

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

[REDACTED]

Appeal Decision:	Approved	Appeal Number:	2512298
Decision Date:	10/2/2025	Hearing Date:	09/19/2025
Hearing Officer:	Casey Groff		

Appearance for Appellant:

[REDACTED]

Appearance for Nursing Facility:

Mary Ann Liatsis Administrator;
Christine E. Shriner, MSW, CDP, CMDCP,
Social Services;
Tracey Conway, Business Office Manager;
Sandra Medrel, Nurse Unit Manager
**All from Cape Heritage Rehab. & Health
Care 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:	Nursing Facility Discharge – 30 Day
Decision Date:	10/2/2025	Hearing Date:	09/19/2025
Nursing Facility Rep.:	Mary Ann Liatsis, <i>et. al.</i>	Appellant’s Rep.:	Temporary Guardian and Conservator
Hearing Location:	Board of Hearings, 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

Through a notice dated 7/25/25, the [REDACTED] (“the nursing facility”) issued a 30-Day Notice of Intent to Discharge Appellant to an “[assisted living facility] of [his] choice” because he had not paid for his stay at the nursing facility. *See* Exh. 1; 130 CMR 610.028. Appellant filed a timely appeal on 8/23/25. *See* Exh. 2 and 130 CMR 610.015(B)(4). 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 to an assisted living facility of his choice because he failed, after receiving reasonable and appropriate notice, to pay for his stay 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

The nursing facility representatives appeared at hearing and offered a copy of Appellant's nursing facility record, which was entered into evidence as Exhibit 4. Through testimony and documentation, the nursing facility presented the following evidence: Appellant was admitted to the facility in the beginning half of [REDACTED]. His past medical history includes hypertension, brain aneurysm, paroxysm, atrial fibrillation, anxiety/depression, hyperlipidemia and hypothyroidism. Prior to admission, Appellant had been living independently in the community; however, he was hospitalized in [REDACTED] after police found him unwell and living in deplorable and unsafe conditions. This led to Appellant receiving a court appointed temporary guardian/conservator. The temporary guardianship was extended currently remains in effect.

Upon admission to the facility, Appellant received skilled nursing and therapy services as well as occupational and physical therapy, which have since ended. According to the facility, Appellant has returned to baseline. He needs cues, reminders, and requires minimal assistance with activities of daily living. He uses a front-wheeled walker to ambulate inside and outside of the facility. In addition to these services, Appellant has been seen by a licensed nurse practitioner for [REDACTED] support and emotional support as needed. The facility physician, [REDACTED] has found that Appellant no longer requires a skilled level of care.

On 3/4/2025, Appellant indicated that he wanted to be discharged home. Because his home was determined to no longer be a safe option, his temporary guardian/conservator and a court appointed attorney have been coordinating with the facility and outside agencies to locate an appropriate assisted living facility (ALF) based on Appellant's requests. As of the hearing date, three ALF's, which can adequately care for Appellant, have offered to accept him as a resident. Despite touring the ALFs, Appellant has rejected all offers.

The facility representatives testified that Appellant has submitted two MassHealth long-term care (LTC) applications during the course of his stay, however, both were denied for failure to verify. Appellant has not had a payor source for his nursing facility care since his Medicare benefit ended four days after his admission. As of the hearing date, he remains a private pay resident. The daily private rate at the facility is \$569 per day. Despite having made numerous attempts to collect payment from Appellant's temporary guardian/conservator, the facility did not receive a single payment until 4/24/25. To date, Appellant has paid a total of \$66,500 to the facility. As of the latest invoice dated 9/1/25, which includes fees through the month of September, Appellant still owes the facility a remaining balance of \$217,646.00 for his care. See Exh. 4, p. 172.

On 7/25/25, the facility issued a 30-day discharge notice to Appellant and his temporary guardian/conservator. The notice informed Appellant that the facility was seeking to discharge him to an “ALF of your choice” on [REDACTED] for “non-payment for stay at facility.” See Exh. 1.

At the hearing, the nursing facility representatives explained that although they did not specify a particular discharge location on the notice itself, the Appellant has his choice of the ALFs that have agreed to accept him - the names of which are documented in his clinical record. The cost of an ALF would be significantly less than the cost of remaining at the nursing facility.

