

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**

[REDACTED]

<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2510480
<b>Decision Date:</b>	08/05/2025	<b>Hearing Date:</b>	08/04/2025
<b>Hearing Officer:</b>	Christopher Jones		

**Appearance for Appellant:**

Pro se

[REDACTED]

**Appearance for Nursing Facility:**

[REDACTED] – NF Social Worker

[REDACTED] RN – Floor Nurse  
Manager



*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; Expedited
<b>Decision Date:</b>	08/05/2025	<b>Hearing Date:</b>	08/04/2025
<b>Nursing Facility's Reps.:</b>	[REDACTED]	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Telephonic	<b>Aid Pending:</b>	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 of Intent to Discharge Resident with Less than 30 Days' Notice (Expedited Appeal), dated July 8, 2025, the respondent-nursing facility informed the appellant that he would be discharged on [REDACTED], to a specific address. The discharge was occurring because the "resident's health has improved sufficiently so the resident no longer need the services provided by the facility." (Exhibit 1.) The discharge notice and a non-activated Health Care Proxy were submitted to the Board of Hearings on July 15, 2025. (Exhibit 2.) The Board of Hearings dismissed the appeal for lack of authority, and the appellant timely submitted a signed fair hearing request on July 23, 2025. (Exhibit 3; Exhibit 4; 130 CMR 610.015(B).) Nursing facility residents have the right to request an appeal of any nursing facility-initiated transfer or discharge. (130 CMR 610.032(C).)

This matter was originally scheduled for July 28, 2025. (Exhibit 4.) On July 25, 2025, the appellant's attorney filed his appearance and requested that the matter be rescheduled. (Exhibit 6.) The reschedule request was granted, and this matter was rescheduled for August 4, 2025. (Exhibit 7.)

### Action Taken by Nursing Facility

The nursing facility sought to discharge the appellant with less than 30 days' notice because his health had improved sufficiently so that he no longer needed services provided by the facility.

## Issue

The appeal issues are whether: (1) the discharge notice and patient record meet the regulatory requirements set forth in the Fair Hearing Rules at 130 CMR 610.028 and 610.029 (see also 130 CMR 456.701 - .702); (2) the facility has valid grounds to discharge the appellant; and (3) the facility has provided sufficient preparation and orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place pursuant to MGL Ch. 111, § 70E.

## Summary of Evidence

The appellant is a middle-aged man without a community residence. Over the last couple of years, the appellant has resided in nursing facilities and hospitals at various times. In the spring of [REDACTED] the appellant was involuntarily admitted to a hospital from another nursing facility under Section 12 of M.G.L. Ch. 123.<sup>1</sup> The nursing facility's representatives testified that the appellant was in the hospital for a few months based upon uncontrolled blood pressure, but this condition had resolved before he was discharged to the nursing facility. The facility planned to discharge the appellant to a shelter based upon his having nowhere else to go in the community. The nursing facility submitted portions of the appellant's clinical file into the record. The sections submitted included some of the hospital records, evaluations by the facility's occupational therapy (OT) and physical therapy (PT) departments, and social work progress notes.

The OT and PT records reflect that the appellant does not require any therapies, and that the appellant was already at a baseline level of independence with activities of daily living. (Exhibit 5, pp. 64, 67.) The social work progress notes include 3 notes prior to the discharge notice being issued. The first note, from July 1, 2025, documents the appellant being a new patient, and that a care plan was being developed. The second note, from July 7, 2025, states that the appellant

was verbally aggressive intimidated potential for physical violence towards the aftercare staff. Patient unable to express full thoughts, Patient unable to process information without becoming highly agitated and insulting. [Patient] will not give consent to contact his DMH worker or other service providers. ... [Patient] is stating he wants to return to the Hospital and states he has acute pain in his right side. [The social worker] reviewed issues with [n]urse manager and [director of nursing]. He will be sent to the ED per his request.

(Exhibit 5, p. 73.)

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<sup>1</sup> The appellant testified that he was illegally discharged from that facility, and they never provided him with a discharge notice. This discharge occurred more than 30 days after that nursing facility discharged or transferred the appellant, failed to readmit the appellant, or failed to provide the appellant with notice. Any appeal of that discharge is untimely. (See 130 CMR 610.015(B)(4).)

The only note signed by a medical practitioner is from the nurse manager of the floor on July 8, 2025, documenting that the appellant felt past facilities had treated him unfairly. The appellant agreed to work with the social worker on housing, including sobriety housing, and on “care planning for discharge ... .” The note concludes with a referral to speak with a psychiatric nurse practitioner. (Exhibit 5, p. 73.) The next note documents delivery of the discharge notice.<sup>2</sup> There are no notes from treating physicians for primary care providers. The nursing facility’s representatives acknowledged that they have failed to include the admission note to the nursing facility and the doctor’s note authorizing the discharge to the community.

