

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

[REDACTED]

v.

DOCKET No. 26-2821

[REDACTED]

DECISION

I. INTRODUCTION

A Microsoft Teams hearing on the above matter was held on May 26, 2026. [REDACTED] (Appellant) did not choose to attend by video. The Appellant initiated this matter to appeal an involuntary discharge from [REDACTED] (Facility). The Appellant was issued a Rhode Island Department of Human Services Pre-Transfer or Pre-Discharge 30 Day Notice (30-Day Notice) on April 27, 2026, for endangering the health and/or safety of individuals in the facility, with an effective discharge date of May 27, 2026. The Appellant then filed a timely appeal received by the Executive Office of Health and Human Services (EOHHS) Appeals Office on May 7, 2026. The Appellant is seeking to have the discharge overturned and remain at the Facility. For the reasons discussed in more detail below, the Appellant's appeal is granted.

II. JURISDICTION

EOHHS is authorized by R.I.G.L. § 42-7.2-6.1 and 210-RICR-10-05-2.1.3(A)(2)(n) to be the agency responsible for appeals and hearings related to transfers and discharges for all



residents of nursing facilities and assisted living facilities, regardless of whether 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 is whether there is sufficient evidence that the Facility complied with administrative procedures to involuntarily discharge the Appellant for endangering the health and/or safety of other individuals.

IV. STANDARD OF PROOF

It is well settled that in 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 Treaties* §10.7 (2002) & *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (a preponderance standard is the “normal” standard in civil cases). 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

The Facility failed to show for the scheduled hearing. The undersigned Hearing Officer waited 10 minutes and then proceeded without the Facility.

Ombudsman Beth Mantia with The Alliance for Better Long-Term Care was present on behalf of the Appellant. The Appellant submitted no documents as evidence at hearing.

VI. RELEVANT LAW/REGULATIONS

According to 210-RICR-50-00-7, nursing facilities and assisted living facilities must adhere to specific discharge criteria before involuntarily discharging a resident. A resident may be discharged if the health and/or safety of individuals in the facility would otherwise be endangered. 210-RICR-50-00-7.4(A)(4).

Furthermore, according to 210-RICR-50-00-7.6, there are procedural requirements for the involuntary discharge of someone from a long-term care facility. These include:

1. Written notice must be given to the resident and any representative they have, which
 - a. is in a language and manner the patient understands.
 - b. lists the reason for the transfer/discharge.
 - c. lists the effective date of the transfer/discharge.
 - d. lists the location to which the patient is being transferred/discharged.
 - e. contains 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. contains information on how to obtain the appeal form and 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 some instances 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 resident has not been in the facility for a period of at least 30 days.
- i. For intellectually and developmentally disabled patients, the notice must 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 must include the Office of the Mental Health Advocate's mailing address, email address, and telephone number.
- 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 must also receive a notice of appeal rights at the time of the discharge notice.

Finally, the discharge must be safe. Federally, 42 C.F.R. § 483.15(c)(7) requires the facility to prepare in advance for the discharge and to document and provide documentation to the resident to ensure safe and orderly discharge from the facility.

VII. FINDINGS OF FACT

- 1. The Appellant was issued the 30-Day Notice on April 27, 2026, which stated that the

Appellant would be discharged from the Facility on May 27, 2026.

2. The Appellant filed a timely appeal on May 7, 2026.
3. A hearing commenced on May 26, 2026.
4. According to the 30-Day Notice:
 - a. The Appellant is being discharged for endangering the health and/or safety of individuals in the facility by violating the Facility's smoking policy numerous times.
 - b. There was no discharge location for the Appellant listed on the notice.
5. According to the Ombudsman:
 - a. This is the Appellant's only violation of the Facility's smoking policy.
 - b. The Facility did not provide any documentation that the Appellant violated the Facility's smoking policy prior to this incident.
 - c. A discharge location was not provided on the 30-Day Notice.

VIII. DISCUSSION

The issue is whether the Facility may involuntarily discharge the Appellant for endangering the health and/or safety of others at the Facility, by violating the Facility's smoking policy. The Facility failed to provide the Appellant with any documentation that he had violated the smoking policy in the past. The Ombudsman testified that this was the Appellant's first time violating the smoking policy at the Facility.

To discharge, the Facility must adhere to specific regulations. The procedural requirements the Facility must adhere to are set forth in State regulation 210-RICR-50-00-7.6. The notice must be given to the resident and any representative they may have, and must be in the language and manner the resident understands, list the reason for the discharge, a location to

be discharged to, contain the resident's appeals rights and appeal form, including the name, mailing address, email address, and telephone number of the entity that receives and conducts such appeals, and how to get assistance in completing the appeal if needed, contain the contact information of the Office of the State Long-Term Care Ombudsman. The notice must be provided at least 30 days before the effective date of discharge. On the 30-Day Notice provided to the Appellant, the Facility failed to provide a safe discharge location, therefore providing an inadequate and insufficient 30-Day Notice to the Appellant.

IX. CONCLUSION OF LAW

After a careful review of the evidence and testimony presented at the administrative hearing, this Appeals Officer concludes:

1. The 30-Day Notice was not issued in accordance with State and/or Federal regulations, specifically 210-RICR-50-00-7.6, by failing to include a discharge location on the notice issued on April 27, 2026.
2. The Facility failed to ensure that the discharge would be safe and orderly as required by Federal regulation 42 C.F.R. § 483.15(c)(7).

X. DECISION

Based on the foregoing findings of fact, conclusions of law, evidence, and testimony, it is found that a final order is hereby entered that the criteria for an involuntary discharge from a long-term care facility has not been met by a preponderance of evidence. Therefore, the 30-Day Notice issued on April 27, 2026, is not valid. To discharge the Appellant, the Facility would need to issue a new 30-Day Notice.

APPEAL GRANTED

/s/ Robert Pelosi

EOHHS Appeal Officer

NOTICE OF APPELLANT 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 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 a stay, or the reviewing court may order one, upon the appropriate terms.

Appeals are generally filed in the Providence County Superior Court. However, appeals affecting or concerning children under the age of 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 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, 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 a true copy of the foregoing to [REDACTED]

[REDACTED] to [REDACTED]

[REDACTED], and to Beth Mantia, The Alliance for
Better Long-Term Care, 422 Post Road, Suite 204, Warwick, RI 02888, via regular mail,
postage prepaid. Copies were sent via email to Beth Mantia at beth@alliancebltc.org and

[REDACTED] on this 27TH day of

MAY, 2026.