Appellant and his temporary guardian/conservator (hereinafter “Appellant’s representative”) appeared at the hearing and testified that they are actively working to obtain the funds to pay the facility. Appellant’s representative testified that Appellant receives \$2,492 in social security income per month. Because the income can only satisfy a portion of the debt, Appellant’s representative has been trying to gain access to Appellant’s existing assets so they can be used to repay the remaining balance. Appellant’s representative testified that just recently, he obtained access to Appellant’s stocks/bonds. As soon as he received these funds, he turned them over to the facility. Currently, there is an active petition to sell Appellant’s investment property. Appellant, however, has objected to the sale, prompting the court to appoint a *guardian ad litem* to assess whether the sale of the property is in Appellant’s best interest. While no report has been filed with the court, the *guardian ad litem* has indicated he will be in favor of a license to sell. As soon as the report is filed, Appellant’s representative intends to strike the objection so that a license to sell may issue. They have already established a buyer for the property and prepared a purchase and sale agreement. Once sold, the proceeds, currently estimated at \$340,000, will be used to pay the facility. Appellant’s representative indicated he was unaware that the second MassHealth application had been denied but explained that a Medicaid specialist agency is working with them and will likely seek to appeal the notice. Appellant’s representative requested the facility postpone the intended discharge to allow him additional time to secure the funds to pay the outstanding debt.

The facility representatives responded that they would be unwilling to rescind the discharge notice, noting that they have delayed the discharge process for too long without having any assurance of being paid. Despite the testimony by Appellant’s representative, there are too many additional steps that need to occur before the facility has any guarantee of being paid.

Findings of Fact

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

1. Appellant is a current resident of the nursing facility with a past relevant medical history of hypertension, brain aneurysm, paroxysm, atrial fibrillation, anxiety/depression,

hyperlipidemia and hypothyroidism.

2. Upon admission to the facility, Appellant received skilled nursing and therapy services as well as occupational and physical therapy, which have since ended.
3. The facility physician, [REDACTED] found that Appellant no longer requires a skilled level of care.
4. As part of the facility's discharge planning efforts, the facility, with the help of Appellant's temporary guardian/conservator, have found three ALF's, which have offered to accept Appellant as a resident; however, Appellant has rejected all ALF options presented.
5. Appellant has submitted two MassHealth LTC applications during the course of his stay, however, as of the hearing date, both had been denied for failure to verify.
6. Appellant has not had a payor source for his nursing facility care since his Medicare benefit ended four days after his admission.
7. As of the hearing date, Appellant had only paid the facility \$66,500 for his care, leaving him with a remaining balance of \$217,646.00.
8. On 7/25/25, the facility issued a 30-day discharge notice to Appellant and his temporary guardian/conservator. The notice informed Appellant that the facility was seeking to discharge him to an "ALF of your choice" on [REDACTED] for "non-payment for stay at facility."

Analysis and Conclusions of Law

The federal Nursing Home Reform Act (NHRA) of 1987 – now codified in 42 U.S.C. §§ 1395i-3, 1396r and 42 CFR § 483.15 - 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 mirror the federal NHRA requirements, which are found in 130 CMR 456.000 *et seq.* (long-term care services) and 130 CMR 610.000 *et seq.* (fair hearing rules). Under the applicable federal and state laws and regulations, a nursing facility must fulfill certain requirements before it can initiate an involuntary transfer or discharge of a resident.

First, a facility must permit each resident to remain in the facility and not transfer or discharge the resident from the facility **unless** one of the following circumstances applies:

- (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); 130 CMR 456.701(A); 42 CFR § 483.15(c)(1).

When the discharge or transfer is made pursuant to any of the reasons specified in subsections (1) through (5), above, the resident's clinical record must contain documentation to explain the transfer or discharge. See 130 CMR 610.028(B); 130 CMR 456.701(B).

