

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2505287
Decision Date:	5/9/2025	Hearing Date:	04/15/2025
Hearing Officer:	Marc Tonaszuck		

Appearances for Appellant:




**Appearances for Park Avenue Health Care
Skilled Nursing Facility:**

Jerry Lavelle, Administrator; Binal Patel,
Director of Rehabilitation; Robin Luciano, Nurse
Manager; and Nicole Troisi, Social Services



*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 - Endangering the safety of others
Decision Date:	5/9/2025	Hearing Date:	04/15/2025
Skilled Nursing Facility's Reps.:	Jerry Lavelle, Administrator; Binal Patel, Director of Rehabilitation; Robin Luciano, Nurse Manager; and Nicole Troisi, Social Services	Appellant's Reps.:	
Hearing Location:	Tewksbury MassHealth Enrollment Center	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

The appellant received a 30-Day Notice of Intent to Transfer ("transfer notice") dated 04/02/2025. The notice states that Park Avenue Health Care ("the skilled nursing facility" or "the facility") seeks to discharge the appellant to "your address" on 05/01/2025. The notice indicates the reason for the discharge is that "your behaviors are violent, and you remain a safety risk to staff and peers. You are physically and verbally abusive to staff and peers" (Exhibit 1A). The appellant received a second transfer notice ("second transfer notice") dated 04/02/2024, stating that the facility seeks to discharge the appellant to "your address on file  MA" on 05/01/2025 because "you do not require this level of care. You don't require a skilled setting" (Exhibit 1B).

The appellant filed this timely appeal on 04/03/2025 (130 CMR 610.015(B); and Exhibit 2). Discharge

or transfer of a Nursing Facility patient is valid grounds for appeal (130 CMR 610.028; 42 CFR Ch IV §483.200 et seq.).

Action Taken by the Nursing Facility

The skilled nursing facility intends to discharge the appellant from the facility.

Issue

Is the planned discharge correct pursuant to 130 CMR 610.028?

Summary of Evidence

Jerry Lavelle, Administrator; Binal Patel, Director of Rehabilitation; Robin Luciano, Nurse Manager; and Nicole Troisi, Social Services from the skilled nursing facility appeared at the hearing and testified telephonically. The appellant also appeared telephonically with [REDACTED], Advocate and [REDACTED], Case Assistant. Exhibits 1-3 were admitted into evidence. Prior to the hearing, the facility submitted the appellant's clinical record from the facility into evidence (Exhibit 4).

The facility representatives testified that the appellant was admitted to the facility in autumn 2022. Recently the appellant has been violating the facility smoking policy by going out locked emergency exits at times when smoking is not permitted. He frequently carries smoking materials with him, which is a violation of the facility's smoking policy. There are also instances where the appellant was verbally abusive to staff and peers. His behavior is a danger to himself and to others in the facility. The second transfer notice addresses the appellant's need for skilled nursing services. According to the facility representatives, the appellant is independent with activities of daily living and can ambulate with an assistive device. He does not require physical or occupational therapy. His care can be provided in the community.

The hearing officer asked the skilled nursing facility representatives to show where in the medical record the physician has documented the basis of either transfer notice. The representatives testified that there is no physician documentation of his behavior in the file. The hearing officer next asked the skilled nursing facility representatives to show where the discharge plan is in the clinical record. They responded that there is no stated discharge plan, but that because the appellant is independent with ADL's and requires no skilled nursing care or therapy, his care can be coordinated in the community.

The appellant denied that he violated the smoking policy. He stated that sometimes the emergency exits are opened, but he does not open them. He testified that he cannot move to the address on the transfer notice because it is his sister's home. He lived there while he was recovering from back

and knee surgery; but, he cannot return to that home. He testified he “can barely walk without a cane.”

Findings of Fact

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

1. Appellant was admitted to the facility in 2022.
2. The appellant received a 30-Day Notice of Intent to Transfer (“transfer notice”) dated 04/02/2025. The notice states that Park Avenue Health Care (“the skilled nursing facility” or “the facility”) seeks to discharge the appellant to “your address” on 05/01/2025. The notice indicates the reason for the discharge is that “your behaviors are violent, and you remain a safety risk to staff and peers. You are physically and verbally abusive to staff and peers” (Exhibit 1A).
3. The appellant received a second transfer notice (“second transfer notice”) dated 04/02/2024, stating that the facility seeks to discharge the appellant to “your address on file [REDACTED]” on 05/01/2025 because “you do not require this level of care. You don’t require a skilled setting” (Exhibit 1B).
4. There is no documentation in the appellant’s clinical record from a physician that addresses the alleged basis for the transfer notices.
5. There is no written discharge plan in the appellant’s clinical record.

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 initiated by a nursing facility. MassHealth has enacted regulations that follow and implement the federal requirements concerning a resident’s right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in both (1) the Nursing Facility Manual regulations at 130 CMR 456.000 et seq., and (2) the Fair Hearing Rules at 130 CMR 610.000 et seq.

Regulations at 130 CMR 610.028 address notice requirements regarding actions initiated by a nursing facility, as follows:

- (A) 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.

(B) When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 610.028(A)(1) through (5), the resident's clinical record must be documented. The documentation must be made by

(1) the resident's physician when a transfer or discharge is necessary under 130 CMR 610.028(A)(1) or (2); and

(2) a physician when the transfer or discharge is necessary under 130 CMR 610.028(A)(4).

(C) 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 MassHealth agency 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 610.029; and

(c) the effect of requesting a hearing as provided for under 130 CMR 610.030;

(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.

Regulations at 130 CMR 610.029 Time Frames for Notices Issued by Nursing Facilities, state, in pertinent part:

(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.

(Emphasis added.)

Also relevant to this appeal, an amendment to G.L. c. 111, §70E, which went into effect in November of 2008, states 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.

The facility's transfer notices are both dated 04/02/2025. The first discharge notice informs the appellant that the facility seeks to discharge him to "your address" on 05/01/2025. The above

regulations require that the facility state the location to which the resident is to be discharged or transferred on the transfer notice. “Your address” does not adequately describe the intended discharge location.

Second, the skilled nursing facility representatives were unable to provide documentation from a physician in the appellant’s clinical record to support the underlying reason(s) for the appellant’s intended discharge or transfer. None was provided in this case. A notation in the record by a physician assistant or nurse practitioner does not satisfy the above regulations.

Finally, there is no written discharge plan in the appellant’s clinical record. Even if the appellant may no longer require skilled nursing services or therapy, as alleged by the facility, a discharge plan for community resources available to the appellant is required by the above statute.

Without a discharge plan in place, the facility may not discharge the appellant pursuant to either of the 04/02/2025 transfer notices. For the foregoing reasons, this appeal is approved, because the skilled nursing facility has not complied with the above regulations and statute.

Order for the Nursing Facility

Rescind the two transfer notices dated 04/02/2025.

Implementation of 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, at the address on the first page of this decision.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc: Respondent: Park Avenue Health Care, Attn: Administrator, 146 Park Avenue, Alrington, MA 02476