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

[redacted]

v. DOCKET No. 26-5253

[redacted]

DECISION

I. INTRODUCTION

A Microsoft Teams hearing on the above matter was held on September 15, 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 August 20, 2026, for endangering the health and/or safety of individuals in the facility, with an effective discharge date of September 20, 2026. The Appellant then filed a timely appeal, which the Executive Office of Health and Human Services (EOHHS) Appeals Office received on August 26, 2026. The Appellant seeks to have the discharge overturned and to 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, 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 sufficient evidence shows that the Facility complied with State regulations 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

Facility Administrator [redacted] and Social Worker [redacted] represented the Facility. The record was held open until September 15, 2026, for the Facility to submit a copy of its policies. The Facility submitted the following document as evidence at hearing.

- Facility Exhibit #1 – Clinical Operations: Sex Offender Admissions Policy, revised August 2026.

Ombudsman Renee Miller with The Alliance for Better Long-Term Care was present along with the Appellant; both testified. The record was held open until September 16, 2026, for the Appellant to review and respond to the evidence the Facility submitted. The Appellant submitted the following document as evidence at hearing.

- Appellant Exhibit #1 –

VI. RELEVANT LAW/REGULATIONS

Under 210-RICR-50-00-7, nursing facilities must meet 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).

Under 210-RICR-50-00-7.5(A)(3), the facility must document in the resident's clinical record the basis for the transfer or discharge and how it relates to endangering the health of individuals in the facility.

Furthermore, 210-RICR-50-00-7.6 sets procedural requirements for involuntarily discharging 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. must 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.

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 a safe and orderly discharge from the facility.

VII. FINDINGS OF FACT

1. The Appellant was issued the 30-Day Notice on August 20, 2026, which stated that the

Appellant would be discharged from the Facility on September 20, 2026.

2. The Appellant filed a timely appeal on August 26, 2026.
3. A hearing commenced on September 15, 2026.
4. According to the Facility:
    a. The Facility recently changed owners, effective July 1, 2026, at which time [redacted] became the new owner of the Facility.
    b. The Facility Administrator has only been with [redacted] since July 1, 2026. The Administrator met with the Appellant because the Appellant was concerned about his pending sex offender-related litigation. This is how the Facility learned about the Appellant's court case and the allegations against him.
    c. The Appellant is being discharged for endangering the health and/or safety of residents of the facility by violating one of [redacted] policies.
    d. Per the [redacted] admission policy relating to sex offenders, the Appellant is not permitted to be a resident of the facility.
    e. Even though the Appellant has had no documented incidents that endangered the health and/or safety of other residents while residing in the Facility. Because of the Appellant's pending court case and alleged charges, the Facility believes it can't keep residents, staff, visitors, and neighborhood community members out of potential harm by allowing the Appellant to reside at the Facility.
5. According to the Ombudsman and the Appellant:
    a. The Appellant has been a resident at the Facility for the past 15 months and has had no documented incidents at the Facility.

b. Since the Appellant has had no prior incidents while at the Facility, the Facility cannot provide any documentation to show that the residents are endangered.

c. The Appellant has not been convicted of any crime as of the date of the hearing.

VIII. DISCUSSION

The issue is whether the Facility may involuntarily discharge the Appellant due to him endangering the health and/or safety of others at the Facility by residing at the Facility. The Facility provided its sex offender admissions policy as evidence, which states that, as part of the admissions process, the Facility may review the National Sex Offender Public Website and the Rhode Island Sex Offender Community Notification Unit Registry, as permitted by law. If the potential resident is listed on either, the Facility may review admission on a case-by-case basis, considering the potential impact on the health, safety, security, and well-being of residents, visitors, and staff.

The Facility testified that the Appellant has no documented incidents while residing at the Facility. The Ombudsman testified that the Appellant has been a resident of the Facility for 15 months, and during that time, the Appellant has had no documented incidents. The Ombudsman further testified that the Appellant had not been convicted of any crime as of the date of the hearing.

The issue with this discharge is that the Appellant is already a resident of the Facility; he is not being admitted to the Facility. Second, the Facility admitted that the Appellant has had no documented incidents while at the Facility. Third, as of the date of this hearing, the Appellant has not been convicted of any crime. The Facility learned of the Appellant's pending court case only after the Appellant informed them. The Facility's admission policy states that it determines each case's circumstances on a case-by-case basis. The Facility failed to follow its own policy by

not considering that the Appellant has had no prior incidents while residing at the Facility for the last 15 months.

To discharge the Appellant, the Facility must follow specific regulations. The procedural requirements the Facility must adhere to are set forth in State regulation 210-RICR-50-00-7. According to 210-RICR-50-00-7.5, the Facility must show prior documentation that the Appellant has endangered the health and/or safety of other residents at the Facility. Yet, the Facility has failed to provide any documentation to support its discharge claim. The Facility contradicts itself by stating on the record that the Appellant had no prior incidents in the past 15 months while residing in the Facility. Based on these facts, the reason for the discharge is invalid.

IX. CONCLUSION OF LAW

After a careful review of the evidence and testimony presented at the administrative hearing, it has been concluded that:

1. The Facility has failed to meet the documentation requirements for discharge under 2140-RICR-50-00-7.5.
2. The Facility has failed to prove that the Appellant has endangered the health and/or safety of other residents in the Facility, as laid out in 210-RICR-50-00-7.4 (A).
3. The Facility policy, cited at hearing, entitled Sex Offender Admission Policy, deals with new admissions to the Facility and not current residents.

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 August 20, 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], and to Renee Miller, Alliance for Better Long-Term Care, 422 Post Rd, Suite 204, Warwick, RI 02888, via regular mail, postage prepaid. Copies were sent, via email, to [redacted] on this 25th day of September, 2026.

