

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2419894
Decision Date:	03/21/2025	Hearing Dates:	January 21, 2025; February 27, 2025
	Hearing Officer:	Stanley M. Kallianidis	

Appellant Representative:



Facility Representative:



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

APPEAL DECISION

Appeal Decision:	Approved	Issue:	Nursing Facility Discharge- Endangering the Safety of Others
Decision Date:	03/21/2025	Hearing Date:	January 21, 2025; February 27, 2025
Facility Rep.:	Maria Casey	Appellant Rep.:	

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 December 3, 2024, the respondent nursing home (herein after "facility") planned to discharge 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 December 31, 2024 (see 130 CMR 610.015 and Exhibit 2).

A nursing facility-initiated discharge is valid grounds for appeal (see 130 CMR 610.032).

The appellant's hearing was initially scheduled for January 21, 2025 (Exhibit 3). The appellant's representative requested that the discharge be denied or, alternatively, that the appeal be rescheduled because she was not provided with the appellant's resident record which the facility had intended for inclusion in the hearing record (Exhibit 4).

A continuance was granted, and the hearing was continued to February 27, 2025 to allow the appellant's representative time to review this evidence (Exhibit 5).

Action Taken by the Facility

The facility planned to discharge the appellant because he is endangering the safety of individuals in the facility.

Issue

Has the facility provided the appellant with a discharge location that will allow for his safe and orderly discharge pursuant to 130 CMR 610.028 and MGL c.111, §70E?

Summary of Evidence

A representative from the facility submitted the appellant's resident record into evidence. She testified that the appellant was admitted in early [REDACTED] and is under 65 years of age. He has a medical history of COPD, emphysema, heart disease, depression, anxiety, alcohol and substance abuse, and cognitive deficits (Exhibit 6).

The facility planned to discharge the appellant because he is endangering the safety of others in the facility. The facility representative referenced the resident record, and explained on one occasion, the appellant exposed himself, and that there were several times where the appellant made sexually inappropriate comments to residents and staff (Exhibit 6).

According to the appellant's physician at the facility, he may be safely discharged into the community (Exhibit 6).

The facility representative further testified that the appellant's place of discharge is the [REDACTED]. She also testified that the facility would pay the appellant's first three nights at the hotel and provide with him a social worker so that he could coordinate services in the community after that (Exhibits 1 & 6).

The appellant's attorney submitted her memorandum into evidence. She objected to [REDACTED] as a safe place of discharge because it is not a permanent setting and also because it can not meet all of the appellant's medical needs. She further testified that the appellant has no credit card and that his monthly income could only pay for ten days of his stay in the hotel. Thus, even if the hotel allowed the appellant to stay after three days, he would have no place to reside after a couple of weeks (Exhibit 7).

The appellant's attorney also cited several prior Board of Hearings decisions involving nursing home discharges in which the hearing officers each ruled that a hotel was not an appropriate or safe place of discharge and as a consequence, approved their respective appeals (Exhibit 7).

Findings of Fact

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

1. The appellant was admitted to his facility in early [REDACTED] and is under 65 years of age (Exhibit 6).
2. The appellant has a medical history of COPD, emphysema, heart disease, depression, anxiety, alcohol and substance abuse, and cognitive deficits (Exhibit 6).
3. In a notice dated December 3, 2024, the facility planned on discharging the appellant because, "The safety of individuals in the nursing facility is endangered" (Exhibit 1).
4. According to the appellant's physician at the facility, he may be safely discharged into the community (Exhibit 6).
5. The appellant's place of discharge is the [REDACTED] The facility plan is to pay the appellant's first three nights at the hotel (Exhibit 6).
6. The appellant could not pay for a stay at the hotel for more than a couple of weeks based upon his limited income and where he has no credit card (Exhibit 7).

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.

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;

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 was admitted to his facility in early 2021 and is under 65 years of age. His medical history includes COPD, emphysema, heart disease, depression, anxiety, alcohol and substance abuse, and cognitive deficits.

In a notice dated December 3, 2024, the facility planned on discharging the appellant because, "The safety of individuals in the nursing facility is endangered." The appellant's physician at the facility has indicated he may be safely discharged into the community.

Notwithstanding the appellant's behavioral issues which were not disputed, and that a physician has indicated that he may be safely discharged to the community, I nonetheless conclude that the facility cannot proceed with his discharge at this time because the planned location of discharge is neither a safe nor appropriate place for him.

The appellant's place of discharge is the [REDACTED] The facility plan is to pay the appellant's first three nights at the hotel, after which time he will be on his own. I have found that the appellant could not possibly pay for a stay at the hotel for more than a couple of weeks based upon his limited income and where he has no credit card. Realistically, the Framingham Red Roof Inn as the appellant's place of discharge is more akin to a dropping off point rather than even a temporary residence in the community. At best, the appellant would be homeless after a couple of weeks and his health would be at risk.

In summary, the facility's place of discharge for the appellant does not comply with the notice and location requirements of 130 CMR 610.028 and MGL c.111, §70E.

The appeal is therefore approved.

Order for the Facility

Rescind the December 3, 2024 Discharge Notice to the appellant based upon a lack of a current safe location of discharge.

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.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings

cc:

[REDACTED]

[REDACTED]

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