

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2516042
<b>Decision Date:</b>	11/26/2025	<b>Hearing Date:</b>	11/17/2025
<b>Hearing Officer:</b>	Amy B. Kullar, Esq.	<b>Record Open to:</b>	11/21/2025

**Appearance for Appellant:**  
*Pro se*

**Appearances for Nursing Facility:**  
[Redacted] Administrator,  
[Redacted]  
[Redacted] Director of Nursing,  
[Redacted]  
[Redacted] Director of Social Work,  
[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>	Expedited Nursing Facility Discharge
<b>Decision Date:</b>	11/26/2025	<b>Hearing Date:</b>	11/17/2025
<b>Nursing Facility Reps.:</b>	Stephen Doyle, <i>et al.</i>	<b>Appellant's Rep.:</b>	<i>Pro se</i>
<b>Hearing Location:</b>	Charlestown MassHealth Enrollment Center - Room 2 (Telephone)	<b>Aid Pending:</b>	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 October 8, 2025, [REDACTED] (“the nursing facility”) informed the appellant that it would be seeking to discharge him from the nursing facility in less than 30 days. *See* Exhibit 1; 130 CMR 610.029(B). The appellant filed a timely appeal on October 31, 2025. *See* 130 CMR 610.015(B)(4); Exhibit 2. 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 the appellant in fewer than 30 days based on grounds that (1) it determined that after reasonable and appropriate notice, that he failed to pay, and/or failed to have Medicare or Medicaid pay for, his nursing facility care; and (2) the safety of the individuals in the facility is endangered due to his clinical or behavioral status.

## Issue

Is the planned discharge correct pursuant to 130 CMR 610.028?

## Summary of Evidence

The skilled nursing facility was represented by its administrator, its director of nursing, and its director of social work; they appeared at the hearing telephonically. The appellant also appeared at the fair hearing telephonically and verified his identity. Prior to the hearing, the facility submitted the appellant's clinical record from the facility and the facility's documentation of the appellant's financial account into evidence. See Exhibit 4.

The discharge notice at issue in this matter contains: a specific statement of the reasons for the intended discharge - (1) "[Appellant] was drinking alcohol in the facility putting other residents at risk;" and (2) "[Appellant] owes the facility payment back to [REDACTED];" the location to which the appellant is to be discharged [REDACTED] the effective date of the intended discharge ([REDACTED] 2025); the right of the appellant to request a fair hearing on the intended discharge, the address 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 (*to wit*, that the facility cannot discharge the appellant until 5 days after the hearing officer's decision is received); the name and address of the local long-term care ombudsman office; the mailing address of the agencies responsible for the protection and advocacy of mentally ill individuals; the name of the person at the facility supervising the discharge; the name and address of the local legal-services office; and the mailing address of office of the protection and advocacy for developmentally disabled individuals, respectively. See Exhibits 1 and 2.

Based on testimony and documentary submissions, the nursing facility presented the following evidence: The nursing facility asserts two grounds for the proposed discharge: "[Appellant] was drinking alcohol in the facility putting other residents at risk;" and (2) "[Appellant] owes the facility payment back to [REDACTED]." Exhibit 1. The appellant is an adult under the age of 65 who was admitted to the nursing facility in the summer of 2024 following complications from alcohol withdrawal. Exhibit 4 at 46. His medical diagnoses include alcohol use disorder with multiple admissions for withdrawal, type 2 diabetes mellitus, acute kidney failure, toxic metabolic encephalopathy, hypertension, hyperkalemia, hepatic steatosis, post-traumatic stress disorder, GERD, edema, and generalized muscle weakness. *Id.* The appellant uses a wheelchair to ambulate. Testimony. The appellant is "independent" with "wheelchair ADLs." Testimony. The appellant has a history of falls. *Id.* The appellant is currently receiving physical therapy and occupational therapy at the nursing facility. *Id.* As a result of his limited mobility, the appellant is dependent on caregivers to perform certain activities of daily living (ADLs) for him. Testimony.

