

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2506038
Decision Date:	5/12/2025	Hearing Date:	5/06/2025
Hearing Officer:	Patrick Grogan	Record Open to:	N/A

Appearances for Appellant:



Appearances for Facility:

Darrell Carlson, Administrator, Opal McKenzie-Buchanan, Director of Nursing, Petra Bunting, Assistance Director of Nursing, Deb Harrington, Social Services, Carol Bolstad, Substance Abuse Counsellor, Nan Jordan, Regional Nurse Case Manager

Interpreter:

N/A



*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:	Nursing Facility Discharge
Decision Date:	5/12/2025	Hearing Date:	5/06/2025
Facility's Reps.:	Darrell Carlson, Opal McKenzie-Buchanan, Petra Bunting, Deb Harrington, Carol Bolstad, Nan Jordan	Appellant's Rep.:	[REDACTED]
Hearing Location:	Remote (Tel)	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 March 18, 2025, [REDACTED] (hereinafter "the nursing facility" or "facility") issued a 30 Day Notice of Intent to Discharge Resident to [REDACTED] (hereinafter "the discharge facility") for the specific reasons: "your health has improved sufficiently so you no longer need the services provided by this facility, and the safety of the individuals in the facility is endangered due to your behavioral status." (130 CMR 456.701, 130 CMR 610.029(B); Exhibit 1). The Appellant filed this appeal in a timely manner on April 16, 2025. (130 CMR 610.015(F); Exhibit 2). Notice of transfer or discharge from a nursing facility is valid grounds for appeal. (130 CMR 456.703; 130 CMR 610.032(C)).

Action Taken by Facility

The nursing facility issued a 30 Day Notice of Intent to Discharge Resident for the specific reasons: "your health has improved sufficiently so you no longer need the services provided by this facility, and the safety of the individuals in the facility is endangered due to your

behavioral status.” (130 CMR 456.701; 130 CMR 610.029(B); Exhibit 1)

Issue

The appeal issue is whether the nursing facility was correct, pursuant to 130 CMR 456.701; in notifying the Appellant of its intent to discharge because: “your health has improved sufficiently so you no longer need the services provided by this facility, and the safety of the individuals in the facility is endangered due to your behavioral status.” (130 CMR 456.701; Exhibit 1)

Summary of Evidence

The nursing facility was represented telephonically at the hearing by its Administrator, its Director of Nursing, the Assistant Director of Nursing, a representative from Social Services, a Substance Abuse Counsellor, and a Regional Nurse case manager, who testified as follows: the Appellant no longer requires the skilled services of the facility. (Testimony, Exhibit 4). The facility pointed to a doctor’s note supporting this determination. (Exhibit 4, pg. 40) The facility representatives highlighted various issues with the Appellant’s behavior. (Testimony). The facility outlined various observations of the Appellant’s consumption of alcohol, including an incident where the Appellant was believed to be intoxicated and was sent to the hospital. (Exhibit 4, pgs.224-228) The facility explained that the Appellant has no medical authorization to consume alcohol and some of the Appellant’s medications may interact negatively with alcohol. (Testimony) The facility representatives stated that the Appellant presented as argumentative when representatives of the facility suspected the Appellant had imbibed. (Testimony) The facility explained that the Appellant had resided in the past in the shelter to which the facility is seeking discharge. (Testimony, Exhibit 4). The facility representatives had stated they had obtained housing for the Appellant, but that he did not go¹. (Testimony) Based upon this information, with the note from the facility’s doctor, the facility stated discharge is appropriate. (Testimony)

The Appellant testified that he still has medical issues and disagrees with the assessment that he no longer requires the skilled services of the facility. (Testimony). The Appellant highlighted his medication issues. (Testimony) Although the Appellant stated that the facility’s doctor is his primary care physician, the Appellant has only seen the doctor a handful of times. (Testimony) The Appellant highlighted concerns regarding his safety within the chosen shelter. (Testimony) The Appellant explained efforts he has made on his own to obtain housing, and that he continues those efforts. (Testimony) The Appellant presented testimony from a witness to refute the allegations of intoxication and drinking with the facility. (Testimony) The Appellant

