

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

[REDACTED]

Appeal Decision:	APPROVED	Appeal Number:	2513559
Decision Date:	9/29/2025	Hearing Date:	09/25/2025
Hearing Officer:	Sharon Dehmand		

Appearance for Appellant:
Pro se

Appearance for MassHealth:

[REDACTED]



*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

Appeal Decision:	APPROVED	Issue:	Nursing Facility Discharge; Endangering the Safety of others
Decision Date:	9/29/2025	Hearing Date:	09/25/2025
MassHealth's Rep.:	Krystal Washburn Baroutas; Karen Bergstrom	Appellant's Rep.:	Pro se
Hearing Location:	Remote	Aid Pending:	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 dated September 15, 2025, [REDACTED] (hereinafter “nursing facility”) notified the appellant of its intent to discharge him with less than 30 days’ notice to a shelter on [REDACTED], because the safety of the individuals in the facility is endangered due to the clinical or behavioral status of the resident. See 130 CMR 610.028(A)(3); and Exhibit 1. The appellant filed this appeal in a timely manner on September 17, 2025. See 130 CMR 610.015(B)(5); 130 CMR 456.703; and Exhibit 2. A notice of intent to transfer or discharge a resident from a nursing facility is valid grounds for appeal before the Board of Hearings. See 130 CMR 610.032(C).

Action Taken by the Nursing Facility

The nursing facility notified the appellant of its intent to discharge him because it determined that the safety of the individuals in the facility is endangered due to the clinical or behavioral status of the resident.

Issue

Whether the nursing facility satisfied its statutory and regulatory requirements when it issued a notice of intent to discharge the appellant from the nursing facility. See 130 CMR 610.028(A)(3); 130 CMR 610.029(B)(1).

Summary of Evidence

All parties participated telephonically. The nursing facility was represented by its Director of Social Services and the Director of Nursing. The appellant appeared *pro se* and verified his identity. The following is a summary of the testimony and evidence provided at the hearing:

The facility's director of social services testified that the appellant was admitted to the nursing facility on [REDACTED] for a short-term stay following the fracture of his left foot sustained in [REDACTED] which subsequently became infected. In [REDACTED], the surgically installed hardware was removed, and by [REDACTED] the appellant's foot was fully healed.

She stated that between [REDACTED] the appellant committed multiple infractions after being found in possession of various contraband items, such as marijuana vapes, crack pipes, and spoons. These incidents resulted in implementation of "no harm" contracts, which the appellant sometimes complied with, and other times required extensions.

On [REDACTED] after the discovery of crack pipes and a spoon, the nurse practitioner cleared the appellant for discharge. However, the appellant requested another chance, which the facility granted. The most recent incident occurred on [REDACTED] when a marijuana vape was found in the appellant's possession. This discovery prompted the issuance of the current discharge notice. On [REDACTED] the facility informed the appellant of its intent to discharge him with less than 30 days' notice to a shelter on [REDACTED] See Exhibit 1.

Additionally, she referenced the nurse practitioner's notes dated [REDACTED] and [REDACTED] [REDACTED] documenting concerns that the appellant's behavior endangered the safety of others. Exhibit 4, pp. 61, 69.¹

¹ It should be noted that, despite testimony and documentary submissions indicating that the nursing facility's packet was transmitted by email to both the Board of Hearings and this hearing officer on September 24, 2025, and September 25, 2025, neither party received it. On September 26, 2025, one day after the hearing, the Board of Hearings received the nursing facility's packet by mail. See Exhibit 5. Although untimely, the document was admitted into the record and marked as Exhibit 4.

The documentation submitted by the nursing facility reflect that on [REDACTED], in the section titled "History of Present Illness," the nurse practitioner stated that "[t]he administration

The director of nursing testified that they have provided the appellant with a list of available services. She stated that the facility plans to discharge the appellant to a shelter but has not contacted the shelter to confirm bed availability. She further acknowledged that the facility does not intend to make such outreach until the time of discharge. She added that the facility would make appointments and arrangements for the appellant as needed.

The appellant did not dispute his possession of contraband. He explained that he is struggling with addiction, has experienced relapses, and is working hard toward recovery. He stated that he is actively participating in a recovery group and intends to continue with this support. The appellant denied that he poses a danger to others. He acknowledged that the facility had provided him with a list of sober houses to consider but expressed concern about his health. He reported that he is scheduled for cataract surgery on October 8, 2025. He also stated that he had a telephone consultation on September 24, 2025, regarding pre-surgery for his left foot. The director of nursing responded that the cataract surgery can be done in-community and said that no follow-up has been scheduled as result of the telephone consultation.

Findings of Fact

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

1. The appellant was admitted to the nursing facility on [REDACTED] for a short-term stay following a fracture of his left foot and subsequent infection of the same. (Testimony).
2. In [REDACTED] the surgically installed hardware was removed, and by [REDACTED] the appellant's foot was fully healed. (Testimony).
3. Between [REDACTED] the appellant committed multiple infractions after being found in possession of various contraband items, such as marijuana vapes, crack pipes, and spoons. (Testimony and Exhibit 4).
4. These incidents resulted in implementation of "no harm" contracts, which the appellant sometimes complied with, and other times required extensions. (Testimony and Exhibit 4).
5. On [REDACTED] the discovery of a marijuana vape in the appellant's possession prompted the issuance of the current discharge notice. (Testimony and Exhibit 4).
6. On [REDACTED] the facility informed the appellant of its intent to discharge him with

team of the facility issued him a 30-day discharge notice due to being a danger to himself and to others." See Exhibit 4, p. 61.

less than 30 days' notice to a shelter on [REDACTED] because the safety of the individuals in the facility is endangered due to the clinical or behavioral status of the resident. (Testimony and Exhibit 1).

