

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



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|-------------------------|------------|-----------------------|------------|
| Appeal Decision: | Denied | Appeal Number: | 2600144 |
| Decision Date: | 2/11/2026 | Hearing Date: | 01/26/2026 |
| Hearing Officer: | Emily Sabo | | |

Appearance for Appellant:

Pro se

Appearances for Nursing Facility (Cape Heritage Rehab & Health Care):

██████████ Administrator; ██████████
██████████ Nursing Director; ██████████ 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

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|----------------------------------|--|--------------------------|---|
| Appeal Decision: | Denied | Issue: | Nursing Facility Discharge; Improved Health |
| Decision Date: | 2/11/2026 | Hearing Date: | 01/26/2026 |
| Nursing Facility's Reps.: | Administrator, Nursing Director, Social Worker | Appellant's Rep.: | Pro se |
| Hearing Location: | Tewksbury MassHealth Enrollment Center (Telephone) | 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 11, 2025, the nursing facility issued a notice that the Appellant would be discharged to [REDACTED] MA¹ on [REDACTED] 2026, because the Appellant's health had improved sufficiently such that he no longer needed the services provided by the facility. *See* 130 CMR 610.028, 130 CMR 610.029, and Exhibit 1. The Appellant filed this appeal in a timely manner on January 5, 2026. *See* 130 CMR 610.015(B) and Exhibit 5. Notice of a transfer or discharge from a nursing facility is valid grounds for appeal. 130 CMR 610.032(C).

Action Taken by Nursing Facility

The nursing facility issued a notice of discharge to the appellant.

¹ A shelter and center for housing and social services.

Issue

Whether the nursing facility established, pursuant to 130 CMR 610.028, that the Appellant's health has improved sufficiently so that he no longer needs the facility's services.

Summary of Evidence

Documentary and Testimonial Evidence

The hearing was held by telephone. The nursing facility was represented by its administrator, nursing director, and social worker. The facility submitted materials in advance of the hearing. Exhibits 4 & 5. The Appellant represented himself. Based on testimony and documentary evidence submitted into the record, the following information was provided:

The Appellant was admitted to the nursing facility on [REDACTED] 2024, and was homeless at the time of his admission. The Appellant is [REDACTED] years old. The facility's representative testified that the Appellant is independent for his activities of daily living. The facility's representative testified that the Appellant can walk long distances independently and that he leaves the facility to walk places multiple times per day. The facility's representative testified that the Appellant has diabetes but that he refuses insulin checks. The facility's representative testified that the Appellant's health conditions can be managed in the community and that he does not require the facility's services. *See also* Exhibit 4 at 104. The facility's representative testified that the facility's medical director, who serves as the Appellant's physician agreed that the Appellant does not require the facility's services. *See also* Exhibits 4 & 5.

The facility's representative testified that the Appellant had been working with MassAbility to complete housing applications, but he does not have any income, which makes finding housing more challenging. The facility's representative testified that the facility had engaged in discharge planning with the Appellant and that the Appellant had stated he wanted to be discharged to another facility. The facility's representative testified that the facility had made several referrals but has been unable to find another facility that would take the Appellant and so had settled on [REDACTED] [REDACTED] as a discharge location, and had reached out to the Appellant's primary care physician in the community and psychiatric resources in [REDACTED] MA. *See also* Exhibit 4 at 104.

The Appellant testified that he lost his job and home in 2021. The Appellant testified that prior to being admitted to the facility he would go to the emergency room four times per month. The Appellant testified that he has diabetes, irritable bowel syndrome, neuropathy, and scoliosis. The Appellant testified that when he leaves the facility it is for short, 15-20-minute walks or a smoke break. The Appellant testified that his diabetes numbers have not improved over the course of his stay, so he did not understand how he could be discharged. The Appellant testified that he does not want to learn how to inject himself with a needle or pen for insulin treatment. The Appellant

testified that he is stressed, which is having a negative impact on his health. The Appellant testified that he experiences chronic body pain and that his brain shuts down when he has to deal with medical, legal, or financial matters.

Content of the Discharge Notice and Clinical Record

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.

