

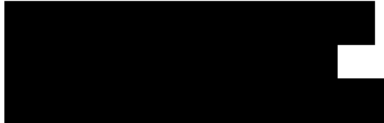
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2500504
Decision Date:	01/21/2025	Hearing Date:	01/15/2025
Hearing Officer:	Christopher Jones		

Appearances for Appellant:



Appearances for Nursing Facility:

Colleen Pino
Susan Garvey



*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 Facility Discharge; Improved Health; Expedited
Decision Date:	01/21/2025	Hearing Date:	01/15/2025
Nursing Facility Reps.:	Colleen Pino; Susan Garvey	Appellant's Reps.:	[REDACTED]
Hearing Location:	Telephonic	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 111, Chapter 118E, and Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a 30-Day Notice of Intent to Discharge Resident, dated January 9, 2025, the respondent-nursing facility informed the appellant that he would be discharged "home" on the same day. The notice indicated that the discharge was because "your health has improved sufficiently so that you no longer need services provided by the facility." (Exhibit 1) The appellant filed this appeal in a timely manner on January 9, 2025. (Exhibit 2; 130 CMR 610.015(B).) Nursing facility residents have the right to request an appeal of any nursing facility-initiated transfer or discharge. (130 CMR 610.032(C).)

Action Taken by Nursing Facility

The nursing facility sought to discharge the appellant with less than 30 days' notice because his health had improved sufficiently so that he no longer needs services provided by the facility.

Issue

The appeal issues are whether: (1) the discharge notice and patient record meet the regulatory requirements set forth in the Fair Hearing Rules at 130 CMR 610.028 and 610.029; (2) the facility has valid grounds to discharge the appellant; and (3) the facility has provided sufficient preparation

and orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place pursuant to MGL Ch. 111, § 70E.

Summary of Evidence

The appellant is a resident in the respondent-nursing facility. The nursing facility's representatives testified that the appellant entered the nursing facility [REDACTED] ago, and his stay had been covered by Medicare. While covered by Medicare, the appellant was receiving physical and occupational therapies. In late December 2024, the nursing facility determined that the appellant no longer required therapy services, and they sought to discharge him. The nursing facility's representatives testified that they have no control over the Medicare coverage criteria, and once the resident is not eligible for Medicare, they are discharged.

The discharge notice is styled a "30-Day Notice of Intent to Discharge Resident." It has a handwritten date of January 9, 2025. It states that notice was given to the resident via mail to his home address, and no copies were sent to a representative. The discharge notice sought to discharge the appellant home on the same day. The nursing facility representative testified that the hearing request form was the back page of the discharge notice that they handed the appellant. The hearing request is dated January 8, 2025. The hearing request copies the appellant's attorney as his representative, and it includes the contact information for the Board of Hearings. The notice does not provide a time frame for requesting the hearing or explain the effect of requesting a hearing. None of the documents submitted include contact information for the local long-term-care ombudsman, though the nursing facility's representatives testified that they provided it to the appellant.

The facility was asked why they used a 30-day notice when they were not giving 30-days' notice. The nursing facility's representatives testified that it had never mattered before. The nursing facility's representatives testified that the facility starts working with residents on transitioning back into the community, practically from the time of admission. The nursing facility's representatives argued, therefore, that the appellant had plenty of notice of their intention to send him home. They also argued that the appellant had filed two appeals with Medicare regarding the ongoing coverage, and he had lost them both. Therefore, the appellant was aware that he no longer required nursing facility coverage, according to Medicare, and would be discharged home.

The appellant and his wife testified that the appellant had been admitted with an immobilized leg and a wound-vac, which delayed his ability to start on occupational and physical therapy. The appellant's wife testified that the appellant's legs are very weak from disuse, and the facility stopped the therapy before the appellant was strong enough to be discharged. The appellant also had to request specific therapy goals, such as stairs or getting into and out of a car. The appellant and his wife also had to specifically ask for exercises to strengthen the appellant's legs, such as using an exercise bike. The appellant's wife noted that the appellant had won one of the Medicare appeals, before ultimately losing on the second appeal. The appellant's wife argued that the

appellant's legs are still too weak, and he needs additional time in a safe environment strengthening them before he can go home.

It was pointed out that this appeal can only address the question of whether the facility may move forward with this discharge. It cannot order the facility to provide any services or otherwise provide payment for the stay at the facility. The appellant and his wife understood that this appeal was solely focused on whether the discharge could proceed. The appellant's wife testified that they are privately paying for their stay at the facility, but she felt that payment should cover therapies that the appellant needs to be ready for discharge.

