

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision: APPROVED
Decision Date: 8/28/2025
Hearing Officer: Sharon Dehmand

Appeal Number: 2509463
Hearing Date: 08/25/2025

Appearance for Appellant:
Pro se

Appearance for MassHealth:



*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; Improved health
Decision Date:	8/28/2025	Hearing Date:	08/25/2025
Nursing Facility's Rep.:	[REDACTED]	Appellant's Rep.:	Pro se
Hearing Location:	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 June 24, 2025, [REDACTED] (hereinafter "nursing facility") notified the appellant of its plan to discharge him to [REDACTED] in 30 days because it determined that his health had improved sufficiently so he no longer required the services provided by the facility. See 130 CMR 610.028(A)(2); and Exhibit 1. The appellant filed this appeal in a timely manner on June 24, 2025. See 130 CMR 610.015(B)(3); 130 CMR 456.703; and Exhibit 2. A notice of intent to transfer or discharge a resident from a nursing facility is valid grounds for appeal before the Board of Hearings. See 130 CMR 610.032(C).

Action Taken by the Nursing Facility

The nursing facility notified the appellant of its intent to discharge him because it determined that his health had improved sufficiently so he no longer required the services provided by the facility.

Issue

Whether the nursing facility satisfied its statutory and regulatory requirements when it issued a notice of intent to discharge the appellant from the nursing facility. See 130 CMR 610.028(A)(2).

Summary of Evidence

All parties participated telephonically. The nursing facility was represented by its Director of Social Services, Administrator, RN Unit Manager, and Long-Term Care Social Worker. The appellant appeared pro se and verified his identity. The following is a summary of the testimony and evidence provided at the hearing:

The facility's director of social services testified that the appellant was admitted to the nursing facility on [REDACTED] from a behavioral health facility. His admission diagnoses included irritable bowel syndrome (IBS), bipolar disorder, and type 1 diabetes. The appellant is ambulatory and independent in all activities of daily living (ADLs). He frequently leaves the facility independently, often multiple times per day, to walk to stores and other locations. However, he often misses medication administration and sometimes refuses blood sugar checks. The director further testified that [REDACTED] the facility's medical director and also the appellant's treating physician, noted on June 13, 2025, "resident's condition has remained stable without signs of acute exacerbation or need for continued skilled services. Diabetes management, psychotropic use, and behavioral monitoring remain routine and within expected parameters. No current nursing home-level skilled services needs are identified. The resident no longer needs criteria for continued stay under the Medicare skilled nursing facility (SNF) benefit." Exhibit 4, p. 11.¹

She said that since the appellant no longer required a skilled nursing facility, they provided the appellant with notice of intent to discharge. She confirmed that page three of the notice provided the contact information for the [REDACTED]

[REDACTED] which was listed as [REDACTED]

The facility's nurse testified that the appellant's blood sugar levels fluctuate depending on diet and other factors. He takes oral medication, wears a continuous blood sugar monitoring device, and requires insulin injections via injector pen. His blood sugar is checked three times daily, and when injections are necessary, the nurses administer them. Since June, the staff have been teaching the appellant to self-administer insulin. However, he has been reluctant. The nurse noted that the facility's nurse practitioner agreed the appellant may be eligible for a self-

¹ The nursing facility submitted this exhibit on July 16, 2025, to the Board of Hearings as part of a prior hearing scheduled for this appeal. It is entered into the record for this hearing as Exhibit 4.

administering insulin pump.

The director of social services testified that she had met with the appellant a number of times to discuss discharge planning. The facility had assisted him in applying for various programs and placed him on the waiting list for [REDACTED] where he was number 65 on the list at the last check. She added that, if the appellant were agreeable, they could also consider a shelter in [REDACTED] which likely has a shorter waitlist.

The appellant testified that, in addition to IBS, bipolar disorder, and type 1 diabetes, he also suffers from scoliosis, neuropathy of the legs and arms, and an ongoing oral infection. He expressed concern about being discharged to a shelter, citing both his mental health and the instability of his diabetes management. He further stated that he was hesitant to inject insulin himself due to repeated bruising, bleeding, and breaking a syringe inside his body in the past.

