

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

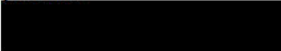


Appeal Decision:	Approved	Appeal Number:	2308077
Decision Date:	9/19/2023	Hearing Date:	09/14/2023
Hearing Officer:	Kimberly Scanlon		

Appearance for Appellant:

Via telephone

Pro se;



Appearance for Nursing Facility:

Via telephone



*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 NH Discharge
Decision Date:	9/19/2023	Hearing Date:	09/14/2023
Nursing Facility's Reps.:	Ami Oriakhi; Lorie Kelley	Appellant's Reps.:	
Hearing Location:	Charlestown MassHealth Enrollment Center - Room 1 (Remote)	Aid Pending:	No

Authority

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

Jurisdiction

Through a notice dated September 8, 2023, [REDACTED] (hereinafter "the nursing facility") issued a Notice of Intent to Discharge Resident With Less Than 30 Days' Notice (Expedited Appeal), to [REDACTED] (hereinafter "homeless shelter") for the specific reason: "the safety of the individuals in the facility is endangered due to clinical or behavioral status of the resident." (130 CMR 456.702(B); 130 CMR 610.029(B); Exhibit 1). The Appellant filed this appeal in a timely manner on September 8, 2023. (130 CMR 610.015(F); Exhibit 2¹). Notice of transfer or discharge from a nursing facility is valid grounds for appeal. (130 CMR 456.703; 130 CMR 610.032(C)).

¹ 130 CMR 610.015(F) Expedited Appeals for Discharges and Transfers from a Nursing Facility Under 130 CMR 610.029(B) or (C). 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). When such a request is made, BOH will schedule a hearing 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). Appeal requests made under 130 CMR 610.015(F) automatically waive the requirement for ten-day advance notice of the scheduled hearing date under 130 CMR 610.046(A).

Action Taken by MassHealth

The nursing facility issued a Notice of Intent to Discharge Resident With Less Than 30 Days' Notice (Expedited Appeal) to a homeless shelter for the specific reason: "the safety of the individuals in the facility is endangered due to clinical or behavioral status of the resident."

Issue

The appeal issue is whether the nursing facility was correct, pursuant to 130 CMR 456.702(B); 130 CMR 610.029(B), in notifying the Appellant of its intent to discharge her with less than 30 days' notice to a homeless shelter because "the safety of the individuals in the facility is endangered due to clinical or behavioral status of the resident."

Summary of Evidence

The nursing facility was represented telephonically at the hearing by its administrator and regional social work manager and testified as follows: On [REDACTED], the Appellant was given a less than 30 day-notice to discharge because the safety of the individuals in the facility is endangered due to the clinical and behavioral status of this resident. Specifically, the Appellant was made aware of the facility's smoking policy which reads that residents in violation thereof may be subject to receive a 30-day discharge notice. The smoking policy was signed by the Appellant on [REDACTED]. However, on [REDACTED] a vape pen was found in the Appellant's possession (her hand) while sleeping, a vape was found in the Appellant's room on [REDACTED], and on [REDACTED]. With respect to the most recent incident, the nursing facility's representatives explained that sleeping with flammable objects in-hand is a serious safety concern due to having residents on oxygen. The Appellant was re-educated on the smoking policy and she continues not to follow the smoking policy by having smoking paraphernalia found in her room. The nursing facility representatives testified that the Appellant had a verbal agreement with the facility's regional administrator on [REDACTED], whereupon she agreed to follow the smoking policy or she would be issued a 7-day expedited notice of intent to discharge. On that date, the Appellant agreed that she would comply with the rules. Shortly thereafter that verbal agreement took place, the Appellant was found with a vape pen in her hand while sleeping. The Appellant was previously issued a 30-day notice discharge due to the same safety concerns. The medical director at the nursing facility was also consulted and confirmed that the Appellant is a danger to herself and other patients and is unfit to live at the facility. Further, the medical director agrees with the discharge plan.²

² The medical director did not attend the hearing that took place for this appeal.

The Appellant and her son appeared at the hearing telephonically and made inquiry as to whether the nursing facility was solely discussing the smoking paraphernalia found in the Appellant's room. In response, the nursing facility confirmed that was the issue on appeal. The nursing facility reiterated that said paraphernalia was found in the Appellant's room on three occasions after she received a 30-day notice to discharge. The Appellant's representative made further inquiry as to when the three incidents occurred. The nursing facility reiterated the incidents occurred on [REDACTED]; and [REDACTED]. The Appellant's representative made further inquiry as to whether the nursing facility conducted room searches prior to any of the three dates given above to which the nursing facility representative responded that she did not think so. The Appellant's representative made inquiry as to whether the Appellant was searched prior to or returning from the facility to see if she was bringing in any alleged smoking paraphernalia. The nursing facility responded that either way the Appellant is aware of the smoking policy and agreed to it.

