



Commonwealth of Massachusetts
Executive Office of Health and Human Services
Division of Medical Assistance
600 Washington Street
Boston, MA 02111
www.mass.gov/dma

MassHealth
Eligibility Letter 90
April 1, 2002

TO: Division Staff

FROM: Wendy E. Warring, Commissioner

RE: Fair Hearing Rights for Nursing Facility Residents

This letter transmits revisions to the *Fair Hearing Rules*. These revisions would give residents the right to a fair hearing when the nursing facility refuses to readmit them after hospitalization or other medical leave of absence. The revisions also require nursing facilities to provide residents with appropriate notice at the time the facility determines that it will not readmit a resident who is eligible for nursing facility services. While federal law does not specifically require Medicaid to provide hearings in such situations, it does require the facility to readmit the resident. To protect residents who are refused readmission contrary to federal law, the Division intends to deem such refusals to be transfers or discharges in order to afford these residents the right to a fair hearing at the Board of Hearings in such situations.

These regulations are issued as emergency regulations, effective April 1, 2002.

MANUAL UPKEEP

<u>Insert</u>	<u>Remove</u>	<u>Trans. By</u>
610.015 (1 of 2)	610.015	E.L. 64
610.015 (2 of 2)	--	--
610.016	610.016	E.L. 64
610.028	610.028	E.L. 38
610.029	610.029	E.L. 38
610.030	610.030	E.L. 38
610.032	610.031	E.L. 80
610.033	610.033	E.L. 80

Trans. by E.L. 90

**MASSHEALTH
FAIR HEARING RULES**

Rev. 04/01/02

**Chapter 610
Page 610.015**

from the date of the conduct provided that the appellant files an affidavit with the Director stating, and can establish at a hearing, that:

- (i) he or she did not know of the right to appeal, and reasonably believed that the problem was being resolved administratively; or
- (ii) he or she was justifiably unaware of the conduct in question; and
- (iii) the appeal was made in good faith.

Failure to substantiate the allegation either before or at the hearing will be grounds for dismissal.

(3) 30 days after a resident receives written notice of a discharge or transfer pursuant to 130 CMR 610.029(A);

(4) 14 days after a resident receives written notice of an emergency discharge or emergency transfer pursuant to 130 CMR 610.029(B);

(5) 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 the resident following hospitalization or other medical leave of absence; or

(6) 30 days after an employer receives written notice of a denial or termination from the Insurance Partnership or a final written reconciliation determination regarding the amount of the Insurance Partnership payment.

(C) Computation of Time. Computation of any period referred to in 130 CMR 610.000 will be on the basis of calendar days except where expressly provided otherwise. Time periods will expire on the last day of such periods unless the day falls on a Saturday, Sunday, legal holiday, or other day on which BOH is closed, in which event the last day of the time period will be deemed to be the following business day.

(D) Time Limits for Rendering a Decision.

(1) The hearing officer must render a final decision within 45 days of the date of request for a hearing when the issue under appeal is:

- (a) the denial or rejection of an application for assistance;
- (b) the failure to act on an application in a timely manner; or
- (c) a nursing facility-initiated discharge or transfer.

Trans. by E.L. 90**MASSHEALTH
FAIR HEARING RULES****Rev. 04/01/02****Chapter 610
(2 of 2) Page 610.015**

(2) The hearing officer must render a final decision within 90 days of the date of request for a hearing for all other appeals.

(3) The time limits set forth in 130 CMR 610.015(D)(1) and (2) may be extended for good cause as follows.

(a) Where delays are caused by the appellant or his or her representative, the time limits may be extended by the total number of days of such delays, which includes the advance notice period before scheduled hearing dates. Such delays include the appellant's delay in the submission of evidence, briefs, or other statements, rescheduling or continuances granted at the request or for the benefit of the appellant, and any other delays caused by the actions of the appellant or his or her representative.

(b) Where delays occur due to acts of nature or serious illness of the hearing officer that makes him or her unable to render a decision, good cause for the extension of the time limits will be deemed to exist.

(E) Expedited Appeals for Denied Acute Hospital Admissions. When the Division denies prior authorization for an elective hospital admission of a member, the member may request an expedited hearing. When such request is made, a hearing will be scheduled to be held 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). A request for an expedited hearing under 130 CMR 610.015(E) automatically waives the requirement for 10-day advance notice of the hearing under 130 CMR 610.046(A). The appellant will be contacted, orally when possible, at least 48 hours before the hearing.

(F) Expedited Appeals for Discharges and Transfers from a Nursing Facility Under 130 CMR 610.029(B). 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). Appeals of discharges or transfers provided under 130 CMR 610.029(B) and (C) will be conducted under the time frames provided in 130 CMR 610.015(E).

Trans. by E.L. 90

**MASSHEALTH
FAIR HEARING RULES**

**Chapter 610
Page 610.016**

Rev. 04/01/02

610.016: Authorized Representative

(A) An appellant has the right to be represented at his or her own expense by a person who is authorized by the appellant, in writing, to do so or is present at the hearing with the appellant. Such written authorization will contain the name, address, and telephone number of the representative and the signature of the appellant, or the appellant's court-appointed guardian or conservator, provided that documentation of such court appointment is submitted with the written authorization. Such authorization must be submitted at, or before, the hearing. An authorized representative may exercise on the appellant's behalf any of the appellant's rights under 130 CMR 610.000.

(B) Where an interpreter also acts as the appellant's authorized representative, the appellant will supply a signed written statement to that effect in both English and, where applicable, the primary language.

