

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2512038
Decision Date:	09/23/2025	Hearing Date:	9/11/2025
Hearing Officer:	Cynthia Kopka		

Appearances for Appellant:




Appearances for Respondent:

[Redacted] Social Services Director
[Redacted] Facility Administrator
[Redacted] 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:	NF discharge – endangering the safety of others
Decision Date:	09/23/2025	Hearing Date:	09/11/2025
Respondent’s Reps.:	Administrator, Social Services Director, Unit Manager	Appellant’s Rep.:	
Hearing Location:	Tewksbury (remote)	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

By notice dated August 5, 2025,  (“Respondent” or “the facility”) informed Appellant of its intent to discharge Appellant from the facility on September 5, 2025. Exhibit 1. Appellant filed a timely appeal on August 18, 2025. Exhibit 2. 130 CMR 610.615. Challenging the discharge or transfer from a nursing facility is a valid basis for appeal. 130 CMR 610.032.

Action Taken by Respondent

Respondent informed Appellant of its intent to discharge Appellant from the facility.

Issue

The appeal issue is whether Respondent satisfied its statutory and regulatory requirements when it issued the notice of intent to discharge Appellant.

Summary of Evidence

Respondent, a skilled nursing facility licensed in Massachusetts, was represented at a telephonic hearing by its administrator, social services director, and unit manager. Respondent's representatives submitted documents in support, Exhibit 4. Appellant appeared by phone and was represented by a volunteer ombudsman and an elder services representative. A summary of testimony and documentary evidence follows.

By hand-delivered letter dated August 5, 2025, Respondent informed Appellant of its intent to discharge Appellant from the facility to a local hotel. Exhibit 1. The notice stated that Respondent sought to discharge Appellant on September 5, 2025, because the safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident, and because the health of individuals in the facility would otherwise be endangered. *Id.* The notice identified the social services director as the person responsible for supervising the discharge and explained Appellant's appeal rights. The notice included contact information for a local long-term care ombudsman, the disability law center, and a center for public representation/disabled persons' protection commission. The part of the form for listing a local legal office for individuals who may qualify for free legal advice is left blank. *Id.* Respondent did not copy a family member or representative on the notice, arguing that Appellant's health care proxy is not invoked.

Appellant was admitted to the facility in [REDACTED] for short term rehabilitation following rotator cuff repair. Exhibit 4 at 231. Appellant's medical history includes [REDACTED] *Id.* at 94, 176, 231. Respondent testified that Appellant is alert and oriented and independent with all activities of daily living (ADLs). *Id.* at 221. Appellant was discharged from occupational therapy (OT) on [REDACTED]. *Id.* at 111. Appellant ambulates with the cane but does not rely heavily on the cane. Appellant is in and out of the facility daily, getting rides from family and friends who pick him up. Appellant is not dependent on staff for care and only receives medications from nurses due to protocol.

Respondent asserts that Appellant has been using alcohol while in the facility. Empty liquor bottles have been found in his room and Appellant has had falls when suspected of being intoxicated. Respondent's staff have also found unprescribed medications in his room. According to the submitted records, on August 5, 2025, Respondent's cleaning staff found empty miniature liquor bottles and unprescribed medications in Appellant's room. Exhibit 4 at 55. Respondent staff has observed Appellant bringing brown paper bags into the facility. Additionally, in April 2025, Appellant was in possession of a vape pen in the facility. *Id.* at 147. Respondent issued the 30-day notice of discharge to protect the safety of individuals in the facility due to Appellant's behavior bringing alcohol into the facility. Additionally, on August 8, 2025, a physician wrote to Appellant stating that Appellant's medical leave of absence visitation schedule will be restricted and Appellant would have to be signed out by a vetted individual due to ongoing concerns of alcohol abuse/use, medication management, and self-neglecting behaviors. *Id.* at 14. A social services note dated August 13, 2025, referenced limitations placed on Appellant's visits outside the building due to drinking. *Id.* at 44.

Appellant met with a substance abuse counselor on August 12, August 19, September 2, and September 9, 2025. *Id.* at 23, 28, 42, 46. There were conflicting reports of Appellant having relapsed into alcohol and whether he had consumed the bottles found in his room. *Id.*

Respondent has provided discharge planning and resources for Appellant. Appellant has been referred to transitional support and skills training. On two occasions, Respondent has assisted in securing a community placement for Appellant, which he has refused. One option was a rest home in the same town as the facility, which was a Medicaid funded placement. Appellant refused to discharge to the rest home because he would have a roommate. The second option was an assisted-living facility (ALF) in a neighboring town. *Id.* at 155, 159, 173. Appellant had secured a single furnished room in the ALF and refused to go at the last minute. As a result of Appellant's refusals, both options are no longer available to Appellant.

