

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2511323
Decision Date:	8/14/2025	Hearing Date:	08/11/2025
Hearing Officer:	Mariah Burns		

Appearance for Appellant:



Appearances for Respondent:

Lynn Wilson, LSW; Vincent Librandi, CEO,
Jewish Healthcare Center



*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:	Expedited Nursing Facility-Initiated Discharge
Decision Date:	8/14/2025	Hearing Date:	08/11/2025
Respondent's Reps.:	Lynn Wilson, Vincent Librandi	Appellant's Rep.:	[REDACTED]
Hearing Location:	Telephone (Springfield)	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

Through a notice dated July 18, 2025, the Respondent, [REDACTED] a nursing and rehabilitation center ("the nursing facility"), informed the appellant with less than 30 days' notice of its intent to discharge him from the facility. *See* Exhibit 1 and 130 CMR §§ 610.028(A)(2), 610.029(8)(2). The appellant, through his conservator, filed a timely appeal on August 1, 2025. *See* 130 CMR 610.015(B); Exhibit 2. An involuntary discharge of a nursing facility resident, including the failure to readmit the resident following a hospitalization, is valid grounds for appeal. *See* 130 CMR §§ 610.032(C), 610.012(5).

Action Taken by Respondent Nursing Facility

The Respondent nursing facility notified the appellant that it would not readmit him to the facility following his hospital stay.

Issue

The issue on appeal is whether the facility met all requirements established under federal and state law when it discharged the appellant to a hospital with less than 30-days' notice.

Summary of Evidence

The appellant is an elderly adult with a diagnosis of dementia. He has resided at the Respondent nursing facility since at least [REDACTED] 2022. He was represented at the hearing by an attorney for his conservator. The Respondent nursing facility was represented by a social worker and the facility Chief Executive Officer (CEO). All parties appeared by telephone. The following is a summary of the evidence and testimony provided at the hearing.

Since the appellant's admission to the facility, and having been denied Medicaid multiple times, the appellant has yet to pay any money toward the cost of his care. The parties report that this is, in large part, due to a lack of cooperation on the part of his spouse, which has resulted in multiple legal actions taken between the many parties. As of August 1, 2025, the appellant owes the facility \$439,940.00, which he does not dispute. Prior to the instant discharge notice, the facility has never attempted to discharge the appellant for failure to pay. The facility's representatives testified that this is because there is no safe place where he can be discharged, as his spouse is also elderly and unable to care for him.

On or about [REDACTED] 2025, the appellant, who is otherwise generally healthy notwithstanding his dementia, showed signs of acute pancreatitis that, the facility felt, warranted his hospitalization. On that date, the facility issued a notice indicating that the facility "seeks to transfer/discharge [the appellant] to [REDACTED] [sic] on [REDACTED] 2025. The reason for transfer/discharge is..." the facility then listed six potential reasons that a resident may be discharged, and circled only the first option: "The transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility..." Exhibit 1 at 1. The facility's representatives reported that this was due to the appellant's condition at the time that warranted hospitalization. The notice then informed the appellant of his right to appeal the discharge "within 14 days of receiving this notice" and informing him that he cannot be transferred "until 5 days after you receive the decision of the hearing officer." *Id.* The notice provided information regarding the state Ombudsman Program and various other legal representation options. The parties agree that, attached to the notice, was a copy of the facility's Bed Hold Policy. Circled by hand was the following:

Private Pay: For Patients/Residents paying privately, payment must continue for all days the bed is reserved. Unless otherwise notified, the facility will presume the bed is to be reserved, and the Patients/Residents will pay the full private rate during a medical leave of absence. The Patients/Residents and/or responsible party may opt

to cease a bed hold reservation at any time, in which [sic] the Patients/Residents will be discharged, and the room vacated of personal belongings (which will be stored according to nursing home policies).

Exhibit 1 at 2. Directly below that circled portion of the Bed Hold Policy is the following:

If the Patient's/Resident's hospitalization exceeds 1) the Medicaid bed hold, 2) the ability to pay privately, or 3) the patient/resident is no longer eligible for insurance coverage, the patient/resident will be re-admitted to the first available bed that medically meets the patient's/resident's. [sic].

Id. The appellant's representative agreed that she received the notice and the Bed Hold Policy and reported that she informed the facility of the appellant's decision to not privately pay for a bed hold while the appellant is hospitalized.

