

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2600235
Decision Date:	02/12/2026	Hearing Date:	02/11/2026
Hearing Officer:	Thomas J. Goode		

Appearances for Appellant:



Appearances for Nursing Facility:

[Redacted] Administrator
[Redacted] Social Services Director
[Redacted], Community Transition Liason
[Redacted] Community Transition



*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:	Nursing Facility Discharge-Endangering the Safety of Others
Decision Date:	02/12/2026	Hearing Date:	02/11/2026
Nursing Facility's Reps.:	Augustine Aiguosatile, Administrator et al.	Appellant's Rep.:	[REDACTED]
Hearing Location:	Remote		

Authority

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

Jurisdiction

On January 5, 2026, [REDACTED] ("the nursing facility") issued to Appellant a "Notice of Intent to Discharge Resident With less than 30 Days' Notice (Expedited Appeal)" to [REDACTED] on [REDACTED] because "[t]he safety of the individuals in the nursing facility is endangered due to your clinical or behavioral status." Appellant filed a timely appeal at the Board of Hearings on January 6, 2026 (130 CMR 610.015(B) and Exhibit 2). A Notice of Intent to Discharge Resident With less than 30 Days' Notice because "[t]he safety of the individuals in the nursing facility is endangered due to your clinical or behavioral status" is valid grounds for appeal (130 CMR 610.015(B), 610.032(C)). A hearing scheduled for January 27, 2026 was rescheduled at Appellant's request (Exhibit 3A).

Action Taken by the Nursing Facility

On January 5, 2026, [REDACTED] ("the nursing facility") issued to Appellant a "Notice of Intent to Discharge Resident With less than 30 Days' Notice (Expedited Appeal)" to [REDACTED] on [REDACTED] because "[t]he safety of the

individuals in the nursing facility is endangered due to your clinical or behavioral status.”

Issue

The hearing issue is whether [REDACTED] (“the nursing facility”) correctly initiated discharge from the nursing facility pursuant to a “Notice of Intent to Discharge Resident With less than 30 Days’ Notice (Expedited Appeal)” to [REDACTED] on [REDACTED] because “[t]he safety of the individuals in the nursing facility is endangered due to your clinical or behavioral status.”

Summary of Evidence

The nursing facility representatives testified that Appellant was admitted to the nursing facility on [REDACTED] and has primary diagnoses including [REDACTED]. Appellant is wheelchair dependent. The facility administrator testified that the nursing facility has designated smoking guidelines and provides several opportunities to smoke with staff supervision. The facility alleges that on January 4, 2026, Appellant was observed smoking at the front of the building, and that cigarette smoke was observed in Appellant’s room. The facility administrator testified that because Appellant violated the facility’s smoking policy, the facility initiated a 30-day notice of discharge to a [REDACTED]. The administrator added that the facility would pay for the hotel for one month and establish visiting nursing services. The nursing facility verified that the reasons for the discharge are not documented or explained by a physician in Appellant’s medical records, and maintained that the discharge is necessary for the safety of staff and other residents of the nursing facility.

Appellant’s attorney stated that the discharge is premised on one alleged violation of the smoking policy. Appellant’s attorney stated that the nursing facility provided incomplete records prior to the hearing and noted that the records he reviewed do not include documentation by a physician explaining the discharge plan to a hotel. Appellant’s attorney added that the medical records also show that Appellant requires wound care and has an ongoing need for skin assessment that requires nursing care. Appellant testified that he had [REDACTED] [REDACTED], and that he [REDACTED] which puts him at risk of falling. Appellant testified that he is unable to administer his own insulin and takes several other medications, but he doesn’t know what they are. Appellant testified that he receives SSI income and has no other income or assets to pay for a hotel and has no other safe housing options. Appellant testified that the nursing facility did not discuss the discharge plan with him, and he doesn’t feel that the discharge plan is safe.

Findings of Fact

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

1. On January 5, 2026, Fall River Healthcare (“the nursing facility”) issued to Appellant a “Notice of Intent to Discharge Resident With less than 30 Days’ Notice (Expedited Appeal)” to [REDACTED] on [REDACTED] because “[t]he safety of the individuals in the nursing facility is endangered due to your clinical or behavioral status.”
2. Appellant was admitted to the nursing facility on [REDACTED], and has [REDACTED]
3. Appellant is wheelchair dependent.
4. Appellant has had [REDACTED]
5. Appellant is unable to administer his own insulin and takes several other medications, but doesn’t know what they are.
6. Appellant receives SSI income and has no other income or assets to pay for a hotel.
7. There is no physician documentation in the medical records forwarded to the Board of Hearings explaining the January 5, 2026 discharge notice.

