

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2311573
<b>Decision Date:</b>	12/01/2023	<b>Hearing Date:</b>	11/30/2023
<b>Hearing Officer:</b>	Kimberly Scanlon		

**Appearance for Appellant:**



**Appearance for Nursing Facility:**

*Via telephone*  
Aimee Castiglioni, Administrator



*The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, Quincy, Massachusetts 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Expedited Nursing Facility Discharge
<b>Decision Date:</b>	12/01/2023	<b>Hearing Date:</b>	11/30/2023
<b>Nursing Facility's Rep.:</b>	Aimee Castiglioni	<b>Appellant's Reps.:</b>	[REDACTED]
<b>Hearing Location:</b>	Springfield MassHealth Enrollment Center Room 1 (Remote)	<b>Aid Pending:</b>	No

### Authority

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

### Jurisdiction

Through a notice dated November 10, 2023, [REDACTED] (hereinafter "the nursing facility") issued a Notice of Intent Not to Readmit a Resident Following Hospitalization with Less Than 30 Days' Notice (Expedited Appeal) for the specific reason: "the health and safety of the individuals in the nursing facility would be endangered and this is documented in your record by a physician." (Exhibit 1). The Appellant filed this appeal in a timely manner on or about November 15, 2023.<sup>1</sup> (130 CMR 610.015(F); Exhibit 2).<sup>2</sup> Failure to readmit a resident following hospitalization

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<sup>1</sup> The Appellant's November 15, 2023 fair hearing request was dismissed by the Board of Hearings (hereinafter "BOH") on or about November 17, 2023, for failure to submit written authorization from the nursing home resident. The Appellant subsequently submitted the pertinent documentation to the BOH on or about November 27, 2023, and a hearing was scheduled. (See, Exhibits 2-5).

<sup>2</sup> 130 CMR 610.015(F) Expedited Appeals for Discharges and Transfers from a Nursing Facility Under 130 CMR 610.029(B) or (C). A resident may request an expedited appeal when a nursing facility notifies a resident of a discharge or transfer under the time frames of 130 CMR 610.029(B) or (C). When such a request is made, BOH will schedule a hearing as soon as possible, but no later than seven days from the date BOH receives the request. The hearing officer must render a final decision as soon as possible, but no later than seven days from the date of the hearing. These time limits may be extended pursuant to 130 CMR 610.015(D). Appeal requests made under 130

by a nursing facility (deemed as a transfer or discharge) is valid grounds for appeal. (130 CMR 456.429; 130 CMR 610.032(C)).

## **Action Taken by the Nursing Facility**

The nursing facility issued the Appellant a Notice of Intent Not to Readmit Resident Following Hospitalization with Less Than 30 Days' Notice (Expedited Appeal) for the specific reason: "the health and safety of the individuals in the nursing facility would be endangered and this is documented in your record by a physician."

## **Issue**

The appeal issue is whether the nursing facility was correct in notifying the Appellant of its intent not to readmit him following hospitalization with less than 30 Days' notice because "the health and safety of the individuals in the nursing facility would be endangered and this is documented in your record by a physician."

## **Summary of Evidence**

The nursing facility was represented by the facility's administrator. Through a notice dated November 10, 2023, the nursing facility issued a Notice of Intent Not to Readmit a Resident Following Hospitalization with Less Than 30 Days' Notice (Expedited Appeal) for the specific reason: "the health and safety of the individuals in the nursing facility would be endangered and this is documented in your record by a physician." (Exhibit 1). The Appellant was admitted to the nursing facility on [REDACTED], with psychiatric diagnoses. The administrator testified that the facility did its best to manage the Appellant, however, she alleges that the Appellant physically assaulted a patient on every unit and there is no location in the facility to safely readmit him. Accordingly, the patients that were assaulted are elderly, vulnerable and unable to defend themselves. The nursing facility's administrator further testified that if the Appellant were to return, the patients that were assaulted will press legal charges of assault and battery against him.<sup>3</sup> The nursing facility administrator testified that she believed the Appellant is a danger to himself and to society.

