

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2206143
<b>Decision Date:</b>	8/30/2022	<b>Hearing Date:</b>	August 23, 2022
<b>Hearing Officer:</b>	Stanley M. Kallianidis		

**Appellant Representative:**



**Facility Representative:**

Ryan Murphy, Administrator



***Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, 6<sup>th</sup> Floor  
Quincy, MA 02171***

## APPEAL DECISION

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Nursing Facility Discharge
<b>Decision Date:</b>	8/30/2022	<b>Hearing Date:</b>	August 23, 2022
<b>Appellant Rep:</b>	[REDACTED]	<b>Facility Rep:</b>	Ryan Murphy

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

On August 1, 2022, Care One at Peabody (the nursing facility) informed the appellant of its intent not to readmit him following hospitalization, with less than 30 days' notice, because the health and well-being of the individuals in the facility would otherwise be endangered. On the same date, he was sent notice that he was being discharged to the same hospital (see 130 CMR 610.028 and Exhibits 1 & 2). The appellant timely appealed the facility's decision not to readmit him on August 13, 2022 (130 CMR 610.015(B) and Exhibit 3).

A nursing facility-initiated discharge is valid grounds for appeal (see 130 CMR 610.032).

### Action Taken by the Facility

The nursing facility issued a notice of intent not to readmit the appellant with less than 30 days' notice.

### Issues

In accordance with 130 CMR 610.028, 456.701, did the nursing facility give proper notice to the appellant following its decision not to readmit him?

In accordance with 130 CMR 610.028, was the reason for discharge cited by the nursing facility documented in the record by a physician?

## Summary of Evidence

The nursing facility's administrator testified that the appellant was transferred to Lawrence General Hospital (the hospital) on August 1, 2022 due to behavioral issues. This action followed an April 13, 2022 notice of discharge to the appellant's home in the community for the same reasons. According to the appellant's nursing home record, he is 65 years old, and was admitted to its facility on February 5, 2021. His primary diagnosis is diabetes with a diabetic left leg ulcer. He also has been diagnosed with psychosis, obesity and depression and anxiety (Exhibit 4).

The nursing facility does not intend to readmit the appellant following this hospitalization because he can no longer be safely cared for at the nursing facility. The nursing facility's administrator testified that the appellant was sent to the hospital on a "Section 12" due to yelling and screaming at staff, refusing his medication and being unable to be redirected. The administrator testified that there have been numerous such incidents where the appellant screams at staff, often at night and early in the morning. These outbursts are laced with profanity and are upsetting the other residents and are documented in the nursing progress notes. The administrator stated that as a result of the appellant's screaming and outbursts, there have been numerous complaints from other residents and the situation has created an atmosphere where their health is now at risk. The appellant was also noted to have thrown a tray at a staff member. According to testimony and the appellant's nursing home record, he is non-compliant with his medication and physical therapy (Exhibit 4).

The nursing facility administrator also testified that a physician has not yet documented that the appellant is a threat to the residents' health, but that he could get statements to this effect from several of the residents who have been affected by the appellant's behavioral issues. The administrator was adamant that facility does not want to readmit the appellant, and that it plans on discharging him to his home in the community which he shares with his two other brothers. He stated that the appellant would be "an at-risk" elder in the community. There has been no discharge plans made for the appellant to return home in the community at this time (Exhibit 4).

The appellant's representative, a hospital social worker, testified that the notice that was given to him was insufficient and that the appellant's transfer to the hospital was unusual in that several closer hospitals and psychiatric units were bypassed. She stated that the appellant is not currently in a psychiatric unit and is ready to be discharged to his nursing facility. She acknowledged that the appellant has behavioral issues. However, she was of the opinion that these issues could be better handed with more staffing.

According to the appellant's representative, he is a total care patient and thus cannot be discharged home to the community. He is non-ambulatory and seldom, if ever gets out of bed. He is a two or three person assist and cannot be transferred out of bed without a Hoyer lift. She testified that the appellant would like to someday return to live in the community, but only when his health improves so that he may do so safely.

## **Findings of Fact**

Based on a preponderance of the evidence, I find the following:

1. The appellant was transferred from the nursing facility to the hospital via a Section 12 order on August 1, 2022 due to yelling and screaming at staff, refusing his medication and being unable to be redirected (Exhibit 1).
2. According to August 1, 2022 notices sent to the appellant, the nursing facility does not intend to readmit him following his release from the hospital because his behavioral issues endanger the health and well-being of the individuals in the facility (Exhibits 1 & 2).
3. The action of August 1, 2022 followed an April 13, 2022 notice of discharge to the appellant's home in the community for the same reasons (Exhibit 4 & testimony).
4. The appellant is 65 years old. He was admitted to its facility on February 5, 2021. His primary diagnosis is diabetes with a diabetic left leg ulcer. He also has been diagnosed with psychosis, obesity and depression and anxiety (Exhibit 4).
5. The appellant is non-ambulatory and seldom, if ever gets out of bed (testimony).
6. The nursing facility plans on discharging the appellant to his home in the community as indicated in the notice of April 13, 2022 (Exhibit 4 & testimony).
7. There has been no discharge plans made to date for the appellant to return home (Exhibit 4).
8. At this time, there is no documentation from a physician that the appellant is a threat to the health of other nursing facility residents (Exhibit 4 and testimony).

