

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

[REDACTED]

V.

DOCKET No. 26-2288

[REDACTED]

**DECISION**

**I. INTRODUCTION**

A Microsoft Teams meeting on the above-entitled matter was held on May 11, 2026, at 9 a.m., and the Appellant, [REDACTED], declined the option of a video hearing. The Appellant initiated this matter to appeal the Pre-Transfer or Pre-Discharge 30-Day Notice (30-Day Discharge Notice) issued by [REDACTED], a nursing home. The appeal was received by the Executive Office of Health and Human Services (EOHHS) on April 13, 2026. The Appellant is seeking to have the discharge overturned and remain at the nursing home. For the reasons discussed in more details below, the Appellant's appeal is granted.

**II. JURISDICTION**

EOHHS is authorized and designated by R.I. General Laws § 42-7.2-6.1 and the Rhode Island Code of Regulations (RICR) 210-RICR-10-05-2.1.3(A)(2)(n) to be the entity responsible for appeals and hearings related to transfers and discharges for all patients of nursing homes regardless if they are on Medicaid or not. The administrative hearing was held in accordance with the Administrative Procedures Act, R.I.G.L. § 42-35-1 et. seq., and 210-RICR-10-05-2.

### III. ISSUE

The issue before this Appeals Officer is whether there is sufficient evidence, along with compliance with administrative procedures, to permit the involuntary discharge of the Appellant.

### 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. 2 Richard J. Pierce, *Administrative Law Treatise* § 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). This means that for each element to be proven, the factfinder must believe that the facts asserted by the proponent are more probably true than false. When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. vs. Carbone*, 898 A.2d 87 (R.I. 2006).

### V. PARTIES AND EXHIBITS

No one from [REDACTED] attended the hearing. The Appellant testified on his own behalf. Ombudsman Beth Mantia from the Alliance for Better Long-Term Care also testified for the Appellant and provided evidence:

- Appellant Exhibits:
  - Appeal received April 13, 2026, in response to attached 30-Day Discharge Notice.
  - 210-RICR-50-00-7 – Involuntary Discharge from a Long-Term Care Facility.

### VI. RELEVANT LAW/REGULATIONS

Under 210-RICR-50-00-7, there is a set of requirements that a nursing home must take to involuntarily discharge a patient. This process is not limited to Medicaid patients. 210-RICR-50-00-7.1. Facilities are not allowed to discharge patients involuntarily, except in certain cases, including if the

safety of individuals in the long-term care facility is endangered due to the clinical or behavioral status of the resident. 210-RICR-50-00-7.4(A)(3).

Furthermore, 210-RICR-50-00-7.6 outlines procedural requirements to discharge a patient from a nursing home involuntarily. These include:

1. Written notice must be given to the patient and any representative they have. The notice must:
  - a. be in a language and manner the patient understands.
  - b. list the reason for the transfer/discharge.
  - c. list the effective date of the transfer/discharge.
  - d. list the location to which the patient is being transferred/discharged.
  - e. contain a statement of the patient's appeals rights including the name, mailing address, email address, and telephone number of the entity that receives such appeals.
  - f. contain information on how to obtain the appeal form and on how to get assistance in completing the appeal if needed.
  - g. contain the name, mailing address, email address, and telephone number of the Office of the State Long-Term Care Ombudsman.
  - h. be provided at least 30 days in advance of the transfer, except in certain cases of:
    - i. danger to the safety or health of the individuals in the facility.
    - ii. when the patient's health improves sufficiently to allow a more immediate transfer or discharge.
    - iii. when a more immediate transfer or discharge is needed based on the patient's urgent medical needs.
    - iv. when the patient hasn't been in the facility for a period of at least 30 days.
  - i. For intellectually and/or developmentally disabled patients, the notice also needs to include the mailing address, email address, and telephone number of the Department of

Behavioral Healthcare, Developmental Disabilities, and Hospitals Division of  
Developmental Disabilities.

- j. For patients with a mental disorder or related disability, the notice also needs to include the mailing address, email address, and telephone number of the Office of the Mental Health Advocate.
2. Notification of the pending discharge must be provided to the Office of the State Long-Term Care Ombudsman. The Ombudsman is part of and operates out of the Alliance for Better Long-Term Care.
3. The patient also needs to receive a notice of appeal rights at the time of the discharge notice.

