Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Approved	**Appeal Number:**	2408095
Decision Date:	06/25/2024	**Hearing Date:**	06/06/2024
Hearing Officer:	Patrick Grogan	**Record Open to:**	N/A

Appearance for Appellant:
[redacted]

Appearance for MassHealth:
Patrick Twomey, Administrator
Nancy Rocheleau, Business Office Manager
Pam O'Neill, Director of Nursing
Sara Severino, Social Worker

Interpreter:
N/A

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

Appeal Decision:	Approved	**Issue:**	Nursing Home Discharge
Decision Date:	06/25/2024	**Hearing Date:**	06/06/2024
MassHealth's Rep.:	Patrick Twomey, Nancy Rocheleau, Pam O'Neill, Sara Severino	**Appellant's Rep.:**	[redacted]
Hearing Location:	Remote (Tel)	**Aid Pending:**	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 May 14, 2024, [redacted] (hereinafter "the nursing facility" or "facility") issued a 30 Day Notice of Intent to Discharge Resident to Extended [redacted] (hereinafter "the discharge facility") for the specific reason: "your health has improved sufficiently so that you no longer require the services provided by this facility." (130 CMR 456.701, 130 CMR 610.029(B); Exhibit 1). The Appellant filed this appeal in a timely manner on May 20, 2024. (130 CMR 610.015(F); Exhibit 2). Notice of transfer or discharge from a nursing facility is valid grounds for appeal. (130 CMR 456.703; 130 CMR 610.032(C)).

Action Taken by MassHealth

The nursing facility issued a issued a 30 Day Notice of Intent to Discharge Resident for the specific reason: ""your health has improved sufficiently so that you no longer require the services provided by this facility." (130 CMR 456.701; 130 CMR 610.029(B); Exhibit 1)

Issue

The appeal issue is whether the nursing facility was correct, pursuant to 130 CMR 456.701; in notifying the Appellant of its intent to discharge because: "your health has improved sufficiently so that you no longer require the services provided by this facility." 130 CMR 456.701; Exhibit 1)

Summary of Evidence

The nursing facility was represented telephonically at the hearing by its Administrator, Business Officer Manager, its Director of Nursing, and a Social Worker who testified as follows: the Appellant was admitted to the nursing facility in [redacted]. At the time of admission, the Appellant was unable to ambulate, transfer and could not complete his own Activities of Daily Living (ADLs). (Testimony, Exhibit 4, pg. 8) The Appellant received skilled therapy services from admission into [redacted]. Following the completion of rehabilitation, the Appellant remained at the facility with the goal of discharge to the community. (Testimony) Throughout the past year the Appellant has continued to progress physically and is now independent with ambulation, transfers, ADLS, and Instrumental Activities of Daily Living (IADLs). (Testimony)

The nursing facility continued, stating that the Appellant leaves the center daily, driving himself to the gym as well as to visit friends and family. (Testimony) The Appellant has resumed his prior career as an auto dealer and is working buying/selling high-end vehicles. The nursing facility was informed that short term review for Mass Health Payment ends in June and he will be denied. The denial will be issued as the Appellant is able to manage his own ADLS and IADLS and is functionally independent. (Testimony) The nursing facility stated that the Appellant no longer meets criteria to remain in a skilled nursing facility. Discharge planning and supports have been offered and placement upon discharge has been identified. Following his discharge his Options Counselor through Age Span will continue to follow his case and assist him in locating permanent community placement. (Testimony)

The Appellant testified that he still has difficulty walking distances and ambulates with use of a walker. (Testimony). The Appellant stated that he spent hundreds of dollars on Uber to be transported to the gym to work, himself, on his physical recovery and strengthening. (Testimony) The Appellant stated that he has trouble lifting his leg to enter the shower. The Appellant explained that he leaves the facility daily between 9:45 and 10:00, goes to the gym, and then goes to Dunkin' Donuts where he spends hours on the phone. (Testimony). The Appellant stated that the discharge plan did not support a long-term residency. (Testimony)

In response to questions posed, the Appellant stated that his personal physician is [redacted] with whom he met last in [redacted] or [redacted] of 2023. (Testimony). The Appellant stated that he has never met the facility's physician, whose submission is included in Exhibit 4. The Appellant was only familiar with the facility's prior physician. (Testimony, Exhibit 4, pg. 16) The Appellant testified that his personal physician had ordered him to undergo an MRI and Ct Scan.

