

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2514646
Decision Date:	12/11/2025	Hearing Date:	November 06, 2025
Hearing Officer:	Brook Padgett	Record Open:	December 05, 2025

Appellant Representative:



Nursing Facility Representative:



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Nursing Facility Discharge 130 CMR 610.028
Decision Date:	12/11/2025	Hearing Date:	November 06, 2025
Nursing Facility Rep:	██████████	Appellant Rep:	██████████.
Hearing Location:	Telephonic to nursing facility		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

The Appellant received a 30-day Notice of Intent to Transfer Resident dated September 17, 2025, stating: The purpose of this letter is to inform you that ██████████ seeks to discharge you to the following non-institutional setting ██████████. The reason for this discharge is the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility nursing home. (Exhibit 1). The Appellant filed this appeal timely on October 03, 2025. (130 CMR 610.015(B); Exhibit 2).¹ Discharge or transfer of a Nursing Facility patient is valid grounds for appeal. (130 CMR 610.028(A); 42 CFR Ch IV §483.200 et seq.).

Action Taken by the Nursing Facility

The nursing facility intends to discharge the Appellant to the ██████████ (a homeless shelter).

¹ On October 01, 2025, counsel from Metro West Legal Services (MWLS) filed an appeal on the appellant's behalf. An appeal was scheduled for October 22, 2025. On October 20, 2025, counsel requested the hearing be rescheduled as he had a conflict with a previously scheduled legal matter and the hearing was rescheduled. (See Exhibit 3B and 3C). It is noted the representative who request the reschedule because he could not attend did not represent the Appellant at the rescheduled hearing.

Issue

Does the planned discharge satisfy the requirements of 130 CMR 610.028(A)?

Summary of Evidence

The Director of Social Services of [REDACTED] testified that the [REDACTED] was admitted to the facility from the hospital on [REDACTED] for cellulitis and wound care. Prior to admission, the Appellant had been living at [REDACTED] will not readmit the Appellant and he has been trying to obtain alternative housing since May). The Director stated that currently the Appellant's medical issues have been resolved and the medical record indicates the Appellant is goal directed with no delusions or hallucination, with no risk of harm to self or others. The Appellant is oriented x 3 and his judgment and insight are appropriate. The Appellant requires no skilled nursing services and spends most of his time outside of the facility. The Director testified that the Appellant's physician notes indicate that the Appellant is currently clinically stable and can walk independently at least 300 feet; and the nursing summary indicates the Appellant is independent and requires no assistance with his activities of daily living (ADLs). Further, on October 21, 2025, a MassHealth Assessment of Clinical Eligibility denial notice was issued stating [REDACTED], an Aging Services Access Point (ASAP) agency, determined that the Appellant is not clinically eligible for MassHealth as nursing facility services are not medically necessary which is required by 130 CMR 456.408(A)(2) and 130 CMR 456.409. The Nursing facility submitted into evidence physician notes, nursing summary, October 21, 2025 clinical eligibility determination and log book. (Testimony and Exhibit 4, 5 and 6).

The Appellant was represented by [REDACTED] who argued the transfer should be denied as the Appellant and his representatives have reached out multiple times to [REDACTED] requesting medical records in support of the proposed discharge as required by the regulations; however, prior to the hearing, no documents have been received. Without access and ability to review the evidence supporting the discharge, the Appellant is unable to adequately prepare and defend the allegations supporting the discharge in this action.

The Appellant's representative further argued for denial of the discharge on two grounds procedural deficiency and substantive inadequacy of the discharge plan. Procedurally, the discharge notice is deficient under 130 CMR 610.028(C), specifically for (a) listing the Mass Legal Assistance Corporation (MLAC) instead of the local legal services office (MetroWest Legal Services) as required by 130 CMR 610.028(C)(9), and (b) listing a contact person who was not employed at the facility and failed to return calls, in violation of 130 CMR 610.028(C)(10). Substantively, the discharge is deficient because the [REDACTED] is not a "safe and appropriate place" under M.G.L. c. 111, §70E, given the Appellant's history of complex health issues (respiratory and heart failure, falls, sepsis, and a scheduled vascular surgery) and ongoing chronic lumbar radiculopathy requiring pain management with narcotics and neuropathics.

The record-open period was extended to November 19, 2025, to allow the Appellant's representative to review the facility's medical evidence and to respond (See Exhibits 4, 5 and 6) and the facility to respond to the Appellant's representative's memorandum. (See Exhibit 7). (Exhibit 8).

