

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2509987
Decision Date:	8/22/2025	Hearing Date:	07/29/2025
Hearing Officer:	Marc Tonaszuck	Record Open to:	08/13/2025

Appearance for Appellant:

Pro se

Appearances for Northwood Rehab and Health Care Center Skilled Nursing Facility:

Jim Dillon, Administrator; Angela Oriakhi, RN, Director of Nursing; Allyson Witt, Director of Social Work; and Pam Schell, Unit Manager.



*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:	Denied	Issue:	Nursing Facility Discharge - Endangering the safety of others
Decision Date:	8/22/2025	Hearing Date:	07/29/2025
Skilled Nursing Facility Reps.:	Jim Dillon, Administrator; Angela Oriakhi, RN, Director of Nursing; Allyson Witt, Director of Social Work; and Pam Schell, Unit Manager	Appellant's Rep.:	Pro se
Hearing Location:	Springfield MassHealth Enrollment Center	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

The appellant received a Notice of Intent to Discharge with 30 Days Notice ("discharge notice") dated 06/25/2025. The notice states that Northwood Rehabilitation and Health Care Center ("the skilled nursing facility" or "the facility") seeks to discharge the appellant to "189-193 Middlesex Street, Lowell, MA" on 07/24/2025. The notice indicates the reason for the discharge is that "the safety of the individuals in the nursing facility is endangered due to your clinical or behavioral status" (Exhibit 1).

The appellant filed this timely appeal on 07/07/2025 (130 CMR 610.015(B); and Exhibit 2). Discharge

or transfer of a Nursing Facility patient is valid grounds for appeal (130 CMR 610.028; 42 CFR Ch IV §483.200 et seq.).

A fair hearing was held on 07/29/2025 before the Board of Hearings (Exhibit 3). At the fair hearing, the appellant requested an opportunity to provide affidavits from the skilled nursing facility staff attesting to his good behavior. His request was granted, and the record remained open until 08/06/2025 for the appellant's submission and until 08/13/2025 for the skilled nursing facility's response (Exhibit 5). Both parties made submission during the record open period (Exhibits 6 and 7).

Action Taken by the Nursing Facility

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

Issue

Is the planned discharge correct pursuant to 130 CMR 610.028?

Summary of Evidence

Jim Dillon, Administrator; Angela Oriakhi, RN, Director of Nursing; Allyson Witt, Director of Social Work; and Pam Schell, Unit Manager from the skilled nursing facility appeared at the hearing and testified telephonically. The appellant also appeared telephonically. Exhibits 1-4 were admitted into evidence. Prior to the hearing, the facility submitted the appellant's clinical record from the facility into evidence (Exhibit 4).

The facility representatives testified that the appellant was admitted to the facility in autumn 2024 from an acute care hospital. He was admitted with diagnoses of alcohol pancreatitis, dysphasia, insomnia, anxiety, depression and for an evaluation of suicidal statements. He is prescribed medications, especially for an acute kidney injury. Recently, the staff of the skilled nursing facility has found approximately 20 alcohol "nip" bottles in his room, violating the policy of the skilled nursing facility and possibly causing interactions with the appellant's medications. He was also found with a cigarette lighter on his person, which is also a violation of the skilled nursing facility safety policies.

Since his admission, the appellant no longer requires occupation or physical therapy, and he also no longer requires skilled nursing care. He is independent with his activities of daily living (ADLs), and he can manage his own medications. The discharge plan is to provide the appellant with a supply of his medications and referrals to community medical services and a social worker. The proposed discharge location is a homeless shelter that can provide medical services to the residents (Exhibit

4).

The appellant appeared at the fair hearing telephonically. He testified that the alcohol was found in his jacket. It was “obviously mine.” His friend brought him 5-6 “nips” of alcohol. He did not address the lighter that the staff testified they found. The appellant stated that he could provide letters from the skilled nursing facility staff in support of his appeal. He requested an extension of one week to provide the letters. His request was granted, and the record remained open in this matter until 08/06/2025 for the appellant’s submission and until 08/13/2025 for the response from the skilled nursing facility (Exhibit 5).

During the record open period the appellant provided a handwritten letter and a typed letter from a social worker (Exhibit 6). In the appellant’s letter, he states he acknowledges drinking alcohol while in the facility on two occasions. He stated he is waiting for one more operation. He was unable to provide written statements from facility staff. He also submitted a letter from Kathleen Leonard, from Agespan (previously elder services) stating that she is assisting the appellant with placement in the community, and that she supports a move out of the skilled nursing facility.