The Appellant had attempted an MRI in [redacted] of 2024, however, due to feelings of claustrophobia, the Appellant was unable to complete the exam. (Testimony) The Appellant stated that he was seeking another device, he was aware of one in New York where the patient can sit, instead of being inserted in the MRI tube. (Testimony). The Appellant stated that his personal physician had instructed him to schedule an appointment once he has completed the tests so that the Appellant and the physician may discuss the result and confirm the status of an infection. (Testimony)

In response to questions posed, the nursing facility stated that the nursing facility did not make any attempt to contact the Appellant's personal physician. In response to questions posed, the nursing facility conceded there was no documentation to explain the transfer or discharge within the nursing facility's submission by the nursing facility's physician. (Testimony) The nursing facility stated that usually the nursing facility's physician will document a patient's file closer to the discharge date. (Testimony)

In an Occupational Therapy and Plan of Treatment Note, dated April 23, 2024, it states "Upon assessment patient presents at baseline, no skilled tx needed, eval only at this time, patient is IND with ADLs, getting dressed INDly [Sic] every morning/evening, ambulates with Rw extended HHD and community distances, leaves facility at 10 AM every day, drives to gym and visits with friends in community, patient does not cook at baseline. Patient currently trying to find suitable housing for discharge." (Exhibit 4, pg. 120)

In a MediTelecare Med Management Note dated May 13, 2024, specifically in the Mental Status Exam, it is written "Normal: alert, good hygiene. Speech is normal, language is fluent, Insight Into mental Illness is fair Judgment as indicated by recent behavior Is fair Judgment as indicated by hypothetical situations is fair, oriented to self, time, place, and situation. Thought process normal. Memory functions are unchanged from baseline. Attention is grossly intact. patient tracks well. General intelligence appears average. Verbal fluency and auditory comprehension are intact. Stated mood is "Okay" patient denies depression and anxiety. Affect Is normal; Thought content Is without auditory or visual hallucinations or paranoia. Denies violent, suicidal or homicidal Ideation. Strength and tone: weakness noted; gait and station: uses wheelchair." (Exhibit 4, pg. 108)

In a [redacted] Patient Consult with the facility's doctor, it is memorialized that "Patient was initially followed by [a prior physician], recently transferred to our service. He has greatly improved during rehab stay. He goes out to the community gym most days. He is independent with ADLs. He has no signs of infection. Alert and oriented x 3. Case reviewed with staff. There are no particular questions or concerns regarding this patient at this time. Medications Reviewed. Vital signs are reviewed and are stable." (Exhibit 4, pg. 16)

There are multiple Social Service Notes within this Administrative Record (Exhibit 4). In a Social Services Note, dated May 14, 2024, it is recorded that "SW met with [Appellant] to

discuss discharge planning. He had been previously made aware that he would not be recertified for a continued stay as of 6/10 as he has progressed physically where he does not have needs that need to be met at SNF level of care. [Appellant] continues to drive, go to the gym daily, and spend most of his time outside the center and working remotely In the car sales business. [Appellant] was given a 30 day notice of discharge. He reports that he has continued to work with his options counselor but has refused to complete some applications as he doesn't want to leave this area. SW also provided him a new lottery application from his options counselor and asked him to complete and return it as soon as possible. SW explained that the [discharge facility] is able to accommodate him at the time of discharge and he agreed with this. He has a discharge date [In June of 2024] Identified. (Exhibit 4, pg. 91)

In a subsequent Social Services Note, dated May 29, 2024, the notation indicates "SW met with [redacted] from Age Span who came to the building to provide [Appellant] additional housing applications to complete. At the time of her visit [Appellant] was not In the building, he remained in the community working/visiting [Sic] with friends. She spoke with him via phone and informed him that the applications would be left in his room and he Is to call her once they are completed so she can return and pick them up. [redacted] shared that her attempts to assist [Appellant] in locating housing have been met with resistance and barriers. [Appellant] often declines her applications as the housing options are In locations that he does not feel are safe enough for him to keep the high end cars he Is buying and selling. She reported that In the past she has attempted to get him into [Sic] available housing placements and he declined at the time. She has continuously attempted to get him to place himself onto suggested waiting lists for affordable housing and he has also declined this. [redacted] reported that [Appellant] is also making llttle effort [Sic] to locate his own housing. [redacted] will provide this SVW with the dates of their visits and a list of all applications she has completed with him for his record. SW remains available to [Appellant] and [redacted] for additional discharge supports. (Exhibit 4, pg. 91

In a follow up Social Services Note, dated May 31, 2024, it states that "SW was provided the dates of visits and applications submitted by [redacted] [Appellant]'s Options Counselor from Age Span. [redacted] met with [Appellant] to coordinate discharge planning on: 2/23/2024. 3/19/2024, 4/19/24, 5/1/24, 5/8/24, 5/14/2024, 5/22/2024. [Sic] [redacted] informed this writer that [Appellant] was originally referred to their services in July 2023, but after several attempts to work with [Appellant] and multiple refusals to engaged In discharge planning she had to discharge him from their services. He was picked back up in February 2024." (Exhibit 4, pg. 91)

Findings of Fact

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

1. Through a Notice dated [redacted], the nursing facility issued a 30 Day Notice of Intent to Discharge Resident for the specific reason: "your health has improved sufficiently so that you

no longer require the services provided by this facility." (130 CMR 456.701, 130 CMR 610.029(B); Exhibit 1).