The Appellant was represented by his guardian and Life Care manager/licensed independent clinical social worker. The Appellant's Life Care manager testified that she has been the Appellant's

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CMR 610.015(F) automatically waive the requirement for ten-day advance notice of the scheduled hearing date under 130 CMR 610.046(A),

<sup>3</sup> Upon inquiry, the nursing facility's administrator testified that all (alleged) assaults were documented in police reports and Section 12 paperwork. However, the record does not include any documentation from the facility to this effect.

case manager for approximately a year and a half. She explained that the Appellant does have psychiatric diagnoses and is currently receiving dialysis three (3) times per week. The Appellant has not been regularly seen by a psychiatrist in the facility and as a result, the Appellant's Life Care manager explained that she reached out to the facility in October of 2022 to inquire about the Appellant's medications. She further explained that the Appellant has a "Rogers" standing order through the Court. (See, Exhibit 4). The Appellant's medication dosages were subsequently increased. The Appellant's Life Care manager testified that when she made further inquiry about whether the Appellant's dosages have been increased since the Rogers order was implemented, the response given by the facility was "the facility's psychiatrist only comes on Mondays." She explained that the Appellant receives dialysis outside of the facility on Mondays, Wednesdays, and Fridays. As a result, the Appellant was not seen by the facility's psychiatrist. Moreover, the Appellant was not seen by a social worker through the psychiatric program either. The Appellant's Life Care manager testified that she believes the Appellant has not been correctly medicated at the facility. She testified that the facility stated that it is not a psychiatric facility. However, residents have a right to be there, regardless of psychiatric diagnoses, she explained. With respect to the Appellant, his psychiatric diagnoses were not being adequately treated at the facility. The Appellant's Life Care manager testified that the hospital currently treating the Appellant was able to make the changes in his medication, as evidenced in hospital reports/progress notes. (See, Exhibit 6). Said hospital notes further indicate that the Appellant does not presently pose an imminent risk to himself or to others. (See, Exhibit 6, p. 13). The Appellant's Life Care manager testified that accordingly, the Appellant is calm, approachable and can have conversations regarding the change in his medications. *Id.*

As to the incident leading to the Notice of Intent issuance, the Appellant's Life Care manager testified that the nursing facility had the Appellant placed on a Section 12 and less than 24 hours later, issued a Notice of Intent not to Readmit him following hospitalization. She explained that upon speaking to the Massachusetts Ombudsman, it is her understanding that if a nursing facility cannot adequately care for a patient, it is not allowed to have said patient discharged and refuse readmission. Rather, the facility must readmit the patient and assist in finding alternative placement. She explained that in the Appellant's case, it appeared that the facility "was dumping" the Appellant. The Appellant should not be staying on a hospital psychiatric floor though as he is able to converse with others, he is mobile and needs to get back into a routine at the nursing facility, where he resides. Presently, the Appellant's routine is tremendously broken.

The Appellant's guardian testified that the Appellant's medications have not been properly managed by the nursing facility. She explained that the nursing facility assisted her in filing the Appellant's Rogers order by stating to her what medications were needed and what medications needed adjustment. The Appellant's guardian testified that she had the Rogers order approved and submitted it to the nursing facility in August of 2023. However, since then, there have not been any medication adjustments made by the nursing facility. Moreover, the Appellant's guardian did not receive any communication from the nursing facility as to the reasoning that the medication adjustments did not occur. The Appellant's guardian expressed her concern with the

lack of medication adjustments from the facility.

In response, the nursing facility's administrator testified that the facility is not a psychiatric facility, however, a concierge psychiatric service is utilized each Monday to see multiple residents. She testified that she cannot control the service availability for one patient. The nursing facility's administrator further testified that the Appellant receives dialysis from an outside facility on Mondays, Wednesdays, and Fridays. She explained that when a person receives dialysis, all medications drain out. Thus, for a psychiatric person to receive dialysis is a cumbersome process. As a result, the nursing facility's administrator testified that Tuesdays, Thursdays, and Saturdays were quite complicated in attempting to keep everyone safe within the unit. As to the Appellant's routine, the nursing facility's administrator testified that the Appellant did not have a routine because he was constantly coming back and forth from receiving dialysis. She further explained that the Appellant did not really converse with other residents at the facility as most people are afraid of him. As to the Appellant's medication adjustments, the nursing facility administrator explained that it is difficult to adjust a patient's medications when said patient, like the Appellant, is receiving dialysis. She testified that the nursing facility is not the right fit for the Appellant. Further, she testified that the Appellant's representatives are clearly not pleased with the care given by the facility, so it is unclear why they want the Appellant to return. Finally, as to the Massachusetts Ombudsman, the nursing facility's representative explained that the Ombudsman is involved in numerous conversations with the facility and was aware of (and agreed to) the facility's issuance of a Notice of Intent to the Appellant. The nursing facility's administrator testified that there were over 30 referrals made to other facilities to have the Appellant transferred and "obviously no one wanted to touch anybody like the Appellant." She testified that the facility cannot readmit the Appellant and if he is readmitted, No Trespass orders will be placed, and legal action will be taken for Assault and Battery against an elderly and fragile patient.<sup>4</sup> She explained that her concern is for the patients that reside at the facility, many of which are afraid of the Appellant. The nursing facility's administrator acknowledged that the Department of Public Health ("DPH") may become involved and testified that the facility is prepared for such.