On, or prior to, [REDACTED] 2025, the appellant's condition stabilized, and he no longer required hospitalization. Exhibit 5 at 2. However, the Respondent nursing facility refused to readmit the appellant and, as of the date of the hearing, he remains admitted to the hospital.

The representatives for the Respondent testified to multiple things. First, they reported that the appellant was discharged from the facility on [REDACTED] 2025, when he refused to privately pay for his bed in accordance with their bed hold policy. They assert that providing the appellant with a copy of their bed hold policy was sufficient notice of the reason for which he was discharged. Second, they stated that the appellant would be welcomed back at the facility if he could provide a prospective pay source. Third, they agree that their facility can currently meet the appellant's medical and care needs.

The appellant argues that the notice provided by the facility is not sufficient to discharge him because it does not include an allegation that he failed to pay for his care. He requests that he be readmitted to the facility when the first appropriate bed becomes available.

Findings of Fact

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

1. The appellant is an elderly adult over the age of 65 with a diagnosis of dementia who has resided at the Respondent nursing facility since at least [REDACTED] 2022. Exhibit 4 at 3.
2. The appellant has applied for and been denied MassHealth long-term care coverage on multiple occasions during his stay at the facility. Testimony. He has been deemed permanently mentally incapacitated since [REDACTED] 2023, and had his healthcare proxy invoked since that

date. Exhibit 4 at 29. His healthcare proxy is his spouse. *Id.* at 30. The appellant was appointed a conservator by the [REDACTED] Probate and Family Court on [REDACTED] 2024. Exhibit 4 at 14, 22. As of August 1, 2025, the appellant has an unpaid balance of \$439,940.00 for the cost of his care at the facility. Exhibit 4 at 5. Multiple lawsuits have been filed in courts across the Commonwealth relating to this failure to pay. Exhibit 4 at 6-28.

3. The appellant has remained essentially physically healthy over the course of his residence at the facility. Testimony, *see generally* Exhibit 4 at 28-150.

4. On [REDACTED] 2025, the appellant was sent to the hospital for evaluation and treatment of acute pancreatitis. Testimony, Exhibit 4 at 1, 42.

5. On that date, the respondent facility issued a notice of intent to transfer/discharge the appellant, and as grounds for the transfer/discharge, circled only “1. The transfer or discharge is necessary to meet the resident’s welfare and the resident’s welfare cannot be met in the facility...” Exhibit 1. Also included with that notice was a copy of the facility’s bed hold policy, with the following circled:

Private Pay: For Patients/Residents paying privately, payment must continue for all days the bed is reserved. Unless otherwise notified, the facility will presume the bed is to be reserved, and the Patients/Residents will pay the full private rate during a medical leave of absence. The Patients/Residents and/or responsible party may opt to cease a bed hold reservation at any time, in which [*sic*] the Patients/Residents will be discharged, and the room vacated of personal belongings (which will be stored according to nursing home policies).

Exhibit 4 at 32. That policy also states the following:

If the Patient’s/Resident’s hospitalization exceeds 1) the Medicaid bed hold, 2) the ability to pay privately, or 3) the patient/resident is no longer eligible for insurance coverage, the patient/resident will be re-admitted to the first available bed that medically meets the patient’s/resident’s. [*sic*].

Id. The appellant did not elect to privately pay to hold his bed while he was admitted to the hospital. Testimony.

6. Since at least [REDACTED] 2025, the appellant is in stable condition and no longer requires hospital level of care. Testimony, Exhibit 5 at 3. The appellant has remained at the hospital as of the date of hearing, because the respondent facility will not readmit him. Testimony, Exhibit 5 at 2.

7. The facility is capable of meeting the appellant’s medical and care needs. Testimony. The

appellant would be welcome to return to the facility if he would be able to identify a payer source. Testimony.

8. This is the facility's first attempt to discharge the appellant since his admission. Testimony, Exhibit 4, *generally*.