7. The appellant filed this appeal in a timely manner on September 17, 2025. (Exhibit 2).
8. On [REDACTED] in the section titled "History of Present Illness," the nurse practitioner stated that "[t]he administration team of the facility issued him a 30-day discharge notice due to being a danger to himself and to others." (Exhibit 4).
9. The nursing facility plans to discharge the appellant to a shelter but has not contacted the shelter to confirm bed availability. (Testimony).
10. The appellant is scheduled for cataract surgery on October 8, 2025. (Testimony and Exhibit 4).
11. The appellant had a telephone consultation on September 24, 2025, regarding pre-admission testing for a future foot surgery. (Testimony and Exhibit 4).

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 some of the relevant regulations may be found in (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 456.701(A) and 130 CMR 610.028(A), a nursing facility resident may be transferred or discharged 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 MassHealth Agency or Medicare) a stay at the nursing facility; or
- (6) the nursing facility ceases to operate.

When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 610.028(A)(1) through (5), the resident's clinical record must be documented. The 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)(4).

See 130 CMR 610.028(B).

When the transfer or discharge, as here, is because "the safety of individuals in the nursing facility is endangered ... the resident's clinical record must contain documentation to explain the ... discharge." See 130 CMR 456.701(A)-(B). The documentation must be made by "a physician or PCP² when a...discharge is necessary under 130 CMR 456.701(A)(3) or (4) . . ." See 130 CMR 456.701(B)(1).

Here, the facility's post-hearing submission does not contain a clinical record signed by a PCP that sufficiently explains that discharge is necessary because the safety of individuals in the nursing facility is endangered. Instead, the nurse practitioner (the PCP in this case) relies on the "administration team['s]" decision to issue "a 30-day discharge notice due to [the appellant] being a danger to himself and to others." See Exhibit 4, p. 61. It is evident from this notation that this discharge is not endorsed by the nurse practitioner for two reasons. One, the notice cited identified the wrong type. Two, her statement that discharge is based on the appellant being a danger to himself and others is expressly noted as the administrative team's perspective. Taken together, this evidence reflects that her statement was not an expression of her own view, but rather a recitation of the administrative team's position. As such, I find that this endorsement of discharge does not satisfy the regulatory requirement that the appellant's clinical record must be documented by a PCP when a discharge is necessary under 130 CMR 610.028(A)(3).

Furthermore, the nursing facility has an obligation to comply with all other applicable state laws, including M.G.L. c. 111, § 70E. The key paragraph of this statute 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

² A PCP is any of the following: a physician, a physician assistant, or a nurse practitioner operating within the scope of their licensure and supervision requirements, as applicable. See 130 CMR 456.402.

transfer or discharge from the facility to another safe and appropriate place.

Federal regulations provide for “Orientation for transfer or discharge. A facility must provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. This orientation must be provided in a form and manner that the resident can understand.” 42 CFR 483.15(c)(7). According to the Federal Centers for Medicare & Medicaid, “sufficient preparation” within the meaning of 42 CFR 483.12(a)(7) means “the facility informs the resident where he or she is going and takes steps under its control to assure safe transportation. The facility should actively involve, to the extent possible, the resident and the resident’s family in selecting the new residence. See Centennial Healthcare Inv. Corp. v. Commissioner of the Div. of Medical Assistance, 61 Mass. App. Ct. 1124, *1 n. 5 (20024) citing Protocol for Long Term Care Facilities: Guidance to Surveyors, Tag F204 at 38 (Rev. 274 June, 1995).

Additionally, Code of Massachusetts Regulations states in relevant parts the following:

- It shall be an unfair or deceptive act or practice, in violation of MGL c. 93A, § 2 for a licensee or administrator...
- (6) to fail to discuss the planned discharge or transfer from the facility with the resident and his/her legal representative or next of kin.
- (7) to fail to consult the resident and his/her family or legal representative in choosing another facility, and to take all reasonable steps to implement the resident’s choice of such facility...

See 940 CMR 4.09(6); 940 CMR 4.09(7).

The record and testimony reflect that the nursing facility has not provided sufficient preparation and orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place. There is no documentation or an articulable plan because there is no location to discharge the appellant to. The nursing facility’s representative testified that they plan to discharge the appellant to a shelter but have not contacted the shelter to confirm bed availability. She further acknowledged that the facility does not intend to make such outreach until the time of discharge. Meanwhile, the appellant is scheduled for cataract surgery on October 8, 2025, and had a phone screening on September 24, 2025 for “pre-admin testing.” See Exhibit 4, p. 3. As such, I find that the nursing facility has not met its obligation to ensure that the appellant will have a safe place to go upon discharge. That obligation has not been met with the proposed discharge to a shelter that may not have availability on the day of discharge. The facility did not aver that they would not discharge unless a bed was available in a shelter, only that they will not inquire until the appellant’s appeal is denied.

For the foregoing reasons, this appeal is APPROVED.³

Order for the Nursing Facility

Rescind [REDACTED] discharge notice. Do not discharge the appellant without issuing a new notice.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. 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.

Sharon Dehmand, Esq.
Hearing Officer
Board of Hearings

CC:

[REDACTED]

[REDACTED]

■ The nursing facility must act in compliance with the law and regulations governing a nursing facility discharge. The facility may issue a proper notice and take proper action at any time.