

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2507601
<b>Decision Date:</b>	05/29/2025	<b>Hearing Date:</b>	May 22, 2025
<b>Hearing Officer:</b>	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, 6<sup>th</sup> Floor  
Quincy, MA 02171***

## APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Safety of Individuals in Facility
<b>Decision Date:</b>	05/29/25	<b>Hearing Date:</b>	May 22, 2025

### 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 May 9, 2025, the respondent nursing home (hereinafter "facility") notified the appellant of its plan to discharge him because, "The safety of individuals in the nursing facility is endangered." The intent to discharge notice was with less than 30 days and scheduled as an expedited discharge (Exhibit 1). The appellant filed this appeal in a timely manner on May 14, 2025 (see 130 CMR 610.015 and Exhibit 2). A nursing facility discharge is valid grounds for appeal (see 130 CMR 610.032).

### Action Taken by the Facility

The facility notified the appellant of its plan to discharge him 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 [REDACTED] testified that the appellant is an adult male admitted to their facility in early [REDACTED]. His admitting diagnoses included respiratory failure, COPD, diabetes mellitus, bipolar disorder, kidney disease with dialysis dependence, and amputation of left leg above the knee. The appellant is dependent on supplemental oxygen. The appellant ambulates independently with his wheelchair (Exhibit 4, p. 13).

The facility is planning the appellant's discharge because he is endangering the safety of individuals in the facility. The facility representative explained that the appellant has been observed smoking cigarettes and vaping in his room and outside of the designated smoking area in the facility on several occasions. Additionally, the appellant was observed lighting matches in his room in the presence of oxygen cannisters (Exhibit 4, pp. 14-15, 33-34, 43, 47, 49, 50-51, 55).

The facility is planning to discharge the appellant to his home in the community with visiting nurses (VNA), and follow-up medical appointments. The appellant was admitted as a skilled care patient with wound care, as well as physical and occupational therapy. The appellant's wound healed, and he has completed his physical and occupational courses (Exhibit 4, pp. 47-63).

The appellant's physician has approved the appellant's discharge due to the danger he poses to others due to his smoking around oxygen, and due to the stability of his condition (Exhibit 4, pp. 33-42).

The appellant did not deny the testimony of the facility representative other than to say that the oxygen was off when he was seen lighting matches, and he did it due to the odor in his room and not to smoke. However, he did not dispute that he has smoked and vaped in his room and outside of designated areas of the facility.

The appellant's spouse also did not dispute that the appellant has smoked and vaped in his room and not in designated areas of facility. She objected to the discharge because she wants the appellant to receive more physical therapy, and because the appellant lives on the second floor and cannot climb stairs.

## Findings of Fact

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

1. The appellant is adult male who was admitted to the respondent facility in early [REDACTED] for wound care (Exhibit 4).
2. The appellant's admitting diagnoses included respiratory failure, COPD, diabetes mellitus,

bipolar disorder, kidney disease with dialysis dependence, and amputation of his left leg above the knee. The appellant is dependent on supplemental oxygen. The appellant ambulates independently with his wheelchair (Exhibit 4).

3. The appellant's wound healed, and he has completed his physical and occupational therapy courses (Exhibit 4).
4. The appellant has been observed smoking cigarettes and vaping in his room and outside of the designated smoking area in the facility on several occasions. Additionally, he was observed lighting matches in his room in the presence of oxygen cannisters (Exhibit 4).
5. In a notice dated May 9, 2025, the facility notified the appellant of its plan to discharge him on an expedited basis because, "The safety of individuals in the nursing facility is endangered" (Exhibit 1).
6. The facility plans to discharge the appellant home to his residence in the community (Exhibit 1).
7. A facility social worker has set up VNA services for the appellant at home and has scheduled his follow-up medical appointments (Exhibit 4).
8. The appellant's physician has approved the appellant's discharge due to the danger he poses to others due to his smoking around oxygen, and due to the stability of his condition (Exhibit 4).

## **Analysis and Conclusions of Law**

Regarding nursing facility-initiated discharges, a resident may be discharged when the safety of individuals in the facility is endangered (130 CMR 610.028(A)(3)). The reason for the discharge must be documented by the resident's clinical record (130 CMR 610.028(B)).

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, based upon undisputed evidence, I find that the appellant, a nursing facility resident of [REDACTED], smoked and vaped in his room on multiple occasions, and has lit

matches in his room, all in the presence of oxygen cannisters. There is a risk of fire in the nursing facility any time there is unauthorized smoking. However, in this case the appellant was smoking the presence of oxygen cannisters, making the risk even greater. I thus conclude that the appellant's actions are indeed a threat to the safety of the individuals there.

The appellant has multiple medical conditions but is currently stable and has completed his physical and occupational therapy courses. He ambulates independently with a wheelchair. The facility is planning to discharge the appellant to his residence in the community and his physician has approved the discharge. The facility has scheduled the appellant with VNA services upon his discharge and has set up his medical appointments. I conclude that this action complies with the "sufficient preparation and orientation" outlined above. The fact that the appellant lives on the second floor and cannot negotiate stairs does not in itself render this an unsafe discharge plan.

In summary, pursuant to the above regulation and the nursing facility policies, where the safety of individuals in the facility is endangered by the appellant's repeated, unauthorized smoking, the facility may discharge him home as planned.

The appeal is denied accordingly.

## **Order for the Facility**

Discharge the appellant as specified in the discharge notice is authorized within five days of this decision date.

## 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]