Respondent asserted that Appellant does not require a skilled setting and his needs can be met in the community. On September 9, 2025, Appellant's nurse practitioner determined that Appellant was medically stable and appropriate for discharge. Appellant's physician reviewed and agreed with the assessment. *Id.* at 231-233.

When offering the notice of discharge, Respondent's representative testified that she asked Appellant where he would like to go. Respondent's representative testified that Appellant had often stated that he would be moving in with his girlfriend and brother-in-law who have an apartment. However, when Respondent's social services director spoke to him about discharge, Appellant told her that he preferred to go to a hotel. Respondent offered to pay for two weeks at the hotel in a neighboring town and provide a list of shelters. *Id.* at 54. Respondent testified that the facility would provide transportation on the day of discharge if Appellant did not have a ride, though he gets rides from friends and family daily. The hotel is 4 miles from the facility.

Appellant testified that he has not had a drink in months. Appellant denied drinking at the facility and while on leaves of absence from the facility. Appellant asserted that on the day he fell, he had slipped on a wet floor. Appellant argued that he has offered to take a breathalyzer and Respondent refuses this request. Appellant testified that one time when he took a breathalyzer, it was negative. Respondent's representatives dispute this, arguing that there are no breathalyzers on site nor are they administered. Appellant's elder services representative argued that on one occasion, Appellant's urine toxicology screen was negative. Appellant testified that he takes [REDACTED] which stops the urge to drink and can cause violent illness if alcohol is consumed. Appellant received this as a shot but then also received pills. Regarding the unprescribed medication, Appellant argued that the pills in his room were four [REDACTED] pills. This is confirmed in the record. *Id.* at 55.

Appellant testified that he refused the ALF placement because it was being forced upon him. Appellant testified that his brother-in-law and girlfriend have signed a current lease on the apartment in which they reside. Appellant's brother-in-law is having surgery due to cancer. Appellant could move in, but the landlord wants to do work on the apartment and Appellant will be

in the way. Appellant testified that he has been talking about moving in for a while but there have been ongoing issues, such as the building being sold to new ownership and his brother-in-law's health.

Appellant's representative testified that she has been working with Appellant and [REDACTED] fill out housing applications. Appellant recently submitted an application for a housing lottery. Appellant is also on the waitlist for other housing options. Appellant's representative conceded that Appellant is independent and that an ALF may be overly restrictive. Appellant does need support in the community, including medication management and ongoing PT. Appellant testified that he has a referral from his orthopedist saying he would benefit from 6 months of PT for his shoulder. Respondent's social services director testified that when she issued the 30-day notice, she put in referrals to set up visiting nurses, PT, OT, and elder services. Appellant is eligible for MassHealth and therefore eligible for a medication dispensing machine, and nursing can set up a pill box.

Appellant testified that he does leave the facility daily, but never for more than an hour at a time. Appellant's representatives asked if Appellant was followed by psych, Respondents responded yes, several times a month. This is reflected in the record, which includes behavioral health therapy reports on approximately a weekly basis from June 9, 2025, through September 8, 2025. *Id.* at 176-217.

The voluntary ombudsman testified that given his experience as a licensed social worker with thousands of cases, Appellant would fail in the community. The voluntary ombudsman did not have enough knowledge to say whether Appellant had a skilled need.

Findings of Fact

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

1. Appellant admitted to the facility in [REDACTED] for short term rehabilitation following rotator cuff repair. Appellant's medical conditions and history includes [REDACTED] *Id.* at 94, 176, 231.
2. Appellant is alert and oriented and independent with all ADLs. He ambulates with a cane. *Id.* at 221.
3. On August 5, 2025, Respondent's cleaning staff found empty liquor bottles and unprescribed medications in Appellant's room. *Id.* at 55.
4. By hand-delivered letter dated August 5, 2025, Respondent informed Appellant of its intent to

discharge Appellant from the facility to a local hotel. Exhibit 1.

