

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

[Redacted]

Appeal Decision:	Approved	Appeal Number:	2513961
Decision Date:	10/21/2025	Hearing Date:	10/15/2025
Hearing Officer:	Thomas J. Goode		

Appearance for Appellant:
Pro se

Appearances for Skilled Nursing Facility:

[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
Decision Date:	10/21/2025	Hearing Date:	10/15/2025
Nursing Facility's Reps.:	[REDACTED]	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

On September 19, 2025, [REDACTED] ("the skilled nursing facility or SNF") issued a "Notice of Intent to Discharge Resident With less than 30 Days' Notice (Expedited Appeal)" to [REDACTED] on October 20, 2025 "because the safety of the individuals in the facility is endangered due to the clinical or behavioral status of the resident" (130 CMR 610.028, 610.029, 456.701, 456.702 and Exhibit 1). Appellant filed a timely appeal at the Board of Hearings on September 24, 2025 (130 CMR 610.015(B) and Exhibit 2). A Notice of Intent to Discharge Resident With less than 30 Days' Notice because the safety of the individuals in the facility is endangered due to the clinical or behavioral status of the resident is valid grounds for appeal (130 CMR 610.015(B), 610.032(C)).

Action Taken by the Nursing Facility

On September 19, 2025, [REDACTED] ("the nursing facility") issued a "Notice of Intent to Discharge Resident With less than 30 Days' Notice (Expedited Appeal)" to [REDACTED] on October 20, 2025 "because the safety of the individuals in the facility is endangered due to the clinical or behavioral status of the resident."

Issue

The hearing issue is whether [REDACTED] issued proper “Notice of Intent to Discharge Resident With less than 30 Days’ Notice (Expedited Appeal)” to [REDACTED] on October 20, 2025 “because the safety of the individuals in the facility is endangered due to the clinical or behavioral status of the resident.”

Summary of Evidence

The skilled nursing facility (SNF) was represented by its Administrator, Director of Social Services, a social worker, Director of Rehabilitation, and an After Care Coordinator and Substance Abuse Counselor. On September 19, 2025, [REDACTED] issued a “Notice of Intent to Discharge Resident With less than 30 Days’ Notice (Expedited Appeal)” to [REDACTED] on October 20, 2025 “because the safety of the individuals in the facility is endangered due to the clinical or behavioral status of the resident” (Exhibit 1). The SNF representatives testified that the notice was not intended to be a notice of discharge with less than 30 days, and that 30 days’ notice was provided. The SNF representatives testified that Appellant has been a long-term care patient for [REDACTED] including the current placement, and was admitted to the SNF on [REDACTED] from another facility. Prior to the current admission to the SNF, Appellant was homeless or lived with family members. Appellant is [REDACTED] old, and diagnosed with lymphedema, cocaine abuse with intoxication, morbid obesity, atrial fibrillation, psychoactive substance abuse, anxiety, chronic pain, hypertension, constipation, history of venous thrombosis and embolism, major depressive disorder, and localized edema (Exhibit 4, p. 6). Appellant is unable to weight-bear due to morbid obesity and generalized weakness. The SNF testified that Appellant is wheelchair-dependent at baseline and requires a two-person Hoyer lift for transfers. The SNF testified that transfers by Hoyer lift require two staff members per SNF policy. Appellant is incontinent and utilizes absorbent products and is dependent in all activities of daily living involving the lower body including dressing, toileting and bathing. Appellant is independent with the use of his wheelchair once placed and can dress his upper body.