Next, the nursing facility must issue a notice of the intended transfer/discharge to the resident by hand delivery, and to a designated family member or legal representative by mail. See 130 CMR 610.028(C) and 42 CFR §483.15(c) The content of the notice must include specific information, such as (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;** a statement of the resident's appeal rights, and the contact information for the long-term care ombudsman (as well as the contact information for other identified advocacy/protection agencies if applicable). *Id.* (emphasis added).

Additionally, the notice of discharge or transfer "must be made by the nursing facility at least 30 days before the date the resident is to be discharged or transferred..." 130 CMR 610.029(A). MassHealth recognizes limited exceptions to this rule, specifically, in circumstances that would constitute a need for an "emergency discharge,"¹ in which case the notice "must be made as soon as practicable before the discharge..." *Id.*

Lastly, the nursing facility cannot involuntarily discharge or transfer a resident unless it has complied with the requirements of M.G.L. c.111, §70E, which provides 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.**

¹ There are four bases for initiating an "emergency" discharge or transfer, which are: (1) the health or safety of the other residents would be endangered; (2) the resident's health improves sufficiently; (3) an immediate transfer is required by the resident's urgent medical needs; and (4) the resident has not lived in the nursing facility for 30 days. See 130 CMR 610.029(B). None of these circumstances apply in this case.

(emphasis added).

In the present case, the nursing facility, through its 7/25/25 notice, sought appropriate grounds to discharge Appellant from the facility; specifically, that Appellant has failed, after reasonable and appropriate notice, to pay for a stay at the nursing facility. See 130 CMR 610.028(A). The evidence shows that Appellant has accrued a balance of over \$217,000 in unpaid nursing facility service charges since his admission date. Although Appellant has applied for MassHealth long-term care benefits twice, both applications have been denied for failure to cooperate with MassHealth's requests for verifications. The facility has sufficiently documented their many, albeit unsuccessful, efforts to collect the outstanding payments from Appellant and his court appointed guardian/conservator. As of the hearing date, Appellant had made no meaningful progress in satisfying the increasing debt he owes the facility.

Although the facility established appropriate grounds to discharge Appellant, it cannot proceed with the discharge unless it provides Appellant with appropriate notice. In this case, the 7/25/25 notice fails to identify the "location to which the resident is being transferred or discharged" with the level of specificity required under 130 CMR 610.028(C) and 42 CFR §483.15(c), above. The Centers for Medicaid and Medicare Services (CMS) has provided states with guidance on this particular requirement by clarifying that the notice must include "the specific [discharge] location (***such as the name of the new provider or description and/or address if the location is a residence***) to which the resident is to be transferred or discharged." See CMS's *State Operations Manual*, Appendix PP, § F628 (emphasis added).² Notifying Appellant that he would be discharged to an "ALF of [his] choice" is ambiguous and does not meet this standard. See Exh. 1. It is noted that the facility has helped Appellant find multiple ALFs which were willing to accept him, and that despite his acceptance, Appellant has declined all locations. While the broad language was presumably intended to allow Appellant the ability to retain some input in his destination, it fails to place Appellant and other related parties on notice of the specific location to where he will be discharged. Moreover, its enforceability hinges on Appellant's selection of ALFs, which is problematic given that he has already rejected all options presented. Ultimately, the vague language in the 7/25/25 discharge notice renders it invalid. While Appellant does not have a right to remain in the facility without paying, the facility must first provide Appellant with a proper notice in accordance with 130 CMR §§ 610.028 - 610.029.³ Based on the foregoing, this appeal is APPROVED.

² Through the *State Operations Manual*, CMS provides guidance to states on the certification and oversight of Medicaid Programs. A copy of *Appendix PP* – which was last issued on 4-25-25 - can be found online at: https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltc.pdf

³ Because the facility did not meet the preliminary notice requirements to proceed with the discharge, this Decision need not address whether the facility met this standard under M.G.L. c.111, §70E, above. It is noted, however, that the absence of a definitive discharge location would prevent a hearing officer from rendering an informed decision as to whether the facility satisfied the statutory requirement outlined therein.

Order for Nursing Facility

Rescind the 30-Day Notice of Intent to Discharge/Transfer Resident. The 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.

Casey Groff
Hearing Officer
Board of Hearings

[REDACTED]

[REDACTED]