

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2506130
Decision Date:	05/02/2025	Hearing Date:	April 25, 2025
Hearing Officer:	Brook Padgett		

Appellant Representative:



Nursing Facility Representatives:

Alexandria Pellitier, Administrator
Ann Faille, Director of Social Services



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Nursing Facility Discharge; Endangering the Safety of Others; 130 CMR 610.028
Decision Date:	05/02/2025	Hearing Date:	April 25, 2025
Nursing Facility Rep.:	A. Pellitier A. Faille	Appellant Rep.:	██████████
Hearing Location:	Telephonic to facility		

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 Transfer Resident With Less Than 30 Days' Notice (Expedited Appeal) dated April 08, 2025, stating: This notice is to inform you that ██████████ seeks to discharge you to the following non-institutional setting ██████████ on ██████████ (effective date). The specific reason(s) for the discharge is as follows: "The health and safety of the individuals within the skilled nursing facility would otherwise be endangered due to the repeated non-compliance with facility policies related to smoking and illicit drug use/possession." (Exhibit 1).¹ The appellant filed a timely appeal on April 17, 2025. (130 CMR 610.015(B); Exhibit 2). Discharge or transfer of a nursing facility patient is valid grounds for appeal. (130 CMR 610.028(A); 42 CFR Ch IV §483.200 et seq.).

Action Taken by the Nursing Facility

The facility intends to transfer the appellant to ██████████.

¹ The appellant previously received a Notice of Intent to Discharge on March 26, 2025, which was withdrawn by the appellant and the facility after a hearing on April 07, 2025.

Issue

Can the nursing facility transfer the appellant under this notice of intent?

Summary of Evidence

The facility administrator and director of social services testified on behalf of Southbridge Rehab & Health Care Center (SR&HCC) stating the appellant, who is [REDACTED], was admitted to the facility on [REDACTED] after the previous facility in which he was residing closed. The appellant came to SR&HCC with a history of alcoholic cirrhosis without ascites, hepatitis C, polysubstance abuse disorder, schizoaffective disorder, and esophageal varices. The representatives stated the facility does not allow smoking of marijuana for either medical or recreational purposes regardless of individual state specific laws. The appellant agreed to the policy and signed the Smoking Policy Education and Acknowledgement form upon admission. The nursing facility representatives testified that since admission, the appellant has been placed on four No-Harm Agreements (December 06, 2024, January 10, 2025, January 13, 2025, and March 17, 2025) after the discovery of THC vape pens and drug paraphernalia found either in his room or on his person. Due to these multiple infractions, the facility initiated a transfer by serving the appellant with an expedited discharge notice on April 08, 2025. The representative stated current medical notes dated [REDACTED] indicate the appellant is independent with all ADLs, is stable for discharge, and often leaves the facility without assistance. The nursing facility submitted into evidence Smoking Policy Education and Acknowledgement forms, medical records, and progress notes. (Exhibit 4).

The appellant responded that he agrees with the facility testimony and knows he made a mistake and should not have vape pens or be smoking marijuana in the facility. The appellant stated he was sorry and understands he was wrong to break the facility policies. The appellant did not dispute that he is independent with all his ADLs or that he leaves the facility without assistance.

Prior to the end of the hearing, the appellant agreed to work with the facility for the next week to see if he could obtain a placement in a more suitable location such as a rest home. On April 29, 2025 the facility Aftercare Coordinator updated the record with an email stating the facility has assisted the appellant with sending out prescreen referral forms to six rest homes. (Exhibit 5).

Findings of Fact

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

1. The appellant is a resident at the [REDACTED] which is a licensed nursing facility.
2. The appellant is [REDACTED] and was admitted to the nursing facility on [REDACTED] after his previous facility closed. (Exhibit 4 and testimony).

3. The appellant has a history of alcoholic cirrhosis without ascites, hepatitis C, polysubstance abuse disorder, schizoaffective disorder, and esophageal varices. (Exhibit 4, pg. 27).
4. On admission, the appellant signed the facility Smoking Policy Education and Acknowledgement form which states the facility does not allow smoking of marijuana for either medical or recreational purposes regardless of individual state specific laws. (Exhibit 4, pgs. 4-6)
5. The facility Smoking Policy Education and Acknowledgement form states that residents in violation of the smoking policy may be subject to discharge as such a violation could result in risk of harm to self and others. (Exhibit 4, pg. 5).
6. The appellant signed and agreed to four No-Harm Agreements (December 06, 2024, January 10, 2025, January 13, 2025, and March 17, 2025) after the discovery of THC vape pens and drug paraphernalia in his room and on his person. (Exhibit 4, pgs. 7-10).
7. Medical notes dated April 24, 2025 indicate the appellant is independent with ambulation. (Exhibit 4, pg. 18).
8. Medical notes dated April 24, 2025 indicate the appellant is stable for discharge and is independent with all ADLs. (Exhibit 4, pg. 23).
9. Medical notes dated April 24, 2025 indicate the appellant has been working with the facility social worker for further discharge planning. (Exhibit 4, pg. 23, Exhibit 5).
10. The appellant has acknowledged his THC vape use while in the facility and that it is against the facility smoking policy. (Testimony).

