

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2507107
Decision Date:	5/20/2025	Hearing Date:	05/13/2025
Hearing Officer:	Casey Groff, Esq.		

Appearance for Appellant:  
*Pro se*

Appearance for Nursing Facility:

Director of Social Services;

Director of Nursing;

Administrator



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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Nursing Facility Expedited Discharge
<b>Decision Date:</b>	5/20/2025	<b>Hearing Date:</b>	05/13/2025
<b>Nursing Facility Reps.:</b>	Stacy Sullivan; Nadia Boulahtous; Alfonso Vasquez	<b>Appellant's Rep.:</b>	<i>Pro se</i>
<b>Hearing Location:</b>	Board of Hearings, Remote	<b>Aid Pending:</b>	No

### Authority

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

### Jurisdiction

Through a notice dated 5/2/25, the [REDACTED] ("the nursing facility") informed Appellant that it would be seeking to discharge him from the nursing facility in less than 30 days. See Exhibit 1; 130 CMR 610.029(B). Appellant filed a timely appeal on 5/8/25. See 130 CMR 610.015(B)(4); Exhibit 2. An attempt to discharge a nursing facility resident is valid grounds for appeal. See 130 CMR 610.032(C).

### Action Taken by Nursing Facility

The nursing facility sought to discharge Appellant in fewer than 30 days on the basis that his behavior endangered the safety of other individuals at the facility.

### Issue

The appeal issues are whether the nursing facility properly notified Appellant that he would be discharged pursuant to 130 CMR 610.028, whether the facility provided sufficient documentation

for such discharge; and whether the intended discharge location is a safe and appropriate place for Appellant pursuant to M.G.L. Ch. 111, § 70E.

## Summary of Evidence

At the hearing, representatives from [REDACTED] a licensed nursing facility, appeared at the hearing by telephone and provided the following evidence through oral testimony and documentary submissions: Appellant is a [REDACTED] who was admitted to the nursing facility on [REDACTED] 25. Directly preceding his admission, Appellant was hospitalized for fractures of the left proximal humerus and neck caused by a mechanical fall he sustained while intoxicated. See Exh. 4, p. 30-33. At the time of the fall, Appellant was living in a homeless shelter. It was noted that his hospital course was complicated by multidrug-resistant urinary tract infection (UTI) and urinary retention. *Id.* at 13-14. Once deemed stable, the hospital discharged Appellant to the facility to receive skilled nursing and rehab secondary to deficits in mobility and activities of daily living (ADL). *Id.* at 14. Appellant's admitting diagnoses included closed fractures of the neck and left humerus with routine healing, acute kidney injury, alcohol use disorder, congestive heart failure, alcoholic peripheral neuropathy, chronic back pain, and chronic obstructive pulmonary disease. *Id.* at 7, 30. Admission notes from [REDACTED] 25 indicate that "at baseline" Appellant is independent with ADLs and uses a cane or "RW" for ambulation. *Id.* at 23. Orders on admission were to keep a "sling on at all times except for personal hygiene and gentle ranging of the elbow/wrist." *Id.* at 28.

Representatives from the facility testified that on 5/2/25, they issued an expedited notice of discharge following "multiple" instances in which Appellant was found to have drunk alcohol on the premises. The representatives explained that after Appellant was found to be intoxicated at the facility and in possession of alcohol, Appellant entered a "no harm" agreement in which he consented to refrain from consuming alcohol on site. The facility representatives testified that the next day, Appellant was found with alcohol in his room, prompting the facility to issue the 5/2/25 emergency discharge notice. A copy of the 5/2/25 notice indicates that the facility sought to discharge Appellant to a "location of your choice or [homeless] shelter<sup>1</sup>" on 5/13/25 because "the safety of the individuals in the facility are endangered due to the behavioral status of you." See Exh. 1.

A review of Appellant's nursing facility records, which were submitted into evidence, show that on noon on 5/1/25, social services entered a progress note which states "*3 Smirnoff nips were confiscated from [Appellant]. Follow up with NO harm agreement and sent to hospital.*" See Exh. 4 at 11. Additional entries made later that day indicated that Appellant was transferred to the hospital for an evaluation of suspected alcohol consumption, and at approximately 5pm that afternoon, he returned from the hospital with a reported "alcohol level of 16." *Id.* at 10, 33. A progress note entered on 5/2/25 at 10:54am states that "no harm agreement uploaded into

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<sup>1</sup> The specific homeless shelter was named on the notice of discharge.

