

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2510477
<b>Decision Date:</b>	07/22/2025	<b>Hearing Date:</b>	07/21/2025
<b>Hearing Officer:</b>	Christine Therrien		

**Appearance for Appellant:**

Pro se

**Appearances for Nursing Facility:**



*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>	Denied	<b>Issue:</b>	Expedited NF discharge
<b>Decision Date:</b>	07/22/2025	<b>Hearing Date:</b>	07/21/2025
<b>Nursing Facility's Reps.:</b>	[REDACTED]	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Springfield MassHealth Enrollment Center Telephonic		

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

The appellant received a Notice of Intent to Discharge Resident with Less than 30 Days' Notice (Expedited Appeal) dated 7/15/25. The notice stated that [REDACTED] ("the skilled nursing facility" or "the facility") seeks to discharge the appellant to [REDACTED]. The notice indicates the reasons for the discharge are "the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility" and "the safety of the individuals in the nursing facility is endangered due to the clinical or behavioral status of the resident." (Exhibit 1). The appellant filed this timely appeal on 7/15/25. (130 CMR 610.015(B); and Exhibit 2). Discharge of a nursing facility resident is valid grounds for appeal (130 CMR 610.029; 42 CFR Ch IV §483.200 et seq.).

### Action Taken by MassHealth

The skilled nursing facility intends to discharge the appellant from the facility.

## Issue

Is the planned discharge pursuant to 130 CMR 610.029 correct, and did the facility follow proper procedures in preparing to discharge the appellant?

## Summary of Evidence

The Director of Social Services submitted the appellant's Progress Notes from the facility dating back to [REDACTED] into evidence. (Exhibit 4). The Director of Social Services testified that the appellant is [REDACTED] and was admitted to the facility on [REDACTED] with primary diagnoses of COPD, sleep apnea, anxiety, and depression. The Director of Social Services testified that the facility physician visited the appellant on 7/16/25 and stated in her notes that "[appellant] was seen today at the request of nursing staff for discharge home. [Appellant] has met all rehab goals while in facility, is independent with all activities of daily living (ADLs), and is medically cleared to be discharged to the community, inclusive of a shelter. [Appellant] has no acute distress and is cooperative with today's assessment." (Exhibit 4, p. 6).

The Director of Social Services testified that on [REDACTED], the appellant was seen smoking on the sidewalk in front of another building that is part of the facility and not a designated smoking area. (Exhibit 4, p. 23). The Director of Social Services testified that on [REDACTED] the appellant was seen smoking in front of the facility, which is not a designated smoking area. (Exhibit 4, p. 23). The Director of Social Services testified that on [REDACTED] the appellant's room was searched, and smoking paraphernalia and a half tablet of the appellant's prescribed oxycodone were found. (Exhibit 4, p. 22). The Director of Social Services testified that oxycodone should not be in the appellant's possession. The Director of Social Services testified that on [REDACTED] the Substance Use Disorder (SUD) Counselor and Social Worker reviewed the facility's "No Harm Agreement" with the appellant, which he signed.<sup>1</sup> The "No Harm Agreement" states that "[r]esidents found with contraband or paraphernalia in their room will be subject to a 30-day d/c notice." (Exhibit 4, p. 3). The Director of Social Services testified that on [REDACTED] the appellant was seen smoking in the facility driveway, which is not a designated smoking area. (Exhibit 4, p. 19). The Director of Social

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<sup>1</sup> No Harm Agreement: "I, the undersigned, agree with the decision made by the facility to implement safety measures to prevent any harm to myself or any other resident. I am aware that this will be implemented for one week initially, but could continue based on my safety risks. The terms of the safety plan were outlined to me clearly by the Administrator, Social Worker or Director of Nursing and I agree to follow the recommendations checked below: • No visitors after 7 pm & no visitors before 8 am. • All visitors are subject to searches of bagged items brought into facility. • Room searches will be conducted after all visitors and upon return from all LOA's. • Residents found with contraband or paraphernalia in their room will be subject to a 30-day d/c notice" (Exhibit 4, p. 3).

