Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2600056
Decision Date:	01/16/2026	**Hearing Date:**	1/9/2026
Hearing Officer:	Cynthia Kopka	**Record Open to:**	1/12/2026

Appearance for Appellant:
Pro se

Appearances for Respondent:
[redacted], facility administrator; [redacted] director of social services; [redacted], aftercare coordinator/SUD counselor; [redacted], rehab director; [redacted], social worker; [redacted], assistant director of nurses

APPEAL DECISION

Appeal Decision:	Denied	**Issue:**	Expedited nursing facility discharge
Decision Date:	01/16/2026	**Hearing Date:**	1/9/2026
Respondent's Reps.:	[redacted]	**Appellant's Rep.:**	Pro se
Hearing Location:	Springfield (remote)	**Aid Pending:**	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

By notice dated December 31, 2025, [redacted] ("Respondent" or "the facility") informed Appellant of its intent to discharge Appellant from the facility on [redacted] Exhibit 1. Appellant filed a timely appeal on January 2, 2026. Exhibit 2. 130 CMR 610.615. Challenging the discharge or transfer from a nursing facility is a valid basis for appeal. 130 CMR 610.032.

Action Taken by Respondent

Respondent informed Appellant of its intent to discharge Appellant from the facility.

Issue

The appeal issue is whether Respondent satisfied its statutory and regulatory requirements when it issued the notice of intent to discharge Appellant.

Summary of Evidence

Respondent, a skilled nursing facility, was represented by telephone by the administrator, director of social services, social worker, assistant director of nursing, aftercare coordinator, and rehab director. Appellant appeared by telephone. The hearing record was held open through January 12, 2026 for submission of additional information. Documents were submitted prior to and after hearing, Exhibits 4 and 5. A summary of testimony and documents follows.

By hand-delivered letter dated December 31, 2025, Respondent informed Appellant of its intent to discharge Appellant from the facility to a shelter on [redacted]. Exhibit 1. The notice stated that Respondent sought to discharge Appellant because the safety of the individuals in the facility is endangered due to Appellant's clinical and behavioral status. *Id*. The notice explained Appellant's appeal rights and identified the facility administrator as responsible for supervising the discharge. The director of social services was identified as the individual who could assist with appeal rights. *Id*. The notice included a sheet that provided contact information for the long-term care ombudsman, the disability law center, center for public representation, and two local legal assistance offices. *Id*. A copy of the notice was not provided to another party. Appellant had a health care proxy who was subsequently called about the discharge, but no information in the record indicated whether the proxy has been invoked. *Id*. at 3-4, 249.

According to the physician note authored by [redacted] regarding discharge, Appellant was admitted to the facility on [redacted], for hospice services for comfort measures. However, Appellant was found clinically ineligible for hospice. Exhibit 4 at 1. Appellant's diagnoses include [redacted] *Id*. [redacted] wrote that Appellant is independent with all aspects of care and ambulates without devices. *Id*. [redacted] wrote that Appellant has been involved in several resident-to-resident altercations and substance-related activities placing herself and others at risk. The facility has implemented safety measures and harm-reduction with no improvement, making an expedited discharge necessary. *Id*. [redacted] ordered discharge from the facility because Appellant does not require skilled nursing facility level of care. *Id*. The nurse practitioner (NP) with whom Appellant had frequent visits also medically cleared the discharge. *Id*. at 239.

Respondent's director of social services (DSS) testified in detail regarding Appellant's behaviors that have required intervention. Early in her admission, Appellant began an intimate relationship with another resident, which Respondent's employees would respect but offer support, including contraception and STI/STD testing if other residents were not impacted by the relationship. *Id*. at 100, 124.

