

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2178209
<b>Decision Date:</b>	11/23/2021	<b>Hearing Date:</b>	November 4, 2021
<b>Hearing Officer:</b>	Stanley M. Kallianidis	<b>Record Open Date:</b>	November 11, 2021

**Appellant Representative:**

Pro Se

**Facility Representative:**



***Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, 6<sup>th</sup> Floor  
Quincy, MA 02171***

## APPEAL DECISION

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Safety of Individuals in Facility
<b>Decision Date:</b>	11/23/2021	<b>Hearing Date:</b>	November 4, 2021
<b>Appellant Rep:</b>	Pro Se	<b>Facility Rep:</b>	

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

In a notice dated October 26, 2021, the respondent nursing home (herein after "facility") planned on discharging the appellant because, "The safety of individuals in the nursing facility is endangered" (Exhibit 1). The appellant filed this appeal in a timely manner on October 27, 2021 (see 130 CMR 610.015 and Exhibit 2). A nursing facility initiated-discharge is valid grounds for appeal (see 130 CMR 610.032).

### Action Taken by the Facility

The facility plans on discharging the appellant because he is endangering the safety of individuals in the facility.

### Issue

Is the appellant endangering the safety of individuals in the facility pursuant to 130 CMR 610.028?

## Summary of Evidence

A representative from Highview of Northampton testified that the appellant is a 60-year-old male admitted to their facility on June 17, 2021. His primary diagnosis was a right leg fracture and difficulty ambulating (Exhibit 3).

The facility is planning his discharge because he is endangering the safety of individuals in the facility. The facility representative explained that the appellant was observed smoking marijuana in his room on September 25, 2021 (Id. at p 89). Smoking marijuana and smoking outside of the designated smoking are both violations of the facility's smoking policy. Subsequently, on October 25, 2021, while on leave from the facility, the appellant was hospitalized for smoking marijuana laced with fentanyl (Id at p. 28).

The facility is planning to discharge the appellant to a homeless shelter, Friends of the Homeless, at 755 Washington St., Springfield, Massachusetts. The facility representative indicated that it has been in contact with the shelter and that it is able to take care of the appellant's medical needs (Exhibits 1& 3).

The appellant acknowledged smoking marijuana in his room on September 25, 2021. He testified that he was not aware that he was prohibited from smoking in his room, however. He testified that he was unaware that the marijuana that he smoked on October 25, 2021 was laced with fentanyl. He is currently on a public housing list in the community and does not want to go to a shelter.

During the record-open period, the facility submitted a physician's letter stating that the appellant has been clinically cleared for discharge to a shelter with services. Also submitted were copies of the facility's smoking policy and smoking policy acknowledgment (Exhibits 4-6).

According to the facility's smoking policy, smoking marijuana is not allowed anywhere in the facility, and smoking cigarettes is only allowed in designated smoking areas. Residents in violation of the policy are subject to discharge from the facility. Neither the smoking policy nor the smoking policy acknowledgment that were submitted were signed by the appellant (Exhibit 6).

## Findings of Fact

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

1. The appellant is a 60-year-old male admitted to Highview of Northampton on June 17, 2021 (Exhibit 3).
2. His primary diagnosis was a right leg fracture and difficulty ambulating (Exhibit 3).
3. In a notice dated October 26, 2021, the facility planned on discharging the appellant because, "The safety of individuals in the nursing facility is endangered" (Exhibit 1).
4. The facility is planning to discharge the appellant to a homeless shelter, Friends of the Homeless, at 755 Washington St., Springfield, Massachusetts (Exhibit 1 and testimony).
5. The facility's physician indicated that the appellant has been clinically cleared for discharge to a shelter with services (Exhibit 5).
6. The appellant smoked marijuana in his room on September 25, 2021 (Exhibit 3).
7. Smoking marijuana and smoking outside of the designated smoking are both violations of the facility's smoking policy (Exhibit 6).
8. Neither the smoking policy nor the smoking policy acknowledgment were signed by the appellant (Exhibit 6).

## Analysis and Conclusions of Law

130 CMR 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 MassHealth agency 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)(3) & (4).

The nursing facility must meet the requirements of all other applicable federal and state regulatory requirements in addition to the MassHealth-related regulations discussed above, including MGL c.111, §70E, which states in pertinent part that

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.

In the instant case, I have found that the appellant, a resident of Highview of Northampton, in an undisputed incident, smoked marijuana in his room at the facility on September 25, 2021. While I have found that smoking marijuana and smoking outside of the designated smoking are both violations of the facility's smoking policy, neither the policy nor the acknowledgment were signed by the appellant. Given this lack of notice to the appellant of the consequences of his smoking marijuana in the facility, I cannot conclude that he is endangering the safety of individuals in the facility at this time.

The appeal is approved accordingly.

## **Order for the Facility**

Rescind appellant's discharge.

## **Implementation**

If this 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.

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Stanley M. Kallianidis  
Hearing Officer  
Board of Hearings

cc:

