

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	APPROVED	Appeal Number:	2517065
Decision Date:	12/29/2025	Hearing Date:	12/05/2025
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:



Appearances for RegalCare Worcester:

Mariama Millien (BOM); Norma Robertson, RN
and Kelly Williams O'Neill (Social Worker)



*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:	SNF Discharge – Improved Health
Decision Date:	12/29/2025	Hearing Date:	12/05/2025
SNF’s Rep.:	██████████	Appellant’s Rep.:	Attorney Michelle Lucier
Hearing Location:	Tewksbury MEC		

Authority

This hearing was conducted pursuant to federal law and regulations at 42 U.S.C. §1396r and 42 CFR 483.10-483.206 and Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

The skilled nursing facility, ██████████ (the facility) issued a notice dated November 7, 2025 of its intent to discharge Appellant with less than 30 days’ notice on the grounds that Appellant’s health has improved and he no longer requires SNF services (Exhibit A). Appellant filed for this appeal in a timely manner on November 19, 2025 (see 130 CMR 610.015(B)(5) and Exhibit A). Expedited discharge of a nursing-facility patient constitutes valid grounds for appeal (see 130 CMR 610.029(B); 42 CFR Ch. IV, 483.200 et seq.).

Since the request for the hearing was received by the Board of Hearings during the notice period described in 130 CMR 610.015(B)(5), the nursing facility must stay the planned discharge or transfer until 5 days after this decision is rendered. While the stay is in effect, the resident shall not be transferred or discharged from the nursing facility (see 130 CMR 610. 030(B)).

Action Taken by the Nursing Facility

The nursing facility issued notice dated November 7, 2025 of its intent to discharge Appellant with less than 30-days’ notice.

Issue

Whether or not the nursing facility can proceed to discharge Appellant under notice of November 7, 2025.

Summary of Evidence

The parties appeared by telephone. Prior to hearing, the facility filed a packet of supporting documentation including a copy of Appellant's clinical record and a full copy of the subject discharge notice (collectively, Exhibit B).

The facility representatives testified that Appellant was admitted to the facility on [REDACTED] to receive physical therapy following right hip surgery. On November 7, 2025, the facility issued a 30-day notice of intent to discharge Appellant because his health has improved to the point where he no longer requires the services of a skilled nursing facility (Exhibit A). The facility representatives noted that Appellant was screened by Elder Services on November 24, 2025 and was determined to no longer need skilled nursing services.

The facility representatives referenced the physical therapy notes contained in the clinical record which indicates that Appellant is now able to ambulate, but he is also non-compliant with efforts to decrease his reliance on a wheelchair. According to the facility representatives, Appellant is independent with all other activities of daily living (Exhibit B, page 48).

Upon questioning by the hearing officer, the facility representatives stated that Appellant's attending physician has stated in the record under a note dated October 15, 2025 that Appellant's health has improved and he is ready for discharge (Exhibit B, page 93). The facility representatives stated that the discharge location identified in the subject notice is a shelter which is the location where Appellant resided prior to his admission. The facility also stated that the discharge planning included follow up with Appellant's primary care physician, access to an on-site support system available at the shelter and continuing his methadone maintenance program with Spectrum.

Appellant appeared on his own behalf accompanied by legal counsel. Counsel questioned the facility representative on several points to reveal that contrary to their representative's testimony, the facility had issued an expedited discharge notice with less than 30-days' notice. Also, a review of the progress note cited by the facility does not contain a statement by Appellant's physician stating that Appellant is appropriate for discharge to the noticed discharge location.

Appellant testified that he was only at the shelter for two nights prior to his admission to the facility. He previously resided at [REDACTED]. Appellant was transferred to the hospital after [REDACTED] closed. Appellant testified that the shelter has no beds and uses

only yoga mats on the floor. According to Appellant, the shelter also has a “no touch” policy meaning they cannot physically assist him to get on and off the floor. During the two nights he was at the shelter, Appellant had to rely on the assistance of other shelter residents to help get on and off the floor to sleep.

Appellant also testified that the shelter is a “wet shelter” meaning that current drug and alcohol abusers who are still using and not in recovery are allowed to reside there. Appellant asserted that this poses a serious risk to his own recovery efforts.

