

**Office of Medicaid
BOARD OF HEARINGS**

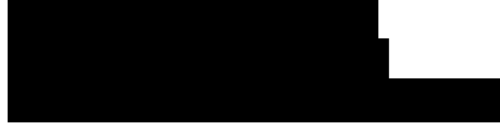
Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2517944
Decision Date:	1/8/2026	Hearing Date:	12/22/2025
Hearing Officer:	Christine Therrien		


Appearance for Appellant:
Pro se

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*

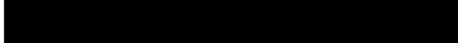
APPEAL DECISION

Appeal Decision:	Approved	Issue:	NF – 30 Day Discharge
Decision Date:	1/8/2026	Hearing Date:	12/22/2025
Nursing Facility's Reps.:		Appellant's Rep.:	Pro se
Hearing Location:	Tewksbury MassHealth Enrollment Center Telephonic		

Authority

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

Jurisdiction

Through a 30-Day Notice of Intent to Transfer/Discharge Resident, dated 12/4/25, the appellant was notified that  intends to discharge the appellant to his estranged wife's home on 1/3/25. The notice states that the reason for the discharge is that "per the facility smoking policy, you violated the safety of the individuals in the facility and the health of individuals in the nursing facility would otherwise be endangered." (Exhibit 1). The appellant filed a timely appeal on 12/4/25. (130 CMR 610.015(B); Exhibit 2). 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 Nursing Facility

The facility intends to discharge the appellant from the nursing facility.

Issue

The appeal issue is whether the nursing facility was correct, pursuant to 130 CMR 610.028, in determining that the safety of the individuals in the facility is endangered due to the clinical or behavioral status of the appellant resident and, therefore, he should be discharged.

Summary of Evidence

The nursing facility (NF) administrator testified that the appellant, who is in his [REDACTED] was admitted to the facility on [REDACTED] because of his COPD. The nursing facility administrator testified that the appellant has had an ongoing issue following the smoking policy, as documented in the progress notes. (Exhibit 5, pp. 4-35 and pp. 44-48).¹ The NF administrator testified that the appellant continually violates the smoking policy by not locking up his lighters.² The NF administrator testified that the appellant had an appeal hearing in July of 2024, and at that hearing, the appellant agreed to follow the smoking policy. The appellant signed the Smoking Policy on 7/12/25. (Exhibit 5, pp. 45-47). The NF administrator testified that the appellant is allowed to manage his own smoking paraphernalia, but he does not lock up his lighters, which is a danger to other residents. The NF administrator testified that the appellant's independent smoking privileges were taken away. The NF administrator testified that the appellant is diabetic and able to administer his insulin himself. The Clinical Coordinator testified that the appellant's leg wound would be healed by the discharge date, and he would qualify for a visiting nurse who could also assist with medication management. The NF administrator testified that they have not gone over a discharge plan with the appellant yet and are waiting until after this hearing. The NF administrator testified that the discharge location is the appellant's wife's home, from which he has been estranged, but she visits him at the NF. The NF administrator testified that the NF has not been able to connect with the wife by telephone to discuss the discharge.

When asked why the appellant did not want to be discharged to his wife's home, the appellant testified that she does not have a home. The appellant testified that he spoke with his wife, and she is living in her truck now.

Findings of Fact

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

1. The appellant, who is in his [REDACTED] was admitted to the facility on [REDACTED] because of his COPD.

¹ MassHealth is paying for the appellant's stay.

² The smoking policy states that all lighting materials will be stored in the resident's secured locker.

2. The appellant has had an ongoing issue following the smoking policy as documented in the progress notes. (Exhibit 5, pp. 4-35).
3. The appellant continually violates the smoking policy by not locking up his lighters.
4. The appellant had an appeal hearing on another discharge notice in July of 2024, and at that hearing, the appellant agreed to follow the smoking policy.
5. The appellant signed the Smoking Policy on 7/12/25. (Exhibit 5, pp. 45-47).
6. The appellant is allowed to manage his own smoking paraphernalia, but he does not lock up his lighters, which is a danger to other residents.
7. The appellant's independent smoking privileges were taken away.
8. The appellant is diabetic and able to administer his insulin himself.
9. The appellant would qualify for a visiting nurse after discharge who could also assist with medication management.
10. The NF has not gone over a discharge plan yet with the appellant.
11. The discharge location is the appellant's wife's home, from whom he has been estranged, but who visits him at the NF.
12. The NF has not discussed the discharge plan with the appellant's wife.
13. The NF has not verified that the discharge location is a valid address for the appellant's wife any longer.

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 initiated by a nursing facility. MassHealth has enacted regulations that follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in both (1) the Nursing Facility Manual regulations at 130 CMR 456.000 et seq., and (2) the Fair Hearing Rules at 130 CMR 610.000 et seq.