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.¹

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

¹ 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.

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;

(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 456.703: 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.

130 CMR 456.704: Stay of a Transfer or Discharge from a Nursing Facility Pending Appeal²

(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), 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

² See also 130 CMR 610.030: 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 BOH during the notice period described in 130 CMR 610.015(B)(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 610.015(B)(4), and the request is received before 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, in accordance with 130 CMR 610.015(B)(4), 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.

(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, in accordance with 130 CMR 610.015(B)(5), the nursing facility must, upon receipt of the appeal decision favorable to the resident, promptly readmit the resident to the next available bed.

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.

(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.³

On January 5, 2026, [REDACTED] ("the nursing facility") issued to Appellant a "Notice of Intent to Discharge Resident With less than 30 Days' Notice (Expedited Appeal)" to [REDACTED] on [REDACTED] because "[t]he safety of the individuals in the nursing facility is endangered due to your clinical or behavioral status." The Notice provides the required information concerning the planned discharge from the facility and in this regard complies with regulatory requirements outlined at 130 CMR 456.701(C) (Exhibit 1). However, although the notice references an expedited appeal and discharge from the facility with less than 30 days' notice, it designates a 30-day period from January 5, 2026 through the date of intended discharge on [REDACTED] and therefore does not fall under emergency discharge provisions for a discharge notice with less than 30 days' notice described at 130 CMR 456.702(B) and 130 CMR 610.029(B) or (C), and does not trigger expedited appeal provisions under 130 CMR

³ 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.

610.015(F).⁴ Appellant's request for a hearing regarding the discharge or transfer from the nursing facility was received by the Board of Hearings during the notice period described in 130 CMR 456.703(B)(1), i.e. within 30 days after the resident receives written notice of a discharge or transfer pursuant to 130 CMR 456.702(A); therefore, under 130 CMR 456.704(A), the nursing facility would be required to stay the planned discharge or transfer until 30 days after this hearing decision is rendered. While a stay is in effect, a resident must not be discharged or transferred from the nursing facility.⁵

A nursing facility resident can only be discharged for specific reasons outlined above at 130 CMR 456.701(A). The applicable regulations require that when initiating a discharge with 30-days' notice because "[t]he safety of the individuals in the nursing facility is endangered due to your clinical or behavioral status" a physician must document the resident's record and explain the reasons for the transfer. It is undisputed that the medical records in the hearing record do not include documentation by a physician explaining the reasons for the discharge (See Exhibit 4 and testimony). Further, the discharge plan to a [REDACTED] with visiting nursing services is not a safe and appropriate place considering Appellant's medical conditions that have required nursing facility placement for more than one year, Appellant's limited income, wheel-chair dependence, and insulin use and inability to administer his medications. Accordingly, Appellant's appeal of the January 5, 2026 discharge notice is APPROVED.

Order for the Nursing Facility

Rescind the discharge notice dated January 5, 2026, and do not discharge Appellant pursuant to the terms of the January 5, 2026 discharge notice.

Notification of Your Right to Appeal to Court

⁴ See 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).


⁵ 130 CMR 456.702(B) addresses nursing facility notices issued with less than 30 days' notice. 130 CMR 610.029(B) addresses nursing facility notices of a transfer or discharge in lieu of the 30-day notice requirement which are considered emergency discharges or transfers, and 130 CMR 610.029(C) addresses transfers or discharges resulting from a nursing facility's failure to readmit a resident after hospitalization or medical leave of absence. Appeals of both notice types are handled under 130 CMR 610.015(F). Despite titling the December 26, 2025 notice "Notice of Intent to Discharge Resident With Less than 30 Days' Notice (Expedited Appeal)," the notice is a 30-day notice of discharge to take effect on January 26, 2026; therefore, expedited appeal requirements under 130 CMR 610.015(F) do not apply, and a 30-day stay following issuance of this hearing decision would be required under 130 CMR 456.704(A) and 130 CMR 610.030(A).

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.

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.

Thomas J. Goode
Hearing Officer
Board of Hearings


Nursing Facility: Fall River Healthcare, Attn: Administrator, 1748 Highland Avenue, Fall River,
MA 02720