

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2601051
Decision Date:	2/19/2026	Hearing Date:	01/23/2026
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:

Pro se

Appearance for RegalCare at Harwich:

Charles Hayward (administrator) with Sue Garvey (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:	Expedited SNF Discharge
Decision Date:	2/19/2026	Hearing Date:	01/23/2026
SNF Rep.:	Charles Hayward	Appellant's Rep.:	Pro se
Hearing Location:	Springfield		

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 (SNF) issued a notice dated January 16, 2026 of its intent to discharge Appellant with less than thirty days' notice on the grounds that Appellant's health has improved sufficiently so that she no longer needs the services provided by the facility (Exhibit A). Appellant filed for this appeal in a timely manner on January 16, 2026 (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 SNF issued a notice dated January 16, 2026 of its intent to discharge Appellant with less than thirty days' notice on the grounds that Appellant's health has improved sufficiently so that she no longer needs the services provided by the facility.

Issue

Whether or not the nursing facility can proceed to an expedited discharge of Appellant under notice of January 16, 2026.

Summary of Evidence

The parties appeared by telephone. The nursing facility was represented by its administrator and a social worker who testified that the facility issued a notice of intent to discharge Appellant with less than 30 days' notice on January 16, 2026 (see copy of complete notice, Exhibit C).

The SNF representatives testified that Appellant was clinically approved for a short term SNF admission through April 21, 2026 (Exhibit C). She was originally admitted to the SNF in August 2025 (Id). During her stay, Appellant has participated in her medical management and therapeutic programs to the point that she is now functioning independently and needs no assistance with her Activities of Daily Living (ADLs). The SNF representatives testified that Appellant regularly and frequently leaves the facility to access the community to see friends and manage her own medical care. The SNF representatives testified that Appellant goes on her own to [REDACTED] for dental work and sees a physician independent of the SNF to treat a hernia. The SNF representatives testified that Appellant does this without informing the SNF, which is then unable to track and manage Appellant's medical care. They also noted that Appellant is only allowed 10 full leave days from the facility and she has already exceeded that number.

The hearing officer questioned the SNF representatives as to whether their packet (Exhibit B) contained a complete and full copy of the subject discharge notice as well as a statement from Appellant's treating physician as to her clinical course and the medical appropriateness of her discharge. The facility representatives stated that they believed the information was in the packet, but could not locate it at that moment and asked if they could submit the documentation in a separate filing after the hearing. This was allowed and the SNF submitted the documentation (Exhibit C).

Upon further questioning by the hearing officer, the SNF representatives explained that as stated in the subject notice, Appellant would be discharged to [REDACTED] where she has stayed in the past. The SNF representatives testified that Appellant has been discharged to the community in the past and has done well. They further testified that the facility offered to help locate transitional housing, but Appellant refused the offer (Exhibit B, page 155). Discharge planning includes VNA services and facilitating contact with local Elder Services.

Appellant appeared on her own behalf and did not dispute the testimony offered by the SNF representatives. She agreed that she does manage on her own and does leave the facility as she pleases. She also agreed that she no longer needs the services of the facility, but noted that she is homeless and has no place to go. She stated, however, that she has spent time at the [REDACTED] in the past and the staff there are good to her and let her use facilities to shower.

Throughout the hearing Appellant repeatedly drew attention to a perceived problem with her Social Security number. Appellant explained that while in [REDACTED] she was told that the SS number she thought was hers did not exist. She claimed that she has been given two other Social Security numbers, but for some reason, they too are not valid. She claimed that right now she needs to address this issue because she believes that she does not have an active Social Security number.

The SNF representatives testified that they do have an active Social Security number that they have been using and have not encountered any problems with any state or federal agencies when using it to identify Appellant. They indicated that Appellant is particularly fixated on this matter and cannot be dissuaded from her current understanding.

