

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2518634
<b>Decision Date:</b>	01/20/2026	<b>Hearing Date:</b>	January 6, 2026
	<b>Hearing Officer:</b>	Stanley M. Kallianidis	

**Appellant Representative:**



**Facility Representative:**



***Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, 6<sup>th</sup> Floor  
Quincy, MA 02171***

# APPEAL DECISION

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Nursing Facility Discharge- Endangering the Safety of Others
<b>Decision Date:</b>	01/20/2026	<b>Hearing Date:</b>	January 6, 2026
<b>Facility Rep.:</b>	██████████	<b>Appellant Rep.:</b>	██

## Authority

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

## Jurisdiction

In a notice dated December 17, 2025, the respondent nursing home (herein after "facility") planned to discharge the appellant because, "The safety of individuals in the nursing facility is endangered" (Exhibit 1). The appellant filed this appeal in a timely manner on December 19, 2025 (see 130 CMR 610.015 and Exhibit 2). A nursing-facility initiated discharge is valid grounds for appeal (see 130 CMR 610.032).

A hearing notice was sent to the parties on December 23, 2025 (Exhibit 3).

## Action Taken by the Facility

The facility planned to discharge the appellant because he is endangering the safety of individuals in the facility.

## Issue

Has the facility provided the appellant a discharge location that will allow for his safe and orderly discharge pursuant to 130 CMR 610.028 and MGL c.111, §70E?

## Summary of Evidence

A representative from the facility submitted the appellant's resident record into evidence. He testified that the appellant was admitted in [REDACTED] from another nursing home and is under 65 years of age. He has a primary diagnosis of multiple sclerosis (Exhibit 4).

The facility plans to discharge the appellant because he is endangering the safety of others in the facility. The facility representative referenced the resident record and explained that the main reason for the discharge notice was that in December 2025 the appellant was found to be smoking marijuana in his room. He has also smoked outside of the building, but not in designated smoking areas (Exhibit 4).

The facility representative further testified that, according to the Notice of Discharge, the appellant's place of discharge is at the home of his cousin in [REDACTED]. Alternatively, if the appellant could not go to his cousin's home, the facility would pay the appellant to stay at a hotel for two weeks (Exhibits 1 & 4).

The appellant testified that he is against being discharged from the facility because he is at constant risk of falling. He testified that he only smoked indoors on one occasion and that this was in his bathroom. He also stated that he will not smoke inside the facility ever again. With regard to possibly being discharged to his cousin's home, the appellant stated that he has never lived there and cannot stay there.

## Findings of Fact

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

1. The appellant was admitted to his facility in [REDACTED] from another nursing home and is under 65 years of age (Exhibit 4).
2. The appellant has a primary diagnosis of multiple sclerosis (Exhibit 4).
3. In a notice dated December 17, 2025, the facility planned to discharge the appellant because, "The safety of individuals in the nursing facility is endangered" (Exhibit 1).
4. The appellant's place of discharge is at the home of his cousin in [REDACTED] (Exhibit 4).
5. Alternatively, if the appellant could not go to his cousin's home, the facility would pay the appellant to stay at a hotel for two weeks (testimony).

## Analysis and Conclusions of Law

130 CMR 610.028: Notice Requirements Regarding Actions 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 MassHealth agency or Medicare pay for) a stay at the nursing facility; or
- (6) the nursing facility ceases to operate.

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;

The nursing facility must meet 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 states in pertinent part that

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.

In the instant case, I have found that the appellant was admitted to his facility in [REDACTED] and is under 65 years of age. The appellant has a primary diagnosis of multiple sclerosis.

In a notice dated December 17, 2025, the facility planned on discharging the appellant because, "The safety of individuals in the nursing facility is endangered."

Notwithstanding the appellant's smoking in his room in December 2025, which endangered individuals in the facility, I nonetheless conclude that the facility cannot proceed with his discharge at this time because the planned location of discharge is neither a safe nor appropriate place for him.

The intended place of discharge is at the home of his cousin in [REDACTED]. Alternatively, if the appellant could not go to his cousin's home, the facility indicated that it would pay the appellant to stay at a hotel for two weeks. However, there is no evidence in the record that the appellant's cousin would allow him to live there, and two weeks in a hotel is only a temporary solution, after which his health would be at risk.

In summary, the facility's place of discharge for the appellant does not comply with the notice and location requirements of 130 CMR 610.028 and MGL c.111, §70E.

The appeal is therefore approved.

## **Order for the Facility**

Rescind December 17, 2025 Discharge Notice to the appellant based upon a lack of a current safe location of discharge.

## 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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Stanley M. Kallianidis  
Hearing Officer  
Board of Hearings

cc:

