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DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Assistant Commissioner

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

A.B.,	
PETITIONER,	**ADMINISTRATIVE ACTION**
v.	**FINAL AGENCY DECISION**
HAMMONTON CENTER REHAB,	**OAL DKT. NO. HMA 8788-2020**
RESPONDENT.	

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. No exceptions to the Initial Decision were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is August 20, 2021 in accordance with an Order of Extension.

This matter arises from the notice of intent to discharge Petitioner from Hammonton Center Rehab (Hammonton) to another facility. For the reasons that follow, I agree with the Initial Decision's finding that Hammonton failed to provide adequate

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notice of the involuntary discharge but MODIFY the decision to apply those findings to the applicable regulations.

The case turns on the adequacy of the notice and the validity of the documents to support the discharge. The regulations surrounding an involuntary discharge lie at the federal level as they apply to all nursing facility residents regardless of payor source. Federal law is clear that a "nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless—. . . **(iii)** **(I)** for transfers or discharges effected on or after October 1, 1989, notice of the resident's right to appeal the transfer or discharge under the State process established under subsection (e)(3) of this section." 42 U.S.C. § 1396r. That subsection requires "a fair mechanism, meeting the guidelines established under subsection (f)(3) of this section, for hearing appeals on transfers and discharges of residents of such facilities; but the failure of the Secretary to establish such guidelines under such subsection shall not relieve any State of its responsibility under this paragraph." 42 U.S.C. § 1396r(e)(3). In turn the Centers for Medicare and Medicaid Services' (CMS) regulations regarding the adequacy of the notice require certain conditions be met. 42 C.F.R. § 483.15(c). That was not done in this case.

At the outset I must note that the Initial Decision's citations to 45 C.F.R. § 205.10 are incorrect. That section of the federal regulations concerns services provided "under title I, IV-A, X, XIV, or XVI(AABD) of the Social Security Act." 45 C.F.R. § 205.10(a). The rules discussing the involuntary transfer or discharge of nursing home residents at 42 C.F.R. § 483.15 point to 42 C.F.R. §§ 431.220 and 431.230 for the resident's rights to a

hearing. While the rules are similar, involuntary discharges or transfers are only subject to the hearing rules found under Title 42.

The federal regulations require that notice be given in writing no less than 30 days prior to the date of discharge or transfer. 42 C.F.R. § 483.15 (c)(4)(i). Here the notice was dated August 14, 2020 and proposed a discharge on September 11, 2020. So, at minimum, the notice fails to meet the required timeframe.

The regulations does provide that the 30 day time period may be shortened to "as soon as practicable" prior to the transfer when:

> **(A)** The safety of individuals in the facility would be endangered under paragraph (c)(1)(i)(C) of this section;
> **(B)** The health of individuals in the facility would be endangered, under paragraph (c)(1)(i)(D) of this section;
> **(C)** The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (c)(1)(i)(B) of this section;
> **(D)** An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (c)(1)(i)(A) of this section; or
> **(E)** A resident has not resided in the facility for 30 days.

42 C.F.R. § 483.15(c)(4)(ii)

The notice alleges that the safety or health of the facility residents would be endangered based on aggressive behavior towards residents; failure to sign and non-compliance with the smoking policy and drug and smoking paraphernalia found in Petitioner's room. However, nothing in the record shows that any of these circumstances required less than 30 day notice. Indeed, according to the facility's own list, the only incident that happened in August prior to the notice was Petitioner's failure to comply with or sign the smoking policy on August 14, 2020. R-1. This does not appear to be a new violation but rather something that had been going on since March 2019.

Additionally when discharging under 42 C.F.R. § 483.15(c)(1)(C) or (D) there must be documentation in the resident's file from a physician attesting to the necessity of the transfer. See 42 C.F.R. § 483.15(c)(2)(B). There is no such documentation in the record.

Due to the timing deficiencies in the notice as well as Hammonton's failure to demonstrate that it had documented Petitioner's file, I hereby concur with the Initial Decision's findings that the transfer notice was invalid as it did not comply with the regulations. I note that Hammonton may cure these issues with a proper notice including the right to a hearing.

THEREFORE, it is on this 17th day of AUGUST 2021,

ORDERED:

That the Initial Decision is hereby MODIFIED as set forth above; and

That the determination that the transfer notice was deficient, as set forth above, warrants the REVERSAL of the proposed transfer.

Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance
and Health Services