Analysis and Conclusions of Law

The federal Nursing Home Reform Act (NHRA) of 1987, now codified at 42 USC 1396r(c), guarantees all nursing facility residents the right to advance notice of, and the right to appeal, any transfer or discharge initiated by such a facility. In compliance with the NHRA, Massachusetts has enacted statutory and regulatory requirements that mirror the federal resident rights protections. The statutes are found in M.G.L. c. 111 § 70E, while the relevant MassHealth regulations may be found in the Nursing Facility Manual regulations at 130 CMR 456.000 *et seq.* and in the Fair Hearing Rules at 130 CMR 610.000 *et seq.* Thus, when issuing a notice of discharge for a resident, the nursing facility must comply with the requirements set forth within those regulations regardless of whether the resident is a MassHealth member.

Under 130 CMR 610.028(A), a resident may only be transferred¹ or discharged² from a nursing facility under 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;

¹ Transfer – except for the movement of a resident within the same facility from one certified bed to another bed with the same certification, a transfer is the movement of a resident from

- (1) a Medicaid- or Medicare-certified bed to a noncertified bed;
- (2) a Medicaid-certified bed to a Medicare-certified bed;
- (3) a Medicare-certified bed to a Medicaid-certified bed;
- (4) one nursing facility to another nursing facility; or
- (5) a nursing facility to a hospital or any other institutional setting.

130 CMR 610.004.

² Discharge – the removal from a nursing facility of an individual who is a resident where the discharging nursing facility ceases to be legally responsible for the care of that individual. 130 CMR 610.004.

- (5) the resident has failed, after reasonable and appropriate notice, to pay for (or failed to have Medicaid or Medicare pay for) a stay at the nursing facility; or
- (6) the nursing facility ceases to operate.

A facility's failure or refusal to re-admit a resident following a medical leave of absence, is considered both a "discharge" and "transfer" under the relevant regulatory definitions. See 130 CMR §§ 456.402, 610.004. As such, the facility must adhere to the same requirements applied to traditional discharges, to ensure that the discharge of the resident whom they are refusing to re-admit is lawful and appropriate. See 130 CMR §§ 456.701(D), 610.029(C). Therefore, a resident may only be refused re-admission to the facility under the above circumstances *and* if proper notice is given.

When intending to discharge a resident, the facility must ensure that the physical notice of discharge is formatted and delivered in accordance with the requirements set forth under 130 CMR 610.028(C). In summary, this provision requires the facility to: hand-deliver the notice to the resident; mail a copy of the notice to any designated family member or legal representative known to the resident; ensure the notice is legible and written in a language the resident understands; and ensure that the notice contain, in relevant part:

- (1) the action to be taken by the nursing facility;
- (2) the specific reason for discharge/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/her right to appeal the notice and right to seek free legal assistance through their local legal services office,
- (6) contact information for the local long-term-care ombudsman office and, if applicable, the contact information of the agency(s) responsible for the protection and advocacy of developmentally disabled individuals and/or mentally ill individuals; and
- (7) the name of someone at the nursing facility who is available to assist the resident with any of the foregoing.

See 130 CMR 610.028(C).

At issue here is whether the notice issued by the Respondent nursing facility is sufficient under state and federal law. To determine this, two questions must first be answered: 1) what is the actual reason that the appellant was discharged from the facility; and 2) did the written notice provided to him and his representatives properly convey that reason.

The federal Medicaid regulations governing transfers/discharges from a nursing facility may be found at 24 CFR § 483.15. The Center for Medicare and Medicaid Services created a State Operations Manual (SOM), Appendix PP (App. PP) that provide interpretive guidance for these

regulations that are informative in this case.³ This guidance states that, according to federal regulations, “once admitted, residents have a right to remain in the facility unless the discharge or transfer meets one of the specified exceptions in §§ 483.15(C)(1)(i)(A)-(F).^[4] Discharging a resident is a violation of this right unless the facility can demonstrate that one of the limited circumstances listed above is met.” SOM, App. PP, §F622 (found on page 187, although the document itself is not paginated). Furthermore, the facility “must ensure that for discharges related to [the resident’s welfare]...the facility has fully evaluated the resident, and does not base the discharge on the resident’s status at the time of transfer to the acute care facility.” *Id.*

Put otherwise, “when residents are sent emergently to an acute care setting, these scenarios are considered facility-initiated transfers, NOT discharges...In a situation where the facility initiates a discharge while the resident is in the hospital following emergency transfer, the facility must have evidence that the resident’s status at the time the resident seeks to return to the facility (not at the time the resident was transferred for acute care) meets one of the [above enumerated] criteria.” Most critically, the guidance states “the resident has the right to return to the facility pending an appeal of any facility-initiated discharge unless the return would endanger the health or safety of the resident or other individuals in the facility.” *Id.* at 188.

