

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2510507
Decision Date:	8/11/2025	Hearing Date:	08/06/2025
Hearing Officer:	Thomas J. Goode		

Appearance for Appellant:

Pro se

Interpreter:

Language Line

Nursing Facility Representatives:

Rodney Gonsalves, Administrator

Kristen Lumsden, Director of Social Services

Norma Robertson, Assistant Director of Nursing

Deborah Desimone, Director of Nursing

Josue Pena, Director of Medical Records



*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:	Denied	Issue:	Nursing Facility Discharge-Improved Health
Decision Date:	8/11/2025	Hearing Date:	08/06/2025
Nursing Facility's Rep.:	Kristen Lumsden et al.	Appellant's Rep.:	Pro se
Hearing Location:	Remote	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

On July 11, 2025, Regal Care at Worcester ("the nursing facility") issued a "Notice of Intent to Discharge Resident With less than 30 Days' Notice (Expedited Appeal)" to the [REDACTED] [REDACTED] "because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility" (130 CMR 610.028, 610.029, 456.701, 456.702 and Exhibit 1). Appellant filed a timely appeal at the Board of Hearings on July 16, 2025 (130 CMR 610.015(B) and Exhibit 2). The appeal request was dismissed by the Board of Hearings on July 16, 2025 because Appellant did not specify the reason for the appeal requested (Exhibit 2A and 130 CMR 610.034, 610.035). On July 22, 2025, Appellant faxed to the Board of Hearings the July 11, 2025 "Notice of Intent to Discharge Resident With less than 30 Days' Notice (Expedited Appeal) (Exhibit 1)." A Notice of Intent to Discharge Resident With less than 30 Days' Notice "because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility" is valid grounds for appeal (130 CMR 610.015(B), 610.032(C)).

Action Taken by the Nursing Facility

On July 11, 2025, Regal Care at Worcester ("the nursing facility") issued a "Notice of Intent to Discharge Resident With less than 30 Days' Notice (Expedited Appeal)" to the [REDACTED]

████████████████████ "because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility."

Issue

The hearing issue is whether Regal Care at Worcester issued proper "Notice of Intent to Discharge Resident With less than 30 Days' Notice (Expedited Appeal)" to the ██████████ and whether the nursing facility is justified in seeking to discharge Appellant "because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility."

Summary of Evidence

The nursing facility administrator appeared by telephone along with the Director of Social Services, the Director and Assistant Director of Nursing, and the Director of Medical Records. On July 11, 2025, Regal Care at Worcester ("the nursing facility") issued a "Notice of Intent to Discharge Resident With less than 30 Days' Notice (Expedited Appeal)" to the ██████████ in ██████████ "because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility." Appellant is ██████████ and was admitted to the facility on ██████████ on a short-term basis for wound care for non-pressure chronic ulcers of the skin with unspecified severity with open wounds on both legs (Exhibit 4, p. 53). Prior to admission to the facility, Appellant resided at the ██████████. The Director of Social Services testified that the July 11, 2025 notice of discharge was precipitated by an Elder Services Screening completed on July 10, 2025 that determined Appellant is eligible for a short-term stay at the facility through August 10, 2025 (Exhibit 4, p. 12). The Director of Social Services testified that Appellant refused wound care treatment, which is his only skilled need. The Assistant Director of Nursing testified that Appellant's treating physician, ██████████ determined that Appellant is medically stable for discharge to his previous home setting (shelter care), and that chronic wounds are stable with no signs of infection, and Appellant has been educated on and demonstrates competency in wound care management and has been provided with wound care supplies and instructions for continued daily dressing changes (Exhibit 4, p. 36). Appellant is also followed by ██████████ ██████████ for wound care in the community (Exhibit 4, p. 24). The nursing facility representatives testified that Appellant was screened as independent by physical therapy (Exhibit 4, p. 31), continues to be resistant to wound care provided by nursing staff (Exhibit 4, p. 43), and does his own wound care (Exhibit 4, p. 44). The Director of Social Services testified that discharge planning includes establishing nursing services in the community and also includes attempts to find alternative placements at rest homes.

