

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2514567
Decision Date:	11/5/2025	Hearing Date:	10/22/2025
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:
Pro se

Appearance for Nursing Facility:



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*


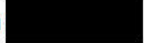
APPEAL DECISION

Appeal Decision:	Approved	Issue:	Nursing Facility Discharge: Improved Health
Decision Date:	11/5/2025	Hearing Date:	10/22/2025
Nursing Facility's Rep.:		Appellant's Rep.:	Pro se
Hearing Location:	All Parties Appeared by Telephone		

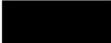
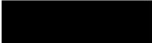
Authority

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 9, 2025, the nursing facility informed the appellant that she would be discharged to a  Massachusetts on  2025 as her health has improved sufficiently so she no longer needs the services provided by the facility. (130 CMR 610.028; Exhibit 1). The appellant filed a timely appeal on October 6, 2025. (130 CMR 610.015(B)(3); Exhibit2). Nursing facility residents have the right to request an appeal of any nursing facility-initiated transfer or discharge. (130 CMR 610.032(C)).

Action Taken by the Nursing Facility

The nursing facility issued a notice to discharge the appellant to a  in  Massachusetts within 30 days of the date of the notice as her health has improved sufficiently so she no longer needs the services provided by the facility. (130 CMR 610.028).

Issue

Whether the nursing facility was correct in issuing a notice to discharge the appellant to an area motel as her health has improved sufficiently so she no longer needs the services provided by the facility. (130 CMR 610.028).

Summary of Evidence

All parties appeared by telephone. On September 9, 2025, the nursing facility issued a notice to discharge the appellant to a [REDACTED] Massachusetts. The discharge was based on a determination that the appellant's health improved sufficiently so she no longer needs the services provided by the facility. The facility did not provide any clinical records to document this determination. Instead, the facility presented an electronic mail message of a site assessment completed by a representative from [REDACTED] Massachusetts, Inc. regarding the appellant's clinical eligibility for MassHealth coverage of nursing facility level of care. (Exhibit 5). The representatives from the facility asked if the hearing could be continued so they could provide clinical records as they were not aware of the need to provide these records. The request was denied. The notice on appeal was sent to the appellant alone. However, at the hearing, the appellant stated that she did not have anyone for the facility to send a copy of the notice.

The representatives from the facility noted that they believed that the determination made by [REDACTED] Massachusetts was sufficient to demonstrate that the appellant's condition has improved sufficiently so she no longer needs the services provided by the facility. The message does not contain any details of medical diagnoses, nursing notes, records of services received in the facility or other documentation regarding the appellant's current medical condition from individuals in the facility or a physician. The parties at hearing acknowledged that the assessment presented was done by a third party to determine whether the appellant was eligible for payment of services.

The notice lists contact information for the Massachusetts Legal Assistance Corporation in [REDACTED] Massachusetts as the "Local Legal Services Office" for the appellant's service area. The Massachusetts Legal Assistance Corporation MLAC provides funding and support to civil legal aid organizations across the Commonwealth. It is not a local legal services office.

Representatives from the facility present at the hearing included a licensed social worker and nurse manager. The nurse manager testified that the appellant is able to perform all activities of daily living on her own. The assessment from [REDACTED] Massachusetts, Inc. grants the appellant an eligibility period to transition into the community. The representatives from the facility noted that this clinical eligibility decision would allow the appellant time to make arrangements for an appropriate discharge. The representatives from the facility felt that a

discharge to a [REDACTED] the location listed on the discharge notice, would be appropriate. The representatives from the facility stated that the appellant would receive some assistance in having to pay for the motel for a period of time but once the appellant's payments from the Social Security Administration are delivered to the appellant directly, that assistance will end. When asked how the appellant would be able to afford to reside in a unit at a [REDACTED] at the end of that period, the representatives acknowledged that this would likely be temporary housing.

The representatives from the facility stated that the appellant is independent with activities of daily living other than medication management and administration. The representatives from the facility testified that they will provide the appellant with a 30-day supply of medications and her primary care physician would help teach the appellant how to administer the medications on her own upon discharge. The representatives from the facility testified that they have been trying to obtain housing for the appellant and discussed discharge to a rest home but the appellant has rejected these options.

The appellant presented a letter that is incorporated into the hearing record as Exhibit 2 which includes her request for hearing. The letter and testimony presented at hearing provide a history of the appellant's admission and stay at the facility. The appellant stated that she has been in the facility for [REDACTED] years. The appellant was diagnosed with [REDACTED] and put on hospice care. The appellant was released from hospice care and at the time of the hearing she was in the facility receiving some services such as assistance with medication administration.

The appellant testified that she was married and her spouse was listed in her records as a contact but she did not want the facility to notify him about the discharge or any other actions related to her stay at the facility. The appellant provided an extensive history of her relationship with her spouse including a history of domestic violence. The appellant states in the letter and testified at hearing that a discharge to a motel was not safe or appropriate. The appellant testified that she would not be able to afford to stay in the motel once payments from the facility end. The facility did not provide other options that would not require payments for extending the stay at the motel, if necessary.