Based on this alone, the notice provided by the facility on July 18, 2025, is deficient on its face. The facility is not permitted to discharge a resident to a hospital based on an acute condition. Reliance on 130 CMR 610.028(A)(1) can only be used to discharge a resident whose baseline needs cannot be met at the facility. By the respondent’s own admission, the appellant has resided at this facility for nearly three years, and the facility has the ongoing ability to care for the appellant’s needs notwithstanding his brief medical issue. Therefore, the facility acted unlawfully when it relied on 130 CMR 610.028(A)(1) as a basis to discharge the appellant in these circumstances.

The Respondent also argues that the appellant was properly discharged pursuant to their bed hold policy. While it is true that state and federal law require facilities to maintain bed hold policies for residents who are on a medical leave of absence, regardless of their payer source (see 24 CFR § 483.15(d), 130 CMR 456.425 and 426), none of those statutes or regulations allow for a resident’s failure to abide by that bed hold policy to serve as a basis to discharge the resident. In fact, “if a resident does not elect to pay to hold his or her bed, the resident will be permitted to return to the next available bed...” SOM App. PP at 201. This does not mean that a facility is required to hold a resident’s bed if they fail to pay for it while on a medical leave of absence, but it does mean that they must readmit the resident as soon as possible to the next available appropriate bed and cannot use this as a reason to discharge them. Thus, the Respondent’s argument that they can

³ This guidance may be found at <https://www.cms.gov/medicare/provider-enrollment-and-certification/guidanceforlawsandregulations/downloads/appendix-pp-state-operations-manual.pdf>

⁴ These specific exceptions are essentially identical to those found in the MassHealth regulations.

refuse to accept the appellant back at their facility because he did not pay for his bed after the facility sent him to the hospital lacks merit. Even if it did not, circling the applicable portion of the bed hold policy cannot be considered proper notice that complies with 130 CMR 610.028(C) and corresponding federal law.

By the admission of the facility representatives, the real reason why the appellant is being denied readmission is because of his failure to pay. The facility's CEO made clear in his testimony that the appellant was not welcome back at the facility without a payer source, and stated that if the appellant were approved for Medicaid today, he could be re-admitted. This statement demonstrates that the appellant was not discharged because he was sent to the hospital, nor because he did not privately pay to hold his bed, but because he has failed to pay for his care and will likely continue to not pay for his care.⁵ The notice given to the appellant and his representatives on July 18, 2025, lacks any reference to this basis for discharge, and therefore does not comply with the requirements under 130 CMR 610.028(C).

In sum, I find that sending the appellant to the hospital was a transfer initiated by the respondent facility, not a discharge that absolves them of their legal obligations to care for him. The facility, therefore, acted unlawfully by treating that action as a discharge. I find that the facility further acted unlawfully by refusing to readmit the appellant to the first available long-term care bed on the grounds that he did not privately pay for his bed according to their bed hold policy. I further find that they did not give the appellant sufficient notice of this reason for failing to readmit. Finally, I find that the facility did not give any notice of their actual reason for discharging the appellant – which was for failure to pay. The respondent did not abide by the requirements set forth at 130 CMR 610.028(A) and (C) and 610.029(C), 130 CMR 456.701 and 702, and the corresponding federal statutes and regulations when refusing to readmit the appellant to their facility.

For the foregoing reasons, the appeal is hereby APPROVED. The appellant must be readmitted to the respondent facility when the first long-term care bed becomes available. If the facility wishes to discharge the appellant for failure to pay, it may do so, provided that it complies with the requirements of 130 CMR 610.029(C) and M.G.L. c. 111, §70E.

Order for the Respondent Nursing Facility

Readmit the appellant to the first-available long term care bed.

⁵ I note for the record that, despite the appellant residing at this facility for nearly three years and accruing a bill nearing \$500,000, this was the first and only attempt made by the facility to discharge the appellant, and was only done after *the facility* determined that he required hospital level of care. I further note that the facility reported that this is because there is no safe place in the community to where the appellant can be discharged.

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.

Mariah Burns
Hearing Officer
Board of Hearings

[REDACTED]

[REDACTED]