

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2513576
Decision Date:	10/14/2025	Hearing Date:	10/06/2025
Hearing Officer:	Marc Tonaszuck	Record Open to:	

Appearance for Appellant:

Pro se

**Appearances for Oxford Rehab and Healthcare
Center Skilled Nursing Facility:**

Administrators; [Redacted]
Asst. Director of Nursing; [Redacted]
Director of Quality Improvements; and
Aftercare Coordinator



*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:	Denied	Issue:	Nursing Facility Discharge – Improved Health
Decision Date:	10/14/2025	Hearing Date:	10/06/2025
Oxford Rehab and Healthcare Center Skilled Nursing Facility Reps.:	[REDACTED] Administrator; [REDACTED], Asst. Director of Nursing; [REDACTED], Director of Quality Improvements; and [REDACTED] Aftercare Coordinator	Appellant’s Rep.:	Pro se
Hearing Location:	Springfield MassHealth Enrollment Center	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 of Intent to Discharge Resident with 30 Days’ Notice (“discharge notice” or “notice”) dated 09/17/2025, [REDACTED] (“the nursing facility” or “the facility”) notified the appellant of its intent to discharge her to [REDACTED] on 10/17/2025. The nursing facility indicated that the discharge is necessary because the appellant’s health has improved sufficiently so she no longer needs services provided by the facility (130 CMR 610.029; Exhibit 1). An appeal was filed in a timely manner on the appellant’s behalf on 09/27/2025 (130 CMR 610.015(B); Exhibit 2). Notice of intent

to transfer or discharge a nursing home resident is valid grounds for appeal (130 CMR 610.032).

Action Taken by the Nursing Facility

The skilled nursing facility intends to discharge the appellant from the facility to [REDACTED] on 10/17/2025.

Issue

Has the nursing facility complied with relevant statutes and regulations in its planned discharge of the appellant?

Summary of Evidence

The appellant and the representatives from the nursing facility participated in the fair hearing by telephone. The nursing facility was represented by [REDACTED]

The nursing facility submitted a packet of documents prior to the hearing (Exhibit 4). The record contains a copy of a discharge notice dated 09/17/2025 from the nursing facility to the appellant informing her of its intent to transfer her to [REDACTED] on 10/17/2025. The packet submitted by the nursing facility contains the appellant's clinical record (Exhibit 4).

The representatives from the nursing facility testified that the appellant was admitted to the facility on [REDACTED], from [REDACTED] for IV antibiotics. Upon admission, the appellant refused to be evaluated by Physical Therapy and Occupational Therapy. She independently removed her PICC line on [REDACTED] and she was sent to [REDACTED] for back surgery. She returned to the skilled nursing facility on [REDACTED]. Upon return, the appellant was evaluated for Physical Therapy and Occupational Therapy.

According to a letter in the appellant's clinical record from her physician, she is currently receiving outpatient-level therapy, and she can continue receiving outpatient therapy while in the community. She ambulates around the facility utilizing a rolling walker and intermittently uses a wheelchair depending on her mobility needs and level of exertion. The physician writes, "It is my professional opinion that there is not a medical need for [REDACTED] to remain a resident at [the facility]. The appellant is capable and safe to discharge to the community" (Exhibit 4, pp. 29-30).

The physician's letter outlines the discharge plan as follows, "upon discharge, [the appellant] will be given a follow-up Primary Care Doctor appointment and will receive Nursing, Physical, and

Occupational Services through a Home Care Agency. Transportation for all her medical appointments will be set up prior to her discharge from the facility” (Exhibit 4, pp. 29-30).

The appellant appeared at the fair hearing telephonically and testified that she feels the doctor at the facility “brushes her off.” She testified that she fell when she was in the facility, resulting in “more pain now than before.” The appellant reports that she suffered a contusion of her “tailbone,” and she is in pain. She feels she should have more time in the facility to engage in additional physical therapy.