Findings of Fact

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

1. The appellant was admitted to the nursing facility on [REDACTED] from a behavioral health facility. (Testimony and Exhibit 4).
2. The appellant's admission diagnoses included irritable bowel syndrome (IBS), bipolar disorder, and type 1 diabetes. (Testimony and Exhibit 4).
3. The appellant also suffers from scoliosis, neuropathy of the legs and arms, and an ongoing oral infection. (Testimony).
4. The appellant is ambulatory and independent in all activities of daily living (ADLs). (Testimony).
5. The appellant takes oral medication, wears a continuous blood sugar monitoring device, and requires insulin injections via injector pen. (Testimony).
6. On June 24, 2025, the facility issued the appellant a 30-day notice of intent to discharge. (Exhibit 1).
7. The discharge notice states that the reason for the discharge is "your health has improved sufficiently so you no longer need the services provided by the facility." (Exhibit 1).
8. The notice listed the contact information for the local legal services office as [REDACTED]

(Testimony).

9. The appellant filed this appeal in a timely manner on June 24, 2025. (Exhibit 2).
10. The appellant is on the waiting list for [REDACTED] where he was number 65 on the list at the last check by the nursing facility. (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 some of the relevant regulations may be found in (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.

Pursuant to 130 CMR 456.701(A) and 130 CMR 610.028(A), a nursing facility resident may be transferred or discharged 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) 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 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)(4).

See 130 CMR 610.028(B).

When the transfer or discharge, as here, is “because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the nursing facility ... the resident's clinical record must contain documentation to explain the ... discharge.” See 130 CMR 456.701(A)-(B). The documentation must be made by “the resident’s physician or PCP when a...discharge is necessary under 130 CMR 456.701(A)(1) or (2)...” See 130 CMR 456.701(B)(1).

Additionally, the nursing facility is required to issue a notice of intent to discharge in compliance with 130 CMR 610.028(C), which states the following:

(C) 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, if the resident has made such a person known to the facility, a notice written in 12-point or larger type that contains the following, in a language the member understands:

- (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 MassHealth agency, 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 610.029; and
 - (c) the effect of requesting a hearing as provided for under 130 CMR 610.030;
- (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. § 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. § 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.

In this case, according to the nursing facility, the notice lists contact information for the [REDACTED] as the “Local Legal Services Office” for the appellant’s service area. The nursing facility is in [REDACTED] [REDACTED] provides funding and support to civil legal aid organizations across the Commonwealth. It is not a local legal services office. The regulations at 130 CMR 610.028(C)(9) state that the notice should contain the address of the nearest legal services office. While this may appear as a technicality, it is an important requirement to protect and provide due process to this vulnerable population. As such, I find the notice to be deficient because it does not comply with the regulations.

Furthermore, the nursing facility has an obligation to comply with all other applicable state laws, including M.G.L. c. 111, § 70E. The key paragraph of this statute 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.

Federal regulations provide for “Orientation for transfer or discharge. A facility must provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. This orientation must be provided in a form and manner that the resident can understand.” 42 CFR 483.15(c)(7). According to the Federal Centers for Medicare & Medicaid, “sufficient preparation” within the meaning of 42 CFR 483.12(a)(7) means “the facility informs the resident where he or she is going and takes steps under its control to assure safe transportation. The facility should actively involve, to the extent possible, the resident and the resident’s family in selecting the new residence. See Centennial Healthcare Inv. Corp. v. Commissioner of the Div. of Medical Assistance, 61 Mass. App. Ct. 1124, *1 n. 5 (20024) citing Protocol for Long Term Care Facilities: Guidance to Surveyors, Tag F204 at 38 (Rev. 274 June, 1995).

Additionally, the Code of Massachusetts Regulations states in relevant parts the following:

It shall be an unfair or deceptive act or practice, in violation of MGL c. 93A, § 2 for a licensee or administrator...

(6) to fail to discuss the planned discharge or transfer from the facility with the resident and his/her legal representative or next of kin.

(7) to fail to consult the resident and his/her family or legal representative in choosing another facility, and to take all reasonable steps to implement the resident’s choice of such facility...

See 940 CMR 4.09(6); 940 CMR 4.09(7).

The record and testimony reflect that the nursing facility has not provided sufficient preparation and orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place. There is no documentation or an articulable plan because there is no location to discharge the appellant. The nursing facility's representative testified that the appellant is on the waiting list for [REDACTED] where he was number 65 on the list at the last check by the nursing facility. The nursing facility is responsible for ensuring that the appellant will have a safe place to go upon discharge. That obligation has not been met with the proposed discharge to a shelter that in fact will not have any availability on the day of discharge. The appellant cannot be safely discharged to a waiting list.

For the foregoing reasons, this appeal is approved.²

Order for the Nursing Facility

Rescind the June 24, 2025, discharge notice. Do not discharge the appellant without issuing a new notice.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Sharon Dehmand, Esq.
Hearing Officer
Board of Hearings

[REDACTED]

² The nursing facility must act in compliance with the law and regulations governing a nursing facility discharge. The facility may issue a proper notice and take proper action at any time.