The Appellant's representative testified that the Appellant does not retain all the information that she receives because she is very forgetful. The nursing facility explained that the Appellant was educated on the smoking policy on numerous occasions and signed the smoking policy. Therefore, if the Appellant was found with smoking material, the policy states that a resident will be issued a 30-day notice to discharge because the safety of the individuals is endangered.

The Appellant's representative next made inquiry as to what led to the Appellant falling in the nursing facility a few weeks prior to the hearing.³ The nursing facility responded that said incident has nothing to do with this appeal. The Appellant's representative inquired whether the safety of all residents has anything to do with these appeals. He testified that the Appellant's safety is not being taken into consideration. The nursing facility representative testified that she is not going to respond because the hearing is not to discuss the Appellant's falls, rather, it is to discuss smoking paraphernalia found in her room. The Appellant's representative testified that the nursing facility has not reached out to him once regarding any of the Appellant's falls. The nursing facility suggested that the Appellant's representative reach out to nursing to discuss that topic.

The Appellant's representative then testified that the Appellant's records submitted by the nursing facility further mentioned alcohol found in the Appellant's room. In response, the nursing facility representatives testified that a room search was conducted on [REDACTED] and alcohol was found in the Appellant's room in an oatmeal box hidden somewhere. The Appellant's representative testified that the Appellant has no means of leaving the facility nor financial means to purchase alcohol. The nursing facility testified that the Appellant's representative should ask the Appellant how alcohol was found in her room. The Appellant's representative testified that he did

³ The nursing facility's progress notes indicate that, on or about [REDACTED] the Appellant slipped and fell on 11-7 shift. Accordingly, the Appellant was ambulating down the hall towards the nursing station. She barely had her eyes open. (See, Exhibit 4, p. 26). Further, on [REDACTED], accordingly, the Appellant slipped and fell while walking in the hallway to the dining. The Appellant fell on her left side. She was alert, conscious and oriented after the fall. She was complaining of pain in her left elbow and left ankle. (See, Exhibit 4, p. 12).

ask the Appellant, as she has been sober for 7 years. Further, the Appellant's representative testified that the nursing facility has acted hostile towards the Appellant, especially after the prior hearing that took place. He testified that that it appeared the nursing facility was simply looking for reasons to discharge the Appellant. In response, the nursing facility representatives testified that was not necessarily true, rather, the Appellant disregards the smoking policy and the rules. Further, the nursing facility has other residents that they must worry about that are on oxygen in the facility.

In response to inquiry made to all parties at the hearing, the Appellant's representative testified that the Appellant is not currently on oxygen.⁴ The Appellant's representative further reiterated that the nursing facility did not conduct a room check of the Appellant, after reportedly finding a vape pen in the Appellant's hand, according to the nursing facility progress notes. The nursing facility responded that they took the vape pen from the Appellant, and according to the nursing notes, the Appellant tried to hide it underneath her pillow and then stated that it was not her pen. The Appellant's representative made inquiry as to whether there was a discharge plan in place. The nursing facility representatives made inquiry as to whether they are there to answer questions. The nursing facility representatives then testified that the Appellant would be discharged to a homeless shelter, as many people are. Thus, it would be the same as any discharge.

In response to further inquiry made at the hearing, the nursing facility representatives responded that in terms of alternative housing, the Appellant is nearing the top of the [REDACTED] list, however, the Appellant submitted that application prior to her admission to the nursing facility. The Appellant's representative explained that he is trying to find a facility that can help the Appellant with all her needs, including physical needs, mental needs, and addiction.

With respect to the nursing facility's smoking policy specifically, the Appellant's representative testified that the Appellant may not have understood said policy in its entirety because there is nothing in the policy that mentions vapes. Thus, the Appellant may interpret smoking as smoking cigarettes. The nursing facility testified that its smoking policy covers all smoking materials. The Appellant's representative reiterated that in the Appellant's diminished-cognitive ability, she would not assert a vape with smoking paraphernalia because there are no open flames. So, in her mind, she would not believe that a vape causes a smoking hazard.