A review of the physician's note dated January 15, 2026, indicates the following:

"[Appellant] has demonstrated a good clinical response to SNF level treatment, including medical management, rehabilitation therapies, and supportive care. Her chronic conditions remain stable, and she has shown functional gains consistent with her care plan. She is medically stable at this time, without active issues requiring continued skilled nursing facility care. No barriers to discharge from a medical standpoint are identified today."

(Exhibit C).

Findings of Fact

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

1. Appellant has been a resident of an SNF since [REDACTED]
2. The SNF issued and served Appellant in hand with a notice of intent to discharge Appellant with less than 30 days' notice on January 16, 2026 (Exhibit C).
3. Appellant was clinically approved for a short term SNF admission through April 21, 2026 (Exhibit C).

4. During her SNF admission, Appellant has participated in her medical management and therapeutic programs to the point that she is now functioning independently and needs no assistance with her Activities of Daily Living (ADLs).
5. Appellant regularly and frequently leaves the facility to access the community to see friends and manage her own medical care.
6. Appellant goes on her own to [REDACTED] for dental work and sees a physician independent of the SNF to treat a hernia.
7. Appellant accesses care outside of the SNF without informing the SNF, which then leaves the SNF unable to track and manage Appellant's medical care.
8. Appellant is only allowed 10 full leave days from the facility and she has already exceeded that number.
9. As stated in the subject notice, Appellant would be discharged to [REDACTED]
10. Appellant has stayed successfully at the [REDACTED] in the past
11. The SNF offered to help Appellant locate transitional housing, but Appellant refused the offer (Exhibit B, page 155).
12. Discharge planning includes VNA services and facilitating contact with local Elder Services.
13. A note from Appellant's treating physician at the SNF dated January 15, 2026, states the following:

"[Appellant] has demonstrated a good clinical response to SNF level treatment, including medical management, rehabilitation therapies, and supportive care. Her chronic conditions remain stable, and she has shown functional gains consistent with her care plan. She is medically stable at this time, without active issues requiring continued skilled nursing facility care. No barriers to discharge from a medical standpoint are identified today." (Exhibit C).

Analysis and Conclusions of Law

The issue on appeal is limited to whether the nursing facility is acting in full and complete compliance with federal and state law governing the discharge of a nursing facility resident in its attempt to discharge Appellant under notice dated January 16, 2026.

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

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 (emphasis supplied):

(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.

A review of the subject notice indicates that it states a proper ground for an expedited discharge and the discharge location (130 CMR 610.029(B)(2) and 130 CMR 610.028(C)(4)). It indicates that it was served in hand to Appellant on the date of issue.

The record supports a finding that the 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 and that Appellant's health has improved sufficiently to allow a more immediate transfer or discharge and the resident's attending physician has documented this in the resident's record (Exhibit C).

The notice complies with all of the requirements set forth above, except for 130 CMR 610.028(C)(9). The notice is missing a statement that "*free legal assistance may be available through their local legal services office*" and the location of the nearest local aid office. Appellant and the SNF are located in [REDACTED]. The notice supplies information relative to the Massachusetts Legal Assistance Corporation in [REDACTED] Massachusetts which is not the closets or even a close legal aid office for someone located in [REDACTED]. There are legal aid providers on [REDACTED] including, but not limited to, [REDACTED]. Additionally, the address and contact information provided in the subject notice for the Massachusetts Legal Assistance Corporation in [REDACTED] is outdated by several years and incorrect. It moved to [REDACTED] over

5 years ago.

The notice requirements set forth by both the state and federal governments are specific and exacting. They pertain to a vulnerable population. Errors and omissions cannot be overlooked or deemed to be mere technical deficiencies. Because the subject notice does not comply with 130 CMR 610.028(C)(9), the notice fails.

For the foregoing reasons, the appeal is APPROVED.

The facility is free to issue a new notice, free of defects, as it deems appropriate.

Order for the Nursing Facility

Appellant may not be discharged under notice dated January 16, 2026. If the facility wishes to pursue a discharge, it must issue and properly serve a new notice.

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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

[REDACTED]