[Appellant's] chart due to being intoxicated on premises." *Id.* at 10. A copy of the no harm agreement, which was entered into evidence, indicates that Appellant and the facility administrator both signed the agreement on 5/1/25, under which Appellant agreed "*with the decision made by the facility to implement safety measures to prevent any harm to [himself] or any other resident...[and that Appellant is] aware that a room search can be performed, per doctors' orders if there is suspicion of impairment/intoxication of possession of alcohol drugs.*" *Id.* at 34. By signing the agreement, Appellant also acknowledged that violating the provisions therein could subject him to an expedited discharge from the facility. *Id.*

Other than the 5/1/25 event, there were no other documented instances of alcohol consumption or possession *prior* to the issuance of the discharge notice on 5/2/25. The facility representatives did, however, testify to a second violation of the alcohol policy that occurred on 5/4/25. A progress note, entered at 3:10p.m. on 5/4/25, reported that Appellant "had an alcoholic drink outside with [a] visitor" which prompted the facility to, again, refer Appellant to the hospital for evaluation. *Id.* at 9. According to the next progress note, Appellant returned to the facility at 2 a.m. the following morning with a negative toxicology screen. *Id.* The facility noted that the negative test result was likely due to the number of hours that elapsed between time of consumption and the test.

When asked if there were any instances of alcohol consumption prior to the 5/1/25 event which prompted Appellant to enter the no harm agreement, the facility representatives referenced an encounter that occurred on 4/29/25 when they claim to have found Smirnoff nip bottles in Appellant's room. A review of Appellant's nursing facility records shows that despite several progress notes being entered on 4/29/25 and 4/30/25 none reference the alleged incident. When asked about this at hearing, the facility representatives indicated that they also could not locate any report or entry that had been made to describe the 4/29/25 event. The submission did however, include, a very low-resolution photograph of what appears to be two Smirnoff nip bottles labeled "4/29" next to another single item, the image of which is indiscernible, labeled "5/1." *Id.* at 35.

The facility also pointed to a physician note from the facility medical director dated 5/6/25, in which the physician noted that Appellant "has been consuming alcohol on site" and will be given a 7-day discharge from the facility for "repeat evaluation of pulses." *Id.* at 33. The note indicated that Appellant was stable for discharge to the community.

The facility representatives testified that they sought to discharge Appellant to the same homeless shelter where he was staying before his hospital admission. The social worker explained that because beds at the shelter are not guaranteed and availability is determined day-of, she was waiting to contact the shelter pending the outcome of this appeal. According to testimony and documentation, on 4/28/25 the facility referred Appellant to a "transitions" worker through elder services who assists with housing. *Id.* The facility testified that the transition worker had met with Appellant but had not yet begun the process of filling out applications for potential housing

programs, such as CHAMP, sober homes, and section 8 housing. At the hearing, the social worker mentioned the option that Appellant, if willing, could explore alternative placements such as a detox center, sober home or rest homes and that she could assist Appellant in placing calls to such locations.

The director of nursing (DON) testified that all the services Appellant receives from the facility can be continued on an outpatient basis, as this primarily entails continued follow-up with the orthopedist. She testified that Appellant has completed all skilled services, including PT and OT and is independent with ADLs. The DON testified that Appellant's son is a designated health care proxy, though his HCP has not been invoked. She has tried to contact the son about Appellant's impending discharge but has not heard back.

Appellant appeared at hearing by telephone and testified that he did not deny having consumed or possessed alcohol while at the facility, though he did deny having been "intoxicated." He also acknowledged that it was a "foolish" thing for him to do and should not have done it. He explained that, at the time, his pain medications had just been reduced, and he was in severe pain. The alcohol made it "a little more comfortable." Appellant did not dispute the facility's plan to discharge him into the community; however, stated that he is looking for a little more time to explore finding an apartment. Appellant explained that he and a friend, who also receives disability income, are looking for a place where they can split the cost of rent. They have already enlisted a realtor friend who is actively looking for options. Appellant asked for another "2 weeks" to try to locate something, as this is his preference. Appellant testified that prior to his hospitalization he had been staying at the same homeless shelter identified on the discharge notice. Appellant explained that he would be willing to return to the shelter if he cannot locate an apartment; however, this possibility worries him given his age and physical limitations, including difficulties tying shoes and getting dressed. Although somewhat hesitant, Appellant testified that he would also be willing to explore alternative options such as a rest home or sober home if he could not find an apartment.