Exhibits 4 and 5 contain the Appellant's medical record from the facility. On January 23, 2026, the facility's medical director, [REDACTED] wrote that the Appellant:

has remained medically stable during his stay at [REDACTED]. Over the past several weeks, he has demonstrated full independence with all activities of daily living, requires no hands[-]on assistance, and has not required skilled nursing interventions, skilled therapy services, or ongoing clinical monitoring that would meet Medicare or insurer criteria for continued skilled nursing facility level of care. Nursing reports and interdisciplinary review confirm that [Appellant] leaves the facility daily without assistance and manages his personal needs independently. He has no active medical issues requiring skilled oversight, wound care, IV therapy, medication titration, or complex clinical management. His psychiatric conditions are stable at this time without acute exacerbation. His ongoing marijuana use has become a behavioral concern within the facility environment but does not constitute a skilled need. Based on current clinical assessment, functional status, and regulatory criteria, [Appellant] no longer meets medical necessity requirements for continued skilled nursing facility care or long[-]term care. He is medically stable for discharge to a less restrictive setting.

Exhibit 5 at 63.

Findings of Fact

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

1. The Appellant is [REDACTED]-years old. Testimony; Exhibits 4 & 5.
2. The Appellant is independent for activities of daily living and ambulates independently. Testimony; Exhibits 4 & 5.
3. The Appellant was admitted to the nursing facility on [REDACTED] 2024. Exhibits 4 & 5.
4. The Appellant was homeless prior to his admission to the facility. Exhibits 4 & 5
5. The facility's medical director wrote that the Appellant: "has remained medically stable during his stay at [REDACTED] Over the past several weeks, he has demonstrated full independence with all activities of daily living, requires no hands[-]on assistance, and has not required skilled nursing interventions, skilled therapy services, or ongoing clinical monitoring that would meet Medicare or insurer criteria for continued skilled nursing facility level of care. Nursing reports and interdisciplinary review confirm that [Appellant] leaves the facility daily without assistance and manages his personal needs independently. He has no active medical issues requiring skilled oversight, wound care, IV therapy, medication titration, or complex clinical management. His psychiatric conditions are stable at this time without acute exacerbation. His ongoing marijuana use has become a behavioral concern within the facility environment but does not constitute a skilled need. Based on current clinical assessment, functional status, and regulatory criteria, [Appellant] no longer meets medical necessity requirements for continued skilled nursing facility care or long[-]term care. He is medically stable for discharge to a less restrictive setting." Exhibit 5 at 63.
6. On December 11, 2025, the facility issued the Appellant a discharge notice, proposing to discharge him on [REDACTED] 2026, to [REDACTED] Exhibit 1.
7. The facility engaged in discharge planning. Testimony; Exhibit 4 and 5.
8. 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.

9. On January 5, 2026, the Appellant filed a timely appeal of the discharge notice with the Board of Hearings. Exhibit 2.

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.

Per 130 CMR 456.701(A) and 130 CMR 610.028(A), a nursing facility resident may be transferred or discharged 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.

Per 130 CMR 456.701(B) and 130 CMR 610.028(B),

- (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).

Per 130 CMR 456.701(C) and 130 CMR 610.028(C),

- (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.

Pursuant to 130 CMR 610.029(B), the notice of discharge or transfer required under 130 CMR 610.028 must be made by the nursing facility as soon as practicable when 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. 130 CM 610.029(B)(2). *See also* 130 CMR 456.702(B)(2).

Massachusetts General Laws, 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.

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).

Here, the facility has alleged that the Appellant’s health has improved sufficiently so that he no longer needs the services provided by the nursing facility. Exhibit 1. The facility’s medical director stated that the Appellant’s conditions are resolved and that he is medically cleared for discharge. 130 CMR 456.701(B)(1); 130 CMR 610.028(B)(1); Exhibit 5 at 63. The hearing record supports this, with documented evidence that the Appellant is independent for his activities of daily living and does not require hands-on assistance or skilled nursing interventions. Exhibits 4 & 5. I find that the facility has established that discharge is appropriate under 130 CMR 456.701(A)(2) and 130 CMR 610.028(A)(2). I find that the facility has provided sufficient orientation and preparation to ensure a safe and orderly discharge. I also find that the discharge notice satisfies the regulatory requirements. 130 CMR 456.701(C) and 130 CMR 610.028(C).

Accordingly, the appeal is denied.

Order for Nursing Facility

Proceed with the discharge as set forth in the notice dated December 11, 2025, but not earlier than 30 days from the date 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.

Emily Sabo
Hearing Officer
Board of Hearings