Appellant disputed the facility’s contention that his health has improved and he no longer requires the facility’s skilled services. Appellant testified that he can only walk short distances with a walker. He denied being uncooperative with efforts to decrease his reliance on his wheelchair. Appellant maintains that due to his ongoing and persistent pain, he is unable to ambulate. Appellant discussed his inability to obtain proper pain management from the facility. Appellant noted that after his hip surgery, he had been prescribed pain medication by his surgeon, yet the facility refused to comply with the surgeon’s orders regarding pain medication on the grounds that the facility was concerned with dispensing such medication to someone with a history of substance abuse. Instead of supplying Appellant with the medication ordered by the surgeon, the facility gave him ibuprofen which was not effective.

Appellant testified that he only saw his treating physician at the facility one time and this was to ask for proper pain medication. According to Appellant, the physician said it would have to be prescribed by his surgeon. Despite knowing that it had been ordered by Appellant’s physician, the facility never supplied him with anything other than ibuprofen. Appellant maintains that the facility’s refusal to properly manage his pain, significantly interfered with physical therapy efforts.

Findings of Fact

By a preponderance of the evidence, this record supports the following findings:

1. Appellant was admitted to the facility on [REDACTED] to receive physical therapy following right hip surgery.
2. On November 7, 2025, the facility issued a notice of intent to discharge with less than 30-days' notice because Appellant's health had improved to the point where he no longer requires the services of a skilled nursing facility (Exhibit A).
3. Appellant was screened by Elder Services on November 24 2025 and was determined to no longer need skilled nursing services.
4. Appellant's clinical record does not contain a statement from his attending physician that Appellant's health has improved sufficiently to allow for an immediate transfer or discharge.
5. Discharge planning includes follow up with Appellant's primary care physician, access to an on-site support system available at the shelter and continuing his methadone maintenance program with Spectrum.
6. According to the subject notice, the facility intends to discharge Appellant to a specific shelter.
7. The shelter is a wet shelter.
8. Appellant is currently in recovery and on methadone.
9. Appellant spent two nights at the shelter prior to his admission to the facility.
10. Appellant had previously been residing at [REDACTED].
11. Appellant was transferred to the hospital after [REDACTED] closed.
12. The shelter has no beds and uses only yoga mats on the floor.
13. The shelter has a "no touch" policy meaning they cannot physically assist Appellant to get on and off the floor.

14. During the two nights he was at the shelter, Appellant had to rely on the assistance of other shelter residents to help get on and off the floor to sleep.

Analysis and Conclusions of Law

The issue on appeal is limited to whether the nursing facility is acting in compliance with federal and state law governing the discharge of nursing facility residents in its attempt to discharge Appellant with less than 30-days' notice under notice dated November 19, 2025.

Massachusetts's regulations at 130 CMR 610.028, which embody federal regulations at 42 CFR Ch. IV §483.12, require the following (emphasis added):

Notice Requirements Regarding Actions 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 the Division 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

10.028(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 Division 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.

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.

In addition to the MassHealth-related regulations discussed above, the nursing facility has an obligation to comply with all other applicable state laws, including M.G.L. c.111, §70E. The key paragraph of that statute, which is directly relevant to this appeal, 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.

This record demonstrates that the facility's notice is defective insofar as the clinical record fails to contain the necessary statement from Appellant's attending physician regarding Appellant's health as required by 130 CMR 610.029(B)(2) above.

The record also demonstrates that the facility has failed to satisfy the above-cited section of including M.G.L. c.111, §70E. The facility has not demonstrated that the discharge location is a

safe and appropriate place for Appellant. Appellant is in a maintenance program for addiction and the discharge location is a wet shelter where current substance abuse users reside. This would neither be safe nor appropriate for a person who is in an active addiction recovery program. Also, the discharge location cannot meet Appellant's basic health care needs as it is a no-touch facility which does not have staff who would be available to help Appellant into and out of his wheelchair from the floor where he would have to sleep.

For the foregoing reasons, the appeal is APPROVED.

Order for the Nursing Facility

You may NOT proceed with discharge under notice of November 19, 2025.


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 this decision is not properly implemented you should contact the Director of the Board of Hearings, Office of Medicaid, at the address on the first page of this decision.

Kenneth Brodzinski
Hearing Officer
Board of Hearings



Respondent: RegalCare at Worcester, Attn: Administrator, 25 Oriol Drive, Worcester, MA
01605, 508-852-3330