The appellant's clinical record was not submitted into the record prior to the hearing. The nursing facility's representatives asked that the record be left open to submit the documentation. This request was denied.

Findings of Fact

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

1. The appellant is a resident in the respondent-nursing facility. (Testimony.)
2. Through a 30-Day Notice of Intent to Discharge Resident dated January 9, 2025, the nursing facility sought to discharge the appellant to his home on January 9, 2025, because his health had improved, and he no longer needed nursing facility services. (Exhibit 1.)
3. The back of this notice included a hearing request form. The hearing request form provides the Board of Hearing's contact information, but it does not list contact information for the ombudsman's office, provide a time frame for requesting the hearing, or explain the effect of requesting a hearing. (Exhibit 1.)
4. This hearing request was filed on January 9, 2025. (Exhibit 1.)
5. The nursing facility did not submit the appellant's clinical record prior to the hearing taking place. (Testimony by the nursing facility's representatives.)

Analysis and Conclusions of Law

There are six reasons for which a facility may discharge a resident. (130 CMR 456.701(A); see also 130 CMR 610.028(A).) When the transfer or discharge is "because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the nursing facility ... the resident's clinical record must contain documentation to explain the ... discharge," and the "documentation must be made by ... the resident's physician or PCP" (130 CMR 456.701(A), (B).)

Before a nursing facility discharges any resident

the nursing facility must hand-deliver to the resident **and mail to the authorized 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 their right to request a hearing before MassHealth'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. § 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. § 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).)

Typically, a nursing-facility must provide 30 days notice of its intent to discharge. (130 CMR 456.702(A); 130 CMR 610.029(A).) However, a discharge may occur “as soon as practicable” where 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.**” (130 CMR 456.702(B)(2) (emphasis added); see also 130 CMR 610.015(B)(4) (allowing 14 days to appeal emergency discharge notice).)

Furthermore, a nursing-facility resident who requests a hearing to dispute the discharge “pursuant to section 48 of chapter 118E, shall not be discharged or transferred from a nursing facility ... 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.”¹ (MGL ch. 111, § 70E.) A resident is any “individual receiving care in a nursing facility **regardless of whether the individual is a MassHealth member.**” (130 CMR 456.402 (emphasis added).)

Together, the notice, supporting documentation, and fair hearing rights protect medically vulnerable residents from being discharged before it is medically appropriate to do so. It is troubling how unaware the nursing facility’s representatives appeared to be of these obligations. The notice here is facially deficient. The notice purports to give 30-days’ notice, even though it seeks to discharge the resident the same day. Such could be excused as a mere oversight were it not for the fact that no notice is given of the resident’s substantive right to legal assistance, to contact an ombudsman, or to the timelines and effects of filing for a fair hearing. Nor did the facility actually provide notice to the appellant’s legal representative or identify who at the facility could answer questions moving forward.² Therefore, the nursing facility failed to provide adequate notice to the appellant, and this appeal is APPROVED.

The nursing facility also failed to satisfy its responsibility to “submit to the hearing officer, at or before the hearing, all evidence on which any action at issue is based.” (130 CMR 610.062(A); see also 130 CMR 610.062(E) (“a nursing facility [must] ensure that the relevant portions of an appellant's resident record are present at the hearing ...”).) Without the clinical record, it is impossible to determine whether the appellant’s attending physician or PCP has documented that he is clinically improved enough to be discharged pursuant to 130 CMR 456.702(B)(2). Nor is it possible to ascertain whether “the nursing facility has provided sufficient preparation and orientation to the resident to ensure safe and orderly transfer or discharge from the facility to

¹ The term “referee” in the statute refers to a Board of Hearings hearing officer.

² The fact that the appellant is represented does not alleviate the requirement to notify a resident of their right to counsel, and raises concerns that the facility is likely failing to notify other residents of their rights during discharge planning.

another safe and appropriate place.” (MGL ch. 111, § 70E.) This appeal is further APPROVED on these grounds.³

Order for Nursing Facility

Rescind the January 9, 2025, discharge notice.


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.

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.

Christopher Jones
Hearing Officer
Board of Hearings



Respondent: JML Care Center, Attn: Administrator, 184 Ter Heun Dr., Falmouth, MA 02540,
508-457-4621

³ This is not meant to be an affirmative finding that it is unsafe to discharge the appellant at this time. Rather, I find that the nursing facility provided insufficient evidence to make any factual determinations on these issues.