¹ In response to questions posed, it was revealed that the facility had obtained an appointment for the Appellant to seek housing, not approval for housing for the Appellant. The facility stated that the Appellant was denied placement due to his response that he would not abstain from alcohol. The Appellant stated the reason for his denial for housing was not explained to him.

stated that he had contacted the chosen shelter days prior to the Hearing, and was informed that there was not a bed available to him. (Testimony)

In response to questions posed, the facility stated that the last time the facility had spoken to the shelter was in March, nearly 2 months prior to the Hearing. (Testimony) The parties explained that the shelter's availability can fluctuate, requiring frequent checks to the shelter. (Testimony) In response to questions posed, the Appellant stated the facility did not discuss with him the appropriateness of the discharge location, and based upon his memory, he recalled the shelter utilized bunkbeds, which the Appellant can no longer navigate due to his physical condition. (Testimony) In response to questions posed, the facility reincorporated the testimony that the Appellant was familiar with the shelter as noted in conversations from the fall of 2024 contained within the progress notes but was unable to point to any record of recent conversations regarding the appropriateness of the chosen discharge location. (Testimony, Exhibit 4)

Within the submission from the facility is an undated letter from the Administrator. Within the letter, the Administrator details the medical conditions that prompted the Appellant's admission to the facility as well as the Appellant's treatment. (Exhibit 4, pgs. 4-5) The Administrator states that the Appellant's condition had significantly improved, and that the Appellant no longer requires skilled services from the facility. (Exhibit 4, pg. 4). The Administrator stated that the Appellant has been non-compliant with the facility's smoking policy by having smoking materials on his person, and for smoking in non-smoking areas of the facility. (Exhibit 4, pg. 4) The Administrator also notes that the Appellant had left the facility without properly informing the facility as required. (Exhibit 4, pg. 4) The Administrator notes that the Appellant had returned on multiple occasions and was suspected to be under the influence of substances. (Exhibit 4, pg. 4). Based upon these behaviors, the Administrator concluded that the Appellant "can be considered to pose a risk to himself, other residents, and staff within the facility." (Exhibit 4, pg. 4)

The letter continues, indicating that the Appellant had stayed at the shelter, where the facility seeks to discharge the Appellant, in the past. (Exhibit 4, pg. 5) The Administrator notes that the Appellant does not wish to be discharged to the shelter, but the Administrator concluded that it is the Appellant's best interest to be discharged into the community. (Exhibit 4, pg. 5) Within the Administrator's letter, there is no reference to any documentation related to the appropriateness of the location to which the facility seeks to discharge the Appellant, nor is there any reference to documentation regarding any preparation or orientation provided to the Appellant (Exhibit 4, pgs. 4-5).

Also included within the facility submission is a psychosocial evaluation dated March 5, 2025. (Exhibit 4, pg. 162) Within the evaluation, it is noted that the Appellant had been admitted to the facility due to a serious motor vehicle collision where the Appellant had been struck by a hit and run driver. (Exhibit 4, pg. 162) The evaluation notes the Appellant wished to

eventually be discharged from the facility. (Exhibit 4, pg. 162) The evaluation highlights the Appellant's efforts to aid other residents within the facility and the Appellant's concerns that the facility staff are not happy with his efforts due to the fact that he often raises issues vocally. (Exhibit 4, pg. 162)

In a doctor's note, dated March 10, 2025, the facility's doctor stated that she saw the Appellant at the request of nursing staff in reference to a discharge. The doctor stated "Patient is capable of making decisions and caring for himself in the community, as such, I am in support of his discharge. Patient is medically cleared to be discharged home. Patient has no acute distress and is cooperative with today's assessment." (Exhibit 4, pg. 40)