The facility administrator testified that the nursing facility is seeking to discharge the appellant because he has accumulated an unpaid balance at the facility that dates back to November 2024. As of the date of the hearing, the appellant owes a “little over \$11,000.00” to the nursing facility<sup>1</sup>. Testimony. The appellant is a Long-Term Care (LTC) MassHealth recipient and each month, the appellant owes \$2,197.20 to the nursing facility; this amount constitutes the appellant’s Patient-Paid Amount (PPA)<sup>2</sup>. The facility submitted billing statements in support of their position. See Exhibit 4. The facility administrator testified that the facility assisted the appellant with his LTC MassHealth application and that during the appellant’s MassHealth application process, the nursing facility attempted to become the appellant’s representative payee, to assist the appellant with making and managing his monthly payments. This process was initiated with the Social Security Administration by the nursing facility in the spring of 2025 but then terminated by appellant in the summer of 2025. The facility administrator asserted that the appellant’s monthly financial obligations to the nursing facility were fully explained to him during the MassHealth application process. Testimony; Exhibit 4 at 7-13. The facility provided a signed and witnessed statement dated September 11, 2025, from two employees of the nursing facility billing office that recounted a conversation between the employees and the appellant:

[Employee 1] and I, [Employee 2], went to speak with [Appellant] to discuss patient liability bill.

I explained the MassHealth regulation regarding paying his monthly patient liability to the facility. I also explained that he is able to keep \$72.80 for personal needs and he is allowed to keep the amount he needs to pay for his United Healthcare insurance.

We also discussed how he went to social security and stopped his social security check from coming to the facility, which had been appointed as his representative payee. I explained that the facility had the right to file as representative payee due to his lack of cooperation in paying his monthly bill. He disagreed with us.

He accused [Employee 1] and I of not discussing any of this with him before and I disagreed because [Employee 1], myself and social services have discussed this with him on several occasions. I have provided him with the MassHealth approval letter that shows the amount of his patient liability.

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<sup>1</sup> The statements submitted by the nursing facility indicate that as of the date of hearing, the appellant owes \$10,184.44 to the nursing facility. See Exhibit 4 at 20.

<sup>2</sup> All of a MassHealth-recipient nursing home resident’s income, less certain deductions, must be paid to the nursing facility, as the so-called Patient-Paid Amount (PPA); MassHealth then pays the balance of the monthly nursing facility cost. See 130 CMR 520.026.

Exhibit 4 at 11.

The appellant responded to this testimony by expressing confusion about his current MassHealth status and his financial obligations to the nursing facility. He thought that he was only at the facility for a short-term stay, for physical therapy. He did not intend to be a long-term nursing facility resident. The appellant acknowledged that he did make some payments to the nursing facility after his LTC MassHealth approval as reflected on the financial statements submitted by the facility. The appellant wants to pay his bills but he is experiencing personal financial hardship and he needs to reevaluate his budgeting for his financial obligations outside of the nursing facility if he is going to be able to settle his outstanding balance at the nursing facility.

After concluding the discussion regarding the appellant's unpaid balance at the facility, the Hearing Officer then questioned the nursing facility representatives about the safety and behavioral concerns that are causing the facility to desire to discharge the appellant. The director of social work testified that the appellant was initially admitted to the facility from a local hospital in the late summer of [REDACTED] for short-term rehabilitation due to complications related to severe alcohol withdrawal. The appellant was subsequently converted to long-term care due to the complexity of his diagnosis and the duration of treatment he required. Testimony. She asserted that the appellant was stable for the first year that he was a resident of the nursing facility, but recently he has had multiple relapses into alcohol use. Testimony.

The director of social work then stated that there are several behavioral incidents noted in the appellant's record at the nursing facility. She referenced specific behavioral incidents such as the appellant drinking alcohol in the facility and being intoxicated and under the influence of alcohol within the facility<sup>3</sup>. She cited instances of yelling and disruptive behavior, where the appellant was endangering himself and other vulnerable residents. Nursing facility staff discovered liquor, cigarettes, and lighters in the appellant's room. The appellant executed a "No Harm" contract with the facility because of these violations; since signing the agreement, there have been repeat episodes of intoxication by the appellant and violations of the agreement. Testimony. The director of social work further stated that police intervention was required during a recent incident due to the behavior of the appellant. After questioning by the Hearing Officer, she clarified that the local police were called to assist an ambulance that had been called to transport the appellant to a hospital after he exhibited symptoms of intoxication and was yelling at the facility while under the influence of alcohol. No police report was filed due to the behavior of the appellant, and no criminal charges were filed against the appellant due to the incident. Testimony. She concluded her testimony by stating that the nursing facility's

