

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**

[REDACTED]

<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2512478
<b>Decision Date:</b>	11/17/2025	<b>Hearing Date:</b>	11/10/2025
<b>Hearing Officer:</b>	Christine Therrien		

**Appearances for Appellant:**

[REDACTED]

**Appearances for Nursing Facility:**

[REDACTED]



*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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	NF Discharge
<b>Decision Date:</b>	11/17/2025	<b>Hearing Date:</b>	11/10/2025
<b>Nursing Facility's Reps.:</b>	[REDACTED]	<b>Appellant's Reps.:</b>	[REDACTED]
<b>Hearing Location:</b>	Tewksbury MassHealth Enrollment Center Telephonic		

## 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 30-day Notice of Intent to Discharge dated 8/15/25. The notice stated that [REDACTED] ("the skilled nursing facility" or "the facility") seeks to discharge the appellant to [REDACTED]. The notice indicates the reason for the discharge is that the appellant "no longer needs the skilled services." (Exhibit 1). The appellant filed this timely appeal on 8/27/25. (130 CMR 610.015(B); and Exhibit 2). Discharge of a Nursing Facility patient is valid grounds for appeal. (130 CMR 610.029; 42 CFR Ch IV §483.200 et seq.).

## Action Taken by MassHealth

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

## Issue

The appeal issue is whether the facility satisfied its statutory and regulatory requirements pursuant to 130 CMR 456.701(A) and (B) when it issued appellant a 30-day notice of intent to discharge.

## Summary of Evidence

The appellant is [REDACTED]. Over the last couple of years, the appellant has resided in nursing facilities and hospitals at various times. The appellant previously had an apartment. In the [REDACTED] [REDACTED] the appellant was involuntarily admitted to a hospital from another nursing facility under Section 12 of M.G.L. c. 123. The facility planned to discharge the appellant to a shelter. The nursing facility submitted portions of the appellant's clinical file into the record. The sections submitted included some of the hospital records, evaluations by the facility's occupational therapy (OT) and physical therapy (PT) departments, and social work progress notes. The nursing facility social worker testified that the hospital sought to discharge the appellant and reached out to the facility for a placement. The nursing facility social worker testified that the facility does not know what a new resident will need with regards to skilled care until the resident is assessed. The appellant was admitted to the facility in [REDACTED]. The nursing facility testified that once the appellant was assessed at the facility, it was determined that he had no skilled needs, and he was previously given a "Notice of Intent to Discharge" within two weeks of his arrival.<sup>1</sup>

The OT and PT records show that the appellant does not require any therapies and that the appellant was already at a baseline level of independence with activities of daily living. (Exhibit 4, pp. 73,77.) The progress note signed by the medical director on 8/6/25 states the appellant "can safely be discharged to the community. He no longer needs this level of care." (Exhibit 4, p. 84.).

The nursing facility social worker testified that on 7/17/25, the facility secured the appellant a bed at a sober living home for \$836.00 a month. (Exhibit 4, p. 108). The facility social worker testified that the appellant declined the bed.

The appellant testified that he is 19<sup>th</sup> on a local housing list, and he was told not to accept any other type of housing, or he would lose his spot. The appellant's representative testified that he did not think that a sober living house was affordable. The appellant's representative testified that the appellant's SSDI benefit is around \$950.00 a month.

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<sup>1</sup> The appellant separately appealed this notice of intent to discharge. The appellant's appeal #2510480 was approved because the Hearing Officer determined that the clinical record was incomplete to determine if discharge was appropriate.

The appellant's attorney is from the legal aid agency operating in the nursing facility's locality. The appellant's attorney argued that he believed that the discharge notice was deficient because it did not identify a local legal services agency. Furthermore, the appellant's attorney argued that discharging the appellant to a shelter was not a safe and appropriate location under M.G.L. c. 111, § 70E. The appellant's attorney testified that he was not sure the bed at the sober living home was still available.

The discharge notice identifies a [REDACTED] organization as the [REDACTED] for the facility in the [REDACTED] area. (Exhibit 1, p. 3.)

## Findings of Fact

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

1. The appellant is [REDACTED]
2. Over the last couple of years, the appellant has resided in nursing facilities and hospitals at various times. In the [REDACTED] the appellant was involuntarily admitted to a hospital from another nursing facility under Section 12 of M.G.L. c. 123.
3. The appellant was admitted to his current nursing facility in [REDACTED]
4. The appellant received a 30-day Notice of Intent to Discharge from his current nursing facility dated 8/15/25. The notice stated that [REDACTED] ("the skilled nursing facility" or "the facility") seeks to discharge the appellant to [REDACTED]. The notice indicates the reason for the discharge is that the appellant "no longer needs the skilled services."
5. The appellant filed a timely appeal of this discharge notice with the BOH.
6. In preparation for the appeal hearing, the nursing facility submitted portions of the appellant's clinical file into the record. The sections submitted included some of the hospital records, evaluations by the facility's OT and PT departments, and social work progress notes.
7. The hospital sought to discharge the appellant and reached out to the facility for a placement.
8. The facility does not know what a new resident will need with regards to skilled care until the resident is assessed.

9. Once the appellant was assessed at the facility, it was determined that he had no skilled needs.
10. The OT and PT records reflect that the appellant does not require any therapies and that the appellant was already at a baseline level of independence with activities of daily living. (Exhibit 4, pp. 73, 77.)
11. The progress note signed by the medical director on 8/6/25 states the appellant “can safely be discharged to the community. He no longer needs this level of care.” (Exhibit 4, p. 84.)
12. The nursing facility social worker testified that on 7/17/25, the facility secured the appellant a bed at a sober living home for \$836.00 a month. (Exhibit 4, p. 108).
13. The appellant declined the bed at the sober living home.
14. The appellant's SSDI benefit is around \$950.00 a month.
15. The discharge notice identifies a [REDACTED] organization as the [REDACTED] for the facility in the [REDACTED] area. (Exhibit 1, p. 3.)