2. The nursing facility testified that the Appellant was admitted to the facility in [redacted]. At the time of admission, the Appellant was unable to ambulate. transfer and could not complete his own Activities of Daily Living (ADLs). (Testimony, Exhibit 4, pg. 8) The Appellant received skilled therapy services from admission into [redacted]. Following the completion of rehabilitation, the Appellant remained at facility with the goal of discharge to the community. (Testimony) Throughout the past year the Appellant has continued to progress physically and is now Independent with ambulation, transfers, ADLS, and Instrumental Activities of Daily Living (IADLs).

3. The nursing facility stating that the Appellant leaves the center daily, driving himself to the gym as well as to visit friends and family. (Testimony) The Appellant has resumed his prior career as an auto dealer and is working daily buying/selling high-end vehicles. The nursing facility was informed that short term review for Mass Health Payment ends in June and he will be denied. The denial will be issued as the Appellant is able to manage his own ADLS and IADLS and is functionally independent. (Testimony) The nursing facility stated that the Appellant no longer meets criteria to remain in a skilled nursing facility. Discharge planning and supports have been offered and placement upon discharge has been identified. Following his discharge, his Options Counselor through Age Span will continue to follow his case and assist him in locating permanent community placement. (Testimony)

4. The Appellant testified that he still has difficulty walking distances and ambulates with use of a walker. (Testimony). The Appellant stated that he spent hundreds of dollars on Uber to be transported to the gym to work, himself, on his physical recovery and strengthening. (Testimony). The Appellant stated that he has trouble lifting his leg to enter the shower.

5. The Appellant explained that he leaves the facility daily between 9:45 and 10:00, goes to the gym, and then goes to Dunkin' Donuts where he spends hours on the phone. (Testimony). The Appellant stated that the discharge plan did not support a long-term residency. (Testimony)

6. The Appellant stated that his personal physician is [redacted] with whom he met last in [redacted]2023. (Testimony). The Appellant stated that he has never met the facility's physician, whose submission is included in Exhibit 4. The Appellant was only familiar with the facility's prior physician. (Testimony, Exhibit 4, pg. 16)

7. The Appellant testified that his personal physician had ordered him to undergo an MRI and Ct Scan. The Appellant had attempted an MRI in [redacted], however, due to feelings of claustrophobia, the Appellant was unable to complete the exam. (Testimony). The Appellant stated that his personal physician had instructed him to schedule an

appointment once he has completed the tests so that the Appellant and the physician may discuss the result and confirm the status of an infection. (Testimony)

8. The nursing facility stated that the nursing facility did not make any attempt to contact the Appellant's personal physician. (Testimony)

9. The nursing facility conceded there was no documentation to explain the transfer or discharge within the nursing facility's submission by the nursing facility's physician. (Testimony)

10. In an Occupational Therapy and Plan of Treatment Note, dated April 23, 2024, it is noted that the Appellant does not require help with his ADLs or IADLs, leaves the facility daily at 10AM, drives to the gym, and visits with friends in the community. (Exhibit 4, pg. 120)

11. In a MediTelecare Med Management Note dated May 13, 2024, specifically in the Mental Status Exam, it is noted that that Appellant exhibited normal speech, that the Appellant was oriented to self, time, place, and situation. It further notes that the Appellant's thought process appeared normal and that his memory functions were unchanged from his baseline. Additionally, it recorded that that Appellant stated his mood was okay and he denied depression and anxiety. Moreover, it was observed that the Appellant's affect was normal, his thought content was without auditory or visual hallucinations or paranoia, and the Appellant denied violent, suicidal or homicidal Ideation. (Exhibit 4, pg. 108)

12. In a [redacted] Patient Consult with the Appellant's primary care doctor, it was noted that that Appellant had greatly improved during rehab stay. The notation supports that Occupational Note indicating that Appellant goes out to the community gym most days, the Appellant is independent with ADLs. Importantly, it is highlighted that the Appellant exhibited no signs of infection, and that there were no particular questions or concerns regarding this Appellant at the time of the consult. (Exhibit 4, pg. 16)

