

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**


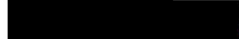


<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2515328
<b>Decision Date:</b>	11/19/2025	<b>Hearing Date:</b>	November 03, 2025
<b>Hearing Officer:</b>	Brook Padgett		

**Appellant Representative:**



**Nursing Facility Representatives:**

, Director of Social Work  
Director of Nursing  
, Administrator



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

# APPEAL DECISION

Appeal Decision:	Denied	Issue:	130 CMR 610.028 Expedited Nursing Home Transfer
Decision Date:	11/19/2025	Hearing Date:	November 03, 2025
Nursing Facility Reps.:	[REDACTED]	Appellant Rep.:	Pro se
Hearing Location:	Telphonic 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 Notice of Intent to Transfer Resident With Less than 30 Days' Notice (Expedited Appeal) dated October 17, 2025, stating: This notice is to inform you that South Shore Rehabilitation Center seeks to discharge you to the following non-institutional setting: [REDACTED] The following reason(s): The safety of the individuals in the facility is endangered due to the clinical or behavioral status of the resident Possession of illegal substances and a knife. The health of the individual in the facility would otherwise be endangered. (Exhibit 1). The Appellant filed a timely appeal on October 21, 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 from the nursing facility to the [REDACTED]

## Issue

Is the planned discharge correct pursuant to 130 CMR 610.028(A)?

## Summary of Evidence

The facility administrator and director of social services testified that the Appellant, a [REDACTED]

[REDACTED] The social worker testified that since the date of admission the Appellant has been redirected on multiple occasions due to her frequently inappropriate behavior with residents and staff<sup>1</sup>.

The facility highlighted several incidents of disruptive and inappropriate behavior from the Appellant's Progress Notes:

- On October 13, 2025, the Appellant signed a No Harm Agreement after a room search discovered a marijuana vape and a knife.
- On October 17, 2025, the Appellant was very aggressive and disruptive with staff, using profanity and exhibiting belligerent behavior. A room search was conducted, and the Appellant was found in possession of drug paraphernalia, including a crack pipe, crack pipe pusher, lighter, cocaine, marijuana, heroin, and vape pens, in her locked nightstand.
- [REDACTED] were called and confiscated all illegal materials. The Appellant was notified that the facility would be initiating an expedited discharge.

The Appellant responded that her altercations with other residents often occurred after they instigated confrontations by verbally attacking her or using racial epithets. The Appellant did not deny having the crack pipe and vape pens in her possession, but she denied ever having marijuana or cocaine. The Appellant stated that while she has threatened to throw a can at her roommate, she never did it. The Appellant stated if she has to be moved, she would prefer to be placed somewhere closer than [REDACTED]

The Director of Nursing testified that the Appellant continues to have some right-sided paralysis as a result of the stroke, but she is cognitively intact and able to transfer and toilet without assistance, as well as self-propel in a wheelchair. While the Appellant continues to require some assistance in her Activities of Daily Living (ADLs), the [REDACTED] is an appropriate location. The facility submitted into evidence the appellant's Progress Notes (Exhibit 4, pgs.1-29).

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<sup>1</sup> Including: October 29, verbal staff altercation; August 05, viewed participating in alleged "drug deal in the parking lot"; June 14, verbal altercation with staff; May 16, verbal altercation with staff; March 26, refusal to listen to staff; February 20, threatening to assault a roommate by throwing a can at her; February 11, altercation with other resident at bingo which involved hitting by both parties.

The facility's social worker responded that they are attempting to place the Appellant closer to home, but it is difficult as the Appellant's prior activity limits who will accept her as a patient.

The record was left open until November 10, 2025, to allow the facility to provide the clinical record documented by the facility physician that the placement is appropriate. (Exhibit 5). Prior to close of the record-open period, the facility indicated the Appellant has agreed to a transfer to a placement in [REDACTED] (Exhibit 6). On November 13, 2025, the facility responded that the Appellant had ultimately refused the placement. (Exhibit 7). The facility submitted the clinical record from the facility physician which documents that the Appellant has a history of [REDACTED] [REDACTED] hypertension, type 2 diabetes, asthma, anxiety and depression. She has no new symptoms and no acute medical concerns. No fever, shortness of breath, chest pains or new complaints. Her ADLs and mobility remain unchanged and can be met at the new facility. She requires supervision with person care and transfers and does not require skilled rehabilitation at this time. The Appellant is medically appropriate for transfer and can be discharged to the [REDACTED] (Exhibit 8).

## 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. (Testimony).
2. The Appellant was admitted to the facility status-post stroke [REDACTED]. (Testimony).
3. The Appellant uses a wheelchair and is independent in transfer and toileting, but requires an assist with bathing, grooming, and dressing. (Exhibit 4).
4. On October 17, 2025, the Appellant was found with drug paraphernalia including a crack pipe, crack pipe pusher, lighter, cocaine, marijuana, heroin, and vape pens in her locked night stand. (Exhibit 4).
5. The Appellant has acknowledged the possession of a crack pipe and other drug paraphernalia while residing in the facility. (Testimony).
6. The facility intends to transfer the Appellant from the nursing facility to the [REDACTED] [REDACTED]. (Exhibit 1).
7. The Appellant's clinical record has been documented by the facility physician who has deemed the transfer appropriate. (Exhibit 8).

## 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.

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 610.028(A)(3)(4); 130 CMR 610.029(B); and 130 CMR 456.701(B)<sup>2</sup>.

### 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 establishes the Appellant while a resident at the nursing facility has been in a number of altercations with residents and staff in addition to being found in possession of drug paraphernalia. This resulted in the facility issuing and the Appellant signing a No Harm Agreement on October 13, 2025, acknowledging the decision made by the facility to implement safety measures to prevent any harm to herself or any other resident. Despite multiple redirections and

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<sup>2</sup> 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 October 17, 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.

signing a No Harm Agreement, the Appellant failed to adhere to the facility's smoking and drug policy and persisted in endangering the safety of herself and other individuals when on October 17, 2025, she was again found with drug paraphernalia and a knife in her locked night stand.

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 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 illegal drugs, and possession of a knife the facility has the authority under the regulations to transfer the Appellant under 130 CMR 610.028(A)(3)(4).

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 the right to request a hearing...
- (6) the name, address, 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.

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.<sup>3</sup>

The evidence demonstrates the facility properly provided the Appellant with reasonable and appropriate notice and has taken adequate measures in exploring alternative viable discharge locations including discussing alternative site prior to the requested transfer. The Appellant's clinical record has been documented by the facility physician and the transfer has been deemed appropriate (see Exhibit 8). 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 October 17, 2025, meets the requirements of 130 CMR 610.000, 130 CMR 456.000, and MGL c.111, §70E.

The Appellant submitted no relevant, reliable evidence to demonstrate that the [REDACTED] [REDACTED] would not be a safe and appropriate place for her to be transferred, other than to say she would like to remain closer to her home.

The record supports the transfer of the Appellant as she has engaged in an activity that endangers the safety of herself 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 the planned discharge no less than 5 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.

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Brook A. Padgett  
Hearing Officer  
Board of Hearings

cc: [REDACTED]

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<sup>3</sup> 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."