

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



|                         |                |                        |            |
|-------------------------|----------------|------------------------|------------|
| <b>Appeal Decision:</b> | Approved       | <b>Appeal Number:</b>  | 2517247    |
| <b>Decision Date:</b>   | 12/3/2025      | <b>Hearing Date:</b>   | 12/01/2025 |
| <b>Hearing Officer:</b> | Patrick Grogan | <b>Record Open to:</b> | N/A        |

**Appearance for Appellant:**



**Appearance for Nursing Facility:**



**Interpreter:**

N/A



*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

|                                  |              |                          |   |
|----------------------------------|--------------|--------------------------|---|
| <b>Appeal Decision:</b>          | Approved     | <b>Issue:</b>            | Expedited Nursing Facility Discharge, Improved Health |
| <b>Decision Date:</b>            | 12/3/2025    | <b>Hearing Date:</b>     | 12/01/2025  |
| <b>Nursing Facility's Reps.:</b> | [REDACTED]   | <b>Appellant's Rep.:</b> | [REDACTED]  |
| <b>Hearing Location:</b>         | Remote (Tel) | <b>Aid Pending:</b>      | 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 November 20, 2025, [REDACTED] (hereinafter "the nursing facility" or "facility") issued a Less than 30 Day Notice of Intent to Transfer Resident to [REDACTED] (hereinafter "discharge location") for the specific reason: "the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility." (130 CMR 456.701, 130 CMR 610.029(B), Exhibit 1). The Appellant filed this appeal in a timely manner on November 21, 2025. (130 CMR 610.015(F), Exhibit 2). Notice of transfer or discharge from a nursing facility is valid grounds for appeal. (130 CMR 456.703, 130 CMR 610.032(C)).

## Action Taken by Facility

The nursing facility issued a Less than 30 Day Notice of Intent to Transfer Resident to [REDACTED] (hereinafter "the discharge location") for the specific reason: "the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility." (130 CMR 456.701, 130 CMR 610.029(B), Exhibit 1)

## Issue

The appeal issue is whether the nursing facility was correct, pursuant to 130 CMR 456.701, in notifying the Appellant of its intent to discharge because “the resident’s health has improved sufficiently so the resident no longer needs the services provided by the facility.” (130 CMR 456.701, Exhibit 1)

## Summary of Evidence

The nursing facility was represented telephonically at the hearing by a social worker and its director of nursing, who testified as follows: The Appellant no longer requires the skilled services of the facility. (Testimony, Exhibit 4). The facility stated that the Appellant’s insurance would no longer cover the Appellant’s stay at the facility, prompting the discharge action. (Testimony) The Notice lists a discharge location, but no street address is furnished. (Exhibit 1) The facility stated that the Appellant refused to provide a specific street address.(Testimony) The facility pointed to a note within the Appellant’s medical records indicating that the Appellant has applied for alternate housing and “has been deemed medically stable and cleared for safe discharge whenever he is accepted.” (Testimony, Exhibit 4, pg.24) After discussion among representatives of the facility, the social worker conceded that this note was electronically signed by a nurse practitioner, not the Appellant’s primary care physician, nor any physician. (Testimony, Exhibit 4, pg. 24) No confirmation was provided that the Appellant had been accepted to any of the locations where he has applied. (Testimony) Although there is a notation that the facility aided the Appellant in scheduling an appointment with his primary care physician, there is no documentation from the Appellant’s primary care physician. (Exhibit 4)

The facility representatives highlighted a multitude of locations and services in various communities for which they helped the Appellant apply and for which they provided contact information to the Appellant. (Testimony, Exhibit 4, pgs. 9-13) These locations include sober houses in various places throughout [REDACTED] (Exhibit 4, pgs. 9-13) Additionally, the facility provided the Appellant telephone contact information for substance support groups. (Exhibit 4, pgs. 9-13) In response to inquiry posed regarding preparation for the transfer, the facility pointed to a note indicating that as of November 17, 2025, the Appellant indicated he was unsure to where he would be discharged and had been working on it. (Testimony, Exhibit 4, pg. 15) No further information regarding the appropriateness of the discharge location, nor any preparation provided to the Appellant regarding this discharge location, was presented at Hearing. (Testimony, Exhibit 4)

The Appellant testified that he had applied to various residences. (Testimony) The Appellant indicated that he needed to find a location to support his sobriety, such as a transitional support services location (TSS). (Testimony) The Appellant confirmed that he was

seeking to remain at the facility while he obtained suitable residence for discharge. (Testimony)

## Findings of Fact

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

1. Through a Notice dated November 20, 2025, the facility issued a Less than 30 Day Notice of Intent to Transfer Resident to [REDACTED] for the specific reason: “the resident’s health has improved sufficiently so the resident no longer needs the services provided by the facility.” (130 CMR 456.701, 130 CMR 610.029(B); Exhibit 1).
2. The nursing facility testified that the Appellant no longer requires the skilled services of the facility. (Testimony)
3. The listed discharge location does not provide a specific street address. (Exhibit 1)
4. Contained within the Appellant’s medical records is a note authored by a nurse practitioner stating that the Appellant has applied for alternate housing and “has been deemed medically stable and cleared for safe discharge whenever he is accepted.” (Testimony, Exhibit 4, pg.26) This note is signed by a nurse practitioner.
5. No confirmation was provided that the Appellant had been accepted to any of the locations where he has applied. (Testimony)
6. Regarding preparation for the transfer, the facility pointed to a note indicating that as of November 17, 2025, the Appellant indicated he was unsure where he would be discharged and had been working on it. (Testimony, Exhibit 4, pg. 15) No further information regarding the appropriateness of the discharge location, nor any preparation provided to the Appellant regarding this discharge location, was presented at Hearing. (Testimony, Exhibit 4)

## 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.<sup>1</sup>

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<sup>1</sup> The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.000 et seq. has regulations which are identical (or nearly identical) to counterpart regulations found within the Commonwealth’s Fair Hearing Rules at 130 CMR 610.001 et seq. as well as corresponding federal government regulations. Because

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, as codified within 130 CMR 456.701(C):

- (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. 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.

