting or concerning children under the age of eighteen (18) and/or appeals of a DCYF action may need to be filed in Providence Family Court. If you have any questions about which court a complaint for appeal should be made, you should seek the advice of an attorney, Rhode Island Legal Services, or the clerk of the court where you wish to file your appeal. The courts' contact information can be found on the judiciary's website (<https://www.courts.ri.gov>). Copies of the appeal must be served upon all parties in your case within ten (10) days of the filing of your appeal.

If you exercise any of these appellate rights, please inform the EOHHS appeals office of this so we can prepare a copy of the record for the court. You can contact the Appeals Office at

