

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

[REDACTED]

| | | | |
|-------------------------|-----------------|-----------------------|------------|
| Appeal Decision: | Denied | Appeal Number: | 2517937 |
| Decision Date: | 12/12/2025 | Hearing Date: | 12/11/2025 |
| Hearing Officer: | Thomas J. Goode | | |

Appearance for Appellant:

Pro se

Nursing Facility Representatives:

[REDACTED], Administrator
[REDACTED] Social Worker
[REDACTED], Nurse Practitioner
[REDACTED] Charge Nurse



*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: | Denied | Issue: | Nursing Facility Discharge-Improved Health |
| Decision Date: | 12/12/2025 | Hearing Date: | 12/11/2025 |
| Nursing Facility's Reps.: | [REDACTED] et al. | Appellant's Rep.: | Pro se |
| Hearing Location: | Remote | 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

On December 3, 2025, [REDACTED] ("the nursing facility") issued a "Notice of Intent to Discharge/Transfer Resident With Less than 30 Days' Notice (Expedited Appeal)" to Appellant's home on December 4, 2025 because "the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility" (130 CMR 610.028, 610.029, 456.701, 456.702 and Exhibit 1). On December 5, 2025, Appellant timely faxed to the Board of Hearings a request to appeal the December 3, 2025 "Notice of Intent to Discharge/Transfer Resident With Less than 30 Days' Notice (Expedited Appeal) (Exhibit 1)." ¹ A Notice of Intent to

¹ 130 CMR 610.015(F) Expedited Appeals for Discharges and Transfers from a Nursing Facility Under 130 CMR 610.029(B) or (C). A resident may request an expedited appeal when a nursing facility notifies a resident of a discharge or transfer under the time frames of 130 CMR 610.029(B) or (C). When such a request is made, BOH will schedule a hearing as soon as possible, but no later than seven days from the date BOH receives the request. The hearing officer must render a final decision as soon as possible, but no later than seven days from the date of the hearing. These time limits may be extended pursuant to 130 CMR 610.015(D). Appeal requests made under 130 CMR 610.015(F) automatically waive the requirement for ten-day advance notice of the scheduled hearing date under 130 CMR 610.046(A).

Discharge/Transfer Resident With Less than 30 Days' Notice because "the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility" is valid grounds for appeal (130 CMR 610.015(B)).

Action Taken by the Nursing Facility

On December 3, 2025, [REDACTED] ("the nursing facility") issued a "Notice of Intent to Discharge/Transfer Resident With Less than 30 Days' Notice (Expedited Appeal)" to Appellant's home because "the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility."

Issue

The hearing issue is whether Marlborough Hills Rehab & Health Care Center issued proper "Notice of Intent to Discharge/Transfer Resident With Less than 30 Days' Notice (Expedited Appeal)" to Appellant's home on December 4, 2025, and whether the nursing facility is correct in seeking to discharge Appellant because "the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility."

Summary of Evidence

The nursing facility was represented by the administrator, a social worker, charge nurse, and a physician assistant all of whom appeared by telephone. On December 3, 2025, [REDACTED] ("the nursing facility") issued a "Notice of Intent to Discharge/Transfer Resident With Less than 30 Days' Notice (Expedited Appeal)" to Appellant's home because "the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility." Appellant is a [REDACTED] female with diagnoses including [REDACTED]

[REDACTED] (Exhibit 4, p. 28). The nursing facility representatives testified that Appellant was admitted to the nursing facility on [REDACTED] from [REDACTED] for short term care for administration of intravenous antibiotics to treat [REDACTED]. Appellant has been screened eligible by MassHealth for short term nursing facility placement through January 6, 2026. The treatment course with intravenous antibiotics was completed on November 19, 2025. Appellant was also receiving physical therapy and occupational therapy services from which she was discharged on November 5, 2025 (Exhibit 4, pp. 5-11). Appellant's goal was to be discharged to her home in the community. Discharge planning to Appellant's former home was initiated on December 2, 2025. The nursing facility issued the discharge notice on December 3, 2025 because Appellant refused to leave the facility with arranged transportation. The nursing facility representatives testified that Appellant no longer has a skilled need and does not require nursing facility services as determined by