The Appellant's guardian made inquiry as to when the alleged assaults took place. She explained that the most recent incident<sup>5</sup> involving the Appellant did not include an elderly resident and the facility never told her about any other incidents that took place. The nursing facility's administrator testified that she could not respond to any legal matters that counsel is currently researching, however, the Appellant's guardian can contact the police department for any information. In

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<sup>4</sup> It should be noted that the Appellant is over the age of 65.

<sup>5</sup> With respect to the incident leading to the Appellant's hospital admission, it is documented by the hospital, not the nursing facility, that the resident the Appellant "punched in the face" is a 300 lb. male and is 6 feet and 6 inches tall. Accordingly, a police report was filed following this incident. However, the hospital's progress notes indicate that the nursing facility's director stated that the facility filed charges against the Appellant and were faxed over to the Emergency Room (ER). The ER reportedly never received said paperwork. The pertinent police department was then contacted and stated that it has no record of this incident on file. Upon inquiry made to the nursing facility's administrator at the hearing, the response given was "hospitals never get reports from the police."

response, the Appellant's guardian testified that she did contact the police and was told there are no incidents (reports) on file. The nursing facility's administrator testified that the Appellant's guardian has until Sunday to pick up the patient's belongings.<sup>6</sup>

The Appellant's Life Care manager testified in response that the Appellant is very intelligent and humorous. She explained that the Appellant becomes agitated upon provocation. As to the most recent incident that resulted in the Appellant's hospitalization, she explained that the Appellant was on the telephone with his guardian, who has first-hand knowledge of what occurred. The Appellant's Life Care manager testified that another resident attempted to grab his telephone and he pushed the resident away. At that time, the Appellant did not believe that he hurt the other resident, rather he was being provoked while he was on the facility's telephone with a family member (his guardian).<sup>7</sup> She further testified that many people find the Appellant to be joyous. The Appellant's dialysis nursing staff appreciates the Appellant's sense of humor and more importantly, the Appellant is a human being that needs help. She explained that the medication is the help that the Appellant needs and was not receiving. The Appellant's Life Care manager testified that she recently visited the Appellant at the hospital. He was able to converse, listen and understand. She took exception to the picture being painted by the nursing facility's administrator. She testified that back in August, the Appellant had a roommate that punched him, and the nursing facility put that person back into the Appellant's room as his roommate. She further testified that the nursing facility has not assisted the Appellant, who is a joy to be around. The Appellant's Life Care manager explained that the Appellant becomes agitated when provoked and not receiving the proper medication dosages. She further explained that the Appellant is a graduate from Harvard and has a diagnosis of Autism. He does not deserve to be tossed around from place to place. She reiterated that when the Appellant is properly medicated, he can thrive and expressed her frustration with the picture the nursing facility's manager painted of the Appellant, one of the facility's residents.

The Appellant's guardian testified that when the Rogers order was requested, she spoke to the nursing facility's nurse practitioner and an entire plan was put into place and subsequently approved. She explained that she was never notified that the nurse practitioner has since left the facility. Further, it is not the Appellant's fault that his medications were not properly administered by the facility. She further explained that if you set a person up to fail, that person will fail. The Appellant's guardian testified that the Appellant knows and cares for the residents. Specifically, the Appellant will tell her about the residents and their lives, such as what instruments the residents play and what their dreams are. She acknowledged that when the Appellant is agitated, he is not great to be around but that is why he needed his medication adjusted. The Appellant's guardian testified that the Appellant wanted to purchase a gift for one of the dialysis nursing staff because she recently became engaged, as an example of one of the Appellant's endearing

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<sup>6</sup> The nursing facility is encouraged to review, *inter alia*, 130 CMR 456.704, and the Notice for Hearing regarding the nursing facility's requirements. (See, Exhibit 5).

<sup>7</sup> The Appellant's Life Care manager explained that the Appellant does not have a private telephone located within his room and therefore must use the facility's main telephone.

gestures made.