610.017: Auxiliary Aids

BOH will provide reasonable auxiliary aids to appellants who request such aids and who have an impairment that BOH determines would prevent adequate participation of the appellant at the hearing. BOH will inform appellants of the availability of this service. BOH will provide telephonic or, at its option, other interpreter services for an appellant who is deaf or hearing-impaired, or whose English proficiency is limited, unless such appellant provides his or her own interpreter or such appellant knowingly and voluntarily signs a waiver of such services.

(130 CMR 610.018 through 610.025 Reserved)

Trans. by E.L. 90

**MEDICAL ASSISTANCE PROGRAM
FAIR HEARING RULES**

Rev. 04/01/02

**Chapter 610
Page 610.028**

610.028: 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 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 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;

Trans. by E.L. 90**MEDICAL ASSISTANCE PROGRAM
FAIR HEARING RULES****Rev. 04/01/02****Chapter 610
Page 610.029**

- (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.
- (D) As provided in 130 CMR 456.429, a nursing facility's failure to readmit a resident following a medical leave of absence shall be deemed a transfer or discharge (depending on the resident's circumstances). Upon determining that it will not readmit the resident, the nursing facility must issue notice to the resident and an immediate family member or legal representative in accordance with 130 CMR 456.701(A) through (C), 456.702, and 610.028 through 610.030.

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 prior to 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 resided in the nursing facility for 30 days immediately prior to receipt of the notice.

**MEDICAL ASSISTANCE PROGRAM
FAIR HEARING RULES****Rev. 04/01/02****Chapter 610
Page 610.030**

(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.

(D) Appeals of discharges and transfers listed in 130 CMR 610.029(B) and (C) will be handled under the expedited appeals process described in 130 CMR 610.015(E) and (F).

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 the Board of Hearings 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 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, 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.

610.031: Notification of the Right to Request a Hearing

(A) Upon being notified of any appealable action, the applicant or member will be informed in writing of his or her right to a hearing, of the method by which a hearing may be requested, and of the right to use an authorized representative (see 130 CMR 610.016).

(B) If an applicant or member indicates disagreement with an appealable action, the Division will provide the applicant or member with an appeal form and, if requested, help complete the form. The Division may not restrict the applicant's or member's freedom to request a fair hearing.

(C) If there is an individual or organization that provides free legal representation, the person requesting a hearing will be informed of the availability of that service.

(D) At the time that a nursing facility notifies a resident that he or she is to be discharged or transferred, the nursing facility must inform the resident that he or she has the right to request a hearing before the Division.

Trans. by E.L. 90**MEDICAL ASSISTANCE PROGRAM
FAIR HEARING RULES****Rev. 04/01/02****Chapter 610
Page 610.032**

(E) At the time the Division or its agent notifies an employer in writing that it is being denied or terminated from the Insurance Partnership, or there has been a written reconciliation regarding the amount of the Insurance Partnership payment, the employer will be informed of its right to a hearing before the Division.

610.032: Grounds for Appeal

(A) Applicants and members have a right to request a fair hearing for any of the following reasons:

- (1) denial of an application or request for assistance, or the right to apply or reapply for such assistance;
- (2) the failure of the Division to give timely notice of action on an application for assistance in accordance with the requirements of M.G.L. c. 118E, § 21;
- (3) any Division action to suspend, reduce, terminate, or restrict a member's assistance;
- (4) individual Division determinations regarding scope and amount of assistance (including, but not limited to, level-of-care determinations);
- (5) coercive or otherwise improper conduct as defined in 130 CMR 610.033 on the part of any Division employee directly involved in the applicant's or member's case;
- (6) any condition of eligibility imposed by the Division for assistance or receipt of assistance that is not authorized by federal or state law or regulations;
- (7) the failure of the Division to act upon a request for assistance within the time limits required by Division regulations;
- (8) the Division's determination that the member is subject to the provisions of 130 CMR 508.000;
- (9) the Division's denial of an out-of-area provider under 130 CMR 508.002(F);
- (10) the Division's disenrollment of a member from a managed care provider under 130 CMR 508.002(G); and
- (11) a determination by the Division's behavioral health contractor, under 130 CMR 508.003(A), or by one of the Division's managed care organization (MCO) contractors, under 130 CMR 508.001(B)(2)(b), to deny, reduce, modify, or terminate a covered service, if the member has exhausted all remedies available through the contractor's internal appeals process.

(B) Nursing facility residents have the right to request an appeal of any nursing facility-initiated transfer or discharge.

Trans. by E.L. 90

**MEDICAL ASSISTANCE PROGRAM
FAIR HEARING RULES**

Rev. 04/01/02

**Chapter 610
Page 610.033**

(C) Determinations of temporary eligibility for presumptive coverage or prenatal coverage are not appealable. See 130 CMR 502.008(C).

(D) Employers have the right to request an appeal of any denial or termination from the Insurance Partnership, or to appeal the amount of the Insurance Partnership payment they receive.

610.033: Coercive or Otherwise Improper Conduct

(A) Definitions.

(1) Coercive conduct means knowingly compelling an applicant, member, or former member by force, threat, intimidation, or other abuse of position to take action that is injurious to his or her best interest and that he or she would not otherwise have done.

(2) Improper conduct means reckless and unreasonable abuse of authority that interferes with the applicant's, member's, or former member's exercise of rights under MassHealth.

(B) Remedies. When a hearing officer has found coercive or otherwise improper conduct on the part of any Division employee directly involved in the applicant's, member's, or former member's case at a fair hearing, the enrollment center director will:

(1) assign a different worker; and

(2) initiate appropriate personnel action including the insertion of a written reprimand and a copy of the written findings, if any, in the worker's personnel file.

610.034: Request for a Fair Hearing

(A) A request for a fair hearing is defined as a written statement by the appellant or his or her authorized representative that asks for administrative review of an appealable action. The request for a fair hearing must be received by BOH within the time limits set forth in 130 CMR 610.015.