## 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.

For the purposes of this decision, the definitions found in 130 CMR 456.402 apply:<sup>2</sup>

*“Nursing facility” - an institution or a distinct part of an institution that meets the provider-eligibility and certification requirements of 130 CMR 456.404 or 456.405. For requirements related to the transfer and discharge of residents, the term nursing facility also includes a nursing facility participating in Medicare, whether or not it participates in MassHealth.*

*“Discharge” - the removal from a nursing facility to a noninstitutional setting of an individual*

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<sup>2</sup>The regulatory language in the MassHealth Nursing Facility Manual has identical (or near-identical) regulatory counterparts within the Commonwealth’s Fair Hearing Rules under 130 CMR 610.000 et seq., as well as federal regulations found under 42 CFR 483.000 et seq. As to this part of the regulatory law, the regulations in 130 CMR 610.028 and 42 CFR 483.12(a)(2) are identical to that found in 130 CMR 456.402. This appeal decision will hereafter make all further regulatory references only to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000, unless other regulatory references is noted and appropriate.

*who is a resident where the discharging nursing facility ceases to be legally responsible for the care of that individual; this includes a nursing facility's failure to readmit following hospitalization or other medical leave of absence.*

*"Transfer" — 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.*

*A nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, resulting in the resident being moved to another institutional setting is also a transfer. Movement of a resident within the same facility from one certified bed to another bed with the same certification is not a transfer.*

The appellant is challenging the nursing facility's attempt to discharge him to a homeless shelter in a community setting via its notice dated 8/15/25. (Exhibits 1 and 130 CMR 456.402).

The guidelines that apply in a determination of whether the appellant can be so discharged are found in 130 CMR 456.701 of the MassHealth Nursing Facility Manual. This section of the regulations strictly and specifically lists the only circumstances and conditions that allow for the transfer or discharge of a resident from a nursing facility and the requirements of the relevant notice – if these requirements are not met, the facility must permit the resident to remain in the facility.

The relevant portions of the regulation at 130 CMR 456.701 read as follows:

**456.701: Notice Requirements for Transfers and Discharges Initiated by a Nursing Facility**

- (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 Division 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 456.701(A)(1) through (5), the resident's clinical record must

contain documentation to explain the transfer or discharge. The documentation must be made by:

- (1) the resident's physician when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and
- (2) a physician when the transfer or discharge is necessary under 130 CMR 456.701(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 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 their right to request a hearing before MassHealth's Board of Hearings, 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 456.702; and
  - (c) the effect of requesting a hearing as provided for under 130 CMR 456.704;
- (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. s. 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. s. 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.

(Emphasis added)

The first issue is whether the appellant's discharge is appropriate because his health has improved sufficiently so that the appellant no longer needs the services provided by the nursing facility. The appellant was admitted to the facility and was promptly determined not to require a skilled level

of care. The appellant is independent with all ADLs. The appellant does not have any documented conditions that require the clinical care provided by a nursing facility. Thus, the discharge is appropriate.

The second issue is whether the nursing facility provided notice that met all of the notice requirements listed in 130 CMR 456.701(C). The notice the facility delivered to the appellant does not contain the name and address of the local legal services, but rather the address of legal services in [REDACTED] which is not in the appellant's locale. For this reason, the discharge fails to meet the notice requirements.

The third issue is whether the nursing facility has met the requirements of all other applicable federal and state regulatory requirements in addition to the MassHealth-related regulations discussed above, including MGL c.111, §70E, which went into effect in November of 2008. The key paragraph of that statute, which is directly relevant to this appeal, reads 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.***

(Emphasis added)

“The Federal Centers for Medicare and Medicaid, during the times relevant here known as the Health Care Finance Administration, is the Federal agency charged with administering the Medicaid program and promulgating regulations. Sufficient preparation means, according to HCFA,<sup>3</sup> that the facility informs the resident where he or she is going and takes steps under its control to assure safe transportation; the facility should actively involve, to the extent possible, the resident and the resident's family in selecting the new residence.” Centennial Healthcare Investment Corp. v. Commissioner of the Division of Medical Assistance, 61 Mass. App. Ct. 1124, 1125, n. 5 (2004) (Appeals Court Rule 1:28). Here, the facility informed the appellant where he was going via the written notice on 8/15/25. The record supports that the facility provided sufficient preparation to the appellant regarding his discharge. The facility worked with the appellant to ensure an orderly transition to new housing in a sober living home, but the appellant refused to accept the available bed. The appellant did not provide any relevant, reliable evidence to prove that the homeless shelter listed on the “Notice of Discharge/Transfer” would not be a safe and appropriate place for his discharge, and he is appealing the discharge because he wants to remain at the NF until he makes it to the top of the housing list. Therefore, the nursing facility has met the requirements of all other applicable federal and state regulatory requirements in addition to the MassHealth-related regulations

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<sup>3</sup> The Health Care Finance Administration is now known as the Centers for Medicare and Medicaid Services.

discussed above, including M.G.L. c. 111, §70E, with regard to sufficient preparation for discharge.

While the discharge meets two of the three issues, the totality of the evidence presented is not sufficient to warrant discharge under the regulations because the notice requirements were not met. Therefore, this appeal is **APPROVED**.

## **Order for Nursing Facility**

Rescind the 8/15/25 discharge notice. Do not discharge the appellant without issuing a new notice.

## **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 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.

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Christine Therrien  
Hearing Officer  
Board of Hearings

[REDACTED]