The SNF testified the facility intends to discharge Appellant to a [REDACTED] [REDACTED] due to multiple documented episodes of illicit drug use and possession and possible drug dealing within the facility. The SNF testified that Appellant applied for the Money Follows the Person (MFP) waiver, and was denied because MassHealth determined that Appellant could not be safely serviced in the community. The SNF Administrator testified that no attempts have been made to find another SNF placement because it is unlikely that another SNF would accept the placement. The SNF testified that the discharge plan would involve utilizing Appellant’s MassHealth benefit to obtain a Hoyer Lift for use in the hotel, payment for a few days for the hotel, arrangement for visiting nursing, physical therapy, occupational therapy, and the involvement of family members including Appellant’s [REDACTED] mother and his sister to provide care for him. The SNF testified that

Appellant's physician, [REDACTED], is aware of the discharge plan and agreed that it is necessary for Appellant's welfare and the welfare of other residents to implement the discharge plan (Exhibit 4, p. 6). The SNF testified to multiple incidents of possession and use of substances assumed to be crack cocaine and other illicit drug paraphernalia and large amounts of cash, as well as no-harm agreements signed and violated by Appellant (Exhibit 4, pp. 112-260).¹ Appellant was referred to a detox facility in [REDACTED] and was denied placement (Exhibit 4, p. 177).

Appellant testified that he wants to stay at the facility and that his family, especially his mother, would not be able to care for him at a hotel. Appellant testified that he does get high at the facility but denied bringing drugs into the facility.

Findings of Fact

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

1. On September 19, 2025, [REDACTED] issued a "Notice of Intent to Discharge Resident With less than 30 Days' Notice (Expedited Appeal)" to [REDACTED] on October 20, 2025 "because the safety of the individuals in the facility is endangered due to the clinical or behavioral status of the resident" (Exhibit 1).
2. The September 19, 2025, notice was not intended to be a notice of discharge with less than 30 days, and 30 days' notice was provided.
3. Appellant has been a long-term care patient for [REDACTED] including the current placement, and was admitted to the SNF on [REDACTED], from another skilled nursing facility.
4. Prior to the current admission to the SNF Appellant was homeless or lived with family members.

¹ See Exhibit 4, p. 112: large amount of cash in Appellant's room and small baggies; p. 114: small baggies and crack pipe; p. 116: no-harm agreement; allegedly smoking crack cocaine in patient room with another patient present on oxygen. Appellant sent to ER; p.141: mental status change noted with Appellant throwing items, and possession of 3 sharp objects and transfer to ER; p. 143: behavioral health referral; p. 158: two residents observed by Unit Manager exchanging contraband and identified Appellant as a dealer in the facility; p. 164: Assistant Director of Nursing notes large amount of cash in Appellant's room, and another resident reporting Appellant is dealing drugs; p. 165: details of drug dealing reported to [REDACTED]; p. 168: Security report that it will be "open season" when Director of Security is on vacation; p. 169: non compliance with no-harm agreement, verbal abuse toward staff, throwing full urinal across the hallway, resident report that Appellant is dealing crack in the facility, large bundle of cash observed; p. 170: Appellant found with 3 lighters; p. 175: cocaine use recorded; p. 179: found with vape in room; p. 180: threw urine bottle at staff after reporting \$1,000 missing, threats toward staff, found in patient room: white rock substance (presumed to be crack) and a clear baggy w/residue, an empty blunt wrapped package, a pen in two pieces and a small razor-style pencil sharpener. See also: photographs of items at Exhibit 4, pp. 251-260.

5. Appellant is [REDACTED], and diagnosed with lymphedema, cocaine abuse with intoxication, morbid obesity, atrial fibrillation, psychoactive substance abuse, anxiety, chronic pain, hypertension, constipation, history of venous thrombosis and embolism, major depressive disorder, and localized edema.
6. Appellant is unable to weight-bear due to morbid obesity and generalized weakness.
7. Appellant is wheelchair-dependent at baseline and requires a two-person Hoyer lift for transfers.
8. Appellant is incontinent and utilizes absorbent products and is dependent in all activities of daily living involving the lower body including dressing, toileting and bathing.
9. Appellant is independent with the use of his wheelchair once placed and can dress his upper body.
10. The SNF intends to discharge Appellant to a [REDACTED] due to multiple documented episodes of illicit drug use and possession and possible drug dealing within the facility.
11. Appellant applied for the Money Follows the Person (MFP) waiver and was denied because MassHealth determined that Appellant could not be safely serviced in the community.
12. The SNF has made no attempts to find another skilled nursing facility placement.
13. The discharge plan would involve utilizing Appellant's MassHealth benefit to obtain a Hoyer Lift for use in the hotel, payment for a few days for the hotel, arrangement for visiting nursing, physical therapy, occupational therapy, and the involvement of family members including Appellant's [REDACTED] mother and his sister to provide care for him.
14. Appellant was referred to a detox facility in Springfield and was denied placement.