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<sup>3</sup> The clinical record submitted by the nursing facility has three alcohol-related incidents documented. On [REDACTED] 2025, it was documented that the appellant "ingested alcohol." On [REDACTED] 2025, the appellant was sent to a local emergency room for "alcohol intoxication." The note for this incident indicates the appellant is "often found with alcohol bedside." There is only one other note in the submitted clinical record that documents an instance of alcohol use: on [REDACTED] 2025, the appellant was again sent to the emergency room for symptoms of alcohol intoxication. Exhibit 4 at 82.

clinical team expresses significant concern for the safety of staff and residents of the facility due to the appellant's volatile behavior. Furthermore, the appellant is a fall risk and could seriously injure himself while he is under the influence of alcohol. Testimony.

In response to this testimony, the appellant acknowledged that he has recently relapsed into alcohol use after a year of sobriety. However, he asserted that he did not bring alcohol into the facility, but rather that he entered the facility already under the influence of alcohol after visiting friends in the community. Testimony. The appellant expressed remorse for his behavior when he is under the influence of alcohol. He understands that alcohol use is not permitted at the nursing facility, and that using alcohol in the facility creates an unsafe environment for himself and the other nursing facility residents. The appellant asserted that he has a personal struggle with addiction, and his struggle is made worse by his PTSD due to his [REDACTED] [REDACTED] Testimony. The appellant closed his testimony by stating that he strongly objects to current discharge location; he does not feel that he would be safe in such an environment. The appellant resided in a condominium before he entered the nursing facility. The appellant wants to return to the community when he has access to safe and appropriate housing. Testimony.

The Hearing Officer then questioned the facility staff regarding the discharge planning that the facility has engaged in in anticipation of the appellant's discharge from the facility. The director of nursing stated that it is possible for the appellant to be medically cleared for discharge, but she acknowledged that the appellant will have challenges returning to the community due to his mobility issues and dependency on caregivers for certain Activities of Daily Living (ADLs). Testimony. The facility social worker responded to the Hearing Officer's question about the feasibility of the proposed discharge to the designated location. The website of the designated location indicates that residents must be "independent" with all ADLs and manage their own medication. The appellant's clinical record indicates that he is not independent with ADLs and relies on nursing facility staff for medication management. In response, the director of social work acknowledged that as of the date of the hearing, a referral to the proposed discharge location had been made but that as of the morning of the hearing, the appellant had not been accepted or approved as a resident of the proposed discharge location yet. The Hearing Officer then questioned the facility staff about alternative discharge locations. The clinical record indicates that the appellant's mother resides locally and is very supportive of the appellant. The director of social work stated that the appellant's mother's home is not an appropriate discharge location because it is only accessible by stairs and the appellant ambulates with a wheelchair. She then stated that a referral has also been made to the MassHealth Money Follows the Person (MFP) Waiver programs on behalf of the appellant, but she acknowledged that realistically, the appellant's active substance abuse disorder does not make him a good candidate for MFP waiver services at this time. Testimony.

At this point in the hearing, the Hearing Officer indicated that she was willing to allow the nursing facility a little more time to provide a written discharge plan for the appellant, including

a suitable discharge location. The facility was given until November 21, 2025, to supplement the written record with a revised discharge plan, including a written update from the proposed discharge location as to the status of the appellant's referral there. The appellant would be allowed to supplement the written record with any information that he thought would be useful to his opposition to being discharged from the nursing facility. The appellant was urged to consider establishing a payment plan with the nursing facility during the record open period.

At the conclusion of the hearing, the record was held open until November 21, 2025, for the submission of a revised discharge plan for the appellant. Exhibit 5. On November 20, 2025, via email, the nursing facility administrator emailed the Hearing Officer two one-page documents. Exhibit 6.

The body of the email states that "At this time [proposed discharge location] has not accepted [Appellant]." *Id.* The first attachment is a Social Work note dated [REDACTED] 2025 that states:

OT reports that [Appellant] is independent with wheelchair mobility and independent with dressing and feeding. He is able to toilet himself and is able to ambulate with the walker if needed for 25 feet. OT will continue to work with him through the discharge process to hone these skills. His mother is also working on locating a unit in the community. [Appellant] will be a safe discharge when the appropriate placement has been found.