Services testified that on [REDACTED], the appellant was observed smoking in front of the facility, which is not a designated smoking area. (Exhibit 4, p. 18). The Director of Social Services testified that on [REDACTED] a room search was conducted and the appellant's girlfriend's belongings were discovered along with a bottle of Clonazepam prescribed to the appellant's girlfriend. (Exhibit 4, p. 17). The Director of Social Services testified that the appellant signed the "Facility Smoking Contract" on [REDACTED] and again on [REDACTED]. (Exhibit 4, pp.4-5).<sup>2</sup> The Administrator testified that all smoking paraphernalia is documented and inventoried before being placed in a box before and after all supervised smoking breaks. The Administrator testified that all smoking must be supervised. The Director of Social Services testified that on [REDACTED] two staff members observed the appellant vaping in the hallway. (Exhibit 4, p. 14). The Director of Social Services testified that on [REDACTED] a room search was conducted by two nurses and "[a]n empty container labelled as something containing THC was found in the trash by pt's bed and a cartridge containing brown liquid found mixed in with colored pencils with no battery/device attached. Pt reported this cartridge's liquid to contain CBD." (*Id.*). The Director of Social Services testified that on [REDACTED] the appellant was issued a Notice of Intent to Discharge with Less than 30 Days' Notice to [REDACTED] which provides rehousing services and a health care clinic. (Exhibit 1).

The Director of Social Services testified that during the discharge planning process, the appellant stated he wanted to move to a rest home. The Director of Social Services testified that applications to two rest homes were submitted. The Director of Social Services testified that the rest homes voiced concerns regarding the appellant's behavior and have not yet decided whether to admit the appellant. (Exhibit 4, p. 13). The Director of Social Services testified that the social worker reviewed the rules of the rest homes with the appellant. (Exhibit 4, p. 12).

The appellant testified that he only smoked in the smoking area. The appellant testified that he is waiting for his leg brace to be repaired and that he is currently in a wheelchair.

The Director of Social Services testified that on the Friday before the hearing, the appellant ambulated 150 feet without his leg brace using a rolling walker. The appellant confirmed this statement but said it was slow. The Director of Social Services testified that the appellant's leg brace will be repaired on site this week.

The appellant testified that prior to his stay in the facility, he was living with his ex-girlfriend, but that is not an option for a discharge location. The appellant testified that he wants to have a rest home lined up before he leaves the facility.

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<sup>2</sup> Facility Smoking Contract: "1) I understand that I may smoke in the facility-designated smoking area in the back parking lot smoking hut. 2) I understand that smoking is not allowed in any other part of the facility or facility grounds. 3) I understand and agree that I am not allowed to carry cigarettes, lighters, or other smoking materials, and will not give such materials to another resident. 4) I understand that violating the rules of the policy will result in progressive steps, including the possibility of forfeiting smoking privileges and/or the facility offering me alternate placement. 5) I understand that staff will supervise all smoking times and assistance will be provided to me if necessary based on my Smoking Assessment, and I will comply with the facility Smoking Policy" (Exhibit 4, p. 4 - 5).

The Administrator testified that the appellant no longer needs skilled care or nursing services.

## Findings of Fact

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

1. The appellant is [REDACTED], and was admitted to the facility on [REDACTED] with primary diagnoses of COPD, sleep apnea, anxiety, and depression.
2. The facility physician visited the appellant on [REDACTED] and stated in her notes that "[appellant] was seen today at the request of nursing staff for discharge home. [Appellant] has met all rehab goals while in facility, is independent with all ADLs, and is medically cleared to be discharged to the community, inclusive of a shelter. [Appellant] has no acute distress and is cooperative with today's assessment."
3. The appellant no longer needs skilled care or nursing services.
4. On [REDACTED] the appellant was seen smoking on the sidewalk in front of another building that is part of the facility and not a designated smoking area.
5. On [REDACTED] the appellant was seen smoking in front of the facility, which is not a designated smoking area.
6. On [REDACTED] the appellant had a room search where smoking paraphernalia and a half tablet of the appellant's prescribed oxycodone were found.
7. Oxycodone should not be in the appellant's possession.
8. On [REDACTED] the SUD Counselor and Social Worker reviewed the facility's "No Harm Agreement" with the appellant, which he signed. The "No Harm Agreement" states that "[r]esidents found with contraband or paraphernalia in their room will be subject to a 30-day d/c notice."
9. On [REDACTED] the appellant was seen smoking in the facility driveway, which is not a designated smoking area.
10. On [REDACTED] the appellant was observed smoking in front of the facility, which is not a designated smoking area.
11. On [REDACTED] a room search was conducted, and the appellant's girlfriend's belongings were

discovered along with a bottle of Clonazepam prescribed to the appellant's girlfriend.