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.²

² The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.701 et seq. is identical

456.701: 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 MassHealth 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 (4), 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 or PCP when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and
 - (2) a physician or PCP when the transfer or discharge is necessary under 130 CMR 456.701(A)(3) or (4).
- (C) Before a nursing facility discharges or transfers 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;

(or nearly identical) to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq.

- (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 456.702: Time Frames for Notices Issued by Nursing Facilities:

(A) The notice of discharge or transfer required under 130 CMR 456.701(C) must be made by the nursing facility at least 30 days prior to the date the resident is to be discharged or transferred, except as provided for under 130 CMR 456.702(B).

(B) Instead of the 30-day-notice requirement set forth in 130 CMR 456.702(A), the notice of discharge or transfer required under 130 CMR 456.701 must be made as soon as practicable before the discharge or transfer in any of the following circumstances, which are emergency discharges or emergency transfers.

- (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 resided in the nursing facility for 30 days immediately prior to receipt of the notice.

(C) When the transfer or discharge is the result of a nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, the notice of transfer or discharge, including that which is required under 130 CMR 456.429, must comply with the requirements set forth in 130 CMR 456.701 and

must be provided to the resident and an immediate family member or legal representative at the time the nursing facility determines that it will not readmit the resident.

130 CMR 456.703: Time Frames for Submission of Requests for Fair Hearings

(A) Appeals of discharges and transfers will be handled by MassHealth's Board of Hearings (BOH) pursuant to 130 CMR 610.000: *MassHealth: Fair Hearing Rules*.

(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) 30 days after a nursing facility initiates a transfer or discharge or fails to readmit and fails to give the resident notice; or
- (3) 14 days after a resident receives written notice of an emergency discharge or emergency transfer pursuant to 130 CMR 456.702(B); or
- (4) 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.

130 CMR 456.704: Stay of a Transfer or Discharge from a Nursing Facility Pending Appeal³

³ See also 130 CMR 610.030: Stay of a Transfer or Discharge from a Nursing Facility Pending Appeal

(A) If a request for a hearing regarding a discharge or transfer from a nursing facility is received by BOH during the notice period described in 130 CMR 610.015(B)(3), the nursing facility must stay the planned discharge or transfer until 30 days after the decision is rendered. While this stay is in effect, the resident must not be transferred or discharged from the nursing facility.

(B) If a hearing is requested, in accordance with 130 CMR 610.015(B)(4), and the request is received before the discharge or transfer, then the nursing facility must stay the planned transfer or discharge until five days after the hearing decision.

(C) If the request for a hearing, in accordance with 130 CMR 610.015(B)(4), is received within the applicable time frame but after the transfer, the nursing facility must, upon receipt of the appeal decision favorable to the resident, promptly readmit the resident to the next available bed in the facility.

(D) In the case 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, if the request for a hearing is received within the applicable time period, in accordance with 130 CMR 610.015(B)(5), the nursing facility must, upon receipt of the appeal decision favorable to the resident, promptly readmit the resident to the next available bed.

(A) If a request for a hearing regarding a discharge or transfer from a nursing facility is received by the Board of Hearings during the notice period described in 130 CMR 456.703(B)(1), the nursing facility must stay the planned discharge or transfer until 30 days after the decision is rendered. While this stay is in effect, the resident must not be transferred or discharged from the nursing facility.

(B) If a hearing is requested, in accordance with 130 CMR 456.703(B)(2), and the request is received prior to the discharge or transfer, then the nursing facility must stay the planned transfer or discharge until five days after the hearing decision.