*Id.*

The second attachment is an Occupational Therapy (OT) Note dated [REDACTED] 2025 that states:

**Functional Status as a Result of Skilled Interventions**

**Sitting Balance:** Sitting During ADLs = Good

**Standing Balance:** Standing During ADLs = Fair

*Id.*

Having received no submissions from appellant by the end of the day, the Hearing Officer closed the administrative record on November 21, 2025.

## Findings of Fact

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

1. The appellant was admitted to the facility in the summer of [REDACTED] for short-term rehabilitation from a hospital. He has diagnoses that include alcohol use disorder, type 2 diabetes mellitus, acute kidney failure, toxic metabolic encephalopathy, hypertension,

hyperkalemia, hepatic steatosis, post-traumatic stress disorder, GERD, edema, and generalized muscle weakness.

2. The appellant received a Notice of Intent to Discharge Resident with Less Than 30 Days' Notice ("discharge notice") dated October 8, 2025. The notice states that the facility seeks to discharge the appellant to [REDACTED] on [REDACTED] 2025. The notice indicates the reasons for the discharge are that "[Appellant] was drinking alcohol in the facility putting other residents at risk;" and (2) "[Appellant] owes the facility payment back to [REDACTED]/2024."
3. The nursing facility identified a location to which to discharge the appellant, but the appellant has not been accepted as a resident of this location.
4. According to the appellant's clinical record, he is participating in physical and occupational therapy, he ambulates with a wheelchair, and he is independent with his dressing and eating activities of daily living.
5. No physician has documented in the appellant's clinical record that the appellant no longer requires nursing home level of care and that he can safely be discharged to the community.
6. There is no written discharge plan submitted by the facility.
7. As of the hearing date, the appellant accrued a total unpaid nursing home bill of \$10,184.44.
8. The discharge notice at issue contains all the elements required by state and federal regulations. Exhibit 1.

## **Analysis and Conclusions of Law**

The federal Nursing Home Reform Act (NHRA) of 1987, now codified at 42 USC § 1396r(c), guarantees all residents of Medicaid and/or Medicare certified nursing facilities, the right to advance notice of, and the right to appeal, any transfer or discharge initiated by such a facility. The federal law requires state Medicaid agencies to provide a fair mechanism for hearing appeals on nursing facility-initiated transfers and discharges. *See* 42 U.S.C. § 1396r; 42 CFR §§ 483.204 and 483.206. Massachusetts, through its Medicaid agency, MassHealth, has enacted regulations that mirror the above-referenced federal protections, which can be found at 130 CMR 456.000 *et seq.* and 130 CMR 610.00 *et seq.*

Under the applicable MassHealth regulations, a nursing facility cannot discharge or transfer a resident unless certain criteria are met. First, the facility must cite proper grounds for the

discharge. The resident may *only* be discharged in the following circumstances:

- (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); *see also* 130 CMR 456.701(A).

Furthermore, the stated basis for the intended discharge must be documented in the resident's clinical record.<sup>4</sup> See 130 CMR 610.028(B); 130 CMR 456.701(B). Where the facility is seeking to discharge a resident under subsection (3), above, as is the case here, the necessity of such discharge must be documented by a physician. *Id.* (emphasis added).

Next, the nursing facility must ensure that it provides the resident with adequate notice of the discharge or transfer. MassHealth Fair Hearing Rules at 130 CMR 610.028(C) establish the format and content requirements of the notice itself.<sup>5</sup> Here, there is no allegation or evidence to suggest the October 8, 2025, discharge notice, as written, was deficient or failed to meet the criteria imposed under 130 CMR 610.028(C).