Findings of Fact

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

1. The appellant was admitted to the facility on [REDACTED], from [REDACTED] for IV antibiotics.
2. Upon admission to the skilled nursing facility, the appellant refused to be evaluated by Physical Therapy and Occupational Therapy. She independently removed her PICC line on [REDACTED] and she was sent to [REDACTED] for back surgery.
3. The appellant returned to the skilled nursing facility on [REDACTED]. Upon return, the appellant was evaluated for Physical Therapy and Occupational Therapy.
4. According to a letter in the appellant’s clinical record from her physician, she is currently receiving outpatient-level therapy, and she can continue receiving outpatient therapy while in the community. She ambulates around the facility utilizing a rolling walker and intermittently uses a wheelchair depending on her mobility needs and level of exertion.
5. The physician writes, “It is my professional opinion that there is not a medical need for Ms. Polanco to remain a resident at [the facility]. The appellant is capable and safe to discharge to the community.”
6. Upon discharge from the skilled nursing facility, will be given a follow-up Primary Care Doctor appointment and will receive Nursing, Physical, and Occupational Services through a Home Care Agency. Transportation for all her medical appointments will be set up prior to her discharge from the facility.”
7. Through a Notice of Intent to Discharge Resident with 30 Days’ Notice (“discharge notice” or “notice”) dated 09/17/2025, the nursing facility notified the appellant of its intent to discharge her to [REDACTED] on 10/17/2025 (Exhibit 1).

8. The appellant filed a timely appeal with the Board of Hearings on 09/27/2025.
9. On 10/06/2025, a fair hearing was held before the Board of Hearings.

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.

The Fair Hearing Rules at 130 CMR 610.004 define a "transfer" as

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.

Movement of a resident within the same facility from one certified bed to another bed with the same certification does not constitute a transfer.

The same regulation defines "discharge" as the removal from a nursing facility of an individual who is a resident where the discharging nursing facility ceases to be legally responsible for the care of that individual. A "discharge" is defined in the same regulation as "the removal from a nursing facility of an individual who is a resident where the discharging nursing facility ceases to be legally responsible for the care of that individual."

MassHealth regulations at 130 CMR 456.701 provide in relevant part:

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;
- (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 when a transfer or discharge is necessary under 130 C.M.R. 456.701(A)(1) or (2);** and
- (2) a physician when the transfer or discharge is necessary under 130 CMR 456.701(A)(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 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.

(Emphasis added.)

Finally, MassHealth regulation 130 CMR 456.704 provides:

- (A) Appeals of discharges and transfers will be handled by the Division's Board of Hearings (BOH).
- (B) Time Limitation on the Right of Appeal. The date of request for a fair hearing is the date on which BOH receives such a request in writing. BOH must receive the request for a fair hearing within the following time limits:
 - (1) 30 days after a resident receives written notice of a discharge or transfer pursuant to 130 CMR 456.702(A); or
 - (2) 14 days after a resident receives written notice of an emergency discharge or emergency transfer pursuant to 130 CMR 456.702(B); or
 - (3) 14 days after a resident receives written notice of a transfer or discharge that is the result of a nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence.

Also relevant to this appeal, an amendment to G.L. c. 111, §70E, which went into effect in November of 2008, states 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.

Through a notice dated 09/17/2025 the nursing facility seeks to discharge the appellant to a [REDACTED] on 10/17/2025. The basis of the notice is that the discharge is necessary because the appellant's health has improved sufficiently so she no longer needs services provided by the facility. The appellant's clinical record and a letter from the physician states that the appellant no longer requires skilled nursing level of care, that she no longer requires physical or occupational therapy, she is independent with

ADLs, and she is able to ambulate independently with an assistive device. Therefore, the reason for the appellant's discharge is substantiated by the hearing record.

The Notice of Intent to Discharge the appellant meets the regulatory requirements set forth above. Additionally, the nursing facility has provided evidence that appellant's clinical record was appropriately documented.

Upon discharge, the skilled nursing facility will give the appellant a follow-up Primary Care Doctor appointment and she will receive Nursing, Physical, and Occupational Services through a Home Care Agency. Transportation for all her medical appointments will be set up prior to her discharge from the facility." The documentation from the appellant's physician states that she can continue receiving outpatient therapy while in the community. She can ambulate utilizing a rolling walker and she intermittently uses a wheelchair depending on her mobility needs and level of exertion.

Ideally, the appellant may find that another community setting may be more appropriate where her needs may be better met; however, the nursing facility has met its burden of providing the appellant with the appropriate notice and documenting her clinical record properly. Additionally, because the appellant is independent with ADLs and has no skilled nursing needs; the discharge plan meets the above statutory requirements. Thus, the nursing facility may discharge the appellant pursuant to the 09/17/2025 discharge notice. Accordingly, this appeal is denied.

Order for the Nursing Facility

Proceed with discharging the appellant as planned pursuant to regulations.

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc: Respondent: [REDACTED], Attn: Administrator, [REDACTED]
[REDACTED]