12. The appellant signed the "Facility Smoking Contract" on [REDACTED] and again on [REDACTED]
13. All smoking paraphernalia is documented and inventoried before being placed in a box before and after all supervised smoking breaks. All smoking must be supervised.
14. On [REDACTED] two staff members observed the appellant vaping in the hallway.
15. On [REDACTED], a room search was conducted by two nurses and "[a]n empty container labelled as something containing THC was found in the trash by pt's bed and a cartridge containing brown liquid found mixed in with colored pencils with no battery/device attached. Pt reported this cartridge's liquid to contain CBD."
16. On [REDACTED] the appellant was issued a Notice of Intent to Discharge with Less than 30 Days' Notice. The designated discharge location is [REDACTED], a shelter which provides rehousing services and a health care clinic.
17. The reasons for the discharge are "the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility" and "the safety of the individuals in the nursing facility is endangered due to the clinical or behavioral status of the resident."
18. During the discharge planning process, the appellant stated he wanted to move to a rest home. Two rest home applications were submitted.
19. The rest homes voiced concerns regarding the appellant's behavior and have not yet decided whether to admit the appellant.
20. The social worker discussed the rest homes' rules and behavioral concerns with the appellant.
21. The appellant can ambulate 150 feet with a rolling walker and no leg brace.

## **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 initiated by a nursing facility. MassHealth has enacted regulations that follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in both (1) the Nursing Facility Manual regulations at 130 CMR 456.000

*et seq.*, and (2) the Fair Hearing Rules at 130 CMR 610.000 *et seq.* For the purposes of this decision, the definitions found in 130 CMR 456.402 apply.<sup>3</sup>

The appellant is challenging the nursing facility's attempt to discharge him to a homeless shelter via its notice dated 7/15/25. (Exhibits 1 and 130 CMR 456.402).

The guidelines that apply in a determination of whether the appellant can be so discharged are found in 130 CMR 456.701 of the MassHealth Nursing Facility Manual; for expedited nursing facility discharge appeals, regulations at 130 CMR 456.702(B) govern. These sections of the regulations strictly and specifically list the only circumstances and conditions that allow for the transfer or discharge of a resident from a nursing facility and the requirements of the relevant notice – if these requirements are not met, the facility must permit the resident to remain in the facility.

The relevant portions of the regulation at 130 CMR 456.701 read as follows:

456.701: Notice Requirements for Transfers and Discharges 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;

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<sup>3</sup> "Nursing facility" - an institution or a distinct part of an institution that meets the provider-eligibility and certification requirements of 130 CMR 456.404 or 456.405. For requirements related to the transfer and discharge of residents, the term nursing facility also includes a nursing facility participating in Medicare, whether or not it participates in MassHealth. "Discharge" - the removal from a nursing facility to a noninstitutional setting of an individual who is a resident where the discharging nursing facility ceases to be legally responsible for the care of that individual; this includes a nursing facility's failure to readmit following hospitalization or other medical leave of absence.

"Transfer" — movement of a resident from: (1) a Medicaid- or Medicare-certified bed to a noncertified bed; (2) a Medicaid-certified bed to a Medicare-certified bed; (3) a Medicare-certified bed to a Medicaid-certified bed; (4) one nursing facility to another nursing facility; or (5) a nursing facility to a hospital, or any other institutional setting. A nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, resulting in the resident being moved to another institutional setting is also a transfer. Movement of a resident within the same facility from one certified bed to another bed with the same certification is not a transfer.