In response to direct inquiry made to the Appellant at the hearing, the Appellant testified that she did not really understand the smoking policy when she signed it. She testified that the nursing facility does not give residents any time to read the policy, that the facility just asked her to sign it. The Appellant further testified that when the higher-ups ask her to sign something, she signs it. Additionally, the nursing facility did not even read the policy to her. The Appellant explained that

⁴ The nursing facility representatives further testified that the Appellant's roommate is not on oxygen either, however, nearby residents on the same unit are currently on oxygen.

she needs documents read to her because she has memory issues.⁵ She further explained that she has been suicidal previously and jumped in front of a train which diminished her abilities. The nursing facility representative testified that the smoking policy is read to every resident upon admission. Further, when there is an infraction of the smoking policy, there is a meeting that occurs with the resident to go over said policy. The nursing facility representative explained that while she does not have the exact figure in front of her, the smoking policy has been read and discussed with the Appellant at least four or five times. The Appellant disputed that the policy was read to her. The nursing facility representative explained that previous no-harm agreements were put in place with the Appellant, prior to the previous discharge notice. The nursing facility representatives, upon inquiry, testified that on [REDACTED], the Appellant verbally agreed that she would not have any smoking materials on her person, otherwise she would be subject to a 7-day notice of discharge. (See, Exhibit 4, p. 8).

The Appellant, in response to inquiry made at the hearing, testified that she did not recall having a conversation on [REDACTED] regarding the smoking policy and made inquiry as to who spoke to her on that date. The nursing facility representatives testified that another facility worker spoke to the Appellant when the nursing facility administrator was out of the office. The Appellant testified that while the nursing facility representative stated that conversation took place, she honestly does not recall this conversation. The Appellant explained that sometimes she does not always understand what is being asked of her and sometimes she answers in the affirmative because no one understands her disabilities. The Appellant's representative reiterated that the Appellant easily forgets what she is told so a verbal agreement would not assist the Appellant. The nursing facility testified that apparently written agreements do not assist the Appellant in remembering the policy either. Further, there is nothing in the record that states the Appellant's capacity is diminished. The Appellant's representative reiterated that the Appellant has suffered from serious head trauma and as a result, does not retain any information given to her. The nursing facility testified that a doctor has not declared that the Appellant has diminished capacity. The Appellant's representative referred to the Appellant's progress notes, specifically, that the Appellant was found walking in the halls, groggy, and disoriented, the nursing facility only brought the Appellant back to her room. Moreover, the Appellant is forgetful and cannot recall what she has signed. He questioned whether this is not an indication of diminished capacity. The nursing facility representatives reiterated that diminished capacity is a decision made by a doctor. In response to further inquiry made at the hearing regarding whether the Appellant was using the vape found in her hand, the nursing facility representatives testified that the Appellant was found sleeping, with the vape in her hand.⁶ The nursing facility representatives further testified upon

⁵ It is noted that within the progress notes submitted by the nursing facility: on [REDACTED], the Appellant was documented as having increased drowsiness early morning walking aimless in hallway. Instructed to go back and lie down to maintain safety. This writer spoke with resident regarding being signed out when she goes out on LOA and not leaving this facility without doing so. Resident stated she forgot yesterday. (See, Exhibit 4, p. 16).

⁶ The progress notes provided by the nursing facility indicate that, on [REDACTED], "at 0600 this morning, this writer went to give patient her medication. Patient was soundly asleep with eyes closed, signs of life noted with breathing and even aspirations. This writer noted patient holding a vapor in her right hand. Patient then

inquiry that the Appellant has been approved to stay at the facility with the goal of returning to the community.

Finally, the Appellant's representative testified that the Appellant would be unsafe if she is discharged. The Appellant testified that there is never the same staff and questioned how the facility can keep track of everyone. With respect to the smoking policy specifically, the Appellant testified that every day there is a new policy. The nursing facility representatives responded that the smoking policy has been consistent since 2020. The Appellant testified that she believed there were recent changes made to the policy however, she did not retain any further information. The nursing facility representatives testified that everyone must abide by the smoking policy to ensure safety and the nursing facility is simply following its own policy. Moreover, this has been an ongoing issue with the Appellant. As to the safety concerns of the Appellant regarding her recent falls, the nursing facility representatives suggested that the Appellant's representative contact the Director of Nursing for the facility.⁷

Findings of Fact

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

1. The Appellant was admitted to the facility in June of 2022. (Exhibit 4).
2. On September 8, 2023, the facility issued to the Appellant, a Notice of Intent to Discharge with Less than 30 Days' Notice. (Testimony, Exhibit 1).
3. The Appellant timely appealed on September 8, 2023. (Exhibit 2).
4. On or about [REDACTED]; [REDACTED]; and [REDACTED], the Appellant was found with a vape pen. (Testimony; Exhibit 4, p. 68).
5. During the [REDACTED] incident, the Appellant was found with a vape pen in her hand while sleeping. (Testimony, Exhibit 4, pp. 9, 68).
6. Sleeping with a flammable object in hand is a serious safety concern because of residents on oxygen. (Testimony; Exhibit 4, p. 68).
7. The Appellant, nor her roommate, are on oxygen. (Testimony).

immediately threw it under her sheet. I asked her what she was hiding, she replied and said "it my pen." I then ask patient if I can see her pen, she handed it over with hesitance. I told patient this is not a pen and I will have to give it to the DON. Patient then replied and said "it not mine, I don't know how it got into my room or in my hands." (See, Exhibit 4, p. 9).

