

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2512836
<b>Decision Date:</b>	10/07/2025	<b>Hearing Date:</b>	10/03/2025
<b>Hearing Officer:</b>	Christine Therrien		

**Appearance for Appellant:**



**Appearances for Nursing Facility:**

[Redacted], Social Worker;  
[Redacted] Administrator; [Redacted],  
Business Officer 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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	NF Discharge
<b>Decision Date:</b>	10/07/2025	<b>Hearing Date:</b>	10/03/2025
<b>Nursing Facility's Reps.:</b>	[REDACTED] Social Worker; [REDACTED] Administrator; [REDACTED] [REDACTED], Business Officer Manager	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Charlestown 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

Through a "30-Day Notice of Intent to Transfer or Discharge Resident" dated 9/12/24, the nursing facility (NF), [REDACTED], informed the appellant of the facility's intent to discharge the appellant to [REDACTED], because "[*appellant has*] failed after reasonable and appropriate notice to pay for [*his*] stay at the facility." (130 CMR 610.028; 130 CMR 456.701; and Exhibit 1). The appellant filed a timely appeal on 10/9/24. (130 CMR 610.015(B); 130 CMR 456.703; and Exhibit 2). Challenging a notice of transfer or discharge initiated by a nursing facility is a valid ground for appeal to the Board of Hearings. (130 CMR 610.032(C)).

### Action Taken by Nursing Facility

The nursing facility notified the appellant that it sought to discharge him due to failure to pay.

## Issue

The appeal issue is whether the NF can discharge the appellant to the designated location pursuant to the governing state and federal regulations, which include, but are not limited to, 130 CMR 610.028 and 130 CMR 456.701.

## Summary of Evidence

The appellant is [REDACTED] and was admitted to the NF on [REDACTED] after he sustained an injury in the community. The NF social worker testified that the appellant was determined eligible for MassHealth LTC benefits after being in the NF for six months. The NF social worker testified that the appellant has never paid his monthly patient-paid amount, which is currently \$2,911.17. The NF social worker testified that the appellant made two payments of \$300. The NF social worker testified that the appellant has an outstanding balance of \$21,579.73 as of 9/1/25. (Exhibit 4). The NF social worker testified that she has spoken with the appellant about the requirement to pay his patient-paid amount. (Exhibit 4). The NF social worker testified that she also spoke with the appellant's daughter #2 about the need to pay the patient-paid amount, and daughter #2 stated she did not think he needed to pay that amount because "he is not supposed to stay forever." (Exhibit 4, p. 11). The NF social worker testified that she had spoken to the appellant about discharge planning and that he chose the address of daughter #2 for discharge. The NF social worker testified that she went over discharge planning with the appellant and that he agreed she could contact the VNA and Agespan (Elder Services in the discharge location) on his behalf. (Exhibit 4, p. 9). The documentation submitted indicates the appellant requires assistance with one activity of daily living (ADL), which he can receive assistance with via community-based programs (VNA or PCA if he qualifies). (Exhibit 4).

The appellant's representative (daughter #1) testified that she did not think the appellant owed the amount the NF is claiming, and there is a billing error that the NF refuses to fix. The appellant's representative testified that the appellant should not have to pay the entire patient-paid amount because he is considered a rehab patient and not a resident. The appellant's representative testified that the appellant has had several hospitalizations due to injuries, and each time he goes to the NF, he is a rehab patient, not a resident.<sup>1</sup> The appellant's representative testified that once, the appellant was discharged after he was voluntarily away from the NF for more than 10 days. The appellant's representative testified that she did not know he was not allowed to leave the NF for that long until she brought him back and was told he had been discharged. The appellant's representative testified that the appellant was staying with his girlfriend, and he did not return to the NF because the NF had a Covid outbreak and he was undergoing chemotherapy for cancer. The appellant's representative testified that he cannot come back to her house to stay because he was living in an RV in her driveway until he was admitted to the NF, and the town told her it was

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<sup>1</sup> Appellant sustained a broken arm in the facility and broken ribs from a fall outside the facility.

illegal to live in an RV on her property for more than two weeks. The appellant's representative testified that she will not take him until he is deemed completely self-sufficient. The appellant's representative testified that the appellant cannot care for his own hygiene. The appellant's representative testified that the appellant will not accept that he has dementia. The appellant's representative testified that the appellant cannot afford the patient-paid amount because his Social Security is going toward the construction of an accessory dwelling unit at daughter #2's house. The appellant's representative testified that she does not manage the appellant's money and that he has never been responsible with his money. The appellant's representative testified that she thinks the appellant should be deemed incapable of handling his own affairs. The appellant's representative testified that the facility should just take the appellant's money. The appellant's representative testified that she did not think daughter #2 wanted the appellant because he is not self-sufficient.

The appellant testified that he was never spoken to about being discharged or owing any money to the facility. The appellant exited the hearing prior to its conclusion because he was getting angry. The appellant's daughter #2 did not appear at the hearing.

The NF social worker testified that when a resident voluntarily leaves the facility for more than 10 days, they are automatically discharged, and there is no guarantee that a bed will be held for the resident. The NF social worker testified that the appellant left the facility for 11 days and was re-admitted on [REDACTED]. The NF social worker testified that after a resident has been in the NF for 6 months, they are converted from a short-term status to a long-term status, and the patient-paid amount is established by MassHealth. The NF social worker testified that if a resident leaves the NF for more than 60 days and then returns, their short-term status begins again. The NF social worker testified that the appellant never left the facility for 60 days; therefore, he never converted back to short-term status and thus owes the patient-paid amount.

