

**Division of Medical Assistance
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2511400
Decision Date:	09/19/2025	Hearing Date:	September 11, 2025
Hearing Officer:	Brook Padgett		

Appellant Representatives:



Nursing Home Representatives:

Executive Director, [REDACTED]
Administrator (in training)
Unit Manager
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:	Approved	Issue:	Nursing Facility Discharge 130 CMR 610.028
Decision Date:	09/19/2025	Hearing Date:	September 11, 2025
MassHealth Reps.:	Dennis Lapotta, Executive Director	Appellant Reps.:	[REDACTED]
Hearing Location:	Telephonic to nursing 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 30-day Notice of Intent to Transfer or Discharge Resident dated July 02, 2025, which states: "This notice is to inform you that [REDACTED] seeks to transfer you to a facility of your choice on August 20, 2025. The specific reason(s) for this transfer is as follows: needs cannot be met in this facility as resident would like a smoking facility his health and the safety of others are at risk as the resident continues to smoke while requiring oxygen at times." (Exhibit 1). The appellant appealed the action timely on August 04, 2025. (130 CMR 610.015(B); Exhibit 2). Transfer/Discharge of a nursing facility is valid ground for appeal (130 CMR 610.028(A); 42 CFR Ch. IV, 483.200 et seq.).

Action Taken by the Nursing Home

The nursing facility intends to discharge or transfer the appellant.

Issue

Did the nursing facility provide adequate notice, pursuant to 130 CMR 610.028(C), of its intent to transfer or discharge the appellant?

Summary of Evidence

The Director of Social Services of the [REDACTED] testified that the appellant was admitted to the facility on [REDACTED]. The representative argued that the transfer or discharge of the appellant is necessary as the appellant's own safety as well as the safety of the other individuals in the facility is endangered as the appellant continues to smoke in the no smoking facility. She stated the facility has been working with the appellant for the last few months to find him a new facility, one which will allow him to smoke. The appellant also has the option of entering the Moving Forward Plan (MFP) program for residency in a group home. During this process, the appellant has at times been cooperative, but has recently not assisted with finding an alternative placement. The facility submitted into evidence the appellant's medical records. (Exhibit 1, pp. 1-24 and 1-216).

The appellant's representatives responded that the discharge notice does not comply with the regulations at 130 CMR 610.028, as the appellant is not a danger to other residents and the medical record does not support an involuntary discharge, and, in addition, the discharge plan is incomplete. The representative further argues the facility has failed to identify with the appropriate specificity any viable discharge location to determine if the discharge plan is sufficient. The facility has also failed to provide documented evidence that the appellant has been smoking or vaping near anyone with oxygen and that he is a danger to other residents. Lastly, the facility has presented no evidence why the appellant's medical needs cannot be met in the facility. The appellant submitted into evidence a Memorandum in Support with documentation. (Exhibit 4, pp. 1-34).

The appellant testified he has been wearing a nicotine patch for the last months and he wishes to stop smoking.

Findings of Fact

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

1. On [REDACTED], the appellant was admitted to the [REDACTED] (Exhibit 1).
2. On July 12, 2025, the facility provided the appellant with a notice of Transfer or Discharge naming "a facility of your choice" as the transfer or discharge location. (Exhibit 1).

3. The facility notice dated July 12, 2025 does not state a specific location to which the resident is to be discharged or transferred. (Exhibit 1).

Analysis and Conclusions of Law

130 CMR 610.028(C) lists the 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.¹ The regulation requires the notice to include, among other elements, the location to which the resident is to be discharged or transferred. This is a fundamental safeguard because it allows the resident, family, and representatives to evaluate the appropriateness of the placement and to ensure continuity of care.

The nursing facility's notice dated July 12, 2025, identified the discharge destination only as "a facility of your choice." Such a vague designation does not meet the regulatory requirement of 130 CMR 610.028(C)(4). Without a specified location, neither the resident nor the Board of Hearings can assess whether the proposed discharge is safe, appropriate, or feasible.

The omission also fails to satisfy related obligations under M.G.L. c. 111, § 70E and 42 CFR § 483.12(a)(7), which require sufficient preparation and orientation to ensure a safe and orderly transfer. A resident cannot be "sufficiently prepared" for discharge without knowing where his discharge location, nor can a facility demonstrate it has taken steps to ensure safe and appropriate transport without identifying the destination.

¹ 130 CMR 610.028 Notice Requirements Regarding Actions Initiated by a Nursing Facility (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 his or her right to request a hearing before the MassHealth agency 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 610.029; and (c) the effect of requesting a hearing as provided for under 130 CMR 610.030; (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. § 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. § 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*).

██████ failed to indicate a location to which the appellant was to be discharged or transferred on their 30-day Notice of Intent to Transfer or Discharge dated July 12, 2025. Without designating a location, it cannot be determined whether the nursing facility has met the requirements of MGL Chapter 111, Section 70E and 42 CFR 483.12(a)(7) in providing sufficient preparation and orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place. Sufficient preparation requires the facility to inform the resident of a discharge location and to take steps under its control to ensure safe transportation; the facility should actively involve, to the extent possible, the resident and the resident's family in selecting the new residence.

The nursing facility's notice dated July 12, 2025 fails to meet the regulatory requirements at 130 CMR 610.028(C)(4) and therefore this appeal is APPROVED.

Order for the Nursing Home

Rescind the appellant's 30 Day Notice to Discharge or Transfer dated July 12, 2025.

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

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.

Brook Padgett
Hearing Officer
Board of Hearings

cc:

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