In response, the facility representatives testified that by consuming and possessing alcohol on facility grounds, Appellant poses a significant risk to other facility residents, especially those who are elderly, reside in the facility's memory care unit, and/or who are on multiple medications that, if combined with alcohol, would have disastrous results. The facility testified that they were unwilling to rescind the discharge notice as they have to protect the other vulnerable residents within their care. The facility noted that Appellant had not exhibited any aggressive behavior while consuming alcohol. However, given Appellant's long-standing history of alcohol abuse, and multiple instances having occurred within a short period, they do not feel comfortable having Appellant remain at the facility while he continues to bring in alcohol.

## **Findings of Fact**

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

1. Appellant is over the age of 65 and was admitted to the nursing facility on [REDACTED] 25 to receive skilled nursing and rehab secondary to deficits in mobility and ADLs due to having sustained fractures of the neck and left humerus following a fall.
2. Appellant's diagnoses include closed fractures of the neck and left humerus with routine healing, acute kidney injury, alcohol use disorder, congestive heart failure, alcoholic peripheral neuropathy, chronic back pain, and COPD.
3. On 5/1/25, social services entered a progress note indicating that the facility found 3 Smirnoff nip bottles from Appellant's room and that follow-up measures would involve a no-harm agreement and a hospital evaluation of Appellant for alcohol consumption.
4. A 5/1/25 hospital toxicology screen revealed that Appellant had an alcohol level of 16.
5. On 5/1/25, Appellant and the facility administrator executed a no-harm agreement, under which Appellant agreed *"with the decision made by the facility to implement safety measures to prevent any harm to [himself] or any other resident...[and that Appellant is] aware that a room search can be performed, per doctors' orders if there is suspicion of impairment/intoxication of possession of alcohol drugs."*
6. On 5/2/25 the facility issued an expedited notice of discharge seeking to discharge Appellant to a "location of your choice or [homeless] shelter" on 5/13/25 because "the safety of the individuals in the facility are endangered due to the behavioral status of you."
7. The discharge plan was documented and approved by Appellant's physician.
8. On 5/4/25, following the issuance of the discharge notice, Appellant was observed to have been drinking alcohol outside the facility with a visitor; however, a subsequent toxicology screen found Appellant negative for alcohol.

## Analysis and Conclusions of Law

The federal Nursing Home Reform Act (NHRA) of 1987, now codified at 42 USC § 1396r(c), guarantees all residents of Medicaid and/or Medicare certified nursing facilities, the right to advance notice of, and the right to appeal, any transfer or discharge initiated by such a facility. The federal law requires state Medicaid agencies to provide a fair mechanism for hearing appeals on nursing facility-initiated transfers and discharges. See 42 U.S.C. § 1396r; 42 CFR §§ 483.204 § 483.206. Massachusetts, through its Medicaid agency, MassHealth, has enacted regulations that mirror the above-referenced federal protections, which can be found at 130 CMR 456.000 *et seq.* and 130 CMR 610.00 *et. seq.*

Under the applicable MassHealth regulations, a nursing facility cannot discharge or transfer a resident unless certain criteria are met. First, the facility must cite proper grounds for the discharge. The resident may *only* be discharged in the following circumstances:

- (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.

See 130 CMR 610.028(A) (emphasis added); *see also* 130 CMR 456.701(A).

Furthermore, the stated basis for the intended discharge must be documented in the resident's clinical record.<sup>2</sup> See 130 CMR 610.028(B); 130 CMR 456.701(B). Where the facility is seeking to discharge a resident under subsection (3), above, as is the case here, the necessity of such discharge must be documented by a physician. *Id.* (emphasis added).