## Findings of Fact

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

1. The appellant is [REDACTED] and was admitted to the NF on [REDACTED] after he sustained an injury in the community.
2. The documentation submitted indicates the appellant requires assistance with one activity of daily living (ADL), which he can receive assistance with via community-based programs (VNA or PCA if he qualifies). (Exhibit 4).
3. The appellant was determined to be eligible for MassHealth LTC benefits after being in the NF for six months.

4. The appellant has never paid his monthly patient-paid amount, which is currently \$2,911.17.
5. The appellant made two payments of \$300.
6. The appellant has an outstanding balance owed to the facility of \$21,579.73 as of 9/1/25. (Exhibit 4).
7. The NF social worker has spoken with the appellant about the requirement to pay his patient-paid amount. (Exhibit 4).
8. Through a "30-Day Notice of Intent to Transfer or Discharge Resident" dated 9/12/24, the nursing facility (NF), Maplewood Center, informed the appellant of the facility's intent to discharge the appellant to [REDACTED], because "[the appellant has] failed after reasonable and appropriate notice to pay for [his] stay at the facility."
9. The appellant filed a timely appeal on 10/9/24.
10. The NF social worker spoke with the appellant's daughter #2 about the need to pay the patient-paid amount, and daughter #2 stated she did not think he needed to pay that amount because "he is not supposed to stay forever." (Exhibit 4, p. 11).
11. The NF social worker spoke to the appellant about discharge planning, and the appellant chose the address of daughter #2 for discharge.
12. The NF social worker went over discharge planning with the appellant, and the appellant agreed she could contact the VNA and Agespan (Elder Services in the discharge location) on his behalf. (Exhibit 4, p. 9).
13. The appellant was discharged once when he was voluntarily away from the facility for more than 10 days and was re-admitted on [REDACTED]
14. The appellant cannot return to his prior residence at daughter #1's house because he was living in an RV in her driveway, and it is illegal to live in an RV on her property for more than two weeks.
15. The appellant's Social Security is going toward the construction of an accessory dwelling unit at daughter #2's house.
16. After a resident has been in the NF for 6 months, they are converted from a short-term status to a long-term status, and the patient-paid amount is established by MassHealth.

17. If a resident leaves the NF for more than 60 days and then returns, their MassHealth short-term status begins again.
18. The appellant never left the facility for 60 days; therefore, he never converted back to short-term status and thus owes the patient-paid amount.

## 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 456.002 apply:<sup>2</sup>

“Nursing facility” - a Medicare skilled nursing facility or Medicaid nursing facility licensed by the Department of Public Health to operate in Massachusetts, or a distinct Medicaid- or Medicare-certified unit within a facility.

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

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<sup>2</sup> The regulatory language in the MassHealth Nursing Facility Manual often has identical (or near-identical) regulatory counterparts which can be found within the Commonwealth's Fair Hearing Rules or the federal government regulations; in this case, the regulations in 130 CMR 610.028 and 42 CFR 483.12(a)(2) are identical to that in 130 CMR 456.002. This appeal decision will hereafter make all further regulatory references only to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000, unless otherwise noted or required.

bed with the same certification is not a transfer.

Based on the above definition, the NF is attempting to discharge the appellant to his daughter #2's house in the community via its notice dated 8/14/25. (Exhibit 1 and 130 CMR 456.002).

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 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 regulation at 130 CMR 456.701 reads 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 MassHealth 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 (4), 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 or PCP when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and
- (2) a physician or PCP 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 the authorized 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.

The NF is attempting to discharge the appellant pursuant to 130 CMR 456.701(A)(5) due to his failure to pay. The documentation submitted by the NF and found in Exhibits 1, 2, and 4 complies with the requirement of the first paragraph found in 130 CMR 456.701(B).

In addition to the MassHealth-related regulations discussed above, the NF also has an obligation to comply with all other applicable state laws, including M.G.L. c. 111, § 70E. The key paragraph of that statute, which is directly relevant to these types of appeals, 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.

The NF documents submitted show that the NF has tried to prepare and orient the appellant to ensure a safe discharge to a safe and appropriate place. While the appellant's representative argues that discharge is not appropriate now because she thinks the appellant needs more time in the facility to become self-sufficient, the appellant does not require skilled care. The appellant's daughter #1, whom he chose to live with and whom he is supporting in building an accessory

dwelling unit, did not appear at the hearing to dispute the appropriateness of the discharge location.

Based on the record, the NF has complied with all applicable and relevant state and federal legal requirements, the NF's action is appropriate and reasonable, and there is no evidence to support the appellant's appeal of the discharge.

Accordingly, this appeal is DENIED. Per 130 CMR 456.704(A) and 130 CMR 610.030(A), the nursing facility must stay the discharge of the appellant for at least 30 days from the date of this decision.

## **Order for Nursing Facility**

Proceed with notice of discharge to a safe and appropriate place with appropriate services in place. Per 130 CMR 456.704(A) and 130 CMR 610.030(A), such discharge may not take place any earlier than 30 days from the date of this decision.

## **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 nursing facility fails to comply with the above order, 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

cc: Appellant Representative: [REDACTED]

cc: Administrator, [REDACTED]