

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2510610
<b>Decision Date:</b>	7/29/2025	<b>Hearing Date:</b>	07/23/2025
<b>Hearing Officer:</b>	Radha Tilva		

**Appearance for Appellant:**  
Pro se

**Appearance(s) for Nursing Facility:**  
Adepeju Akere, Social Worker  
Theresa Picard, Assistant Dir. Of Nursing  
Kris Voss, MDS Nurse  
Michael Ferrante, Unit 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>	Denied	<b>Issue:</b>	Expedited nursing home discharge
<b>Decision Date:</b>	7/29/2025	<b>Hearing Date:</b>	07/23/2025
<b>Nursing Facility Reps.:</b>	Adepeju Akere, Theresa Picard, Kris Voss, and Michael Ferrante	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Springfield (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 dated July 14, 2025, [REDACTED] informed the appellant that it would discharge her to a specific shelter in [REDACTED] Massachusetts on [REDACTED], 2025 (Exhibit 1.) The appellant filed this timely appeal on July 18, 2025 (Exhibit 2; 130 CMR 610.015(B).) Nursing facility-initiated discharges are valid grounds for appeal (130 CMR 610.032(C)).

### Action Taken by the Nursing Facility

[REDACTED] sought to discharge the appellant with fewer than 30-days' notice because her medical condition improved to the point where she no longer needed to reside in a nursing facility, and because the safety of the individuals in the facility was endangered due to the clinical or behavioral status of the resident.

### Issue

The appeal issue is whether the nursing facility gave appropriate notice of legitimate grounds for discharging the appellant pursuant to 130 CMR 610.028(A) and 130 CMR 456.701(A).

## Summary of Evidence

The appellant is a homeless woman in her [REDACTED] who came to the nursing facility in [REDACTED] 2025 for short term rehabilitation following a brief hospitalization for a suspected overdose. She initially was covered for her stay through her primary insurance, Tufts, which covered her under a skilled benefit to get stronger and to get out into the community (nursing facility testimony). On or around June 6, 2025 the insurance company stated that she reached baseline and no longer needed to stay at the facility, but allowed her to remain on her custodial benefit, through MassHealth, until discharge (nursing facility testimony).<sup>1</sup>

On July 14, 2025 the nursing facility issued a Notice of Intent to Discharge the Resident with less than 30 Days Notice on the grounds that the appellant's health had improved sufficiently such that she no longer needed the services provided by the facility, and also because the safety of the individuals in the facility was endangered due to the behavioral status of the resident (Exhibit 1). The nursing facility representative(s) testified that appellant's condition consists of chronic COPD, heart failure, kidney disease, depression, and bipolar disorder. A medical note from the physician at the nursing facility, by [REDACTED] dated [REDACTED] 2025, was submitted which states that appellant "has achieved notable functional gains, as assessed by physical and occupational therapy, and is now considered safe for discharge. Her medical status remains stable, with no urgent medical needs necessitating continued skilled care. The discharge plan includes medication reconciliation, patient education on medication adherence, and coordination of any necessary medical equipment" (Exhibit 5, p. 42). A discharge planning note dated June 27, 2025 reflects the same (Exhibit 5, p. 41).

The nursing facility representatives explained that the appellant has been having behavioral issues at the facility and further explained that she has been caught smoking and with a lighter in possession, despite having signed a no-harm agreement on July 9, 2025.<sup>2</sup> The record reflected a report on July 18, 2025 of another resident claiming that the appellant hit her and calling the police to the premises (Exhibit 5, p. 36). On July 7, 2025, a search was completed due to her room smelling like cigarettes and the staff found two bags of THC gummies, a lighter, and two pills (Exhibit 5, p. 39). On July 14, 2025 the appellant was caught smoking in front of the building with another resident without permission (Exhibit 5, p. 38). It was noted the appellant had been caught smoking several times violating the policy by smoking cigarettes in non-designated areas (*Id.*).

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<sup>1</sup> A PASRR (Preadmission Screening and Resident Review) Level II denial issued on July 11, 2025 which the appellant appealed to the Board of Hearings (see Exhibit 4). This denial is not being adjudicated in this proceeding.

<sup>2</sup> A no-harm agreement is an agreement signed by the appellant which allows the nursing facility to implement safety measures to prevent any harm to appellant or any other resident (Exhibit 5, p. 79).

The nursing facility listed a shelter in [REDACTED] as a place for discharge and stated that the appellant came from another shelter in [REDACTED], Massachusetts, but did not want to go back there as she feels like it was not a safe environment. The appellant's daughter was notified of the discharge notice, but did not appear at hearing. The appellant testified at hearing that she did not want to go to a shelter as she does not think they are safe. The appellant felt like her overdose resulted in her hospitalization and was caused by her being in the shelter. The appellant testified that she does not smoke and feels as though the facility is attacking her. The appellant has only seen the physician at the facility twice (appellant testimony).

