

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**

[REDACTED]

|                         |            |                       |            |
|-------------------------|------------|-----------------------|------------|
| <b>Appeal Decision:</b> | Approved   | <b>Appeal Number:</b> | 2517827    |
| <b>Decision Date:</b>   | 1/12/2026  | <b>Hearing Date:</b>  | 12/29/2025 |
| <b>Hearing Officer:</b> | Emily Sabo |                       |            |

**Appearances for Appellant:**

[REDACTED]

**Appearances for Nursing Facility:**

Miatta Osagi, Administrator; [REDACTED]  
Director of Social Services; [REDACTED] Social  
Worker



*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>             | Nursing Facility Discharge; Improved Health |
| <b>Decision Date:</b>            | 1/12/2026  | <b>Hearing Date:</b>      | 12/29/2025                                  |
| <b>Nursing Facility's Reps.:</b> | [REDACTED]                                       | <b>Appellant's Reps.:</b> | [REDACTED]                                  |
| <b>Hearing Location:</b>         | Taunton MassHealth Enrollment Center (Telephone) | <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 December 3, 2025, [REDACTED] notified the Appellant of its plan to discharge him to a shelter in [REDACTED] MA<sup>2</sup> on or after [REDACTED] 2026, because his health had improved sufficiently so that he no longer needed the services provided by the facility. Exhibit 1. The Appellant filed this appeal in a timely manner on December 3, 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

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<sup>1</sup> A skilled nursing facility.

<sup>2</sup> The proposed discharge location is hand-written, and at the hearing, the facility staff clarified that the town that was written was an abbreviation for [REDACTED] Exhibit 1.



Appellant's sister and uncle in discussion, including about proposed discharge planning, and that the facility has refused to do so.

During the hearing, the facility requested leave to submit additional materials before the close of the appeal record. The hearing officer denied the request on the grounds that the hearing officer and the Appellant and the Appellant's attorney would need to review the material and then reconvene the hearing.

### **Content of the Discharge Notice**

The discharge notice states that it is a 30-day discharge notice; however, the proposed discharge date is 29 days after the date of notice and elsewhere in the notice it states that it is less than a 30-days-notice of transfer. Exhibit 1 at 1-3.

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**

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

1. On December 3, 2025, the facility notified the Appellant that it intended to discharge him to a multiservice agency with a shelter in ██████████ Massachusetts on or after ██████████ 2026. Testimony, Exhibit 1.
2. 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.

3. On December 3, 2025, the Appellant timely appealed the discharge notice with the Board of Hearings. Exhibit 2.
4. The Appellant has a history of substance abuse and has been sober for [REDACTED] years. Testimony.
5. The proposed discharge location is a "wet" shelter that allows residents to use substances there. Testimony.
6. The facility has not engaged in discharge planning for the Appellant. Testimony.
7. The facility did not submit supporting records prior to the 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 Facility<sup>3</sup>

- (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

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<sup>3</sup> See also 130 CMR 456.701.

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 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). As relevant here, 130 CMR 610.029(B)(2) provides that “[i]n lieu of the 30-day-notice requirement . . . the notice of discharge . . . 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. . . . 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.”

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 Appellant's health has improved such that he does not need the services of the facility. 130 CMR 456.701(A)(2); 130 CMR 610.028(A)(2). 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); *see also* 130 CMR 610.029(B)(2); 130 CMR 456.702(B)(2).

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 note that it did not involve the Appellant's family as provided for in law. 42 CFR 483.21(c)(2)(iv); 940 CMR 4.09(6), (7). Because the Appellant obtained legal representation prior to the hearing, if in the future, the facility proceeds with notice to discharge the Appellant, if the Appellant consents, the facility is also obligated to consult with the Appellant's attorney as his legal representative in such planning.

Accordingly, this appeal is APPROVED to ensure that the facility acts in compliance with the law and regulations governing a nursing home discharge.

## **Order for Nursing Facility**

Rescind the discharge notice issued on December 3, 2025. Do not discharge the Appellant pursuant to this notice.

## **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.

## 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.

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Emily Sabo  
Hearing Officer  
Board of Hearings

[REDACTED]

[REDACTED]

[REDACTED]