

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2510465
<b>Decision Date:</b>	07/24/2025	<b>Hearing Date:</b>	07/22/2025
<b>Hearing Officer:</b>	Susan Burgess-Cox		

**Appearance for Appellant:**  
Pro se

**Appearance for Nursing Facility:**  
Alfonso Vasques et. al.



*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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Nursing Facility Discharge – Improved Health
<b>Decision Date:</b>	07/24/2025	<b>Hearing Date:</b>	07/22/2025
<b>Nursing Facility’s Rep.:</b>	Alfonso Vasques et. al.	<b>Appellant’s Rep.:</b>	Pro se
<b>Hearing Location:</b>	All Parties Appeared by Telephone		

### 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 July 14, 2025, the nursing facility informed the appellant that he would be discharged to an address in [REDACTED] on July 14, 2025 as his health has improved sufficiently so he no longer needs the services provided by the facility. (Exhibit 1). The appellant filed a timely appeal on July 15, 2025. (130 CMR 610.029; Exhibit 2).

Nursing facility residents have the right to request an appeal of any nursing facility-initiated transfer or discharge. (130 CMR 610.032(C)).

### Action Taken by the Nursing Facility

The nursing facility issued a notice to discharge the appellant to an address in [REDACTED] on the same day as the notice on appeal as his health has improved sufficiently so he no longer needs the services provided by the facility.

## **Issue**

Whether the nursing facility was correct in issuing a notice to discharge the appellant as his health has improved sufficiently so he no longer needs the services provided by the facility. (130 CMR 610.028).

## **Summary of Evidence**

All parties appeared by telephone. The facility presented documents that were incorporated into the hearing record as Exhibit 4. The appellant presented documents that were incorporated into the hearing record as Exhibit 5. The notice on appeal was sent to the appellant alone. A representative is listed on the request for hearing form. The Board of Hearings sent the representative listed on the request for hearing form a copy of the hearing notice. The representative did not appear at the hearing and the appellant agreed to move forward with the hearing on his own. The nursing facility had another individual listed as a contact for the appellant in their records. The appellant testified that the individual was deceased.

The notice includes an order from a physician stating that the appellant may be discharged to the community. The location is a shelter in the community. The date of discharge is the same date as the notice on appeal. An order from the physician states that the appellant does not require any skilled services. (Exhibit 1). The notice lists contact information for the Massachusetts Legal Assistance Corporation in Boston, Massachusetts as the "Local Legal Services Office" for the appellant's service area. (Exhibit 1). The Massachusetts Legal Assistance Corporation MLAC provides funding and support to civil legal aid organizations across the Commonwealth. It is not a local legal services office.

Documents presented by the facility include an admission record, nursing progress notes, physician progress notes, social service progress notes, and the facility's substance use-behavioral/no harm agreement. (Exhibit 4). Admission records and progress notes list the following diagnoses: Type 2 diabetes mellitus with food ulcer; Type 2 diabetes mellitus with diabetic neuropathy; unspecified opioid dependence; uncomplicated other psychoactive substance abuse; uncomplicated panic disorder; other specified anxiety disorder; long term use of insulin; other complications of amputation stump; pain in the left foot; unspecified lack of coordination adjustment disorder with mixed anxiety and depressed mood; other specified peripheral vascular diseases; laceration without foreign body in the right foot; radial styloid tenosynovitis; pressure chronic ulcer of the right heel and midfoot; laceration without a foreign body, right foot, a subsequent encounter; non-pressure chronic ulcer of other part of the right foot with unspecified severity; opioid abuse, uncomplicated; other psychoactive substance use; unspecified psychoactive substance-induced disorder.

Nursing notes from the date of discharge indicate that the appellant was alert and oriented,

tolerated medication well; denied pain and discomfort; and had no symptoms of hypo/hyperglycemia. The notes state that education was provided to the appellant regarding wound care and the appellant was able to perform his own wound care. Notes from July 11, 2025 indicate that the appellant was seen by a wound physician due to reports of complications from the left tarsometatarsal (TMA) site. The area turned into a callous with a draining split in it. The physician debrided to wound. It was also noted that the appellant had a new diabetic ulcer to his left plantar. No orders were in place regarding skilled treatment and the doctor intended to follow-up with the appellant.

Notes from July 14, 2025 indicate that the appellant was found sitting outside the facility after hours. Records also show that the appellant has taken steps in the last few months to obtain housing in the community. Records indicate that the appellant has taken a leave of absence both during the day and overnight.

On July 15, 2025, a room search was conducted as the administrator received a written statement from another resident's family that there was a transaction of cocaine being sold and the appellant was involved in the transaction. During a room search of the appellant's room a representative from the facility found a metal bat, burnt scissors, multiple metal tools that had burnt ends, a cigarette presser, copper medal prices and a marijuana pen for smoking. Representatives from the facility contacted the local police department, the items were confiscated and put into the administrator's office. (Exhibit 4).

