

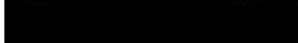
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2515115
Decision Date:	11/21/2025	Hearing Date:	11/17/2025
Hearing Officer:	Christine Therrien		

Appearance for Appellant:



Appearances for Nursing Facility:

Steve Calvin, Administrator
Julie Benbow, Regional Social Worker



*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 - Expedited
Decision Date:	11/21/2025	Hearing Date:	11/17/2025
Nursing Facility Reps.:	Steve Calvin, Administrator; Julie Benbow, Regional Social Worker	Appellant Reps.:	[REDACTED]
Hearing Location:	Quincy Harbor South 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 Notice of Intent to Discharge Resident with Less than 30 Days' Notice (Expedited Appeal) dated 10/13/25. The notice stated that [REDACTED] ("the skilled nursing facility" or "the facility") seeks to discharge the appellant to [REDACTED] a homeless shelter, on 11/12/25. The notice indicates the reason for the discharge is that "the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility." (Exhibit 1). The appellant filed this timely appeal on 10/16/25 (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 (NF) intends to discharge the appellant from the facility on an expedited basis.

Issue

The appeal issue is whether the NF satisfied its statutory and regulatory requirements pursuant to 130 CMR 456.701(A) and (B) when it issued the appellant an expedited notice of intent to discharge.

Summary of Evidence

The appellant is [REDACTED] years old. The NF representative testified that the appellant was admitted to the NF on [REDACTED] from the hospital with malnutrition, spinal stenosis, and back pain. On 10/13/25, the NF issued a Notice of Intent to Discharge Resident with Less than 30 Days' Notice stating that "the [appellant's] health has improved sufficiently so the resident no longer needs the services provided by the facility." (Exhibit 1). The NF representative testified that as of 10/22/25, the appellant is independent with all his Activities of Daily Living (ADLs), except that he requires supervision for sitting to stand, transferring from chair to bed, and transferring to a toilet due to instability. (Exhibit 4, p. 25). The NF representative testified that the appellant can stand but uses a wheelchair to get around. The NF representative testified that on 10/11/25, the NF physician included in the appellant's clinical record that "the appellant is medically stable and does not require ongoing skilled nursing facility services. He is cleared for discharge." (Exhibit 4, p. 30). The MassHealth Payment for Nursing Facility Services, a notice regarding the appellant's clinical eligibility for NF services dated October 31, 2025, states that the appellant is no longer clinically eligible for nursing facility services because they are not medically necessary. (Exhibit 4, p. 9). The NF representative testified that the appellant refused a referral to a sober living home. The NF representative testified that the NF issued a notice of intent to discharge the appellant to a homeless shelter.

The appellant testified that he was previously living with his sister. The appellant testified that his sister is living in her own subsidized apartment. The appellant's attorney testified that he assisted the appellant and his sister with the eviction from the home where they had lived previously. The appellant testified that he is on a housing list. The appellant's attorney testified that he has a private social worker looking for housing for the appellant as well.

Findings of Fact

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

1. The appellant is [REDACTED] years old.
2. The appellant was admitted to the NF on [REDACTED] from the hospital with malnutrition, spinal stenosis, and back pain.
3. On 10/13/25, the NF issued a Notice of Intent to Discharge Resident with Less than 30

Days' Notice stating that "the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility." (Exhibit 1).

4. As of 10/22/25, the appellant is independent with all his ADLs except that he requires supervision for sitting to stand, transferring from chair to bed, and transferring to a toilet due to instability. (Exhibit 4, p. 25).
5. The appellant can stand but uses a wheelchair to get around.
6. On 10/11/25, the NF physician included in the appellant's clinical record that "the appellant is medically stable and does not require ongoing skilled nursing facility services. He is cleared for discharge." (Exhibit 4, p. 30).
7. The MassHealth Payment for Nursing Facility Services notice dated 10/31/25 states the appellant is no longer clinically eligible for nursing facility services because they are not medically necessary. (Exhibit 4, p. 9).
8. The appellant refused a referral to a sober living home.
9. The NF issued a notice of intent to discharge the appellant to a homeless shelter.
10. The appellant was previously living with his sister.
11. The appellant's sister is living in her own subsidized apartment.
12. The appellant was evicted from his prior home.
13. The appellant is on a housing list.
14. The appellant would like to remain at the NF because he likes it there.
15. The appellant's attorney has a private social worker looking for housing for the appellant.

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:¹

“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 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 on an expedited basis to a homeless shelter in a community setting via its notice dated 10/13/25. (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.

¹The 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.

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 facility issued a discharge notice based on the grounds that the resident's health has improved sufficiently so that the resident no longer needs the services provided by the nursing facility. The 10/13/25 "Notice of Intent to Discharge Resident with Less than 30 Days' Notice" found in Exhibit 1 asserts the circumstances identified at 130 CMR 456.701(C)(2) and 130 CMR 456.702(B)(1) and complies with the notice requirements outlined in 130 CMR 456.701(C). Therefore, the appellant received adequate and actual notice of the planned discharge.

The next issue is whether the appellant's discharge is appropriate because the appellant's health has improved sufficiently so that he no longer needs the services provided by the nursing facility. The Medical Progress Notes submitted by the facility document that the appellant is in stable condition with no skilled needs. (Exhibit 4, pp. 32-37). The NF physician stated on 10/11/25 that the appellant can be safely discharged to the community. (Exhibit 4, p. 30). Further, the MassHealth Payment for Nursing Facility Services notice dated 10/31/25 states the appellant is no longer clinically eligible for nursing facility services because they are not medically necessary. (Exhibit 4, p. 9).

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 M.G.L. 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,² 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 to be discharged via the written notice on 10/13/25. The record supports that the facility provided sufficient preparation for the appellant regarding his discharge. The facility worked with the appellant to ensure an orderly transition to new housing, but the appellant refused a referral to the sober living home. 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 because he likes it there. Therefore, 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 M.G.L. c. 111, §70E, with regard to sufficient preparation for discharge.

The totality of the evidence presented is sufficient to warrant discharge under the regulations because the notice requirements were not met. Therefore, this appeal is **DENIED**.

Order for Nursing Facility

The nursing facility may proceed with the notice of discharge. Pursuant to 130 CMR 610.030(B) and 130 CMR 456.704(B), the appellant may not be discharged any earlier than 5 days from the date 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.

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

² The Health Care Finance Administration is now known as the Centers for Medicare and Medicaid Services.

Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Christine Therrien
Hearing Officer
Board of Hearings

cc: Respondent:

[REDACTED]

cc:

[REDACTED]