

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

[REDACTED]

Appeal Decision:	Approved	Appeal Number:	2512442
Decision Date:	10/02/2025	Hearing Date:	09/12/2025
Hearing Officer:	Emily Sabo		

Appearance for Appellant:

[REDACTED]

Appearances for Nursing Facility:

[REDACTED], Administrator, Windsor Skilled Nursing and Rehabilitation Center; [REDACTED]
[REDACTED], Social Worker, Windsor Skilled Nursing and Rehabilitation 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; Failure to Pay
Decision Date:	10/02/2025	Hearing Date:	09/12/2025
Nursing Facility's Reps.:	[REDACTED]	Appellant's Rep.:	Son/Health Care Proxy
Hearing Location:	Quincy Harbor South (Telephone)	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 29, 2025, [REDACTED] notified the Appellant of its plan to discharge her to [REDACTED] on or after August 28, 2025, because she had failed, after reasonable and appropriate notice, to pay for her stay (or had failed to have Medicare or Medicaid pay for her stay) at the facility. Exhibit 1. The Appellant filed this appeal in a timely manner on August 26, 2025. 130 CMR 610.015(B)(3) and Exhibit 1. The discharge of a nursing home resident is valid grounds for appeal. 130 CMR 610.032(C).

Action Taken by Nursing Facility

[REDACTED] (facility) notified the Appellant of its intent to discharge her because she had failed to pay for her stay at the facility. Exhibit 1; *see also* 130 CMR 610.028(A)(5).

Issue

¹ A skilled nursing facility.

² The listed discharge location is her son's residence.

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

Summary of Evidence

Documentary and Testimonial Evidence

The day before the hearing, the facility submitted records including the Appellant's progress notes and bills. The records did not include any discharge or transfer plan. Exhibit 4. The facility also provided information indicating that there was a pending conservator petition for the Appellant with the probate court.³ *Id.* The Appellant is over the age of 65 and was admitted to the facility on May 8, 2025. *Id.*

The hearing was held by telephone. The Appellant was represented by her son and invoked health care proxy, who verified the Appellant's identity. The facility was represented by its administrator and a social worker.

The facility's administrator testified that initially the Appellant's stay was paid for by Medicare. He testified that the Appellant's Medicare payment ended on July 3, 2025, and that he has had multiple conversations with the Appellant's son informing him that the Appellant would need to pay privately for her stay at the facility. The facility's administrator testified that the facility calculated that the Appellant owed \$52,370.86. This was advance billed through September 30, 2025.⁴ The facility's social worker testified that the facility had not engaged in discharge planning for the Appellant. The facility's social worker testified that Appellant could not be safely served at the proposed discharge location of [REDACTED]. The facility's social worker testified that the Appellant requires 24/7 care, and that there was no plan for her to receive services at the discharge location. The facility's social worker stated that the local elder services organization said that they did not have the resources to help. The facility's social worker testified that she understood that the Appellant's [REDACTED] grandson lives at the [REDACTED] property and that he is prone to violent attacks and aggression, and that this would be unsafe for the Appellant due to her history of falls and dementia. The facility's administrator and social worker both testified that they want the Appellant to be safe and to stay at the facility; the administrator also explained that he wanted the facility to be paid.

The Appellant's representative testified that he is the Appellant's health care proxy, but he is not financially responsible for the Appellant's bills at the facility. The Appellant's representative testified

³ At the conclusion of the hearing, the hearing officer asked the parties that if a conservator is appointed for the Appellant, to please notify the conservator of this pending appeal.

⁴ The bill statements submitted indicate certain co-insurance payments, which the hearing officer asked about, but the facility could not fully explain how the totals were calculated. Exhibit 4.

that he loaned the Appellant money for a co-payment in order for her to be admitted to the facility and that he put the \$6,268.00 payment on his [REDACTED] credit card, which carries a 30% interest rate. He explained that he does not have the legal authority to make financial decisions for the Appellant and that for that reason, the Appellant's bank and the Social Security Administration and the Veterans Administration will not deal with him. The Appellant's representative explained that he thought that the Appellant could not qualify for MassHealth due to the income she receives from the Veterans Administration, as a military widow. The Appellant's representative testified that he feels positive about the facility and that the Appellant is well cared for there. The Appellant's representative testified that the facility's staff are kind and knowledgeable, and that the Appellant is receiving better care compared to another facility where she had previously resided. The Appellant's representative testified that it would not be safe for the Appellant to come and live with him, based on her care needs.

Content of the Discharge Notice

The discharge notice at issue in this matter contains a statement of the action to be taken by the nursing facility, a specific statement of the reasons for the intended discharge, the location to which the Appellant is to be discharged, the effective date of the intended discharge, the right of the Appellant to request a fair hearing on the intended discharge, the address, telephone number and fax number of the Board of Hearings, the time frame for requesting a hearing, the effect of requesting a hearing as provided for under 130 CMR 610.030 (that the facility cannot discharge the Appellant until 30 days after the hearing officer's decision is rendered), the name of the person at the facility who can answer any questions about the discharge notice and about the right to file an appeal, the name and address of the local legal-services office, the name and address of the local long-term care ombudsman program, and the mailing addresses and telephone numbers of the agencies responsible for the protection and advocacy of mentally ill individuals, and the protection and advocacy for developmentally disabled individuals. Exhibits 1 & 2.