## Findings of Fact

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

1. The appellant is a homeless woman in her [REDACTED] who came to the nursing facility in [REDACTED] 2025 for short term rehabilitation following a brief hospitalization for a suspected overdose.
2. The appellant was initially covered for her stay through her primary insurance, Tufts, which covered her under a skilled benefit to get stronger and to get out into the community.
  - a. On or around June 6, 2025 the insurance company stated that she reached baseline and no longer needed to stay at the facility.
3. A PASRR (Preadmission Screening and Resident Review) Level II denial, contesting her clinical eligibility for nursing home level of care, issued on July 11, 2025, which the appellant appealed to the Board of Hearings.
4. On [REDACTED] 2025, the physician at the nursing facility, [REDACTED] stated that appellant "has achieved notable functional gains, as assessed by physical and occupational therapy and is now considered safe for discharge. Her medical status remains stable, with no urgent medical needs necessitating continued skilled care. The discharge plan includes medication reconciliation, patient education on medication adherence, and coordination of any necessary medical equipment."
5. On July 14, 2025 the nursing facility issued a Notice of Intent to Discharge the Resident with less than 30 Days Notice on the grounds that the appellant's health had improved sufficiently such that she no longer needed the services provided by the facility, and also because the safety of the individuals in the facility was endangered due to the behavioral status of the resident.
6. On July 7, 2025 a search was completed due to appellant's room smelling like cigarettes and the staff found two bags of THC gummies, a lighter, and two pills.

7. Appellant signed a no-harm agreement at the facility which allowed the nursing facility to implement safety measures to prevent harm to appellant and the residents.
8. On July 14, 2025 the appellant was caught smoking in front of the building with another resident without permission.
9. On July 18, 2025, another resident claimed that the appellant hit her and called the police to the premises.
10. The facility issued a Notice of Intent to Discharge Resident with Less than 30 Days' Notice on July 14, 2025 to a specific shelter in [REDACTED] Massachusetts on [REDACTED] 2025.
11. The appellant does not want to go back to a shelter, however, does not seem to have any other options.

## Analysis and Conclusions of Law

A nursing facility may only discharge or transfer a resident for one of six reasons:

(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 pay for) a stay at the nursing facility; or

(6) the nursing facility ceases to operate.

(130 CMR 610.028(A); see also 130 CMR 456.701(A).)

When the transfer or discharge is for one of the first five reasons, the nursing facility must also document the basis for the transfer or discharge in the resident's clinical record (130 CMR 610.028(B); 130 CMR 456.701(B).) Further, "[t]he 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)(3) or (4).” (130 CMR 610.028(B)(1), (2).)

The discharge notice must be hand delivered to the resident and mailed to a designated family member, and it must state 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 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. s. 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. s. 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 610.029(A).) An emergency discharge, such as the one the facility is seeking in this matter, may proceed “as soon as practicable” in one 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.

(130 CMR 610.029(B); see also 130 CMR 610.015(B)(4) (allowing 14 days to appeal emergency discharge notice).)

The record reflects that the nursing facility has provided proper notice to the appellant of its intent to discharge her. The appellant’s clinical record details that the appellant could be safely and appropriately discharged to a homeless shelter at this time, however, the appellant does not want to be discharged to one. (130 CMR 610.029(B)(2)). A nursing-facility resident who requests a hearing to dispute their 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> (M.G.L. ch. 111, § 70E.). The record and testimony reflect that the nursing facility has provided sufficient preparation and orientation to ensure that the discharge to the shelter is safe. The appellant was homeless before she arrived to the facility and her condition(s) were being maintained in the community. What brought her to the nursing facility was an overdose of which the record reflects that she has now recovered from. [REDACTED] writes that the appellant has no urgent medical needs necessitating continued skilled care and can be discharged with medication reconciliation, patient education on medication adherence, and coordination of any necessary medical equipment, which the nursing facility must provide. Thus, the evidence supports that appellant’s health has improved sufficiently to allow for a more immediate discharge and the nursing facility has not erred in issuing its Notice of Intent to Discharge on those grounds.

With respect to the alternate grounds that the facility seeks an emergency discharge (the health and safety of individuals in the nursing facility would be endangered), the regulation requires that this also be documented in the clinical record by a physician (130 CMR 610.029(B)(1)). While

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

having a cigarette lighter in one's possession in a nursing facility can be a safety hazard to others in the facility, the nursing facility has not provided sufficient evidence to support that a physician has documented that the health and safety of the nursing facility residents would be endangered by appellant's continued presence as required under the regulations. Thus, the discharge fails on grounds that the health and safety of individuals in the nursing facility would be endangered.

For the reasons set forth above this appeal is DENIED and the Notice of Intent to Discharge is upheld.

## **Order for Nursing Facility**

Proceed with discharge no sooner than five days from the date 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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Radha Tilva  
Hearing Officer  
Board of Hearings

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[REDACTED]