Appellant testified that in ██████████ he was burned over 70% of his body and spent 4 months in a coma with third degree burns. He stated that he had skin grafts in ██████████, before being transferred to ██████████ where he learned the correct way to do chronic wound care.

Appellant testified that nurses at the facility refuse to complete wound care correctly and at his direction. Appellant added that he does not want to be discharged to the shelter because he would be forced to leave the shelter at 5:00 a.m. and walk around until he can return to the shelter which would cause his wounds to open.

Findings of Fact

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

1. On July 11, 2025, Regal Care at Worcester (“the nursing facility”) issued a “Notice of Intent to Discharge Resident With less than 30 Days’ Notice (Expedited Appeal)” to the [REDACTED] [REDACTED] “because the resident’s health has improved sufficiently so the resident no longer needs the services provided by the facility.”
2. Appellant is [REDACTED] and was admitted to the facility on [REDACTED] on a short-term basis for wound care for non-pressure chronic ulcers of the skin with unspecified severity with open wounds on both legs.
3. Prior to admission to the facility, Appellant resided at the [REDACTED]
4. An Elder Services Screening completed on July 10, 2025 determined Appellant is eligible for a short-term stay at the facility through August 10, 2025.
5. Appellant’s treating physician, [REDACTED] determined that Appellant is medically stable for discharge to his previous home setting (shelter care), that his chronic wounds are stable with no signs of infection, and that Appellant has been educated on and demonstrates competency in wound care management and has been provided with wound care supplies and instructions for continued daily dressing changes (Exhibit 4, p. 36).
6. Appellant is followed by [REDACTED] for wound care in the community.
7. Appellant has been screened as independent by physical therapy and has no skilled needs other than wound care.
8. Appellant is resistant to wound care provided by nursing staff and does his own wound care.
9. Discharge planning includes establishing nursing services in the community and attempts to find alternative placements at rest homes.

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

456.701: Notice Requirements for Transfers and Discharges Initiated by a Nursing Facility

- (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 MassHealth 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 456.701(A)(1) through (4), 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 or PCP when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and
 - (2) a physician or PCP when the transfer or discharge is necessary under 130 CMR 456.701(A)(3) or (4).
- (C) Before a nursing facility discharges or transfers 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;

¹ The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.701 et seq. is identical (or nearly identical) to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq.

- (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. 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 456.702: Time Frames for Notices Issued by Nursing Facilities:

(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.**
- (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 456.703: Time Frames for Submission of Requests for Fair Hearings

(A) Appeals of discharges and transfers will be handled by MassHealth's Board of Hearings (BOH) pursuant to 130 CMR 610.000: *MassHealth: Fair Hearing Rules*.

(B) Time Limitation on the Right of Appeal. The date of request for a fair hearing is the date on which BOH receives such a request in writing. BOH must receive the request for a fair hearing within the following time limits:

- (1) 30 days after a resident receives written notice of a discharge or transfer pursuant to 130 CMR 456.702(A); or
- (2) 30 days after a nursing facility initiates a transfer or discharge or fails to readmit and fails to give the resident notice; or
- (3) 14 days after a resident receives written notice of an emergency discharge or emergency transfer pursuant to 130 CMR 456.702(B); or
- (4) 14 days after a resident receives written notice 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.

130 CMR 456.704: Stay of a Transfer or Discharge from a Nursing Facility Pending Appeal²

(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

² See also 130 CMR 610.030: 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 BOH during the notice period described in 130 CMR 610.015(B)(3), 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 610.015(B)(4), and the request is received before 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, in accordance with 130 CMR 610.015(B)(4), 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, in accordance with 130 CMR 610.015(B)(5), the nursing facility must, upon receipt of the appeal decision favorable to the resident, promptly readmit the resident to the next available bed.

