Commonwealth of Massachusetts
Executive Office of Health and Human Services
Division of Medical Assistance
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MASSHEALTH
TRANSMITTAL LETTER NF-42
March 2002

TO: Nursing Facilities Participating in MassHealth

FROM: Wendy E. Warring, Commissioner

RE: *Nursing Facility Manual* (Fair Hearing Rights)

This letter transmits revisions to the regulations in the *Nursing Facility Manual*. These revisions 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.

NEW MATERIAL
(The pages listed here contain new or revised language.)

Nursing Facility Manual

Pages iv, vi, 4-1, 4-2, 4-11 through 4-14, and 4-21 through 4-24

OBSOLETE MATERIAL
(The pages listed here are no longer in effect.)

Nursing Facility Manual

Pages iv, 4-1, and 4-2 — transmitted by Transmittal Letter NF-37

Page vi — transmitted by Transmittal Letter NF-39

Pages 4-11 and 4-12 — transmitted by Transmittal Letter NF-38

Pages 4-13 and 4-14 — transmitted by Transmittal Letter NF-34

Pages 4-21 through 4-24 — transmitted by Transmittal Letter NF-36

4. PROGRAM REQUIREMENTS

456.401: Nursing Facility Services: Introduction

130 CMR 456.000 establishes the requirements for nursing-facility services under MassHealth. All nursing facilities participating in MassHealth must comply with the regulations of the Division of Medical Assistance governing MassHealth including, but not limited to, the regulations set forth in 130 CMR 456.000 and 450.000.

456.402: Definitions

Board of Hearings — the unit within the Division of Medical Assistance that is responsible for administering the fair-hearing process under 130 CMR 610.000 and claims for adjudication hearings under 130 CMR 450.241, including hearings about transfers and discharges of residents by nursing facilities.

Discharge — the removal from a nursing facility to a noninstitutional setting of an individual who is a resident where the discharging nursing facility ceases to be legally responsible for the care of that individual**;** this includes a nursing facility's failure to readmit following hospitalization or other medical leave of absence.

Fair Hearing — an administrative, adjudicatory proceeding conducted pursuant to 130 CMR 610.000 to determine the legal rights, duties, benefits, or privileges of applicants and members, or residents.

Hospital — an inpatient facility that is licensed as a hospital by the Massachusetts Department of Public Health.

Length of Stay — the duration of a member's inpatient hospital stay at a Medicare hospital level of care during a medical leave of absence.

Medical Leave of Absence — an inpatient hospital stay at a Medicare level by a member who is a resident of a nursing facility. The Division will pay the nursing facility for up to 10 consecutive medical leave-of-absence days in a hospital.

Medicare Hospital Level of Care — a level of care that meets all criteria, as determined by the Health Care Financing Administration or its agent, for MassHealth payment for hospital care.

Member — a person determined by the Division to be eligible for MassHealth.

Mobility System — any manual or motorized wheelchair or other wheeled device, such as a scooter, including its components, accessories, and modifications, that is prescribed by a physician.

Nursing Facility — an institution or a distinct part of an institution that meets the provider-eligibility and certification requirements of 130 CMR 456.404 or 456.405. For requirements related to the transfer and discharge of residents, the term nursing facility also includes a nursing facility participating in Medicare, whether or not it participates in MassHealth.

Patient-Paid Amount — The portion of monthly income that a member in a nursing facility must contribute to the cost of care.

Personal Needs Allowance (PNA) — the designated portion of monthly income that a member in a facility is allowed to keep for personal expenses.

Personal Needs Allowance (PNA) Account — an account or accounts administered by a nursing facility on behalf of a member. The account may be used to deposit the PNA and any other money, such as a gift, belonging to the member.

Resident — an individual receiving care in a nursing facility regardless of whether the individual is a MassHealth member.

Transfer — movement of a resident from:

(1) a Medicaid- or Medicare-certified bed to a noncertified bed;
(2) a Medicaid-certified bed to a Medicare-certified bed;
(3) a Medicare-certified bed to a MassHealth-certified bed;
(4) one nursing facility to another nursing facility; or
(5) a nursing facility to a hospital, or any other institutional setting.

A nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, resulting in the resident being moved to another institutional setting, is also a transfer. Movement of a resident within the same facility from one certified bed to another bed with the same certification is not a transfer.

Working Days — Monday through Friday except for legal holidays.

456.403: Eligible Members

(A) (1) MassHealth Members. The Division pays for nursing-facility services only when provided to eligible MassHealth members, subject to the restrictions and limitations in the Division's regulations. The Division's regulations at 130 CMR 450.105 specifically state which services are covered and which members are eligible to receive those services.
(2) Recipients of Emergency Aid to the Elderly, Disabled and Children. For information on covered services for recipients of Emergency Aid to the Elderly, Disabled and Children, see 130 CMR 450.106.

(B) For information on verifying member eligibility and coverage type, see 130 CMR 450.107.

