

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

[REDACTED]

<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2510788
<b>Decision Date:</b>	9/3/2025	<b>Hearing Date:</b>	08/11/2025
<b>Hearing Officer:</b>	Kimberly Scanlon	<b>Record Open to:</b>	08/15/2025

**Appearance for Appellant:**

Pro se

**Appearances for Nursing Facility:**

Kelly Jones, Social Worker;  
Maryann Liatsis, Administrator



*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>	30-Day Nursing Facility Discharge
<b>Decision Date:</b>	9/3/2025	<b>Hearing Date:</b>	08/11/2025
<b>Nursing Facility's Reps.:</b>	Kelly Jones, Social Worker; Maryann Liatsis, Administrator	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy Harbor South 7 (Remote)	<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 30-Day Notice of Intent to Discharge Resident dated June 24, 2025, the nursing facility informed the appellant of its intent to discharge him to a shelter of his choice or [REDACTED] [REDACTED] (hereinafter “a homeless shelter”) on [REDACTED], because his health has improved sufficiently so that he no longer requires the services provided by the facility. (Exhibit 1). The appellant filed this appeal in a timely manner on July 22, 2025. (130 CMR 610.015(F); Exhibit 2). Notice of discharge from a nursing facility is valid grounds for appeal. (130 CMR 456.703; 130 CMR 610.032(C)). A hearing was held on August 11, 2025. (Exhibit 3). At the conclusion of the August 11<sup>th</sup> hearing, the record was left open to obtain additional information. (Exhibit 5).

### Action Taken by Nursing Facility

The facility informed the appellant of its intent to discharge him because his health has improved sufficiently so that he no longer needs the services provided by the facility.

## Issue

The appeal issues are as follows: whether the nursing facility has valid grounds to discharge the appellant; whether the discharge notice and patient record meet the regulatory requirements; and whether the facility has provided sufficient preparation and orientation to the appellant to ensure a safe and orderly discharge from the nursing facility to a safe and appropriate place.

## Summary of Evidence

The appellant appeared telephonically at the hearing. The nursing facility was represented telephonically by its administrator and social worker. The facility's social worker testified that the appellant is over the age of [REDACTED] and he has been a resident of the nursing facility since [REDACTED] (Exhibit 4, p. 3). He was admitted for: a traumatic subdural hemorrhage with loss of consciousness, a history of traumatic brain injury (TBI), delusional disorders, malignant neoplasm of base of tongue, severe protein malnutrition, and hypertension. (Exhibit 4, p. 4). The appellant is ambulatory, and he does not require the use of assistive devices. He does not require assistance with activities of daily living (ADLs). The appellant is independent, and throughout his stay at the facility, he has signed in and out of the facility without issue, to run errands, go to the store and the like - all of which illustrate his independence. Presently, there is no medical need for the appellant to be at a skilled nursing facility and can have his needs met in the community. The facility's administrator testified that the facility's staff had ongoing discharge conversations with the appellant over the past month to prepare him for discharge. In its submission, which included the appellant's clinical records, the facility provided a letter from [REDACTED] the facility's medical director, explaining the discharge. (Exhibit 6).

The appellant testified that he has is on a waiting list for an apartment and is waiting to hear back on signing a lease. The facility's social worker explained that the appellant has been working with the Community Transition Living Program for housing opportunities since August 2023. Additionally, the facility referred the appellant to the Homeless Not Hopeless Program approximately six months ago. Recently, the Community Transition Living Program notified the appellant of a potential housing option, though that apartment has not been confirmed. However, the appellant's name would remain on any housing waitlist, regardless of the location he discharges to from the facility.

With respect to the discharge plan, the facility's social worker stated that the appellant is active with MassHealth benefits and therefore he can request a Prescription for Transportation (otherwise known as a PT-1). Additionally, the appellant is familiar with the Door2Door transport service, which he currently uses. The appellant agreed that his health has improved immensely; however, he stated that he would not feel safe being discharged to [REDACTED] because he is waiting to hear back from the Community Transition Living Program about a potential apartment. He added that if this potential housing option fell through though, he would be

comfortable with being discharged to [REDACTED]

## Findings of Fact

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

1. The appellant is a resident of a nursing facility.
2. On June 24, 2025, the facility notified the appellant of its intent to discharge him to a homeless shelter because his health has improved sufficiently so that he no longer requires the services provided by the facility.
3. The appellant filed a timely appeal on July 22, 2025.
4. The appellant's health has improved in the nursing facility – he is independent with his ADLs, he ambulates without assistive devices, he leaves the facility as needed, and he does not require any nursing services.
5. The facility's medical director has cleared the appellant for discharge.
6. The facility's social worker has been continuously working with the appellant to secure permanent housing.

## 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 the relevant regulations may 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.<sup>1</sup>

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

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<sup>1</sup> The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.000 et seq. has regulations which are nearly identical to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq. and corresponding federal government regulations. Because of such commonality, the remainder of regulation references in this Fair Hearing decision will only refer to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000, unless otherwise noted and required for clarification.

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)).

Further, the notice requirements set forth in 130 CMR 456.701(A) state that 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 the Division or Medicare pay for) a stay at the nursing facility; or
- (6) the nursing facility ceases to operate.

(130 CMR 610.028(A); 130 CMR 456.701(A)). (emphasis added).

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 when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and
- (2) a physician when the transfer or discharge is necessary under 130 CMR 456.701(A)(3) or (4).

(130 CMR 456.701(B)).

In the present case, the appeal issues are as follows: whether the nursing facility has valid grounds to discharge the appellant; whether the discharge notice and patient record meet the regulatory requirements; and whether the facility has provided sufficient preparation and orientation to the appellant to ensure a safe and orderly discharge from the nursing facility to a safe and appropriate place.

In addition to the MassHealth-related regulations discussed above, the nursing facility must also comply with all other applicable state laws, including G.L. c. 111, § 70E. The key paragraph of this statute, which is directly relevant to any type of appeal involving a nursing facility-initiated 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.<sup>2</sup>

Here, the facility proposes to discharge the appellant to a homeless shelter. While it may not be an ideal situation for the appellant, the proposed discharge location is safe and appropriate. There is documentation supporting that the appellant's health has improved sufficiently that he no longer

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<sup>2</sup> See also 42 USC 1396r(c)(2)(C) which requires that a nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

needs the services provided by the facility. Through its testimony and documentation, the facility has demonstrated that the appellant is independent with his ADLs, ambulates independently without assistive devices, does not require any skilled nursing care, and can safely live in the community. The appellant did not dispute these assertions. Further, the facility's social worker was actively engaging with the appellant in discharge planning and finding permanent housing. The facility has demonstrated that it has provided sufficient orientation and preparation to ensure a safe and orderly transfer.

For these reasons, this appeal is denied.

## **Order for Nursing Facility**

Proceed with the planned discharge no less than 30 days after 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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Kimberly Scanlon  
Hearing Officer  
Board of Hearings