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.³

On July 11, 2025, Regal Care at Worcester (“the nursing facility”) issued a “Notice of Intent to Discharge Resident With less than 30 Days’ Notice (Expedited Appeal)” to the [REDACTED] [REDACTED] “because the resident’s health has improved sufficiently so the resident no longer needs the services provided by the facility.” The Notice provides the required information concerning the planned discharge from the facility and in this regard complies with regulatory requirements outlined at 130 CMR 456.701(C) (Exhibit 1). However, although the Notice references an expedited appeal and discharge from the facility with less than 30 days’ notice, it designates a 30-day period from July 11, 2025 through the date of intended discharge on [REDACTED] [REDACTED] and therefore does not fall under emergency discharge provisions for a discharge notice with less than 30 days’ notice described at 130 CMR 456.702(B) and 130 CMR 610.029(B) or (C), and does not trigger expedited appeal provisions under 130 CMR 610.015(F).⁴ Appellant’s request for a hearing regarding the discharge or transfer from the nursing facility was received by the Board of Hearings during the notice period described in 130 CMR 456.703(B)(1), i.e. within 30 days after the resident receives written notice of a discharge or transfer pursuant to 130 CMR 456.702(A); therefore, under 130 CMR 456.704(A), the nursing facility must stay the planned discharge or transfer until 30 days after this hearing decision is rendered. While this stay is in effect, the resident must not be discharged or transferred from the nursing facility.⁵

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.

⁴ See 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 CMR 610.015(F) automatically waive the requirement for ten-day advance notice of the scheduled hearing date under 130 CMR 610.046(A).

⁵ 130 CMR 456.702(B) addresses nursing facility notices issued with less than 30 days’ notice. 130 CMR 610.029(B) addresses nursing facility notices of a transfer or discharge in lieu of the 30-day notice requirement which are considered emergency discharges or transfers, and 130 CMR 610.029(C) addresses transfers or discharges resulting from a nursing facility’s failure to readmit a resident after hospitalization or medical leave of absence. Appeals of both notice types are handled under 130 CMR 610.015(F). Despite titling the July 11, 2025 notice “Notice of Intent to Discharge Resident With Less than 30 Days’ Notice (Expedited Appeal),” the notice is a 30-day notice of discharge to take effect on August 10, 2025; therefore, expedited appeal requirements under 130 CMR 610.015(F) do not apply, and a 30-day stay following issuance of this hearing decision is required under 130 CMR 456.704(A) and 130 CMR 610.030(A). The misstated notice title is not fatal to the notice as Appellant’s appeal rights were not impeded,

A nursing facility resident can only be discharged for specific reasons outlined above at 130 CMR 456.701(A). The applicable regulations require that when initiating a discharge with 30-days' notice 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 attending physician must document the resident's record. Appellant's treating physician, [REDACTED] documented in the medical record that Appellant is medically stable for discharge to his previous home setting (shelter care), and that his chronic wounds are stable with no signs of infection, and that Appellant has been educated on and demonstrates competency in wound care management and has been provided with wound care supplies and instructions for continued daily dressing changes (Exhibit 4, p. 36). Appellant has been screened as independent by physical therapy and has no skilled needs other than wound care. The evidence and testimony show that Appellant is independent with activities of daily living, has refused wound care, and is capable of independently completing wound care in conjunction with wound care services at [REDACTED]. The nursing facility will arrange VNA services in the community and has otherwise provided sufficient preparation and orientation to ensure a safe and orderly discharge from the facility to a local shelter or rest home. While returning to a shelter is not ideal, the testimony and evidence in the hearing record support the conclusion that the discharge plan is safe and appropriate. Accordingly, the appeal is DENIED.

Order for the Nursing Facility

Proceed with the discharge plan to the [REDACTED] or an appropriate rest home, no sooner than 30 days from the date of this hearing decision.

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.

and the notice substantively complies with notice requirements at 130 CMR 450.701(A).

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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc: Regalcare at Worcester, Attn: Administrator, 25 Oriol Drive, Worcester, MA 01605