On 08/07/2025, the administrator from the skilled nursing facility responded that he doubted the appellant’s statement that he only drank alcohol two times while in the facility. He cites to the photograph submitted that shows at least 20 “nip” bottles of alcohol in his room (Exhibit 7).

Findings of Fact

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

1. Appellant was admitted to the facility in autumn 2024 from an acute care hospital. He was admitted with diagnoses of alcohol pancreatitis, dysphasia, insomnia, anxiety, depression and for an evaluation of suicidal statements. He is prescribed medications, especially for an acute kidney injury.
2. On 06/25/2025, the skilled nursing facility issued to the appellant a Notice of Intent to Discharge with 30 Days’ Notice (“discharge notice”), that states that the skilled nursing facility seeks to discharge the appellant to “189-193 Middlesex Street, Lowell, MA” on 07/24/2025. The notice indicates the reason for the discharge is that “the safety of the individuals in the nursing facility is endangered due to your clinical or behavioral status” (Exhibit 1).
3. The skilled nursing facility staff found at least 20 “nip” bottles of alcohol in the appellant’s room. He admits to drinking alcohol while a resident of the skilled nursing facility.
4. The appellant’s clinical record documents the appellant’s use of alcohol in the facility.

5. The appellant no longer requires occupational or physical therapy. He also no longer requires skilled nursing level of care. He is independent with all activities of daily living.
6. The discharge location is a homeless shelter.
7. The discharge plan is to provide the appellant with a supply of his medications and referrals to community medical services and a social worker. The proposed discharge location is a homeless shelter that can provide medical services to the residents.

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.

Regulations at 130 CMR 610.028 address notice requirements regarding actions initiated by a nursing facility, as follows:

- (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.
- (B) ***When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 610.028(A)(1) through (5), the resident's clinical record must be documented.*** The documentation must be made by
 - (1) the resident's physician when a transfer or discharge is necessary under 130 CMR 610.028(A)(1) or (2); and
 - (2) a physician when the transfer or discharge is necessary under 130 CMR 610.028(A)(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 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.

Regulations at 130 CMR 610.029 Time Frames for Notices Issued by Nursing Facilities, state, in pertinent part:

- (A) The notice of discharge or transfer required under 130 CMR 610.028 must be made by the nursing facility at least 30 days before the date the resident is to be discharged or transferred, except as provided for under 130 CMR 610.029(B) and (C).
- (B) In *lieu* of the 30-day-notice requirement set forth in 130 CMR 610.029(A), the notice of discharge or transfer required under 130 CMR 610.028 must be made as soon as

practicable before the discharge or transfer in any of the following circumstances, which are considered to be 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 lived in the nursing facility for 30 days immediately before receipt of the notice.

(Emphasis added.)

Also relevant to this appeal, an amendment to G.L. c. 111, §70E, which went into effect in November of 2008, states 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.

The facility's discharge notice is dated 06/25/2025 and it informs the appellant that the facility seeks to discharge him to "189-193 Middlesex Street, Lowell, MA" on 07/24/2025. The notice indicates the reason for the discharge is that "the safety of the individuals in the nursing facility is endangered due to your clinical or behavioral status."

The skilled nursing facility representatives provided evidence that the appellant was found with "nip" alcohol bottles in his room. The appellant also acknowledges drinking alcohol while in the facility. The clinical record contains documentation that this behavior took place and was documented. Accordingly, the reason for the appellant's proposed discharge is supported by the clinical record.

The proposed discharge location is a homeless shelter in the community. According to the staff of the skilled nursing facility, medical services are available to the residents of the shelter. The appellant has no skilled nursing needs, no physical or occupational therapy needs, and he is independent with all ADLs. Upon discharge, the facility will provide the appellant with a supply of his medications and resources available to him in the community.

The facility has complied with the regulations and statutes above in its discharge. The facility may

proceed with discharge, pursuant to the relevant regulations. For the foregoing reasons, this appeal is approved, because the skilled nursing facility has not complied with the above regulations and statute.

Order for the Nursing Facility

Proceed with discharge pursuant to 06/25/2025 discharge notice and the MassHealth regulations. Provide the appellant with appropriate community care contacts prior to his 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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

CC: [REDACTED]