Further, the notice requirements set forth in 130 CMR 456.701(A) state that 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

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of such commonality, the remainder of regulation references in this Fair Hearing decision will only refer to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000 unless otherwise noted and required for clarification.

- 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.

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. Pursuant to 130 CMR 456.701(B), the documentation must be made by:

- (1) the resident's physician when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and
- (2) a physician when the transfer or discharge is necessary under 130 CMR 456.701(A)(3) or (4).

130 CMR 456.702: Time Frames for Notices Issued by Nursing Facilities:<sup>2</sup>

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<sup>2</sup> See also 130 CMR 610.029: Time Frames for Notices Issued by Nursing Facilities

(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).

(B) In lieu of the 30-day-notice requirement set forth in 130 CMR 610.029(A), the notice of discharge or transfer required under 130 CMR 610.028 must be made as soon as practicable before the discharge or transfer in any of the following circumstances, which are considered to be 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. (emphasis added)
- (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 lived in the nursing facility for 30 days immediately before 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: *Medical Leave of Absence: Failure to*

(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 456.704: 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 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.

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*Readmit*, must comply with the requirements set forth in 130 CMR 456.701: *Notice Requirements for Transfers and Discharges Initiated by a Nursing Facility*, and must be provided to the resident and an immediate family member or legal representative, if such person is known to the nursing facility, at the time the nursing facility determines that it will not readmit the resident.

(D) Appeals of discharges and transfers listed in 130 CMR 610.029(B) and (C) are handled under the expedited appeals process described in 130 CMR 610.015(F).

(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 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.<sup>3</sup>

Here, the nursing facility issued a Less than 30 Day Notice of Intent to Transfer Resident for the specific reasons: "the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility." (130 CMR 456.701; 130 CMR 610.029(B); Exhibit 1)

This Notice does not meet the regulatory requirements as outlined in 130 CMR 456.701(C). (Exhibit 1, Exhibit 4) The Notice lists a street, with no street address, nor any zip code. (Exhibit 1) Although the facility indicated the Appellant refused to provide the specific information related to the transfer location, this information regarding the Appellant's refusal to provide the information does not appear within the submitted evidence on behalf of the facility. (Exhibit 4) Furthermore, within the Regulations highlighted supra, there is no exception listed for a facility to provide a street name, only. The Regulation requires "the location to which the resident is to be discharged or transferred" and this Notice does not provide the specific location to which the Appellant is to be discharged. (Exhibit 1, 130 CMR 456.701(C)(4))

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<sup>3</sup> 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.

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. Pursuant to 130 CMR 456.701(B), the documentation must be made by the resident's physician when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2). Here, the Appellant's clinical record is documented by a nurse practitioner, not a physician. (Exhibit 4, pg. 24) The Regulations require the documentation must be made by a physician, which is lacking in this Record. (Exhibit 5) Additionally, the nurse practitioner's note indicated that the Appellant "has been deemed medically stable and cleared for safe discharge whenever he is accepted." (Testimony, Exhibit 4, pg. 24) The way this note is worded appears to highlight the Appellant's "medically stable" condition which clears the Appellant for "safe discharge whenever he is accepted." (Exhibit 4, pg. 24) No information that the Appellant has been accepted was provided in this Record. (Exhibit 4)

In addition to documentation from a physician, the facility has specific regulatory requirements that must be met before an Appellant may be discharged. Specifically, the facility must also comply with G.L. c. 111, § 70E. Per this statutory provision, before a nursing facility may discharge a resident, it must ensure safe and orderly transfer or discharge from the facility to another safe and appropriate place. No testimony was offered regarding the appropriateness of the discharge location. The location lists a street, and no street address, for discharge. (Exhibit 1) Although there are various records within the facility's submission (Exhibit 4), lacking is any information related to the appropriateness of the location to which the facility seeks to discharge the Appellant. Also lacking is documentation regarding any preparation or orientation provided to the Appellant related to the specific location to which the Appellant is to be discharged. (Exhibit 4) This Record does not provide the requisite information as required by the Regulations and G.L. c. 111, § 70E.

Where the Notice lists only a street, and not a specific street address, the Notice does not provide the Appellant with a specific location to which the resident is to be discharged or transferred. (130 CMR 456.701(C)(4)) Where the Appellant's medical record is not signed by his primary care physician, nor a physician, but rather a nurse practitioner, the attempt to discharge the Appellant runs afoul of the Regulations. (130 CMR 456.701(B)) Where this Record lacks any supporting documentation regarding the appropriateness of the discharge location, or any preparation or orientation provided to the Appellant, the attempt to discharge runs afoul of G.L. c. 111, § 70E. On this Record, the Appellant has shown, by a preponderance of evidence, that the facility is not in compliance with the specific dictates of 130 CMR 456.701(C)(4), 130 CMR 456.701(B), and G.L. c. 111, § 70E. Accordingly, this appeal is APPROVED.

## **Order for Nursing Facility**

Rescind the Less than 30 Day Notice of Intent to Transfer Resident dated November 20, 2025.

## **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.

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Patrick M. Grogan  
Hearing Officer  
Board of Hearings

