cc: DOH.sm.DCAppeals@health.ny.gov by scan
SAPA File
BOA by scan

NEW YORK STATE | Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

August 15, 2025

CERTIFIED MAIL/RETURN RECEIPT

[redacted]
c/o Stony Brook University Hospital
101 Nichols Road
Stony Brook, New York 11794

Carolyn Hill, Esq.
Stony Brook University Hospital
101 Nichols Road
Stony Brook, New York 11794

Peretz Stein, Administrator
Ross Center for Nursing and Rehabilitation
839 Suffolk Avenue
Brentwood, New York 11717

Carly Sommers, Esq.
Mental Hygiene Legal Services
320 Carleton Avenue
Central Islip, New York 11722

RE: In the Matter of [redacted] – Discharge Appeal

Dear Parties:

Enclosed please find the Decision After Hearing in the above referenced matter. This Decision is final and binding.

The party who did not prevail in this hearing may appeal to the courts pursuant to the provisions of Article 78 of the Civil Practice Law and Rules. If the party wishes to appeal this decision it may seek advice from the legal resources available (e.g. their attorney, the County Bar Association, Legal Aid, etc.). Such an appeal must be commenced within four (4) months from the date of this Decision.

Sincerely,

Natalie J. Bordeaux

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

In the Matter of an Appeal, pursuant to 10 NYCRR 415.3, by

[redacted]

Appellant,

from a determination by

Ross Center for Nursing and Rehabilitation,

Respondent,

to discharge him from a residential health care facility.

COPY

DECISION AFTER HEARING

#DA25-6637

Hearing before: Jeanne T. Arnold
Administrative Law Judge
August 11 & 14, 2025
By videoconference

Parties: Ross Center for Nursing and Rehabilitation
839 Suffolk Avenue
Brentwood, New York 11717
By: Peretz Stein, Administrator

[redacted]
c/o Stony Brook Hospital
101 Nichols Road
Stony Brook, New York 11794
By: Carly Sommers, Esq.
Mental Hygiene Legal Services
320 Carleton Avenue
Central Islip, New York 11722

Also Appearing: Stony Brook University Hospital
By: Carolyn Hill, Esq.
Stony Brook Hospital
101 Nichols Road
Stony Brook, New York 11794

JURISDICTION

Ross Center for Nursing and Rehabilitation (Facility), a residential health care facility subject to Article 28 of the Public Health Law (PHL), transferred [redacted] (Appellant) from its nursing home to an acute care hospital and refuses to readmit him. The Appellant appealed the discharge to the New York State Department of Health pursuant to 10 NYCRR 415.3(i).

HEARING RECORD

Facility witnesses:	Theda Burrell, Director of Nursing Patricia Schill, Assistant Director of Nursing
Facility exhibit:	1 - Brief Interview of Mental Status (BIMS) report
Appellant witness:	Jamie Barbarino, Licensed Master Social Worker (LMSW) Stony Brook University Hospital
Appellant exhibits:	None
ALJ exhibits:	I (Notice of Hearing) II (Resident Face Sheet)

A pre-hearing conference was held on August 11, 2025 and both parties consented to an adjournment in contemplation of settlement. The hearing, held on August 14, was recorded on Webex videoconference. (1h1m.) Testimony is indicated by "T".

ISSUES

Has the Facility established that the Appellant's discharge is necessary and that the discharge plan is appropriate?

SUMMARY OF FACTS

1. The Facility is a nursing home within the meaning of PHL § 2801(2) and 10 NYCRR 415.2(k), located in Brentwood, New York.

2. The Appellant, age [redacted] was last admitted as a resident in [redacted] 2025 from [redacted] Hospital. His medical history includes [redacted] and other disorders of [redacted]. (Exhibit II.) The Appellant's BIMS score is [redacted]/15. (Exhibit 1.)

3. On [redacted] 2025, the Facility transferred the Appellant to Stony Brook University Hospital for a [redacted] evaluation after he [redacted] and [redacted] wheelchair and [redacted]. (T Burrell, Schill.)

4. Stony Brook University Hospital is a general hospital within the meaning of PHL § 2801(10). The hospital staff determined that the Appellant does not require hospitalization and is ready to return to the Facility. He is medically stable for discharge from the hospital and appropriate for nursing home placement. (T Barbarino.)