⁷ The contact number provided to the Appellant's representative is as follows: [REDACTED].

8. The Notice of Intent to Discharge the Appellant with Less than 30 Days' Notice indicates that the Appellant will be discharged to a homeless shelter. (Testimony; Exhibit 1).
9. The nursing facility's discharge plans for the Appellant include discharge to a homeless shelter, as many people are. (Testimony).

Analysis and Conclusions of Law

The federal Nursing Home Reform Act (NHRA) of 1987 guarantees all residents the right to advance notice of, and the right to appeal, any transfer or discharge action initiated by a nursing facility. Massachusetts has enacted regulations that follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant regulations may be found in both (1) the MassHealth Nursing Facility Manual regulations at 130 CMR 456.000 et seq., and (2) the Fair Hearing Rules at 130 CMR 610.000 et seq.⁸

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

⁸ The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.000 et seq. has regulations which are identical (or nearly identical) to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq. as well as corresponding federal government regulations. Because of such commonality, the remainder of regulation references in this Fair Hearing decision will only refer to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000 unless otherwise noted and required for clarification.

of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. s. 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. s. 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 456.701(C)).

Further, the notice requirements set forth in 130 CMR 456.701(A) state that 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.

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); and
- (2) a physician when the transfer or discharge is necessary under 130 CMR 456.701(A)(3) or (4).

(130 CMR 456.701(B))

130 CMR 456.702: Time Frames for Notices Issued by Nursing Facilities:⁹

(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.

(emphasis added)

(2) The resident's health improves sufficiently to allow a more immediate

⁹ See also 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. (emphasis added)

(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.

(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: *Medical Leave of Absence: Failure to Readmit*, must comply with the requirements set forth in 130 CMR 456.701: *Notice Requirements for Transfers and Discharges Initiated by a Nursing Facility*, and must be provided to the resident and an immediate family member or legal representative, if such person is known to the nursing facility, 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) are handled under the expedited appeals process described in 130 CMR 610.015(F).

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.

130 CMR 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.

The nursing facility must also comply with all other applicable state laws, including M.G.L. c.111, §70E. The key paragraph of this statute, which is directly relevant to any type of appeal involving a nursing facility-initiated transfer or discharge, 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.¹⁰

In the present case, the nursing facility issued a Notice of Intent to Discharge Resident With Less Than 30 Days' Notice (Expedited Appeal), to a homeless shelter for the specific reason: "the safety of the individuals in the facility is endangered due to the clinical or behavioral status of the resident." The notice, which is treated as an emergency transfer, triggers specific regulatory timeframes and requirements outlined above. A nursing facility resident can only be discharged for specific reasons also outlined above. Here, it appears that the Appellant's clinical record was documented by a physician. (See, Exhibit 4, p. 62). However, it does not appear that the Appellant was given the following information from the nursing facility, in accordance with 130 CMR 456.701(C):

1. name, address, and telephone number of the local long-term-care ombudsman office; and
2. 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.

Moreover, while it is certainly understandable that the nursing facility's primary concern is for the safety of its residents, it is puzzling that on the date of the September 6, 2023 vaping incident documented, the Appellant was found to be sleeping soundly by staff, with her eyes closed, signs of life noted with breathing and even respirations, with a vapor in her hand. (See, Exhibit 4, p. 9). Yet, accordingly, the Appellant immediately threw the vapor under her sheet (apparently while sleeping soundly). Given the Appellant's confusion, it is equally as puzzling how the nursing facility would expect the Appellant to retain the rules contained within the smoking policy and what constitutes a violation thereof. Indeed, the Appellant testified at the hearing that she does not recall speaking to anyone regarding the smoking policy nor did she recall ever having the policy explained to her. Rather, she was told to sign it, so she did.

Finally, it does not appear within the records provided, nor was there any testimony given by the nursing facility indicating that the Appellant was provided sufficient preparation and orientation to ensure a safe and orderly transfer or discharge from the facility to another safe and appropriate place. For the above-stated reasons, this appeal is approved.

Order for Nursing Facility

¹⁰ See also 42 USC 1396r(c)(2)(C) which requires that a nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

Rescind the September 8, 2023 discharge notice.

Compliance with this Decision

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, Office of Medicaid, at the address on the first page of this decision.

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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc: Appellant's Representative: [REDACTED]
Nursing Facility's Representatives: [REDACTED]
[REDACTED]