Next, the nursing facility must ensure that it provides the resident with adequate notice of the discharge or transfer. MassHealth Fair Hearing Rules at 130 CMR 610.028(C) establish the format and content requirements of the notice itself.<sup>3</sup> Here, there is no allegation or evidence to suggest the 5/2/25 discharge notice, as written, was deficient or failed to meet the criteria

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<sup>2</sup> The only exception to this rule is when the discharge is made pursuant to subsection (6), above, i.e., the nursing facility ceases to operate. *Id.*

<sup>3</sup> In summary, 130 CMR 610.028(C) requires: that the facility hand-deliver the notice to the resident (and provide a mailed copy to any designated family member or legal representative); that the notice be legible and written in 12-point or larger, in a language the resident understands, and that it contain the following information: (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 a fair hearing by the MassHealth agency, including how and when to send the request, as well as the effect of requesting a hearing; (6) contact information for the local long-term-care ombudsman office; (7) if applicable, the contact information of the agency responsible for the protection and advocacy of developmentally disabled individuals, (8) if applicable, the contact information for the agency responsible for the protection and advocacy of mentally ill individuals; (9) a statement that all residents may seek legal assistance and that free legal assistance may be available through their local legal services office; and (10) the name of someone at the nursing facility who is available to assist the resident with any of the foregoing.

imposed under 130 CMR 610.028(C).

MassHealth regulations also require that the nursing facility provide the resident with at least 30 days' advance notice of the intended discharge. *See* 130 CMR 610.029(A). As an exception to this rule, the facility may provide an expedited discharge notice, i.e., less than 30 days, for any of the following "emergency" discharge/transfer circumstances:

- (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 lived in the nursing facility for 30 days immediately before receipt of the notice.

*See* 130 CMR 610.029(B) (emphasis added).

Finally, even if all aforementioned requirements are satisfied, the nursing facility may still not transfer or discharge a nursing facility resident unless it complies with M.G.L. c.111, § 70E, which states, the following:

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 considering the totality of evidence presented, the nursing facility did not meet all aforementioned requirements to proceed in discharging Appellant, pursuant to its 5/2/25 expedited discharge notice. While the facility did cite an appropriate basis for its intended discharge, i.e., that his behavior endangered the safety of other individuals in the nursing facility under both 130 CMR 610.029(B)(1) and 130 CMR 610.028(A)(3), its presentation of events, as explained at hearing, did not entirely comport with the documentation in Appellant's clinical record. Specifically, the facility testified that it sought to discharge Appellant *after* he had a repeated violation of the facility's no-alcohol policy while he had an executed no harm agreement in place. However, the only documented instance of intoxication/alcohol possession that occurred *prior to* the 5/2/25 discharge notice was on 5/1/25 (when Appellant was found in possession of alcohol and had a positive toxicology screen). *Id.* No additional violations were documented between the time Appellant entered the no-harm agreement on 5/1/25 and when the facility issued its discharge notice on 5/2/25. There was also no documentation of an earlier 4/29/25



incident as raised by the facility at hearing. While these inconsistencies do not, alone, render the discharge notice invalid, the facility must also comply with M.G.L. c. 111, § 70E, above, before it can proceed with an intended discharge. Here, Appellant had been at the facility for approximately one week before he received the 5/2/25 discharge notice, limiting the facility's ability to explore discharge placement options. It is noted that Appellant does not have an unfettered right to remain in the facility while presenting a safety risk to other residents. However, the facility must show it that it has taken at least some meaningful steps to sufficiently prepare and orient Appellant to be discharged to another safe and appropriate place. Given Appellant's age, recent arm injury, and limited opportunity to engage in discharge planning, the facility has not complied with M.G.L. c. 111, § 70E.

Therefore, Appellant's appeal is APPROVED.

## **Order for Nursing Facility**

Rescind the Notice of Intent for Expedited Discharge dated 5/2/25. As long as Appellant remains a safety risk, nursing facility may issue a new discharge notice at any time.

## **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 this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. 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.

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Casey Groff, Esq.  
Hearing Officer  
Board of Hearings

cc: Respondent: Southeast Rehab & Skilled Care Center, Attn: Administrator, 184 Lincoln Street, North Easton, MA 02356