(C) If the patient dies and the facility has received a patient-paid amount in excess of the per diem rate for the number of days the member was in the facility, then the facility must deposit the balance into the member's personal needs account or return the balance to the party who paid the patient-paid amount. See 130 CMR 456.614 for the disposition of the personal needs account when a member dies.

456.424: Limitations on Charges to Members

(A) A nursing facility may only charge members for items requested by the member. Before charging the member, the facility must inform the member of the cost of the requested item. The facility must not charge a member for any item or service covered by MassHealth or Medicare.

(B) Items for which the nursing facility must not charge the member include, but are not limited to, the following:

(1) group activities or entertainment that occur within the facility;
(2) parties organized by the facility;
(3) medically necessary drugs, medical supplies, or medical services;
(4) funeral expenses;
(5) room and board to the facility;
(6) wheelchair purchase, rental, or repair;
(7) transportation to obtain necessary medical treatment; and
(8) service charges for maintaining the member's personal needs allowance (PNA) account.

456.425: Medical Leave of Absence: Introduction

(A) Effective for dates of service on or after July 1, 2000, the Division pays to reserve a bed for up to 20 consecutive days for a member who is on medical leave of absence from the nursing facility if the conditions of 130 CMR 456.426 and 456.427 are met.

(B) In accordance with federal law, a nursing facility must establish and follow a written policy regarding its bed-hold period, which must be consistent with the Division's bed-hold policy. Following a medical leave of absence of 20 days or less, the nursing facility must allow the member to return to the facility and resume residence unless the member no longer requires the services provided by the nursing facility. When a member's hospitalization exceeds 20 days or does not meet the requirements of 130 CMR 456.426, the nursing facility must immediately readmit the member to the facility, to the next available bed in a semiprivate room, unless the member no longer requires the services provided by the nursing facility.

456.426: Medical Leave of Absence: Conditions of Payment

(A) When a member is transferred from a nursing facility to a hospital, the nursing facility must:
(1) provide the member and an immediate family member or legal representative with notice of the facility's bed-hold policy, including the member's right to return and resume residence in the facility;
(2) provide the member and an immediate family member or legal representative with notice of the transfer that complies with the requirements set forth in 130 CMR 456.701 and 456.702;
(3) document the date and time of the transfer in the member's record;
(4) automatically reserve a bed for the member until the close of business on the second working day of the member's hospital stay;
(5) contact the admitting hospital and obtain the estimated length of stay by the close of business on the second working day of the member's hospital stay and document the estimated length of stay in the member's medical record;
(6) if the estimated length of stay is 20 consecutive days or less, reserve a bed for the balance of the actual length of stay not to exceed 20 consecutive days from the date of admission to the hospital;
(7) if the hospital advises the nursing facility that the estimated length of stay exceeds 20 consecutive days, not bill the Division for a medical leave of absence from the date of such notification by the hospital; and
(8) ensure that for each day that a bed is reserved, the bed is not occupied.

(B) Notwithstanding 130 CMR 456.426(A), the Division will not pay a nursing facility for reserving a bed for a member:
(1) after the second working day of the member's stay if the nursing facility has failed to obtain the estimate of the length of stay from the hospital;
(2) if the member has notified the nursing facility in writing that he or she does not wish to return to the facility; or
(3) for any consecutive medical leave-of-absence day in excess of the 20 days from the date of transfer from the nursing facility.

(C) When a member is transferred from one inpatient hospital to another inpatient hospital during the medical leave of absence, the nursing facility will continue to reserve a bed for the member for up to the 20th day of the member's absence from the nursing facility as long as the member continues to require a medical leave of absence and the conditions in 130 CMR 456.426(A) and (B) are met. A transfer from one hospital to another will result only in a continuation of the 20-day period initiated on the first day the member originally was transferred from the nursing facility for the original medical leave of absence, and will not initiate another 20-day period.

456.427: Medical Leave of Absence: Payment

(A) The day on which a member is transferred from a nursing facility to a hospital for an inpatient stay is the first day of the medical leave of absence from the nursing facility. The day on which a member is transferred back to a nursing facility or is discharged from the hospital to a noninstitutional setting is not a medical leave-of-absence day.

(B) The Division will pay the nursing facility for properly submitted claims for medical leave-of-absence days at the member's pre-absence rate for days one through 10 and at the facility's lowest payment rate for days 11 through 20.

456.428: Medical Leave of Absence: Readmission

(A) If a member is hospitalized for 20 days or less, the nursing facility must immediately readmit the member to the facility, provided that the member continues to require nursing facility services.

(B) If a member's hospitalization exceeds 20 days or does not satisfy the conditions of payment in 130 CMR 456.426(B), the nursing facility is no longer obligated to reserve a bed for the member. The nursing facility must, however, readmit the member to the next available bed in a semiprivate room, provided that the member continues to require nursing-facility services. Members who have been authorized for payment of nursing-facility services who are admitted to a hospital from a nursing facility may be readmitted to the same facility without a new authorization except when a hospitalization exceeds six months. When a hospitalization exceeds six months, the nursing facility must request a new authorization for nursing-facility services before readmitting the member.