## Findings of Fact

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

1. The Appellant is over the age of 65 and has psychiatric diagnoses. (Testimony; Exhibit 6).
2. The Appellant was admitted to the nursing facility in [REDACTED] [REDACTED]. (Testimony).
3. On or about November 10, 2023, the nursing facility had the Appellant placed on a Section 12 following an incident that took place at the facility. (Testimony).
4. On or about November 10, 2023, the nursing facility then issued a Notice of Intent Not to Readmit the Resident Following Hospitalization with Less than 30 Days' Notice. (Exhibit 1).
5. On November 28, 2023, the hospital medically cleared the Appellant to return to the facility. (Exhibit 6, p. 13).
6. The nursing facility refuses to readmit the Appellant. (Testimony).
7. The Appellant's medications were properly adjusted at the hospital. (Testimony).
8. The Appellant is ready to return to his program and does not pose an imminent risk to himself or others. (Testimony; Exhibit 6, p. 13).

## Analysis and Conclusions of Law

The federal Nursing Home Reform Act (NHRA) of 1987 guarantees all residents the right to advance notice of, and the right to appeal, any transfer or discharge action initiated by a nursing facility. Massachusetts has enacted regulations that follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant regulations may be found in both (1) the MassHealth Nursing Facility Manual regulations at 130 CMR 456.000 et seq., and (2) the Fair Hearing Rules at 130 CMR 610.000 et seq.<sup>8</sup>

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<sup>8</sup> The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.000 et seq. has regulations which are nearly identical to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq. and corresponding federal government regulations. Because of such commonality, the remainder of regulation references in this Fair Hearing decision will only refer to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000 unless otherwise noted and required for clarification.

**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 a notice written in 12-point or larger type that contains, in a language the member understands, the following:

- (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;
- (5) a statement informing the resident of his or her right to request a hearing before the Division's Board of Hearings including:
  - a) the address to send a request for a hearing;
  - b) the time frame for requesting a hearing as provided for under 130 CMR 456.702; and
  - c) the effect of requesting a hearing as provided for under 130 CMR 456.704;
- (6) the name, address, and telephone number of the local long-term-care ombudsman office;
- (7) for nursing-facility residents with developmental disabilities, the address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. s. 6041 et seq.);
- (8) for nursing-facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. s. 10801 et seq.);
- (9) a statement that all residents may seek legal assistance and that free legal assistance may be available through their local legal-services office. The notice should contain the address of the nearest legal-services office; and
- (10) the name of a person at the nursing facility who can answer any questions the resident has about the notice and who will be available to assist the resident in filing an appeal.

(130 CMR 456.701(C)). (emphasis added).

Further, the notice requirements set forth in 130 CMR 456.701(A) state that 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 Division or Medicare pay for) a stay at the nursing facility; or
- (6) the nursing facility ceases to operate.

(See, 130 CMR 610.028(A); 130 CMR 456.701(A)). (emphasis added).

When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 456.701(A)(1) through (5), the resident's clinical record **must contain documentation to explain the transfer or discharge**. The documentation must be made by:

- (1) the resident's physician when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and
- (2) a physician when the transfer or discharge is necessary under 130 CMR 456.701(A)(3) or (4).**

(130 CMR 456.701(B)). (emphasis added).

#### 130 CMR 456.702: Time Frames for Notices Issued by Nursing Facilities:<sup>9</sup>

<sup>9</sup> See also 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 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*

(A) The notice of discharge or transfer required under 130 CMR 456.701(C) must be made by the nursing facility at least 30 days prior to the date the resident is to be discharged or transferred, except as provided for under 130 CMR 456.702(B).

***(B) Instead of the 30-day-notice requirement set forth in 130 CMR 456.702(A), the notice of discharge or transfer required under 130 CMR 456.701 must be made as soon as practicable before the discharge or transfer in any of the following circumstances, which are 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.***

(emphasis added)

(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 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 resided in the nursing facility for 30 days immediately prior to 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, must comply with the requirements set forth in 130 CMR 456.701 and must be provided to the resident and an immediate family member or legal representative at the time the nursing facility determines that it will not readmit the resident. (emphasis added).**

#### 130 CMR 456.704: Stay of a Transfer or Discharge from a Nursing Facility Pending Appeal

(A) If a request for a hearing regarding a discharge or transfer from a nursing facility is received by the Board of Hearings during the notice period described in 130 CMR 456.703(B)(1), the nursing facility must stay the planned discharge or transfer until 30 days after the decision is rendered. While this stay is in effect, the

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*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).

resident must not be transferred or discharged from the nursing facility.