5. The Facility refuses to readmit the Appellant.

6. At no time did the Facility provide to the Appellant or his designated representative or other family member a written notice of discharge including the grounds for discharge, discharge location, the Appellant's appeal rights, and the other information required by 10 NYCRR 415.3(i)(1)(iii),(iv),(v).

7. The Facility has not developed an appropriate post-discharge plan of care for the Appellant that addresses his long-term care and medical needs and how they will be met after discharge, as required by 10 NYCRR 415.3(i)(1)(vi).

APPLICABLE LAW

A residential health care facility (or nursing home) is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. PHL § 2801(2)(3); 10 NYCRR 415.2(k).

Transfer and discharge rights of nursing home residents have been codified in PHL § 2803-z and set forth in Department regulations at 10 NYCRR 415.3(i) and federal regulations at 42 CFR 483.15(c). They include the requirement that before it transfers or discharges a resident, the nursing home must notify the resident and designated representative, if any, of the transfer or discharge and the reasons for the move in writing. Such notice must be provided no later than the date on which a determination was made to transfer or discharge the resident. 42 CFR 483.15(c)(3)(4); 10 NYCRR 415.3(i)(1)(iii)(iv).

Department regulations at 10 NYCRR 415.3(i)(1)(i) describe the permissible bases upon which a nursing home may transfer or discharge a resident. When a facility determines that discharging a resident is appropriate because the safety of individuals in the facility is endangered, it must ensure that the resident's clinical record contains complete documentation made by a physician. 42 CFR 483.15(c)(2)(ii)(B); 10 NYCRR 415.3(i)(1)(ii)(b). The facility must prove that the discharge was necessary and that the discharge plan is appropriate. 10 NYCRR 415.3(i)(2)(iii); New York State Administrative Procedure Act § 306(1).

DISCUSSION

The Appellant was transferred to Stony Brook University Hospital on [redacted] 2025 after an episode in which he [redacted] and [redacted] wheelchair and [redacted]. (T Burrell, Schill.) The hospital emergency room evaluated the Appellant and determined the same day that he was both medically and [redacted] stable for return to the Facility. (T Barbarino.)

The hospital notified the Facility on [redacted], [redacted] 2025 via NAVI, its healthcare navigation communication system, that the Appellant was cleared

to return to the Facility. (T Barbarino.) The Facility has not responded to the hospital's messages and refuses to allow the Appellant to return. (T Barbarino.) On [redacted], only after the Appellant requested a hearing, the Facility appeared and agreed to review the hospital records to discern whether it would readmit the Appellant or issue a discharge notice. The hearing was adjourned on consent to [redacted]

On [redacted] although the Facility still had not issued a notice of discharge as required by 42 CFR 483.15(c)(3)(4) and 10 NYCRR 415.3(i)(1)(iii)(iv), it still refused to readmit the Appellant. The Facility contends that it is not "dumping" the Appellant in the hospital but rather "crying out" to the hospital for help because the Facility is not a safe place for the Appellant and its residents will be in danger if the Appellant returns. (T Burrell, Schill.) However, the Facility produced no evidence that this alleged grounds for discharge was documented by a physician and made part of the Appellant's clinical record as required by both federal and state regulations. 42 CFR 483.15(c)(2)(ii)(B); 10 NYCRR 415.3(i)(1)(ii)(b). The Facility is also required to document in the resident's clinical record the risks to the resident or others if the resident were to remain in the facility. PHL § 2803-z(e). When discharge is alleged to be necessary because the resident's needs cannot be met after reasonable accommodation in the Facility, the resident's clinical record must include complete documentation made by the resident's physician of the specific needs that cannot be met and the Facility's attempt to meet those needs. PHL § 2803-z(d); 10 NYCRR 415.3(i)(1)(ii)(a); 42 CFR 483.15(c)(2)(i)&(ii).

Department policy disseminated to nursing home administrators by "Dear Administrator Letter" (DAL) explicitly confirms that the notice requirements are applicable if a nursing home does not want to readmit a resident who has been hospitalized:

Q: If a resident is sent to the hospital due to the resident's clinical or behavioral status that endangers the health and/or safety of other individuals in the facility, do I need to issue a Discharge/Transfer Notice?