MassHealth regulations also require that the nursing facility provide the resident with at least 30

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<sup>4</sup> The only exception to this rule is when the discharge is made pursuant to subsection (6), above, i.e., the nursing facility ceases to operate. *Id.*

<sup>5</sup> In summary, 130 CMR 610.028(C) requires: that the facility hand-deliver the notice to the resident (and provide a mailed copy to any designated family member or legal representative); that the notice be legible and written in 12-point or larger, in a language the resident understands, and that it contain the following information: (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 a fair hearing by the MassHealth agency, including how and when to send the request, as well as the effect of requesting a hearing; (6) contact information for the local long-term-care ombudsman office; (7) if applicable, the contact information of the agency responsible for the protection and advocacy of developmentally disabled individuals, (8) if applicable, the contact information for the agency responsible for the protection and advocacy of mentally ill individuals; (9) a statement that all residents may seek legal assistance and that free legal assistance may be available through their local legal services office; and (10) the name of someone at the nursing facility who is available to assist the resident with any of the foregoing.

days advance notice of the intended discharge. See 130 CMR 610.029(A). As an exception to this rule, the facility may provide an expedited discharge notice, i.e., less than 30 days, for any of the following “emergency” discharge/transfer circumstances:

- (1) *The health or safety of individuals in the nursing facility would be endangered and this is documented in the resident's record by a physician.*
- (2) The resident's health improves sufficiently to allow a more immediate transfer or discharge and the resident's attending physician documents this in the resident's record.
- (3) An immediate transfer or discharge is required by the resident's urgent medical needs, and this is documented in the medical record by the resident's attending physician.
- (4) The resident has not lived in the nursing facility for 30 days immediately before receipt of the notice.

See 130 CMR 610.029(B) (emphasis added).

Finally, even if all aforementioned requirements are satisfied, the nursing facility may still not transfer or discharge a nursing facility resident unless it complies with M.G.L. c. 111, § 70E, which states, the following:

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.

In this case, the nursing facility has alleged it has two grounds for which it may discharge the appellant: (i) the appellant has failed, after reasonable and appropriate notice, to pay for his stay at the nursing facility; and (ii) the health or safety of individuals in the nursing facility would be endangered if the appellant is not discharged from the facility. At hearing, the nursing facility provided ample evidence of the first ground; the appellant acknowledged that he owes an outstanding balance of at least \$10,184.44 to the nursing facility. During the hearing, the appellant confirmed that he refuses to pay his monthly Patient Paid Amount to the nursing facility because he needs his income for his other bills. The nursing facility also claimed that the health or safety of individuals in the nursing facility would be endangered if the appellant continues to reside in the nursing facility. The facility did document in the testimonial and written record several incidents where the appellant was intoxicated at the nursing facility and the appellant did not deny that these incidents occurred.

While the facility has established proper grounds to discharge appellant, it must also comply with all other applicable state laws before it can proceed with the discharge. In addition to the fair hearing regulations cited above, nursing facilities are subject to the requirements set forth in

M.G.L. c. 111, § 70E, which state the following:

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 facility proposes to discharge the appellant to a [REDACTED] home. No written discharge plan was provided by the nursing facility in the pre-hearing period or in the post-hearing, record open period. Testimony and the existing record evidence from both parties indicate that the appellant has not been accepted for placement at the proposed discharge location. The appellant ambulates solely by wheelchair, and he is still receiving daily treatment and care for his numerous medical diagnoses at the nursing facility. While the appellant is independent in performing most of his ADLs, he still requires a discharge location that is a “safe and appropriate place” due to his ongoing medical and mobility issues. I acknowledge the difficulty that exists in securing appropriate housing for someone with the medical and behavioral needs of the appellant, but as of the issuance of this decision, no appropriate discharge location has been identified by the nursing facility. Finally, no physician has certified in the appellant’s medical record that the appellant’s health has improved sufficiently so that the appellant no longer needs the services provided by the nursing facility.

Given the appellant’s physical limitations and uncertainties about the proposed discharge plan, the facility has not satisfied the standards outlined in M.G.L. c. 111, § 70E, above. Accordingly, the facility’s planned discharge is not currently authorized. However, if the appellant’s balance to the facility remains unpaid, or if the appellant’s behavior at the facility endangers the health or safety of individuals in the nursing facility in the future, the facility may issue a new discharge notice, with appropriate notice to the appellant, at any time.

For these reasons, this appeal is APPROVED.

## **Order for Nursing Facility**

Rescind the October 8, 2025 Notice of Intent to Discharge Resident with Less Than 30 Days’ Notice. Do not discharge the appellant under this notice. The facility may issue a new discharge notice with appropriate discharge planning at any time if the appellant’s balance to the facility remains unpaid, or if the appellant’s behavior at the facility endangers the health or safety of individuals in the nursing facility in the future.

## **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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Amy B. Kullar, Esq.  
Hearing Officer  
Board of Hearings