**(B) If a hearing is requested, in accordance with 130 CMR 456.703(B)(2), and the request is received prior to the discharge or transfer, then the nursing facility must stay the planned transfer or discharge until five days after the hearing decision. (emphasis added).**

(C) If the request for a hearing is received within the applicable time frame but after the transfer, the nursing facility must, upon receipt of the appeal decision favorable to the resident, promptly readmit the resident to the next available bed in the facility.

**(D) In the case of a transfer or discharge that is the result of a nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, if the request for a hearing is received within the applicable time period as described in 130 CMR 456.703(B)(3), the nursing facility must, upon receipt of the appeal decision favorable to the resident, promptly readmit the resident to the next available bed. (emphasis added).**

130 CMR 456.429: Medical Leave of Absence: Failure to Readmit

**(A) When a nursing facility is notified that the resident is ready to return to the facility, the nursing facility must readmit the resident following a medical leave of absence. If the nursing facility does not allow the resident to be readmitted following hospitalization or other medical leave of absence, the nursing facility's failure to readmit the resident is deemed a transfer or discharge. The nursing facility must then provide the resident and an immediate family member or legal representative with a notice explaining its decision not to readmit the resident. The notice must comply with the requirements set forth in 130 CMR 456.701, and must be provided to the resident and an immediate family member or legal representative at the time such determination is made.**

**(B) A nursing facility that fails to readmit a member who requires nursing facility services or otherwise violates these provisions may be subject to administrative action.**

(130 CMR 456.429). (emphasis added).

The nursing facility must also comply with all other applicable state laws, including M.G.L. c.111, §70E. The key paragraph of this statute, which is directly relevant to any type of appeal involving a nursing facility-initiated transfer or discharge, reads:

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.<sup>10</sup>

In the present case, on November 10, 2023, the nursing facility issued a Notice of Intent not to Readmit the Resident Following Hospitalization with Less Than 30 Days' Notice (Expedited Appeal), for the specific reason: "the health and safety of the individuals in the nursing facility is endangered and this is documented in your record by a physician. The notice, which is treated as an emergency transfer, triggers specific regulatory timeframes and requirements outlined above. A nursing facility resident can only be discharged for specific reasons also outlined above. The regulations require that when initiating a discharge with less than 30-days' notice because the health or safety of individuals in the nursing facility would be endangered, **it must be documented in the resident's record by a physician**, as explicitly stated in the Notice of Intent issued by the nursing facility. It is puzzling that despite this clear and concise language contained therein, the Appellant's record submitted into evidence is entirely devoid of any documentation by a physician.<sup>11</sup> It is equally as puzzling as to why there are conflicting responses given by the facility (and further contained in the hospital's progress notes) regarding the most recent (alleged) incident that took place involving the Appellant. Notwithstanding the conflicting documentation (or lack thereof received by the facility in support of its claim), 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, must comply with the requirements set forth in 130 CMR 456.701 and must be provided to the resident and an immediate family member or legal representative at the time the nursing facility determines that it will not readmit the resident. It is unclear whether the determination was made by the facility at the time of its determination not to readmit the Appellant.<sup>12</sup>

The Appellant's appeal is APPROVED in accordance with the order below.

## Order for Nursing Facility

Rescind the November 10, 2023 Notice of Intent Not to Readmit the Resident Following Hospitalization with Less than 30 Days' Notice and comply with all requirements set forth above, specifically, in 130 CMR 456.704.<sup>13</sup>

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<sup>10</sup> See also 42 USC 1396r(c)(2)(C) which requires that a nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

<sup>11</sup> The nursing facility did not submit any documentation pertaining to the most recent incident that took place, nor any other alleged incidents involving the Appellant. Indeed, the nursing facility did not submit any documentation.

<sup>12</sup> Regardless of when the nursing facility determined such, the expedited notice of intent not to readmit the Appellant that was issued fails regulatory requirements, for the reasoning set forth above.

<sup>13</sup> The nursing facility is strongly encouraged to work with all parties to ensure that all residents, including the

## Compliance with this Decision

If the nursing facility fails to comply with the above order, 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 you disagree 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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Kimberly Scanlon  
Hearing Officer  
Board of Hearings

cc:

[REDACTED]

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Appellant, are safely and properly cared for.