13. In a Social Services Notes, dated May 14, 2024, it was noted that the Appellant had met with a social worker to discuss discharge planning and the Appellant had been previously made aware that he will not be recertified for a continued stay on account of his physically progress where he does not exhibit a requirement for a skilled nursing level of care. Once again, the report supports the notations from the Occupational Therapy and Plan of Treatment Note, dated April 23, 2024 and the Appellant's physician's [redacted] Patient Consult note that the Appellant continues to drive, go to the gym daily, and spend most of his time outside the center. The Social Services Notes continues, noting that the Appellant works remotely In the car sales business. The Note indicates that the Appellant was served a 30 day notice of discharge and that the Appellant reported that he has continued to work with his options. The Social Worker noted that the Worker had explained to the Appellant that the Discharge Facility was able to accommodate him at the time of his

discharge and that he agreed with that information. (Exhibit 4, pg. 91)

14. In a subsequent Social Services Note, dated May 29, 2024, the notation indicated that the options counselor had shared that her attempts to assist the Appellant in locating housing had been met with resistance and barriers. [Appellant] often declined her applications as the housing options are in locations that the Appellant indicated he did not believe were safe enough for him to keep the high-end cars he has been buying and selling, and that the Appellant had declined various placements. (Exhibit 4, pg. 91)

15. In a follow up Social Services Note, dated May 31, 2024, it was noted that the Appellant had met with the options counselor to coordinate discharge planning on: 2/23/2024. 3/19/2024, 4/19/24, 5/1/24, 5/8/24, 5/14/2024, 5/22/2024. The Note continues, indicating that the Appellant was originally referred to the option counselor's services in July 2023, but after several attempts to work with the Appellant and multiple refusals to engaged In discharge planning, she had to discharge him from their services. The Appellant was picked back up in February 2024. (Exhibit 4, pg. 91)

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.[1]

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, as codified within 130 CMR 456.701(C):

(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

[1] The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.000 et seq. has regulations which are identical (or nearly identical) to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq. as well as 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 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.

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.

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. Pursuant to 130 CMR 456.701(B), 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 456.702: Time Frames for Notices Issued by Nursing Facilities: [2]

(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

[2] 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. (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 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).

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 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.

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 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.

(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.

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 as follows:

> 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.[3]

In the present case, through a Notice dated [redacted], the nursing facility issued a 30 Day Notice of Intent to Discharge Resident for the specific reason: "your health has improved sufficiently so that you no longer require the services provided by this facility." (130 CMR 456.701, 130 CMR 610.029(B); Exhibit 1). The Notice meets the regulatory requirements as outlined in 130 CMR 456.701(C). (Exhibit 1, Exhibit 4) The Notice, being deemed regulatorily sufficient, triggers specific regulatory timeframes and requirements to support the reasoning for the issuance of the Notice as outlined above. A nursing facility resident can only be discharged for specific reasons also outlined above. (Exhibit 1, Exhibit 4, pgs. 10-13)

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. Pursuant to 130 CMR 456.701(B), the documentation must be made by the Appellant's physician. Here, the Appellant's clinical record is not documented by the Appellant's physician. (Exhibit 4) Pursuant to 130 CMR 456.701(B)(1), the documentation must be made by the resident's physician when a transfer or discharge is sought under 130 CMR 456.701(A)(2*).* I find that the facility's notice does not comport with the strict requirements for Notice for a discharge based upon sufficient improvement of the Appellant's condition so that the Appellant no longer requires the services provided by the facility, as encapsulated within the Regulations. Specifically, as the Appellant testified, he has a physician, and as the nursing facility conceded, the nursing facility did not attempt to contact the Appellant's physician. Additionally, the nursing facility's physician did document the Appellant's progress, however, nothing in this Administrative Record demonstrates the facility's physician's documentation of the explanation of the Appellant's discharge nor any explanation of how his progress supports discharge, at this time. (Exhibit 4)

While it may be possible to infer, through the submission of the nursing facility, that the nursing facility's physician believes that the Appellant no longer requires skilled nursing services and discharge of the Appellant is appropriate, the Regulations require more than a mere inference. When a transfer or discharge is sought under 130 CMR 456.701(A)(2), the resident's

[3] 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.

clinical record must contain documentation to explain the transfer or discharge. Pursuant to 130 CMR 456.701(B), the documentation must be made by the Appellant's physician. In the instant appeal, this has not happened.

Where this Administrative Record submitted is bereft of any documentation specifically authored by the Appellant's physician, nor even any documentation authored by the nursing facility's physician, supporting the attempt to discharge the Appellant, the attempt to discharge runs afoul of 130 CMR 456.701(B)(1). Accordingly, this appeal is APPROVED.

Order for Nursing Facility

Rescind the 30 Day Notice of Intent to Discharge Resident dated [redacted].

Compliance with this Decision

If this nursing facility fails to comply with the above order, you should report this in writing to the Director of the Board of Hearings, Office of Medicaid, 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.

Patrick Grogan
Hearing Officer
Board of Hearings

cc:

[redacted]