The Appellant's counsel responded stating the reasons for discharging a resident must be documented in the resident's clinical record 42 C.F.R. 483.12 (a)(4)(ii); 130 C.M.R. 610.028(B) by the resident's attending physician, and here the clinical records have not been documented by his physician, [REDACTED]. The representative argues that in reviewing the submitted records, she was unable to locate any clinical notes or summaries from the Appellant's physician explaining that the Appellant's health had improved sufficiently so that he did not require care at the facility and that she was ordering discharge.

The Appellant's representative indicated she contacted the [REDACTED] on November 18, 2025 and was told that currently it was at capacity and had no available beds. The representative reiterated that [REDACTED] shelter is not safe and appropriate as required by the regulations because the Appellant will not have a bed and would be homeless, and would likely end up wandering the streets during the winter. The representative maintained that in the past year the Appellant has had multiple hospitalizations for respiratory and heart failure, wound care, falls, sepsis, pneumonia, and COVID complications. He underwent vascular surgery on the left leg on [REDACTED]. Additional vascular surgery has been scheduled for [REDACTED]. The representative asserts the Appellant cannot safely walk community distances, travel unassisted, or manage transfers independently; he has no means of transportation; he is medically unstable; he has uncontrolled pain, as well as a lack of housing. (Exhibit 9).

The facility responded that the 30-day discharge notice issued to the Appellant was appropriate, and compliant with all state and federal regulations. The notice is further supported by the clinical team, MassHealth screening protocols, and applicable regulations under 130 CMR 456.000. The Appellant is medically stable and not clinically eligible for nursing facility level of care; he is functionally and cognitively capable of community living and has been approved for discharge by his own physician, nurse practitioner, the facility care team, and an independent MassHealth nurse screener. The facility has attempted to secure community placement for the Appellant including attempting to return him to his previous rest home, which declined readmission; exploring additional rest home placements; submitting a referral to the [REDACTED] program; discussing potential placement with his sister and other family/friends; and arranging a homeless shelter placement as a last resort, which is an acceptable discharge destination under federal and state regulations when a resident is medically, functionally, and cognitively stable. The facility restated the Appellant is fully independent with all ADLs, including ambulation with a cane for 300+ feet, independent use of his power wheelchair, as well as independent bathing, dressing, transfers, toileting, and mobility tasks. He is also medically stable, and can utilize public transportation. The Appellant currently owes \$36,000.00 to the facility because he does not meet MassHealth criteria for skilled nursing facility services. The Appellant is occupying a skilled bed needed by another MassHealth member who meets criteria for this level of care. (Exhibit 10).

On December 01, 2025, after reviewing the documentation, the hearing officer reopened the record to request that the nursing facility provide documentation from the facility physician indicating the transfer is appropriate, and to allow the Appellant's representative to respond to the nursing facility submission by December 05, 2025. (Exhibit 11).

The facility responded within the extended record-open period and submitted: Physician Notes stating the Appellant can ambulate with a cane up to 170 feet per, complete his ADLs, has electric wheel chair and is medically and functionally stable now for discharge from the nursing home. The notes indicates the Appellant is able to follow up as outpatient for his ongoing medical needs and the Boston Health Care for the Homeless Program will provide him with a follow up PCP appointment, fill prescriptions at their pharmacy, and are integrated with [REDACTED] and other shelters around [REDACTED]. He will also get a care manager who will follow him in the community and provide him with daily bed availability at local shelters. (Exhibit 12). Nurse Practitioner notes which state that the Appellant is clinically stable with no ongoing skilled nursing needs and has demonstrated the ability to safely manage his condition with routine outpatient follow-up. He has no safety risks identified that would require continued inpatient skilled care and is appropriate for discharge from SNF level of care. (Exhibit 13). Physician Orders which state that the Appellant is medically cleared for discharge to [REDACTED] and may be discharged with medications and services. (Exhibit 14).

The Appellant's representative submitted a response arguing that according to the clinical records, at the time the Appellant received the discharge notice, the Appellant's physician had not documented the reasons for discharge and approved the place of discharge. While the attending physician documented that the Appellant is "medically cleared" for discharge to the [REDACTED] homeless shelter, the order is dated December 02, 2025, which is 76 days after the Notice of Discharge issued on September 17, 2025. "Before" (as stated in the regulations) a nursing facility discharges a resident, the nursing facility must comply with specific notice requirements which includes the actions, reasons, effective date, and location among other specific requirements. (See, 130 C.M.R. 610.028 (C)). In this case, the medical clearance by the Appellant's Physician to [REDACTED] [REDACTED] is being retroactively applied and not part of a coordinated care plan developed with the resident, the care team, or community providers. The representative also reiterated that the discharge to the [REDACTED] not a safe and appropriate location as required by the regulations because the Appellant would not have a bed and would be homeless, likely wandering the streets during the winter with extreme temperatures placing his safety and life at risk. (Exhibit 15).

Findings of Fact

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

1. The Appellant is a resident at the [REDACTED] a licensed nursing facility. (Exhibit 1

and Testimony).

2. The Appellant was admitted to the facility from the hospital on [REDACTED], for cellulitis and wound care. (Exhibit 4).
3. Prior to admission, the Appellant had been living at [REDACTED] (Testimony).
4. On September 17, 2025, the Appellant received a 30-day Notice of Intent to Transfer Resident to the [REDACTED] because his health had improved sufficiently so he no longer needs the services provided by the facility nursing home. (Exhibit 1).
5. On October 01, 2025, MWLS appealed the nursing facility action. (Exhibit 2).
6. On October 20, 2025, MWLS requested the hearing be rescheduled as the Appellant's attorney had a conflict with a previously scheduled legal matter. (Exhibit 1).
7. On October 21, 2025, a MassHealth screening determined that the Appellant does not meet the criteria for continued Nursing Facility Level of Care as defined by 130 CMR 456.408 and 456.409. (Exhibit 5, pg. 2).
8. The medical records indicate the Appellant is medically stable, and functionally independent with all ADLs, including ambulation of at least 300 feet, and is independent with use of his power wheelchair. (Exhibit 4 pgs. 2, 5, 11 and 12).
9. The medical record indicates that the Appellant is goal directed with no delusions or hallucinations, with no risk of harm to self or others; he is oriented x 3 and his judgment and insight are appropriate. (Exhibit 5, pgs. 35, 38, 41, 44 and 53).
10. The medical records indicate the Appellant requires no skilled nursing services and spends most of his time outside of the facility. (Exhibit 4 and Testimony).
11. The medical records indicate that the Appellant is functionally and cognitively capable of community living and utilizing community resources, including public transportation. (Exhibit 4 and Testimony).
12. The Appellant's clinical record is signed by the Appellant's physician. (Exhibit 4, 5 and 6).
13. Physician Progress Notes dated December 02, 2025, state the Appellant "is medically and functionally stable now for discharge from nursing home" "should be able to follow up as [an] outpatient for any on going [sic] medical needs with Boston Health Care for the Homeless Program Facility" (Exhibit 12).

14. NP Progress Notes dated December 02, 2025 state “[P]atient is clinically stable with no ongoing skilled nursing needs. He demonstrates the ability to safely manage his condition(s) with routine outpatient follow-up. No safety risks identified that would require continued inpatient skilled care. Patient is appropriate for discharge from SNF level of care. Transition to outpatient services for continued medical management and therapy as indicated.” (Exhibit 13).
15. Discharge orders from facility physician dated December 02, 2025, stating the Appellant is “[M]edically Cleared for discharge to [REDACTED], may discharge with medications and services.” (Exhibit 14).

Analysis and Conclusions of Law

The Nursing Facility's action is governed by 130 CMR 610.028(A), which enumerates the valid reasons for resident transfer or discharge.² The facility relies on subsection (2) that 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.

The Appellant’s representative successfully demonstrated that the Notice of Intent to Transfer contained several procedural deficiencies including 130 CMR 610.028(C)(9) (incorrect legal services contact) and 130 CMR 610.028(C)(10) (unavailable contact person).³ The purpose of the

² 130 CMR 610.028: Notice Requirements Regarding Actions 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 MassHealth agency or Medicare pay for) a stay at the nursing facility; ...(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...** .

³ Prior to a transfer the nursing facility must notify the resident of the impending action by reasonable and appropriate notice. 130 CMR 610.028(C) lists specific notice requirements for a nursing facility transfer or discharge. This regulation states, in relevant part, that 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 that the member understands, the following: (1) the action to be taken by the nursing facility; (2) the specific reason or reasons for the discharge; (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 the right to request a hearing... (6) the name, address, telephone number of the local long-term-care ombudsman office;... (7) for nursing facility residents with developmental disabilities, the address and telephone numbers of the agency responsible for the protection and advocacy of developmentally disabled individuals 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 numbers of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy of the Mentally Ill Individuals (42 U.S.C. §10801 et seq.); (9) a statement that all residents may seek legal services and that free legal assistance may be available through their local

regulations is to ensure due process and provide the resident with the opportunity to appeal. 130 CMR 610.032(C) indicates that failure to comply with the notice provisions may result in denial of the facility's transfer/discharge request; however, because the Appellant was represented by the appropriate legal counsel [REDACTED] began representing the Appellant on October 01, 2025) and was able to fully participate in the hearing on November 09, 2025 as well as given the opportunity to supplement the record after reviewing all the Appellant's medical records (November 19, 2025 and December 05, 2025), the procedural defect was cured, and no prejudice resulted. I find that the Appellant's due process rights were not substantially impaired, making the defects insufficient grounds to nullify the substantively justified discharge.

The facility must also meet its burden of proof on this substantive ground for discharge. The determination rests on whether the Appellant meets the criteria for nursing facility level of care. According to 130 CMR 456.408, Nursing Facility Level of Care is defined as a level of care that requires 24-hour nursing supervision and intervention. Furthermore, 130 CMR 456.409(B)(1) requires the resident to need at least one of the following on a daily basis: skilled nursing services, skilled rehabilitative services, or other specified complex care. The clinical record signed by the facility physician clearly demonstrates that the Appellant is medically stable, functionally independent with all ADLs, and no longer requires daily skilled nursing services or continuous 24-hour supervision. While the Appellant's representative argues the Appellant in the past year has had multiple hospitalizations for respiratory and heart failure, wound care, falls, sepsis, pneumonia, COVID complications and that he underwent surgery on the left leg on [REDACTED], and may require additional vascular surgery in [REDACTED]; currently the medical evidence indicates he is at baseline and is receiving no skilled nursing care. The Appellant's current needs for chronic pain management are manageable on an outpatient basis and do not, in isolation, satisfy the requirement for nursing facility level of care under MassHealth regulations as confirmed by the MassHealth screening of October 21, 2025 (which requires prior to issuance an in person physical assessment as well discussion with the Appellant's physician [REDACTED]). As a result the facility's action meets the criteria under 130 CMR 610.028(A)(2).

The Appellant's counsel argues that the discharge to a homeless shelter is not a "safe and appropriate place" under M.G.L. c. 111, §70E, especially in light of lack of bed availability. The facility's discharge planning duty is defined by federal regulation 42 CFR §483.15(c), which requires the facility to assist the resident in finding an appropriate setting and providing referrals, including providing necessary information and counseling, but it does not require the facility to guarantee the availability of housing or community placement. The determination of "safe and appropriate" under M.G.L. c. 111, §70E is primarily based on the destination's capacity to meet the resident's clinical and functional needs. Given the Appellant's functional independence, a non-institutional setting is clinically appropriate. The facility satisfied its duty to assist by

legal services office, 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.

documenting unsuccessful efforts, including their attempts to secure community placement, exploring additional rest home placements, submitting a referral to the [REDACTED] program, and discussing placement with family, before making the final referral to the [REDACTED]. The fact that the shelter may be full at the time the Appellant requires access demonstrates the limitation of community services and is not a failure of the plan itself. The facility cannot be held responsible due to the lack of available community resources. Further, to compel the facility to retain the Appellant indefinitely while he does not meet nursing facility level of care criteria would violate MassHealth regulations.

Federal and State regulations governing long term care facility discharges procedures require that the reasons for discharging a resident be documented in the resident's clinical record (See, 42 C.F.R 483.15; 940 C.M.R 4.00; 130 C.M.R. 610.028). Although the Appellant's representative argues the facility did not document the Appellant's physician [REDACTED] approval of the place of discharge in the Appellant's clinical record until December 02, 2025, which is after the Notice of Discharge that was issued on September 17, 2025, the regulations require it be documented prior to the discharge, not prior to the notice of an impending discharge.

Based on the record, I conclude that the nursing facility has complied with all applicable and relevant state and federal legal requirements, that the facility's action in this case is appropriate and reasonable, and that there is no evidence to support Appellant's appeal of the discharge.

Accordingly, this appeal must be DENIED.

Order for the Nursing Facility

The Nursing Facility may proceed with the planned discharge. Per 130 CMR 456.704(A) and 130 CMR 610.030(A), such discharge may not take place any earlier than 30 days from 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.

Brook Padgett
Hearing Officer
Board of Hearings

CC: [REDACTED]