The regulatory language in the MassHealth Nursing Facility Manual has identical (or near-identical) regulatory counterparts within the Commonwealth's Fair Hearing Rules under 130 CMR 610.000 *et seq.*, as well as federal regulations found under 42 CFR § 483.000 *et seq.* As to this part of the regulatory law, the regulations in 130 CMR 610.028 and 42 CFR 483.12(a)(2) are identical to that found in 130 CMR 456.402. This appeal decision will hereafter make all further regulatory references only to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000, unless other regulatory references is noted and appropriate.

- (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.
- (B) 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. The documentation must be made by:
- (1) the resident's physician or PCP when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and
  - (2) a physician or PCP when the transfer or discharge is necessary under 130 CMR 456.701(A)(3) or (4).
- (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 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 Division's Board of Hearings ...

In addition, 130 CMR 456.702(B) states in relevant part:

In lieu 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(C) must be made as soon as practicable before the discharge or transfer 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 or PCP.**

**(2) The resident's health improves sufficiently to allow a more immediate transfer or discharge and the resident's attending physician or PCP 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 or PCP.

(4) The resident has not resided in the nursing facility for 30 days immediately prior to receipt of the notice.

(Emphasis added)

The facility issued a discharge notice based on the grounds that the resident's health has improved sufficiently so that the resident no longer needs the services provided by the nursing facility, and that the safety of the individuals in the nursing facility is endangered due to the

appellant's clinical or behavioral status. The 7/15/25 "Notice of Intent to Discharge Resident with Less than 30 Days' Notice" found in Exhibit 1 asserts the circumstances identified at 130 CMR 456.701(C)(2) and 130 CMR 456.702(B)(1) and complies with the notice requirements outlined in 130 CMR 456.701(C). Therefore, the appellant received adequate and actual notice of the planned discharge.

The first issue is whether the appellant's discharge is appropriate because resident's health has improved sufficiently so that the appellant no longer needs the services provided by the nursing facility, and the safety of individuals in the nursing facility is endangered. The discharge summary and testimony indicate the appellant is independent with all Activities of Daily Living (ADLs). Further, the Administrator testified that the appellant is eligible for discharge because he no longer meets the criteria for a Skilled Nursing Facility. There is sufficient evidence provided that the appellant's health has improved sufficiently so that he no longer needs the services provided by the facility. Additionally, the 23 pages of Social Work Progress Notes submitted by the facility document repeated events where the appellant violated the facility smoking contract. Despite multiple documented conversations with the appellant regarding the smoking contract, the appellant appears determined to violate the contract by continuing to smoke in undesignated areas outside of supervised smoking times.

The second issue is whether the nursing facility has met the requirements of all other applicable federal and state regulatory requirements in addition to the MassHealth-related regulations discussed above, 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 this appeal, 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.

Per 130 CMR 456.701(B)(2), there is a physician's discharge note in the documentation provided which is signed by the facility physician. The evaluation from the facility physician states that the appellant is independent with all of his ADLs and can be safely discharged to the community, including a shelter. Based on the credible testimony of the Director of Social Services, the nursing facility has met its burden of providing sufficient preparation and orientation to the resident to ensure safe and orderly discharge from the facility and thus has complied with M.G.L. c. 111, §70E. The appellant did not provide any relevant, reliable evidence to prove that [REDACTED] would not be a safe and appropriate place for his discharge, and is appealing the discharge because he wants to secure a room in a rest home first. The appellant's applications to two rest homes have been submitted and are pending. The nursing facility has met its burden to show compliance with M.G.L. c. 111, §70E.

Based on the record and the above analysis, the nursing facility complied with the Nursing Facility Manual regulations and M.G.L. c. 111, §70E in preparing the appellant for discharge to the community.

This appeal is **DENIED**.

## **Order for MassHealth**

The nursing facility may proceed with the notice of discharge. Pursuant to 130 CMR 610.030(B) and 130 CMR 456.704(B), the appellant may not be discharged any earlier than 5 days from the date of this decision.

## **Implementation of 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, 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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Christine Therrien  
Hearing Officer  
Board of Hearings

cc: Respondent: [REDACTED]