Findings of Fact

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

1. The Appellant is over the age of 65 and was admitted to the facility on May 8, 2025. Exhibit 4.
2. A billing statement from the facility, dated August 15, 2025, states that the Appellant owes \$52,370.86; this includes advance billing for her stay through September 30, 2025. Testimony, Exhibit 4.
3. On July 29, 2025, the facility notified the Appellant that it intended to discharge her to [REDACTED] on or after August 28, 2025, because she had failed, after [REDACTED]

reasonable and appropriate notice, to pay for (or had failed to have Medicare or Medicaid pay for) her stay at the facility. Exhibit 1.

4. The discharge notice contains the action to be taken by the nursing facility, a specific statement of the reasons for the intended discharge, the location to which the Appellant is to be discharged, the effective date of the intended discharge, the right of the Appellant to request a fair hearing on the intended discharge, the address, telephone number and fax number of the Board of Hearings, the time frame for requesting a hearing, the effect of requesting a hearing as provided for under 130 CMR 610.030 (that the facility cannot discharge the appellant until 30 days after the hearing officer's decision is rendered), the name of the person at the facility who can answer any questions about the discharge notice and about the right to file an appeal, the name and address of the local legal-services office, the name and address of the local long-term care ombudsman program, and the mailing addresses and telephone numbers of the agencies responsible for the protection and advocacy of mentally ill individuals, and the protection and advocacy for developmentally disabled individuals. Exhibit 1.
5. On August 26, 2025, the Appellant timely appealed the discharge notice with the Board of Hearings. Exhibit 2.
6. The facility has not engaged in discharge or transfer planning for the Appellant. Testimony, Exhibit 4.
7. The facility admits that the proposed discharge location [REDACTED] is not a safe location for the Appellant. Testimony.
8. The Appellant requires 24/7 care, and no services are in place for her in the community. Testimony.

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.*

130 CMR 610.028: Notice Requirements Regarding Actions Initiated by a Nursing Facility⁵

⁵ See also 130 CMR 456.701.

- (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)(3) or (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, if the resident has made such a person known to the facility, a notice written in 12-point or larger type that contains the following, in a language the member understands:
- (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(A), (B), (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).

Massachusetts General Laws (MGL) c. 111, §70E states in relevant part:

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.**

MGL c. 111, §70E (emphasis added)

Federal regulations provide for “**Orientation for transfer or discharge.** A facility must provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. This orientation must be provided in a form and manner that the resident can understand.” 42 CFR 483.15(c)(7). Federal regulations also provide that when

the facility anticipates discharge a resident must have a discharge summary that includes but is not limited to . . . A post-discharge plan of care that is developed with the participation of the resident and, with the resident’s consent, the resident representative(s), which will assist the resident to adjust to his or her new living environment. The post-discharge plan of care must indicate where the individual plans to reside, any arrangements that have been made for the resident’s follow up care and any post-discharge medical and non-medical services.

42 CFR 483.21(c)(2)(iv).

940 CMR 4.09 provides that:

It shall be an unfair or deceptive act or practice, in violation of MGL c. 93A, § 2 for a licensee or administrator . . . (6) to fail to discuss the planned discharge or transfer from the facility with the resident and his/her legal representative or next of kin. (7) to fail to consult the resident and his/her family or legal representative in choosing

another facility, and to take all reasonable steps to implement the resident's choice of such facility.

940 CMR 4.09(6), (7).

Here, the facility has alleged that the Appellant has failed, after reasonable and appropriate notice, to pay for (or has failed to have Medicare or Medicaid pay for) her stay at the nursing facility. 130 CMR 456.701(A)(5); 130 CMR 610.028(A)(5). If proven, this would be an acceptable reason for a discharge. Regardless, in the present case, the facility did not meet the regulatory procedures required for an appropriate discharge.

As quoted above, federal regulations require that a nursing facility provide and document sufficient preparation and orientation to ensure a safe and orderly discharge, and that this orientation be provided in a form and manner that the resident can understand. 42 CFR 483.15(c)(7). At the hearing, the facility admitted that it had not engaged in discharge planning, and that the proposed discharge location was not safe for the Appellant; further, the facility admitted that the Appellant requires 24/7 care and that no services were in place at the intended discharge location. Federal regulations at 42 CFR 483.21(c)(1) speak to the discharge planning process and require the facility to involve the resident and resident representative in the development of the discharge plan. 130 CMR 483.21(c)(1)(v). The facility has not provided and documented sufficient preparation and orientation to ensure a safe and orderly discharge of the Appellant.

Accordingly, this appeal is APPROVED to ensure that the facility acts in compliance with the law and regulations governing a nursing home discharge. The facility may issue proper notice and take proper action, so long as it engages in safe discharge planning.⁶

Order for Nursing Facility

Rescind the discharge notice issued on July 29, 2025, and do not discharge the appellant to [REDACTED] under this notice.

Compliance with this Decision

If this nursing facility fails to comply with the above order, you should report this in writing to the Director of the Board of Hearings, Office of Medicaid, at the address on the first page of this decision.

Notification of Your Right to Appeal to Court

⁶ Additionally, while not paying for her stay at the facility is adequate grounds for discharge, it did not appear that the Appellant had applied for MassHealth long-term-care or sought alternative methods of payment.

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.

Emily Sabo
Hearing Officer
Board of Hearings

[REDACTED]

cc: Respondent: [REDACTED] [REDACTED] [REDACTED]
[REDACTED]