Appellant's physician at the nursing facility, [REDACTED], who documented that Appellant is medically cleared for discharge to her former home but declined to be discharged at the previously agreed upon time. [REDACTED] documented in Appellant's medical record that intravenous antibiotics have been completed, her pain is well controlled on medications, she is taking Bactrim prophylaxis due to a low CD4 count and has scheduled follow-up appointments with her PCP on [REDACTED] and with Infectious Disease on [REDACTED]. [REDACTED] also documented in Appellant's medical record that her lab work on November 29, 2025 was unremarkable and that Appellant is "medically stable for discharge and to follow up with PCP, ID, and neurosurgery on outpatient basis for continuity of care." (Exhibit 4, p.16). Appellant is currently taking Oxycodone for pain management, which will be tapered and discontinued before discharge (Id., p. 30). The nursing facility representatives testified that that illicit substances and needles have been found in Appellant's room on multiple occasions (Id, p. 28), and the facility attempted to arrange a transfer to a substance abuse facility, which Appellant declined and expressed her plan to be discharged to her home (Id., p. 31). The facility representatives added that a Visiting Nurse referral will be initiated on discharge.

Appellant testified that she feels her medical conditions have gotten worse since she was admitted to the nursing facility, which she attributed to being administered expired antibiotics. She added that she was scheduled to be seen by an infectious disease doctor and a neurologist outside the facility, and both appointments were cancelled. Appellant stated that she now uses a walker to ambulate and is in constant pain. She added that she went to the emergency department two weeks ago and was started on oral antibiotics (Bactrim). She confirmed that the address listed as the discharge destination on the December 3, 2025 notice is her apartment where she lives with a roommate. Appellant added that she feels she is not medically stable for discharge, and that she should be cleared by the infectious disease physician before leaving the facility.

Findings of Fact

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

1. On December 3, 2025, [REDACTED] ("the nursing facility") issued a "Notice of Intent to Discharge/Transfer Resident With Less than 30 Days' Notice (Expedited Appeal)" to Appellant's home because "the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility."
2. Appellant is a [REDACTED] [REDACTED] (Exhibit 4, p. 28).
3. Appellant was admitted to the nursing facility on [REDACTED]

- ██████████ for short term care for intravenous antibiotics to treat ██████████.
4. Appellant has been screened eligible by MassHealth for short term nursing facility placement through January 6, 2026.
 5. The treatment course with intravenous antibiotics was completed on November 19, 2025.
 6. Appellant was receiving physical therapy and occupational therapy services from which she was discharged on November 5, 2025 (Exhibit 4, pp. 5-11).
 7. Discharge planning to Appellant's former home was initiated on December 2, 2025. The nursing facility issued the discharge notice on December 3, 2025 because Appellant refused to leave the facility.
 8. Appellant no longer has a skilled need and does not require nursing facility services as determined by Appellant's physician at the nursing facility, ██████████, who documented that Appellant is medically cleared for discharge to her former home but declined to be discharged at the agreed upon time.
 9. ██████████ documented in Appellant's medical record that intravenous antibiotics have been completed, her pain is well controlled on medications, she is taking Bactrim prophylaxis due to a low CD4 count and has scheduled follow-up appointments with her PCP on ██████████ and with Infectious Disease on ██████████. ██████████ documented in the medical record that Appellant's lab work on November 29, 2025 was unremarkable and that Appellant is "medically stable for discharge and to follow up with PCP, ID, and neurosurgery on outpatient basis for continuity of care." (Exhibit 4, p.16).
 10. Appellant is currently taking Oxycodone for pain management, which will be tapered and discontinued before discharge (Id., p. 30).
 11. Medical records document that illicit substances and needles have been found in Appellant's room on multiple occasions (Id, p. 28).
 12. The nursing facility attempted to arrange a transfer to a substance abuse facility, which Appellant declined and expressed her plan to be discharged to her home (Id., p. 31).
 13. A Visiting Nurse referral will be initiated on discharge.
 14. The discharge destination identified on the discharge notice is Appellant's apartment where she lives with a roommate.