5. The notice stated that Respondent sought to discharge Appellant on September 5, 2025, because the safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident, and because the health of individuals in the facility would otherwise be endangered. *Id.*
6. The notice identified the social services director as the person responsible for supervising the discharge and explained Appellant's appeal rights. The notice included contact information for a local long-term care ombudsman, the disability law center, and a center for public representation/disabled persons' protection commission. The part of the form for listing a local legal office for individuals who may qualify for free legal advice is left blank. *Id.*
7. Appellant filed a timely appeal on August 18, 2025. Exhibit 2.
8. Respondent's notes indicate that the facility will cover the payment for two weeks at the hotel and then provide resources for shelters. Exhibit 4 at 54.
9. On August 8, 2025, a physician wrote to Appellant stating that Appellant's medical leave of absence visitation schedule will be restricted and Appellant would have to be signed out by a vetted individual due to ongoing concerns of alcohol abuse/use, medication management, and self-neglecting behaviors. *Id.* at 14.
10. A social services note dated August 13, 2025, referenced limitations placed on Appellant's visits outside the building due to drinking. *Id.* at 44.
11. Appellant met with a substance abuse counselor on August 12, August 19, September 2, and September 9, 2025. *Id.* at 23, 28, 42, 46. There were conflicting reports of Appellant having relapsed into alcohol and whether he had consumed the bottles found in his room. *Id.*
12. On September 9, 2025, Appellant's nurse practitioner determined that Appellant was medically stable and appropriate for discharge. Appellant's physician reviewed and agreed with the assessment. *Id.* at 231-233.
13. On two occasions, Respondent has assisted in securing a community placement for Appellant, which he has refused. One option was a rest home in the same town as the facility, which was a Medicaid funded placement. Appellant refused to discharge to the rest home because he would have a roommate. The second option was an ALF in a neighboring town. Appellant refused to go to the ALF. *Id.* at 155, 159, 173.
14. Respondent's social services director testified that when she issued the 30-day notice, she put in referrals to set up visiting nurses, PT, OT, and elder services. Appellant is eligible for MassHealth and therefore eligible for a medication dispensing machine, and nursing can set

up a pill box. Respondent will provide transportation from the facility to the hotel if necessary.

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.

When the facility transfers or discharges a resident, the resident's clinical record must contain documentation to explain the transfer or discharge. 130 CMR 456.701(B); 130 CMR 610.028(B). For discharges subject to 130 CMR 456.701(A)(3) and (4) and 130 CMR 610.028(A)(3) and (4), the documentation explaining the discharge must be made by a physician or PCP. 130 CMR 456.701(B)(1).

Prior to discharge or transfer, 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, 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.

130 CMR 610.028(C).

Pursuant to 130 CMR 610.029(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) when the discharge is being made on an emergency basis. *See also* 130 CMR 456.702(A).

Further, Mass. Gen. Laws c. 111, § 70E provides that “[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.” Finally, federal regulations require that a nursing facility provide sufficient preparation for a safe and orderly discharge. *See* 42 CFR 483.15(c)(7).

The appeal issue is whether Respondent met its obligations when issuing the notice of discharge to Appellant. Respondent provided acceptable reasons for discharge and evidence that Appellant is engaging in behavior that puts other residents at risk. The record includes references to alcohol, unprescribed medications, and a vape pen being found in Appellant’s room. Appellant’s physician

has documented these behaviors and has signed off on Appellant's discharge. Though the notice does not provide the name of a local legal services office, this alone does not invalidate the notice under 130 CMR 610.028(C)(9), which provides that this information "should" (but not "must") be provided.

Regarding discharge planning, Respondent has also documented multiple attempts to assist Appellant in finding a suitable discharge location during Appellant's stay. Respondent has also documented Appellant's failure to cooperate in finding a safe and appropriate discharge location. Respondent's testimony that it will pay for two weeks at a local hotel and provide sufficient discharge support is corroborated by the record.

Appellant's representatives did not dispute Respondent's attempts at discharge planning, though they were skeptical about the claims of Appellant's alcohol consumption and his capability of living independently. Ultimately, Appellant's team did not dispute Respondent's assertion that Appellant does not require the services of a skilled nursing facility, or even an ALF. Appellant asserted that he will be moving in with his girlfriend and brother-in-law when the landlord completes fixing the apartment. Appellant's team did not raise a specific concern about Appellant's discharge to a hotel or to an apartment with the friends, apart from the concern that this has been a nebulous plan.

Respondent has satisfied its statutory and regulatory requirements in providing notice of discharge to Appellant. Accordingly, this appeal is denied.

Order for MassHealth

None.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

[REDACTED]

[REDACTED]