Records presented by the appellant include investigation statements from employees at the facility indicating that the appellant has been found: smoking; distributing cigarettes to other residents; using lighters on the premises; and making residents uncomfortable by asking them to smoke and pushing their chairs when they said no.

Both parties presented a copy of a room change notification issued by the facility on July 11, 2025. Both parties testified that the appellant did not agree with this decision. However, records presented by both parties indicate that the appellant signed the document giving consent and waiving the 48-hour notice for the change to take place. Both parties presented copies of a Substance Use-Behavioral/No Harm Agreement signed by the appellant.

## **Findings of Fact**

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

1. The appellant is currently a patient in a long-term care facility.
2. On July 14, 2025, the nursing facility issued a notice to discharge the appellant.

3. The discharge date is the same date as the notice.
4. The discharge is to an area shelter.
5. The discharge is due to the appellant's health improving significantly so he no longer needs the services provided by the facility.
6. The notice includes a statement from a physician indicating that the appellant may be discharged to the community as he does not require any skilled services.
7. The notice was sent to the appellant alone.
8. The facility had contact information for an individual in the community but that individual is deceased.
9. The notice lists contact information for the Massachusetts Legal Assistance Corporation in Boston, Massachusetts as the "Local Legal Services Office" for the appellant's service area.
10. The Massachusetts Legal Assistance Corporation MLAC provides funding and support to civil legal aid organizations across the Commonwealth. It is not a local legal services office.
11. The appellant provides wound care on his own and can perform all activities of daily living on his own.
12. The appellant often takes leaves of absence from the facility. At least one has been overnight.
13. During his stay at the facility, the appellant has taken steps to obtain housing.
14. The appellant keeps cigarettes and smoking articles in his possession.
15. The appellant distributes cigarettes to other residents.
16. The police have intervened at the facility to address some of the appellant's behaviors.

## **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 many regulations that follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge. Some of the relevant regulations can 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.*

Pursuant to 130 CMR 610.028(A) which governs the rules for actions initiated by a nursing facility, 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 Medicaid or Medicare pay for) a stay at the nursing facility;  
or
- (6) the nursing facility ceases to operate.

In the present case, the notice states that the discharge was appropriate because the appellant's health has improved sufficiently so he no longer needs the services provided by the facility. While this is an acceptable reason for discharge, the facility did not meet the regulatory notice requirements or procedures for discharge.

Pursuant to 130 CMR 610.028(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 an individual known to the facility, 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 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 their attempt to discharge the appellant, the nursing facility violated some of the legal and regulatory requirements that serve to protect and provide due process to patients from an extremely vulnerable population.

First, the notice itself does not comply with the regulations as it lists contact information for the Massachusetts Legal Assistance Corporation in Boston, Massachusetts as the “Local Legal Services Office” for the appellant’s service area. The Massachusetts Legal Assistance Corporation MLAC 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.

Second, while a notice of an emergency discharge or emergency transfer can be issued in lieu of the regulatory 30-day requirement set forth in 130 CMR 610.029(A), this notice must be made as soon as practicable before the discharge or transfer. A notice of an emergency discharge or emergency transfer can be issued in any of the following circumstances:

- (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 lived in the nursing facility for 30 days immediately before receipt of the notice.

Providing an individual less than one day to be discharged to a homeless shelter from a facility where he received long-term medical care and the discharge is due to an improvement of the individual's health does not seem practicable.

Finally, in addition to being obligated to comply with the notice requirements that ensure individuals from such a vulnerable population are provided due process, a nursing facility has an obligation to comply with all other applicable state laws, including M.G.L. c.111, §70E, which went into effect in November of 2008. The key paragraph of that statute, which is directly relevant to any type of appeal involving a 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.

Federal regulations also require that a nursing facility provide and document sufficient preparation and orientation to ensure a safe and orderly discharge. (42 CFR 483.15(c)(7)). This orientation must be provided in a form and manner that the resident can understand. Federal regulations at 42 CFR 483.21(c)(1) speak to the discharge planning process. These regulations require a facility to involve the resident and resident representative in the development of a discharge plan. (130 CMR 483.21(c)(1)(v)). In this case, issuing a notice on the same date as that of the discharge does not indicate that the appellant will be provided sufficient preparation and orientation to return to the community.

This appeal is approved to ensure that the facility takes action in compliance with the law and regulations governing a nursing home discharge. The facility may issue a proper notice and take proper action at any time.

The appellant should be aware that the facility appears to have adequate grounds to discharge. Simply making notice and planning errors does not make the reason for discharge incorrect. The appellant did not present adequate evidence to challenge the determination that his health has improved sufficiently so he no longer needs the services provided by the facility. Instead, the appellant presented evidence for the facility to issue a notice based on other grounds such as endangering the safety or health of other individuals in the facility.



## Order for the Nursing Facility

Rescind the discharge notice issued on July 14, 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.

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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

cc:

Respondent: