

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2514846
Decision Date:	12/11/2025	Hearing Date:	12/03/2025
Hearing Officer:	Emily Sabo		

Appearances for Appellant:



Appearances 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
Decision Date:	12/11/2025	Hearing Date:	12/03/2025
Nursing Facility's Reps.:	Nursing Staff	Appellant's Reps.:	Pro se, sister/healthcare proxy, mother, social worker
Hearing Location:	Quincy Harbor South (Telephone)	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 October 9, 2025, [REDACTED] notified the Appellant of its plan to discharge him to a shelter in [REDACTED] on or after November 10, 2025, because "the safety of the individuals in the nursing facility was endangered due to [his] clinical or behavioral status." Exhibit 1. The Appellant filed this appeal in a timely manner on October 10, 2025. 130 CMR 610.015(B)(3) and Exhibits 1 and 2. The discharge of a nursing home resident is valid grounds for appeal. 130 CMR 610.032(C).

Action Taken by Nursing Facility

[REDACTED] (facility) notified the Appellant of its intent to discharge him because he endangered the safety of the individuals in the facility. Exhibit 1; *see also* 130 CMR 610.028(A)(3).

¹ A skilled nursing facility.

Issue

The appeal issue is whether the Respondent facility satisfied its statutory and regulatory requirements when it issued the notice of intent to discharge the Appellant.

Summary of Evidence

Documentary and Testimonial Evidence

The Respondent facility did not submit any records prior to the hearing. The hearing was held by telephone. When phoned for the hearing, the Administrator stated that he had only recently begun working at the facility and was not familiar with the circumstances relating to the discharge notice, which was enacted by the prior administrator KP,² who no longer works at the facility. Two members of the facility's nursing staff participated and provided testimony on behalf of the facility.

The Appellant's sister, who is his invoked health care proxy, testified on his behalf. The Appellant's sister testified that the Appellant is an adult under the age of [REDACTED] who has vascular dementia and has suffered from strokes. She testified that on October 6, 2025, she met with KP about the facility's concern that the Appellant was smoking in his room. The Appellant's sister testified that she did not believe that the Appellant was smoking in his room, but that she discussed a plan with KP and other facility staff, whereby the Appellant would have to turn in his cigarette butts after his outdoor smoke breaks, and that depending on his compliance, he might lose his smoke break privileges. The Appellant's sister testified that she thought the matter had been resolved.

The Appellant's sister testified that her mother would visit the Appellant on Mondays and Thursdays. The Appellant's sister testified that on October 9, 2025, she received a phone call from her mother telling her that the facility had given the Appellant a 30-day discharge notice. The Appellant's sister went to the facility and met with KP, who told her that the Appellant had scored a 13 on the Brief Interview for Mental Status (BIMS) assessment and was too young and a poor fit at the facility.³ The Appellant and his sister filed an appeal with the Board of Hearings on October 10, 2025. The Appellant's sister told KP that she would be out of the country from October 13, 2025, to October 24, 2025.

The facility's nursing staff read into the record a progress note stating that on October 15, 2025, the Appellant had been committed to a hospital under Massachusetts General Laws c. 123, section 12.⁴

² Initials used for privacy.

³ The notice states that the reason for the discharge is that Appellant endangers the safety of individuals in the facility. Exhibit 1.

⁴ In addition to not being testified to directly, I do not credit the narrative provided by the facility about the October 15, 2025, incident. It made very little sense. It involved a social worker purportedly reporting that the Appellant wanted to leave the facility voluntarily, despite a 30-day discharge process being underway, which the Appellant had

The facility representative testified that the police had been contacted and that the facility's intention was to not readmit the Appellant to the facility afterward. Upon questions from the hearing officer, the facility representative testified that the facility did not engage in discharge planning for the Appellant.

The Appellant's sister testified that she thought that the facility involuntarily committed the Appellant when they knew that she as his invoked healthcare proxy was out of the country. The Appellant's sister testified that she believed that the facility had taken these actions against the Appellant in retaliation for complaints that the Appellant and his family had made about the facility relating to theft of the Appellant's belongings by facility staff, and mistreatment of the Appellant and other facility residents. The Appellant's sister testified that she has been told that a staff member brings in alcohol and cigarettes to sell to residents. She testified that because her family visits the Appellant frequently, that they have gotten to know the other residents.

The Appellant's sister testified that it felt like the Appellant had been kidnapped and moved to a facility 2.5 hours away at [REDACTED]. She also testified that because of [REDACTED] report, other facilities will not accept the Appellant into their facilities. [REDACTED] a social worker at [REDACTED] testified that he agreed that this has been a challenge and that he has been contacting other facilities, including those that specialize in behavioral dementia, and they have stated that they will not even consider doing a re-evaluation for the Appellant in order to potentially admit him to their facilities.

Content of the Discharge Notice

The discharge notice at issue in this matter contains a statement of the action to be taken by the nursing facility, a specific statement of the reasons for the intended discharge, the location to which the Appellant is to be discharged, the effective date of the intended discharge, the right of the Appellant to request a fair hearing on the intended discharge, the address, telephone number and fax number of the Board of Hearings, the time frame for requesting a hearing, the effect of requesting a hearing as provided for under 130 CMR 610.030 (that the facility cannot discharge the Appellant until 30 days after the hearing officer's decision is rendered), the name of the person at the facility who can answer any questions about the discharge notice and about the right to file an appeal, the name and address of the local legal-services office, the name and address of the local long-term care ombudsman program, and the mailing addresses and telephone numbers of the agencies responsible for the protection and advocacy of mentally ill individuals, and the protection and advocacy for developmentally disabled individuals. Exhibits 1 & 2.

Findings of Fact

just appealed. It also involved the social worker purportedly deciding to conduct a capacity assessment on the Appellant despite a physician previously invoking his healthcare proxy, stating that the Appellant was alert and oriented but upset, and then requesting to search the Appellant's room, and alleging that the Appellant had "shanks" in his room and made threats against the staff.

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

1. The Appellant is under the age of [REDACTED] and has vascular dementia and has suffered from strokes. Testimony.
2. The Appellant's sister is his invoked healthcare proxy. Testimony.
3. On October 6, 2025, the Appellant's sister met with staff at the facility and discussed a plan whereby the Appellant would have to turn in his cigarette butts after his outdoor smoke breaks, and that depending on his compliance, he might lose his smoke break privileges.
4. On October 9, 2025, the facility notified the Appellant that it intended to discharge him to a shelter on or after November 10, 2025, because the safety of the individuals in the nursing facility is endangered by his clinical or behavioral status. Exhibit 1.
5. The discharge notice contains the action to be taken by the nursing facility, a specific statement of the reasons for the intended discharge, the location to which the Appellant is to be discharged, the effective date of the intended discharge, the right of the Appellant to request a fair hearing on the intended discharge, the address, telephone number and fax number of the Board of Hearings, the time frame for requesting a hearing, the effect of requesting a hearing as provided for under 130 CMR 610.030 (that the facility cannot discharge the appellant until 30 days after the hearing officer's decision is rendered), the name of the person at the facility who can answer any questions about the discharge notice and about the right to file an appeal, the name and address of the local legal-services office, the name and address of the local long-term care ombudsman program, and the mailing addresses and telephone numbers of the agencies responsible for the protection and advocacy of mentally ill individuals, and the protection and advocacy for developmentally disabled individuals. Exhibit 1.
6. On October 10, 2025, the Appellant and his sister timely appealed the discharge notice with the Board of Hearings. Exhibits 1 and 2.
7. The Appellant's sister notified the facility that she would be out of the country October 13, 2025, to October 24, 2025. Testimony.
8. On October 15, 2025, the facility had the Appellant committed to a hospital under Massachusetts General Laws c. 123, section 12 and stated they would not readmit him. Testimony.
9. The facility has not engaged in discharge or transfer planning for the Appellant. Testimony,

10. The facility did not submit any supporting records prior to hearing.

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 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.

130 CMR 610.028: Notice Requirements Regarding Actions Initiated by a Nursing Facility⁵

- (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; 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 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).
- (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 the following, in a language the member understands:
- (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

⁵ See also 130 CMR 456.701.

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.

130 CMR 610.028(A), (B), (C).

Pursuant to 130 CMR 610.029(A), the notice of discharge or transfer required under 130 CMR 610.028 must be made by the nursing facility at least 30 days before the date the resident is to be discharged or transferred, except as provided for under 130 CMR 610.029(B) and (C) when the discharge is being made on an emergency basis. *See also* 130 CMR 456.702(A).

Massachusetts General Laws (MGL) c. 111, §70E states in relevant part:

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.**

MGL c. 111, §70E (emphasis added)

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). Federal regulations also provide that when

the facility anticipates discharge a resident must have a discharge summary that

includes but is not limited to . . . A post-discharge plan of care that is developed with the participation of the resident and, with the resident's consent, the resident representative(s), which will assist the resident to adjust to his or her new living environment. The post-discharge plan of care must indicate where the individual plans to reside, any arrangements that have been made for the resident's follow up care and any post-discharge medical and non-medical services.

42 CFR 483.21(c)(2)(iv).

940 CMR 4.09 provides that :

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.

940 CMR 4.09(6), (7).

Here, the facility has alleged that the safety of individuals in the facility is endangered. 130 CMR 456.701(A)(3); 130 CMR 610.028(A)(3). If proven, this would be an acceptable reason for a discharge. Regardless, in the present case, the facility did not meet the regulatory procedures required for an appropriate discharge. There was no clinical record for the Appellant documented by a physician as required by regulation. 130 CMR 456.701(B)(2); 130 CMR 610.028(B)(2). Accordingly, this appeal is APPROVED to ensure that the facility acts in compliance with the law and regulations governing a nursing home discharge.

Additionally, federal regulations require that a nursing facility provide and document sufficient preparation and orientation to ensure a safe and orderly discharge, and that this orientation be provided in a form and manner that the resident can understand. 42 CFR 483.15(c)(7). Based on the testimony at the hearing, this did not occur. I also draw a negative inference from the facility discharging and failing to readmit the Appellant prior to the November 10, 2025 date listed in the notice, and the 30-days after the Board of Hearings has issued a decision as provided for by 130 CMR 610.030 and the notice. Exhibit 1. Documented violations of a smoking policy can be an acceptable reason for a discharge, due to a concern about the safety of the facility's other residents. The facility may issue proper notice and take proper action, so long as it does so and engages in safe discharge planning.

Order for Nursing Facility

Rescind the discharge notice issued on October 9, 2025, and readmit the Appellant to the next available bed at the facility.

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.

Emily Sabo
Hearing Officer
Board of Hearings

[REDACTED]

[REDACTED]