For the purposes of this decision, the definitions found in 130 CMR 456.402 apply:³

“Nursing facility” - an institution or a distinct part of an institution that meets the provider-eligibility and certification requirements of 130 CMR 456.404 or 456.405. For requirements related to the transfer and discharge of residents, the term nursing facility also includes a nursing facility participating in Medicare, whether or not it participates in MassHealth.

“Discharge” - the removal from a nursing facility to a noninstitutional setting of an individual who is a resident where the discharging nursing facility ceases to be legally responsible for the care of that individual; this includes a nursing facility’s failure to readmit following hospitalization or other medical leave of absence.

“Transfer” — movement of a resident from:

- (1) a Medicaid- or Medicare-certified bed to a noncertified bed;*
- (2) a Medicaid-certified bed to a Medicare-certified bed;*
- (3) a Medicare-certified bed to a Medicaid-certified bed;*
- (4) one nursing facility to another nursing facility; or*
- (5) a nursing facility to a hospital, or any other institutional setting.*

A nursing facility’s failure to readmit a resident following hospitalization or other medical leave of absence, resulting in the resident being moved to another institutional setting is also a transfer. Movement of a resident within the same facility from one certified bed to another bed with the same certification is not a transfer.

The appellant is challenging the nursing facility’s attempt to discharge him to his estranged wife’s home via its notice dated 12/4/25. (Exhibits 1 and 130 CMR 456.402).

The guidelines that apply in a determination of whether the appellant can be so discharged are found in 130 CMR 456.701 of the MassHealth Nursing Facility Manual. This section of the regulations strictly and specifically lists the only circumstances and conditions that allow for the transfer or discharge of a resident from a nursing facility and the requirements of the relevant notice – if these requirements are not met, the facility must permit the resident to remain in the facility.

The relevant portions of the regulation at 130 CMR 456.701 read as follows:

³ The regulatory language in the MassHealth Nursing Facility Manual has identical (or near-identical) regulatory counterparts within the Commonwealth’s Fair Hearing Rules under 130 CMR 610.000 *et seq.*, as well as federal regulations found under 42 CFR 483.000 *et seq.* As to this part of the regulatory law, the regulations in 130 CMR 610.028 and 42 CFR 483.12(a)(2) are identical to that found in 130 CMR 456.402. This appeal decision will hereafter make all further regulatory references only to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000, unless other regulatory references is noted and appropriate.

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 the Division 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 (5), 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 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).
- (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 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;
 - (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.

(Emphasis added)

The first issue is whether the appellant's discharge is appropriate because the health and safety of individuals in the nursing facility is endangered. The appellant has been a resident in the nursing facility since [REDACTED] and has a documented history of not following the smoking policy. The appellant's repeated violation of the smoking policy endangers the health and safety of the other individuals. Thus, the discharge is appropriate on these grounds.

The second issue is whether the nursing facility provided notice that met all the notice requirements listed in 130 CMR 456.701(C). The notice the facility delivered to the appellant contains all the information required under the regulations, except that the discharge location has not been verified as a viable option. The nursing facility has not spoken with the appellant's wife and therefore cannot confirm the accuracy of the appellant's testimony that his wife is not living at the address on the notice. For this reason, the discharge fails to meet the notice requirements.

The third issue is whether the nursing facility has met the requirements of all other applicable federal and state regulatory requirements in addition to the MassHealth-related regulations discussed above, including MGL c. 111, § 70E, which went into effect in November of 2008. The key paragraph of that statute, which is directly relevant to this appeal, 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.***

(Emphasis added)

"The Federal Centers for Medicare and Medicaid, during the times relevant here known as the Health Care Finance Administration, is the Federal agency charged with administering the Medicaid program and promulgating regulations. Sufficient preparation means, according to

HCFA,⁴ that the facility informs the resident where he or she is going and takes steps under its control to assure safe transportation; the facility should actively involve, to the extent possible, the resident and the resident's family in selecting the new residence." Centennial Healthcare Investment Corp. v. Commissioner of the Division of Medical Assistance, 61 Mass. App. Ct. 1124, 1125, n. 5 (2004) (Appeals Court Rule 1:28). Here, the facility informed the appellant where he was going via the written notice on 12/4/25, but the facility has not spoken with the appellant's wife about the discharge plan. The facility representatives testified that they would work on discharge planning after the hearing. The record does not support that the facility provided sufficient preparation to the appellant regarding his discharge. Therefore, the nursing facility has not met the requirements of all other applicable federal and state regulatory requirements in addition to the MassHealth-related regulations discussed above, including M.G.L. c. 111, § 70E, with regard to sufficient preparation for discharge.

The totality of the evidence presented is not sufficient to warrant discharge under the regulations because the notice requirements were not met, and the appellant was not sufficiently prepared for discharge. Therefore, this appeal is **APPROVED**.

Order for Nursing Facility

Rescind the 12/4/25 discharge notice. Do not discharge the appellant without issuing a new 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 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.

⁴ The Health Care Financing Administration is now known as the Centers for Medicare and Medicaid Services.

Christine Therrien
Hearing Officer
Board of Hearings