Analysis and Conclusions of Law

The federal Nursing Home Reform Act (NHRA) of 1987, now codified at 42 USC §§ 1396r(c), guarantees all residents the right to advance notice of, and the right to appeal, any transfer or discharge initiated by a nursing facility. See 42 U.S.C. § 1396r; 42 CFR § 483.204 § 483.206. Massachusetts has enacted statutory and regulatory requirements that mirror the federal resident rights protections, which are found in M.G.L. c. 111 § 70E and MassHealth regulations at 130 CMR 610.000 et seq., and 130 CMR 456.000 et. seq.

A nursing facility may transfer or discharge a resident when the safety of individuals in the nursing facility is endangered. (130 CMR 610.028(A)(3)(4)).

130 CMR 610.028: Notice Requirements Regarding Actions 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 MassHealth agency or Medicare pay for) a stay at the nursing facility; ...
- (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 evidence indicates the appellant has been using a THC vape pen while a resident at the nursing facility. Although the appellant signed the no smoking policy on admission, he was found to be in possession of a THC vape pen and cannabis paraphernalia on December 06, 2024, January 08, 2025, January 09, 2025, January 13, 2025, March 17, 2025, and March 21, 2025. This resulted in the facility issuing and the appellant signing four No Harm Agreements (December 06, 2024, January 10, January 13, and March 17, 2025), with each agreement stating the appellant agrees with the decision made by the facility to implement safety measures to prevent any harm to himself or any other resident.

Despite these notices and signed agreements, the appellant has failed to adhere to the facility's smoking and drug policy and persists endangering the safety of himself and other individuals in the facility through his use of cannabis. The facility has cited proper grounds for an emergency discharge under 130 CMR 610.028(A); specifically, that (3) the safety of individuals in the nursing facility is endangered or (4) the health of individuals in the nursing facility would otherwise be endangered. The nursing facility explained that the appellant's behavior not only places the appellant at risk of harm, but also other residents in the facility, many of whom are medically frail. Due to the appellant's continued use of THC vape pens and cannabis, the facility has the authority under the regulations to transfer the appellant under 130 CMR 610.028(A)(3)(4).

In addition, the clinical record shows that the appellant's physician has documented in the appellant's medical record that the appellant's condition is stable, and he is independent with his ADLs, can ambulate unassisted, and is able to appropriately manage his own care.

Prior to a transfer the nursing facility must notify the resident of the impending action by reasonable and appropriate notice. 130 CMR 610.028(C) lists specific notice requirements for a nursing facility transfer or discharge. This regulation states, in relevant part, that 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 that the member understands, the following:

- (1) the action to be taken by the nursing facility;
- (2) the specific reason or reasons for the discharge;
- (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 Division...
- (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 numbers of the agency responsible for the protection and advocacy of developmentally disabled individuals 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 numbers of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy of the Mentally Ill Individuals (42 U.S.C. §10801 et seq.);
- (9) a statement that all residents may seek legal services and that free legal assistance may be available through their local legal services office, 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*).

Typically, a facility must provide the resident with at least 30-days' notice before the date of the intended transfer or discharge. See 130 CMR 610.029(A). In lieu of the 30-day notice requirement, however, the facility may give notice "as soon as practicable," i.e., less than 30-days, in any one of the following circumstances, which would constitute an "emergency discharge:" See 130 CMR 610.029(B); see also 130 CMR 456.701(B).²

The nursing facility must also meet 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 2008.³ The appellant submitted no relevant, reliable evidence to demonstrate that the [REDACTED] it would not be a safe and appropriate place for him to be transferred, other than to say he would

² Fair Hearing Rules at 130 CMR 610.028(C) set forth requirements the facility must adhere to related to the format and content of the discharge notices it issues to a resident. A review of the April 08, 2025 discharge letter indicates that the facility hand delivered the notice to Appellant; that the letter was presented in a readable format; it included a description of the intended action, the basis for the discharge, the effective date of discharge, the location of discharge, and Appellant's right to appeal the discharge notice, among the other enumerated requirements. See 130 CMR 610.028(C). There is no evidence or suggestion that the facility failed to comply with any of these requirements.

³ 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."

like to stay Southbridge Rehab & Healthcare. The evidence demonstrates the facility has taken adequate measures in exploring alternative viable discharge locations and has discussed the transfer with the appellant. The nursing facility has met its burden of providing sufficient preparation and orientation to the resident to ensure safe and orderly transfer and therefore, the nursing facility's notice dated April 08, 2025, meets the requirements of 130 CMR 610.000, 130 CMR 456.000, and MGL c.111, §70E.

The record supports the transfer of the appellant as he has engaged in an activity that endangers the safety of himself and other individuals in the nursing facility. The nursing facility has complied with the applicable state and federal notice requirements and their action is appropriate and reasonable, this appeal is therefore DENIED.

Order for the Nursing Facility

Proceed with planned transfer, to be implemented no less than five days after 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.

Brook A. Padgett
Hearing Officer
Board of Hearings

cc: Administrator, Southbridge Rehab & Healthcare, 84 Chapin Street, Southbridge, MA 01550