A: A hospital is not an appropriate discharge location. Admission assessments are key to ensuring the facility can care for the residents admitted. If there is evidence a facility cannot meet the resident's needs, or the resident poses a danger to the health and safety of his/herself or others, the facility must follow all the requirements as they apply to discharge including the basis for discharge, provide notice to the resident, his/her representative and the LTCOP, reason for discharge, discharge location and appeal rights information. A facility's determination not to permit a resident to return must not be based on the resident's condition when originally sent to the hospital. DAL-NH 19-07, August 20, 2019; *reissued* October 11, 2022; DAL-NH 25-01, January 7, 2025.

The Facility has failed to comply with the notice requirements of New York State law and both state and federal regulations.

While it may have been appropriate for the Facility to transfer the Appellant for hospital evaluation on [redacted], the hospital care team has determined that the Appellant does not require hospitalization for either medical or [redacted] reasons and that return to the nursing home is appropriate. The Facility was given an opportunity to review the hospital's records and offered no evidence to call that assessment into question. It has not had any contact with the Appellant since sending him to the hospital. (T Burrell, Schill, Barbarino.) Having offered no documentation, and no professional medical opinion to document the Appellant's current condition, the Facility has failed to meet its burden of proving appropriate grounds for discharge or refusal to now readmit the Appellant from Stony Brook University Hospital.

The Facility complains that it was not fully aware of the Appellant's behavioral history when it admitted him, and they believed he would be there only short-term. Facilities are required to determine their capacity and capability to care for the residents

they admit and should not admit residents whose needs they cannot meet. DAL-NH 19-07 & DAL-NH 25-01, *supra*. In any event, the Facility's failure to adequately evaluate the Appellant before admission does not relieve it of the responsibilities it undertook upon admission. Further, the Appellant's face sheet details that the Appellant's [redacted] needs were documented, and the Appellant was first admitted into the Facility in 2022. (Exhibit II.)

In addition to ignoring the notice requirements and failing to document grounds for discharge as required, the Facility failed to conduct and document appropriate discharge planning. When a resident is hospitalized, the nursing home is required to establish and follow a written policy that includes readmission to the facility if the resident requires nursing home care. 10 NYCRR 415.3(i)(3); 42 CFR 483.15(e). If the resident is not appropriate for return to the nursing home, the nursing home is required to provide sufficient preparation and orientation to ensure safe and orderly transfer or discharge in the form of a discharge plan which addresses the medical needs of the resident and how these will be met after discharge, and to provide a discharge summary pursuant to 10 NYCRR 415.11(d). 10 NYCRR 415.3(i)(1)(vi).

The Facility has failed to develop a plan to address the Appellant's continued need for residential care. The Facility intimated that somehow the burden of locating a discharge location fell on the hospital. Yet discharge to a general hospital does not meet the nursing home's responsibility to provide an appropriate discharge plan. DAL-NH 15-06, September 23, 2015. Further, the Facility ***is*** the appropriate location for the Appellant to return to unless or until the Facility proves that discharge is necessary. The Appellant wishes to return to the Facility, his home. (T Barbarino.)

DECISION AND ORDER

Ross Center for Nursing and Rehabilitation has not established that the discharge of the Appellant [redacted] was necessary or that its discharge plan is appropriate.

Ross Center for Nursing and Rehabilitation is directed to readmit [redacted] to its facility prior to admitting any other person pursuant to 10 NYCRR 415.3(i)(2)(i)(d).

Dated: Rochester, New York
August 15, 2025

Jeanne T. Arnold
Administrative Law Judge
Bureau of Adjudication

TO:

Peretz Stein, Administrator
Ross Center for Nursing and Rehabilitation
839 Suffolk Avenue
Brentwood, New York 11717
pstein@rosshealthcare.com

Carly Sommers, Esq.
Mental Hygiene Legal Services
320 Carleton Avenue
Central Islip, New York 11722
csommers@nycourts.gov

[redacted]
c/o Stony Brook University Hospital
101 Nichols Road
Stony Brook, New York 11794

Carolyn Hill, Esq.
Stony Brook University Hospital
101 Nichols Road
Stony Brook, New York 11794
Carolyn.Hill@stonybrookmedicine.edu