Additionally, within the facility's submission is an "After Visit Summary" from a visit to the hospital at the end of [REDACTED] (Exhibit 4, pg. 205). The Summary notes that the Appellant had gone to the hospital due to abdominal pain, and after lab work and a CT scan, it was stated that there was no emergent cause of the Appellant's symptoms detected. (Exhibit 4, pg. 205) The Summary recommends that the Appellant follow up with the Appellant's primary care provider. (Exhibit 4, pg. 205)

Findings of Fact

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

1. Through a Notice dated March 18, 2025, the facility issued a 30 Day Notice of Intent to Discharge Resident for the specific reasons: "your health has improved sufficiently so you no longer need the services provided by this facility, and the safety of the individuals in the facility is endangered due to your behavioral status." (130 CMR 456.701, 130 CMR 610.029(B); Exhibit 1).
2. The nursing facility testified that the Appellant no longer requires the skilled services of the facility. (Testimony, Exhibit 4, pg. 40) The facility representatives highlighted various issues with the Appellant's behavior. (Testimony)
3. The Appellant still has medical issues, and disagrees with the assessment that he no longer requires the skilled services of the facility. (Testimony). Although the Appellant stated that the facility's doctor is his primary care physician, the Appellant has only seen the doctor a handful of times. (Testimony) The Appellant highlighted concerns regarding his safety within the chosen shelter. (Testimony) The Appellant had contacted the chosen shelter days prior to the Hearing, and was informed that there was not a bed available to him. (Testimony)

4. The last time the facility had spoken to the shelter was in March, nearly 2 months prior to the Hearing. (Testimony)
5. The Appellant stated the facility did not discuss within him the appropriateness of the discharge location, and based upon his memory, he recalled the shelter contained bunkbeds, which the Appellant can no longer navigate due to his physical condition. (Testimony) The facility was unable to point to any record of recent conversations regarding the appropriateness of the chosen discharge location. (Testimony, Exhibit 4)
6. Within the submission from the facility is an undated letter from the Administrator. The Administrator drew various conclusions related to the Appellant's medical condition and past behaviors. Within the Administrator's letter, there is no reference to any documentation related to the appropriateness of the location to which the facility seeks to discharge the Appellant, nor is there any reference to documentation regarding any preparation or orientation provided to the Appellant (Exhibit 4, pgs. 4-5).
7. Within the facility submission is a psychosocial evaluation dated March 5, 2025. (Exhibit 4, pg. 162) Within the evaluation, it is noted that the Appellant had been admitted to the facility due to a serious motor vehicle collision where the Appellant had been struck by a hit and run driver. (Exhibit 4, pg. 162) The evaluation notes the Appellant wished to eventually be discharged from the facility. (Exhibit 4, pg. 162) The evaluation highlights the Appellant's efforts to aid other residents within the facility and the Appellant's concerns that the facility staff is not happy with his efforts due on account of the fact that he often raises issues vocally. (Exhibit 4, pg. 162)
8. In a doctor's note, dated March 10, 2025, the facility's doctor stated that she saw the Appellant at the request of nursing staff in reference to a discharge. The doctor stated "Patient is capable of making decisions and caring for himself in the community, as such, I am in support of his discharge. Patient is medically cleared to be discharged home. Patient has no acute distress and is cooperative with today's assessment." (Exhibit 4, pg. 40)
9. Within the facility's submission is an "After Visit Summary" from a visit to the hospital at the end of [REDACTED] less than 2 weeks prior to the Hearing. (Exhibit 4, pg. 205). The Summary notes that the Appellant had gone to the hospital due to abdominal pain. After lab work and a CT scan, the report notes that there is no emergent cause of the Appellant's symptoms detected. (Exhibit 4, pg. 205) The Summary recommends that the Appellant follow up with the Appellant's primary care provider. (Exhibit 4, pg. 205)

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.²

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, as codified within 130 CMR 456.701(C):

- (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. 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

² 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.

- 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.

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. Pursuant to 130 CMR 456.701(B), 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 456.702: Time Frames for Notices Issued by Nursing Facilities:³

³ 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

(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

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).