The appellant’s attorney is from the legal aid agency operating in the nursing facility’s locality. The appellant’s attorney argued that he had yet to receive a copy of the facility’s exhibit or the clinical record for his client, despite his requesting a copy when the hearing was continued from its original hearing date. The appellant’s attorney also argued that they believed that the discharge notice was deficient because it did not specify the name of the long-term care ombudsman agency and it did not identify a local legal services agency. Furthermore, the appellant’s attorney argued that discharging the appellant to a shelter was not a safe and appropriate location under MGL ch. 111, § 70E.

The discharge notice identifies “Long Term Care Ombudsman Program” in the locality of the nursing facility and a Boston legal aid organization that is not in the locality of the nursing facility. (Exhibit 1, p. 5.)

## Findings of Fact

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

- 1) The appellant is a resident in the respondent-nursing facility. (Exhibit 5; Testimony.)
- 2) The nursing facility sought to discharge the appellant to a shelter on [REDACTED], through a Notice of Intent to Discharge Resident with Less than 30 Days’ Notice (Expedited Appeal) dated July 8, 2025. (Exhibit 1.)
- 3) The discharge notice identified the grounds for discharge being that the appellant’s health had improved, and he no longer needed nursing facility services. (Exhibit 1.)
- 4) The discharge notice identifies “Long Term Care Ombudsman Program” and a legal aid organization that is not in the locality of the nursing facility. (Exhibit 1, p. 5.)
- 5) The appellant timely appealed the discharge notice on July 15, 2025. (Exhibit 2; Exhibit 4.)

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<sup>2</sup> The nursing facility’s representatives testified that they expected the appellant would no longer be clinically eligible for MassHealth to pay for long-term care services. The nursing facility’s representatives acknowledged that this was part of the facility’s basis for discharging the appellant.

- 6) The nursing facility submitted portions of the appellant's clinical record. Included were records of the appellant's hospitalizations prior to entering the nursing facility; an OT assessment identifying that the appellant did not require occupational therapy; and a PT assessment identifying that the appellant was independent with ADLs. (Exhibit 5.)
- 7) No clinical documentation from an attending, treating, or primary care provider was submitted documenting that the appellant's discharge was appropriate based upon his clinical condition. (Exhibit 5; testimony by the nursing facility's representatives.)

## Analysis and Conclusions of Law

There are six reasons why a facility may discharge a resident. (130 CMR 456.701(A); see also 130 CMR 610.028(A).) When the transfer or discharge 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," and the "documentation must be **made by ... the resident's physician or PCP ...** ." (130 CMR 456.701(A), (B) (emphasis added).)

Before a nursing facility discharges any resident

the nursing facility must hand-deliver to the resident and mail to the authorized 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 their right to request a hearing before MassHealth'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. § 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.

(130 CMR 456.701(C).)

Typically, a nursing-facility must provide 30 days' notice of its intent to discharge. (130 CMR 456.702(A); 130 CMR 610.029(A).) However, a discharge may occur "as soon as practicable" where 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.**" (130 CMR 456.702(B)(2) (emphasis added); see also 130 CMR 610.015(B)(4) (allowing 14 days to appeal emergency discharge notice).)

Furthermore, a nursing-facility resident who requests a hearing to dispute the discharge "pursuant to section 48 of chapter 118E, shall not be discharged or transferred from a nursing facility ... 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."<sup>3</sup> (MGL ch. 111, § 70E.) A resident is any "individual receiving care in a nursing facility regardless of whether the individual is a MassHealth member." (130 CMR 456.402.)

Regarding the technical requirements of notice, I agree that the notice is deficient. The notice fails to list the "name" of the local long-term care ombudsman organization, and more troublingly it does not list the nearest legal services office. The fact that the appellant was able to secure assistance from his local legal services agency does not obviate this deficiency.

Moreover, the facility has failed to provide documentation from "the resident's physician or PCP" regarding the necessity of the discharge. There is no documentation in the clinical record from anyone who could qualify as the resident's physician or PCP. A "PCP" is defined as "a physician, a physician assistant, or a nurse practitioner operating within the scope of their licensure and

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<sup>3</sup> The term "referee" in the statute refers to a Board of Hearings hearing officer.

supervision requirements, as applicable.” (130 CMR 456.402.) The only medical documentation included in the submitted progress notes is by a registered nurse, and it does not address grounds for discharging the appellant. This documentation is necessary to meet the nursing facility’s obligation to document that they have “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.” (MGL ch. 111, § 70E.) Without it, I cannot begin to determine whether the discharge planning has been appropriate or whether the anticipated discharge location is safe and appropriate.

For the above reasons, this appeal is APPROVED.

## **Order for Nursing Facility**

Rescind the July 8, 2025, discharge notice. Do not discharge the appellant without issuing a new notice.

## **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.

## **Implementation of this Decision**

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.

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Christopher Jones  
Hearing Officer  
Board of Hearings