456.429: Medical Leave of Absence: Failure to Readmit

(A) When a nursing facility is notified that the resident is ready to return to the facility, the nursing facility must readmit the resident following a medical leave of absence. If the nursing facility does not allow the resident to be readmitted following hospitalization or other medical leave of absence, the nursing facility's failure to readmit the resident will be deemed a transfer or discharge. The nursing facility must then provide the resident and an immediate family member or legal representative with a notice explaining its decision not to readmit the resident. The notice 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 such determination is made.

(B) A nursing facility that fails to readmit a member who requires nursing facility services or otherwise violates these provisions may be subject to administrative action.

456.430: Nonmedical Leaves of Absence: Introduction

The Division seeks the fullest integration possible of aged and disabled members into the community. Wherever possible, coordinated support services should be arranged so a member may return to the community. To prevent residents from becoming isolated in nursing facilities and to encourage families to care for members at home, the Division will pay the nursing facility to reserve a bed for a member when the member is temporarily absent from the facility for nonmedical reasons subject to the requirements set forth in 130 CMR 456.431 and 456.432.

456.431: Nonmedical Leaves of Absence: Limitations

The Division will pay for temporary absences for nonmedical leave for members in nursing facilities for up to a total of 15 days per 12-month period starting with the first day of the nonmedical leave. A day is defined as a continuing 24-hour period. Absences from the nursing facility of less than 24 hours do not constitute a day of absence. In special circumstances, the nursing facility may request an extension of the limits on payment of nonmedical leave in accordance with 130 CMR 456.434.

456.432: Nonmedical Leaves of Absence: Conditions for Payment

(A) For the facility to obtain payment for a nonmedical absence, the following conditions must be met.

(1) The member must request the nonmedical leave.

(2) A written authorization from the attending physician is on file in the member's medical record.

(3) During the period of absence the nursing facility must hold the same bed and room for the member and must not admit any other resident in the member's place.

(4) The member's medical record maintained by the facility must document:

(a) the home address, telephone number, and relationship of the person responsible for the member while the member is absent from the facility;

(b) the duration of absence;

(c) the physician's authorization for the absence; and

(d) the member's condition before and after the absence from the facility.

(B) If the member does not return to the facility, the Division will consider the member voluntarily discharged as of the first day of unauthorized absence. The facility must terminate billing the Division as of the first date of unauthorized absence. A voluntary discharge is not a discharge under 130 CMR 456.701 through 456.703 or 610.028 through 610.030.

456.433: Nonmedical Leaves of Absence: Payment

The Division pays nursing facilities for nonmedical leave-of-absence days at the member's pre-absence rate.

456.434: Nonmedical Leaves of Absence: Extensions

The nursing facility may request an extension beyond the limits for reimbursable absences defined at 130 CMR 456.432 by submitting a written request to the Division of Medical Assistance. Such requests must include the reason for the requested extension, the member's most current management minutes category, the number of days requested, and the number of absence days used in the last 12 months. The Division will authorize extensions in writing to the nursing facility. The nursing facility must keep the authorization on file in the member's medical record.

(130 CMR 456.435 through 456.450 Reserved)

456.615: Annual Accounting to the Division of the PNA Balance

(A) Annually, at least by each June 1, an accounting must be made to the Division of the balance of each PNA account. If the facility is not a trustee for any member's money, it must report this fact by each June 1 to the Division. The accounting to the Division must be submitted on the Statement of MassHealth Member's Personal Needs Account (PNA-1) and must be dated and signed under the pains and penalty of perjury by the administrator of the facility and mailed to the Division.

(B) The accounting must consist of the following:
(1) the member's name;
(2) the member's social security number;
(3) the amount of petty cash held in the facility for the member;
(4) the balance held in any individual bank account for the member;
(5) the balance held in the trustee account for the member;
(6) any other money being held by the facility for the member; and
(7) if funds are held in an aggregate trustee bank account, then a copy of the bank statement for that account must be submitted with the accounting.

(130 CMR 456.616 through 456.700 Reserved)

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 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 456.701(A)(1) through (5), 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 when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); or
(2) a physician 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 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'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. § 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) 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). The nursing facillity 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(C), 610.028, and 610.029.

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.

456.703: Time Frames for Submission of Requests for Fair Hearings

(A) Appeals of discharges and transfers will be handled by the Division's Board of Hearings (BOH).

(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);
(2) 14 days after a resident receives written notice of an emergency discharge or emergency transfer pursuant to 130 CMR 456.702(B); or

(3) 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.

456.704: 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 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.

456.705: Scheduling by the Board of Hearings

(A) Upon receipt of a request for a fair hearing, BOH will register the appeal, set a date for a hearing, and so notify the appellant and the nursing facility.

(B) BOH will designate a site for the hearing accessible to the appellant. If the appellant has a handicap or disability that reasonably prevents his or her appearance at the designated site, he or she may request that the hearing be held by telephone or video conferencing, or at an accessible location.

REGULATORY AUTHORITY

130 CMR 456.000: M.G.L. c. 118E, §§ 7 and 12.