Finally, there is a requirement for a safe discharge. The federal regulation 42 C.F.R. § 483.15(c)(7) requires that the facility must provide and document sufficient preparation and orientation to residents to ensure a safe and orderly transfer or discharge. This must be in a form and manner that the patient can understand. On the state level, 210-RICR-50-00-7.5(B) also details the documentation requirements of a safe discharge. This includes 1) contact information for the practitioner responsible for the care of the patient, 2) the patient's representative's information, including contact information, 3) any advance directives of the patient, 4) any special instructions or precautions for ongoing care, 5) comprehensive care plan goals, and 6) all other necessary information and documentation to ensure a safe and effective transition of care. This includes a copy of the discharge summary.

## VII. FINDINGS OF FACT

1. The Appellant submitted his appeal on April 13, 2026, after he was given a 30-Day Discharge Notice from [REDACTED] advising him he was being discharged because he violated the smoking policy three times and is a danger to himself and others.
2. The 30-Day Discharge Notice was signed by the Nursing Home administrator/designee [REDACTED] [REDACTED] on March 11, 2026, and a physician, also on the same date. The Appellant signed the 30-Day Discharge Notice, but there is no date next to his name.

3. It is unclear when the Appellant received the 30-Day Discharge Notice as the section stating “Date Notice is given” is blank. The “Effective Date” of the discharge also is not filled out.
4. The Appellant has resided at [REDACTED] since February 2024. He signed a form on February 3, 2024, acknowledging that he received the nursing home’s smoking policy, and signed the form again on February 13, 2024. The Appellant signed another agreement on March 3, 2026, stating that he understood that if he violated any smoking rules it could result in the confiscation of all smoking materials, room searches, temporary or permanent suspension of smoking privileges, and/or a transfer or discharge from the facility.
5. The Appellant denies violating the smoking policy. About three weeks ago, the Appellant testified he was smoking outside the building in the parking lot, which he described as a public space. The Appellant was signed out of the facility at the time, and on his way back from the store. The Appellant testified he has not smoked inside the building, and smokes only in the designated smoking area.
6. The Appellant testified this is the first time he has had any issues with the nursing home regarding smoking.
7. The Ombudsman testified that [REDACTED] did not provide any evidence that the Appellant violated the smoking policy three times as they stated on the 30-Day Discharge Notice. The Ombudsman testified that she does not believe the Petitioner violated the smoking policy.
8. The Ombudsman testified that she does not want the Appellant discharged to [REDACTED] a shelter, as the 30-Day Discharge Notice states, and that her office is working on an alternative housing plan for him that is safe and permanent.
9. The Appellant testified that he does not want to leave the facility.

#### **VIII. DISCUSSION**

The Nursing Home failed to appear at hearing to submit any evidence or testimony to support their claim that the Appellant is a danger to himself and others due to violating the facility’s smoking

policy on three occasions. The Appellant testified he has not violated the nursing home's smoking policy and could only think of one alleged smoking violation, which occurred about three weeks ago when he was outside the building in the parking lot. The Appellant maintains that his actions on that day were not in violation of the smoking policy as he was in a public space. Whether or not the nursing home considers the area public or a safe place to smoke is unknown as the nursing home officials failed to attend the hearing.

In addition, the 30-Day Discharge Notice lacks required information – the section stating “Date Notice is given” and “Effective Date” is blank. 210-RICR-50-00-7.6(B)(2) states the effective date of the transfer or discharge must be listed.

Based on the above, [REDACTED] did not meet its burden of proof that the Appellant is a danger to himself or others, and failed to fully comply with the requirements of written notification to permit the involuntary discharge of the Appellant.

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

After careful review of the testimony and evidence presented at the Administrative Hearing, this Appeals Officer concludes:

1. The facility failed to attend the hearing and offer evidence for and reasons to support the involuntary discharge, and
2. The 30-Day Discharge Notice failed to list the effective date of transfer or discharge, as is required in 210-RICR-50-00-7.6(B)(2).

#### **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 there is not sufficient evidence to support [REDACTED]' request to involuntarily discharge the Appellant from the nursing facility.

**APPEAL GRANTED**

*/s/ Lori Stabile*

Lori Stabile

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 [OHHS.AppealsOffice@ohhs.ri.gov](mailto:OHHS.AppealsOffice@ohhs.ri.gov), 401.462.2132 (Phone), 401.462.0458 (Fax), or at 3 West Road, Virks Building, Cranston, RI 02908.

CERTIFICATION

I hereby certify that I mailed, via regular mail, postage prepaid, a true copy of the foregoing to [REDACTED]; Beth Mantia, c/o Alliance for Better Long Term Care, 422 Post Road, Suite 204, Warwick, Rhode Island 02888; and [REDACTED]; copies were sent, via email, to Beth Mantia at [beth@alliancebltc.org](mailto:beth@alliancebltc.org) and [REDACTED] at [REDACTED] on this 13<sup>th</sup> day of MAY, 2026.

Samara McKeen