The appellant testified that she has worked with representatives from the facility regarding other options such as discharge to a rest home. The appellant testified that she could not agree to stay at two of the recommended rest homes because they were sober houses and would not allow the use of cannabis. The appellant does not use cannabis for medical treatment. The appellant testified that the current facility did not allow for the use of cannabis when she was on the property but allowed her to return to the facility after such consumption. These other facilities would not allow consumption at all. The appellant testified that the third rest home recommended by the facility was too far away. The appellant testified that she would like to return to the community in a safe and appropriate manner close to where she currently resides.

The appellant presented two other notices of discharge. One within days of the notice on appeal

stating the reason for discharge as failure to abide by nursing facility rules and regulations regarding cannabis use. The word VOID is handwritten across the submission. The second notice was from June 2025 and lists the reason for discharge as the resident's health improving and failure to pay or have Medicare or MassHealth pay for a stay at the facility. The word VOID is handwritten across this notice as well.

While those present at the hearing indicated that they were working with the appellant regarding a discharge plan, as of the date of the hearing, no definitive plan was in place other than sending the appellant to a motel.

Findings of Fact

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

1. On September 9, 2025, the nursing facility issued a notice to discharge the appellant to a [REDACTED] Massachusetts.
2. Someone at the facility determined that the appellant's health improved sufficiently so she no longer needs the services provided by the facility.
3. The facility did not present clinical records to document these findings.
4. The notice on appeal was sent to the appellant alone.
5. The appellant agreed that she did not have anyone else to send a copy of the notice.
6. The notice lists contact information for the Massachusetts Legal Assistance Corporation in [REDACTED] Massachusetts as the "Local Legal Services Office" for the appellant's service area.
7. The Massachusetts Legal Assistance Corporation MLAC provides funding and support to civil legal aid organizations across the Commonwealth. It is not a local legal services office.
8. The appellant requires assistance with medication administration.
9. The facility agreed to pay for at least one night at the motel.
10. The facility has been in contact with agencies for the appellant to obtain services in the community.

11. While those present at the hearing indicated that they were working with the appellant regarding a discharge plan, as of the date of the hearing, no definitive plan was in place other than sending the appellant to a motel.

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 many regulations that follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge. Some of the relevant regulations can 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.*

Pursuant to 130 CMR 610.028(A) which governs the rules for actions initiated by a nursing facility, 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 Medicaid or Medicare pay for) a stay at the nursing facility;
or
- (6) the nursing facility ceases to operate.

In the present case, the notice states that the discharge was appropriate because the appellant's health has improved sufficiently so that she no longer needs the services provided by the nursing facility.

Pursuant to 130 CMR 610.028(B), 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)(3) or (4).

The discharge in this case was made under 130 CMR 610.028(A)(2). Therefore, the facility was required to provide clinical records from the appellant's physician. The facility failed to provide any clinical records. The summary from the [REDACTED] Massachusetts is not a clinical record. It is only a summary and determination regarding clinical eligibility for MassHealth's payment of services.

Pursuant to 130 CMR 610.028(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, if the resident has made such a person known to the facility, 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 MassHealth agency 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 610.029; and
 - c. the effect of requesting a hearing as provided for under 130 CMR 610.030;
- (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.

In this case, the notice lists contact information for the Massachusetts Legal Assistance

Corporation in ██████ Massachusetts as the “Local Legal Services Office” for the appellant’s service area. The Massachusetts Legal Assistance Corporation MLAC provides funding and support to civil legal aid organizations across the Commonwealth. It is not a local legal services office. The regulations at 130 CMR 610.028(C)(9) state that the notice should contain the address of the nearest legal services office.

Pursuant to 130 CMR 610.062, acting entities, such as nursing facilities, have certain rights and responsibilities as part of the fair hearing process. Among those responsibilities is to ensure that the relevant portions of an appellant’s resident record are present at the hearing and that the appellant has adequate opportunity to examine such records before and during the hearing upon reasonable request. (130 CMR 610.062(E)). Such action was not taken in this case.

In addition to being obligated to comply with all the regulatory requirements that ensure individuals from such a vulnerable population are provided due process, a nursing facility has an obligation to comply with all other applicable state laws, including M.G.L. c.111, §70E, which went into effect in November of 2008. The key paragraph of that statute, which is directly relevant to any type of appeal involving a 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.

Federal regulations also require that a nursing facility provide and document sufficient preparation and orientation to ensure a safe and orderly discharge. (42 CFR 483.15(c)(7)). This orientation must be provided in a form and manner that the resident can understand. Federal regulations at 42 CFR 483.21(c)(1) speak to the discharge planning process. These regulations require the facility to involve the resident and resident representative in the development of the discharge plan. (130 CMR 483.21(c)(1)(v)). In this case, sending the appellant to an area motel without a plan for services in place does not appear to provide sufficient preparation and orientation to return to the community. While the individuals at the hearing felt that the appellant’s health improved sufficiently so she no longer needs the services provided by the facility, there were no records to support this conclusion.

This appeal is approved to ensure that the facility acts in compliance with the law and regulations governing a nursing home discharge. The facility may issue proper notice and take proper action at any time.

Order for Nursing Facility

Rescind the discharge notice issued on September 9, 2024.

Compliance with this Decision

If this nursing facility fails to comply with the above order, you should report this in writing to the Director of the Board of Hearings, Office of Medicaid, at the address on the first page 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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