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.⁴

In the present case, through a Notice dated March 18, 2025, the nursing facility issued a 30 Day Notice of Intent to Discharge Resident for the specific reason: "Your health has improved sufficiently so you no longer need the services provided by this facility, and the safety of the individuals in the facility is endangered due to your behavioral status." (130 CMR 456.701, 130

⁴ 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.

CMR 610.029(B); Exhibit 1) The Notice meets the regulatory requirements as outlined in 130 CMR 456.701(C). (Exhibit 1, Exhibit 4) The Notice, being deemed regulatorily sufficient, triggers specific regulatory timeframes and requirements to support the reasoning for the issuance of the Notice as outlined above. A nursing facility resident can only be discharged for specific reasons also outlined above.

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. Pursuant to 130 CMR 456.701(B), the documentation must be made by a physician. Here, the Appellant's clinical record is documented by the Appellant's physician. (Exhibit 4, pg. 40)

Regarding the second grounds for which the facility seeks the Appellant's discharge, pursuant to 130 CMR 456.701(B), the documentation must be made by a physician. Pursuant to 130 CMR 456.701(B)(2), the documentation must be made by a physician when a transfer or discharge is sought under 130 CMR 456.701(A)(3). Here, the Appellant's clinical record is documented by the Appellant's physician. (Exhibit 4, pg. 40)

In addition to documentation from a physician, the facility has specific regulatory requirements that must be met before an Appellant may be discharged. Specifically, the facility must also comply with G.L. c. 111, § 70E. Per this statutory provision, before a nursing facility may discharge a resident, it must ensure safe and orderly transfer or discharge from the facility to another safe and appropriate place. No testimony was offered regarding the appropriateness of the discharge location. The location lists a shelter for discharge (Exhibit 1). Although there are voluminous records within the facility's submission (Exhibit 4), lacking is any information related to the appropriateness of the location to which the facility seeks to discharge the Appellant. Also lacking is documentation regarding any preparation or orientation provided to the Appellant (Exhibit 4). The Administrator's letter, noting the Appellant had stayed at the shelter in the past, does not provide the requisite information as required by the Regulations and G.L. c. 111, § 70E. This is particularly concerning in the instant appeal where the Appellant had been sent to the emergency department of the hospital less than two weeks prior to the May 6, 2025 Hearing. (Exhibit 4, pg. 205) Moreover, based upon the instant record, it is unclear whether the shelter actually has any placement opportunity for the Appellant. The Appellant testified that he had contacted the shelter, and there was no availability. The parties explained that the shelter's availability can fluctuate. (Testimony) Where the facility explained that they had not spoken to the shelter since March, it cannot be presumed that placement is still an option for the Appellant, especially in light of testimony to the contrary.

Where the record lacks any supporting documentation regarding the appropriateness of the discharge location, or any preparation or orientation provided to the Appellant, the attempt to discharge runs afoul of G.L. c. 111, § 70E. As of the date of the Hearing, it is unclear whether there is room for the Appellant at the chosen shelter. The facility could not even confirm that a

placement at the shelter for the Appellant remained. (Testimony) The Appellant has shown, by a preponderance of evidence, that the facility is not in compliance with the specific dictates of G.L. c. 111, , § 70E. Accordingly, this appeal is APPROVED⁵.

Order for Nursing Facility

Rescind the 30 Day Notice of Intent to Discharge Resident dated March 18, 2025.

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.

Patrick Grogan

⁵ The issue of the Appellant's behavior rises to the level of endangering the safety of others in the facility as well as the issue of the sufficiency of the medical determination that the Appellant no longer requires the skilled services of the facility do not reach a conclusion within this decision since this appeal has been approved on other grounds.

Hearing Officer
Board of Hearings

cc: Respondent: Cape Regency Rehab & Health Care Center, Attn: Administrator, 120 South Main Street, Centerville, MA 02632, 508-778-1835