## Analysis and Conclusions of Law

A resident may be transferred or discharged from a nursing facility only when

- (1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the nursing facility;
- (2) the transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the nursing facility;
- (3) the safety of individuals in the nursing facility is endangered;
- (4) the health of individuals in the nursing facility would otherwise be endangered;
- (5) the resident has failed, after reasonable and appropriate notice, to pay for (or failed to have the MassHealth agency or Medicare pay for) a stay at the nursing facility; or
- (6) the nursing facility ceases to operate. 130 CMR 610.028(A).

130 CMR 610.028(D): As provided in 130 CMR 456.429: Medical Leave of Absence: Failure to Readmit, a nursing facility's failure to readmit a resident following a medical leave of absence will be deemed a transfer or discharge (depending on the resident's circumstances). Upon determining that it will not readmit the resident, the nursing facility must issue notice to the resident and an immediate family member or legal representative, if the resident has made such a person known to the facility, in accordance with 130 CMR 456.701(A) through (C), 456.702<sup>1</sup>: Time Frames for Notices Issued by Nursing Facilities, and 130 CMR 610.028 through 610.030.

130 CMR 610.029: Time Frames for Notices Issued by Nursing Facilities.

(A) The notice of discharge or transfer required under 130 CMR 610.028 must be made by the nursing facility at least 30 days before the date the resident is to be discharged or transferred, except as provided for under 130 CMR 610.029(B) and (C).

(B) In lieu of the 30-day-notice requirement set forth in 130 CMR 610.029(A), the notice of discharge or transfer required under 130 CMR 610.028 must be made as soon as practicable before the discharge or transfer in any of the following circumstances, which are considered to be emergency discharges or emergency transfers.

- (1) The health or safety of individuals in the nursing facility would be endangered and this is documented in the resident's record by a physician.
- (2) The resident's health improves sufficiently to allow a more immediate transfer or discharge and the resident's attending physician documents this in the resident's

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<sup>1</sup> The regulations at 130 CMR 456.701 and 456.702 are the same as the regulations at 130 CMR 610.028 and 610.029.

record.

(3) An immediate transfer or discharge is required by the resident's urgent medical needs and this is documented in the medical record by the resident's attending physician.

(4) The resident has not lived in the nursing facility for 30 days immediately before receipt of the notice.

(C) When the transfer or discharge is the result of a nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, the notice of transfer or discharge, including that which is required under 130 CMR 456.429: Medical Leave of Absence: Failure to Readmit, must comply with the requirements set forth in 130 CMR 456.701: Notice Requirements for Transfers and Discharges Initiated by a Nursing Facility, and must be provided to the resident and an immediate family member or legal representative, if such person is known to the nursing facility, at the time the nursing facility determines that it will not readmit the resident.

(D) Appeals of discharges and transfers listed in 130 CMR 610.029(B) and (C) are handled under the expedited appeals process described in 130 CMR 610.015(F).

130 CMR 610.028(C): Notice Requirements Regarding Actions Initiated by a Nursing Facility.

Before a nursing facility discharges or transfers any resident, the nursing facility must hand-deliver to the resident and mail to a designated family member or legal representative, if the resident has made such a person known to the facility, a notice written in 12-point or larger type that contains the following, in a language the member understands: (1) the action to be taken by the nursing facility; (2) the specific reason or reasons for the discharge or transfer; (3) the effective date of the discharge or transfer; (4) the location to which the resident is to be discharged or transferred.

The nursing facility must meet the requirements of all other applicable federal and state regulatory requirements in addition to the MassHealth-related regulations discussed above, including MGL c.111, §70E, which states in pertinent part that

A resident, who requests a hearing pursuant to section 48 of chapter 118E, shall not be discharged or transferred from a nursing facility licensed under section 71 of this chapter, unless a referee determines that the nursing facility has provided sufficient preparation and orientation to the resident to ensure safe and orderly transfer or discharge from the facility to another safe and appropriate place.

In this case, I have found that the appellant's nursing facility transferred the appellant to the hospital on August 1, 2022 due to behavioral issues. The nursing facility does not intend to readmit the appellant following this hospitalization because his behavioral issues endanger the health and well-being of the individuals in the facility. Regardless of

whether or not this action has any merits, the nursing facility failed to comply with all the notice requirements of regulation 130 CMR 456.701, including the obligation to include in the transfer/discharge notice the location to which the resident is to be discharged or transferred following his hospitalization. While such transfer/discharge notice with a discharge location was previously given to the appellant in April 2022, there is to date no discharge plan in place as is required by 130 CMR 610.028 and state statute. Also, there has been no physician documentation in the record that the appellant is a threat to the health of the facility's other residents as required under 130 CMR 610.029.

Accordingly, based upon an insufficient notice, a lack of discharge planning and no physician documentation, the nursing facility's decision not to readmit the appellant is overturned, and the facility must readmit the appellant promptly to its first available bed.

The appeal is therefore approved.

## **Order for the Facility**

Facility must promptly re-admit the appellant to the next available bed.

## **Implementation of this Decision**

If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings at the address on the first page of this decision.

## Notification of Your Right to Appeal to Court

If either party disagrees with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

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Stanley M. Kallianidis  
Hearing Officer  
Board of Hearings

cc:



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