(C) If the request for a hearing is received within the applicable time frame but after the transfer, the nursing facility must, upon receipt of the appeal decision favorable to the resident, promptly readmit the resident to the next available bed in the facility.

(D) In the case 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, if the request for a hearing is received within the applicable time period as described in 130 CMR 456.703(B)(3), the nursing facility must, upon receipt of the appeal decision favorable to the resident, promptly readmit the resident to the next available bed.

The nursing facility must also comply with all other applicable state laws, including M.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:

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.⁴

On September 19, 2025, [REDACTED] issued a "Notice of Intent to Discharge Resident With less than 30 Days' Notice (Expedited Appeal)" to [REDACTED], [REDACTED] on October 20, 2025 "because the safety of the individuals in the facility is endangered due to the clinical or behavioral status of the resident" (Exhibit 1). The Notice provides the required information concerning the planned discharge from the facility and in this regard complies with regulatory requirements outlined at 130 CMR 456.701(C). Although the Notice references an expedited appeal and discharge from the facility with less than 30 days' notice, it designates a 30-day period from September 19, 2025 through the date of intended discharge on

⁴ 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.

October 20, 2025, and therefore does not fall under emergency discharge provisions for a discharge notice with less than 30 days' notice described at 130 CMR 456.702(B) and 130 CMR 610.029(B) or (C), and does not trigger expedited appeal provisions under 130 CMR 610.015(F).⁵

The medical records submitted into evidence are replete with allegations and documentation of illicit drug use and potential drug dealing within the facility. Coupled with other documented behavioral incidents including smoking in a resident room with continuous oxygen in use, the SNF has sufficiently documented that Appellant should be discharged from the facility because the safety of the individuals in the facility is endangered due to the clinical or behavioral status of the resident which endangers other residents and staff. However, regardless of whether Appellant's physician authorized the discharge plan, it strains credulity that the discharge location is a [REDACTED], and the cornerstone of the plan is to utilize Appellant's MassHealth benefit to purchase a Hoyer Lift to be operated by family members, including Appellant's sister and [REDACTED]. Appellant has been a long-term care patient for [REDACTED], cannot weight-bear due to morbid obesity and generalized weakness, is wheelchair-dependent at baseline and requires a two-person Hoyer lift for transfers. Appellant is incontinent and utilizes absorbent products and is dependent for all activities of daily living involving the lower body including dressing, toileting and bathing. The discharge plan cannot be even remotely construed as sufficient preparation for a safe and orderly transfer from the nursing facility **to another safe and appropriate place**. The facility has made no attempts to find another nursing facility placement purportedly because another facility is unlikely to accept the placement. While this may be true, it is still incumbent on the nursing facility to devise and implement a safe and orderly transfer from the facility to another safe and appropriate place. Only because the nursing facility has failed in this regard, the appeal is APPROVED.⁶

Order for the Nursing Facility

Rescind the September 19, 2025, notice of intent to discharge and do not discharge Appellant under the terms of the September 19, 2025 notice of intent to discharge.

Notification of Your Right to Appeal to Court

⁵ See 130 CMR 610.015(F) Expedited Appeals for Discharges and Transfers from a Nursing Facility Under 130 CMR 610.029(B) or (C). A resident may request an expedited appeal when a nursing facility notifies a resident of a discharge or transfer under the time frames of 130 CMR 610.029(B) or (C). When such a request is made, BOH will schedule a hearing as soon as possible, but no later than seven days from the date BOH receives the request. The hearing officer must render a final decision as soon as possible, but no later than seven days from the date of the hearing. These time limits may be extended pursuant to 130 CMR 610.015(D). Appeal requests made under 130 CMR 610.015(F) automatically waive the requirement for ten-day advance notice of the scheduled hearing date under 130 CMR 610.046(A).

⁶ The approval of Appellant's appeal here for the reasons stated does not preclude the nursing facility from issuing a new notice of discharge to a safe and appropriate place.

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 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.

Thomas J. Goode
Hearing Officer
Board of Hearings

CC: [REDACTED]