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.²

456.701: Notice Requirements for Transfers and Discharges 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 MassHealth 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 456.701(A)(1) through (4), the resident's clinical record must contain documentation to explain the transfer or discharge. The documentation must be made by
- (1) the resident's physician or PCP when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and
 - (2) a physician or PCP when the transfer or discharge is necessary under 130 CMR 456.701(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 the authorized or legal representative 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;

² The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.701 et seq. is identical (or nearly identical) to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq.

- (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 their right to request a hearing before MassHealth'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.

130 CMR 456.702: Time Frames for Notices Issued by Nursing Facilities:

(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)³, 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.

(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.

³ See 130 CMR 456.703: Time Frames for Submission of Requests for Fair Hearings

(A) Appeals of discharges and transfers will be handled by MassHealth's Board of Hearings (BOH) pursuant to 130 CMR 610.000: *MassHealth: Fair Hearing Rules*.

(B) Time Limitation on the Right of Appeal. The date of request for a fair hearing is the date on which BOH receives such a request in writing. BOH must receive the request for a fair hearing within the following time limits:

(1) 30 days after a resident receives written notice of a discharge or transfer pursuant to 130 CMR 456.702(A); or

(2) 30 days after a nursing facility initiates a transfer or discharge or fails to readmit and fails to give the resident notice; or

(3) 14 days after a resident receives written notice of an emergency discharge or emergency transfer pursuant to 130 CMR 456.702(B); or

(4) 14 days after a resident receives written notice 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.

(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:

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.⁴

On December 3, 2025, [REDACTED] ("the nursing facility") issued a "Notice of Intent to Discharge/Transfer Resident With Less than 30 Days' Notice (Expedited Appeal)" to Appellant's home "because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility" (Exhibit 1). The notice provides the required information concerning the discharge and complies with regulatory requirements outlined at 130 CMR 450.701(C). While the notice states "home" as the discharge destination, the notice also identifies the correct address of Appellant's apartment in the community which Appellant confirmed. The notice must be treated as an emergency transfer, and triggers specific regulatory timeframes and requirements outlined above.

A nursing facility resident can only be discharged for specific reasons also outlined above. The applicable regulations require that when initiating a discharge with less than 30-days' notice because a resident's health improves sufficiently to allow a more immediate transfer or discharge, the resident's attending physician must document the resident's record. Appellant's attending physician [REDACTED] documented in Appellant's medical record that intravenous antibiotics have been completed, her pain is well controlled on medications, she is taking Bactrim prophylaxis due to a low CD4 count and has scheduled follow-up appointments with her PCP on 12/10/2025, and with Infectious Disease on 12/18/2025. [REDACTED] documented in the medical record that Appellant's lab work on November 29, 2025 was unremarkable and that Appellant is "medically stable for discharge and to follow up with PCP, ID, and neurosurgery on outpatient basis for continuity of care." (Exhibit 4, p.16). The evidence and testimony show that the treatment course with intravenous antibiotics was completed on November 19, 2025 and Appellant was discharged from physical therapy and occupational therapy services on November 5, 2025 (Exhibit 4, pp. 5-11). The nursing facility will arrange VNA services in the community and has otherwise provided

⁴ 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.

sufficient preparation and orientation to ensure a safe and orderly discharge from the facility to Appellant's apartment identified on the December 3, 2025 discharge notice. The testimony and evidence in the hearing record supports the conclusion that the discharge plan is safe and appropriate.

The appeal is DENIED.

Because the nursing facility issued a notice of intent to discharge with less than 30 days' notice, and Appellant's request for an appeal was received within 30 days of the nursing facility initiated transfer or discharge as described at 130 CMR 456.703(B)(2), pursuant to 130 CMR 456.704(B), the nursing facility must stay the discharge for 5 days from the date of the hearing decision.

Order for the Nursing Facility

Proceed with the discharge plan to Appellant's address identified on the notice dated December 3, 2025, no sooner than 5 days from the date of this hearing decision.

Compliance with this Decision

If the nursing facility fails to comply with the above order, you should report this in writing to the Director of the Board of Hearings, 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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc: [REDACTED]