Nursing, SUD, and administrator notes from October 1, 2025, documented an incident where Appellant was in another resident's room where a lighter, clear pipe, and burned mesh were found. Appellant denied the items were hers. *Id*. at 131. Appellant was given a no-harm agreement for one week. *Id*., Exhibit 5 at 11. The no-harm agreement, signed by Appellant, included an agreement not

to possess drug paraphernalia or smoking materials, and prohibited Appellant from having visitors or going into other residents' rooms. Exhibit 5 at 11. Appellant testified at hearing that items seized were not hers, and she was in the wrong place at the wrong time. Appellant argued that she was in a deep depression at the time due to a family member passing away, and no one was offering her support at the facility. *Id*. Respondent's DSS testified that this no-harm agreement had to be extended several times due to Appellant violating the agreement by attempting to go into another resident's room, allowing residents in her room, and by possessing a lighter. *Id*. at 132, 136-142; Exhibit 5 at 12, 14. Appellant denied going into another resident's room and argued that her roommate had visitors in her room, which she could not control. Exhibit 5 at 13. Appellant denied having a lighter and claimed that Respondent had no pictures of the lighter near her. *Id*. at 15. Appellant questioned the veracity of Respondent's claim, arguing that her possession of the lighter was not written in the no-harm agreement. *Id*. Respondent's aftercare coordinator documented Appellant's possession of the lighter in the medical notes. Exhibit 4 at 138.

While the no-harm agreement was in place, on October 18, 2025, a nurse reported finding Appellant sleeping in another resident's bed in violation of the no-harm agreement. *Id*. at 140. On October 22, 2025, Appellant was taken off the no-harm agreement after successful completion. *Id*. at 142. Respondent's DSS testified that a no-harm agreement is not meant to be a punishment, but a corrective measure.

A note from October 26, 2025, documented a physical altercation between Appellant and her roommate. *Id*. at 146-147. Neither resident was injured and Respondent moved them in separate rooms. Appellant was referred to behavioral health. *Id*. Respondent's DSS testified that this was a reportable incident, which had to be reported to the police and the state. Nursing and social services followed up with Appellant following the altercation. *Id*. at 151. Appellant testified that her roommate jumped her and pulled her hair during an argument. Appellant was only protecting herself.

Social services documented a well check with Appellant on November 18, 2025. *Id*. at 183. Respondent's DSS testified that this was related to a reportable incident between Appellant, her boyfriend, and another resident. Respondent's DSS testified that there was police involvement at this incident.

A nursing note from December 3, 2025, documented a witnessed altercation between Appellant and her roommate. The nurse witnessed Appellant push her roommate against a wall after the roommate complained to the nurse about noise Appellant and her visitor were making. Appellant's roommate was moved to a different room, and the police were called. *Id*. at 212. Appellant denied the incident.

On the same date, on December 3, 2025, Appellant was involved in another physical altercation, and a code orange was called for violence. *Id*. at 213. Appellant and her boyfriend were yelling, and Appellant's boyfriend was trying to grab a pile of clothes in Appellant's arm. Appellant showed a

nurse a scratch on her arm. *Id*. The facility called 911 and reported the incident to appropriate parties. *Id*.

On December 18, 2025, the facility entered into another no-harm agreement with Appellant following another incident related to substance use. The note indicated that Appellant sent her boyfriend to accept a food delivery in her stead. *Id*. at 216, Exhibit 5 at 16. Respondent's DSS testified that the boyfriend was observed paying $200 for a fast-food hamburger. The burger was searched and found to contain contraband. Respondent's DSS testified that there was video footage of the incident. Appellant denied this. Appellant argued that there is no footage of her accepting or paying for the drugs found in the burger and that the Respondent's employees were lying in claiming that she was on video paying for it.

According to another nursing note dated December 18, 2025, Appellant allegedly hit another resident, a reportable incident. Appellant refused a request to move to a different floor. Appellant denied hitting the other resident and refused a skin check and vitals. Appellant stated she would only talk to the boss. *Id*. at 222. During a social service follow up, Appellant denied the allegation and explained what happened. Appellant was referred to behavioral health with a goal of addressing Appellant's agitation. The DSS warned Appellant that another incident could result in discharge. *Id*. at 223. Appellant refused another room change. *Id*. at 224. The SUD counselor met with Appellant about these altercations and discussed that challenges with impulse control and interpersonal conflict and denying substance use and cravings could pose a safety risk to herself and others. *Id*. at 225.

According to a social services note dated December 23, 2025, a social worker and DSS overheard Appellant discussing purchasing "a bag" with another resident. *Id*. at 228. At the time, Appellant did not have an explanation and scolded the other resident for speaking too loudly. *Id*. The SUD counselor followed up with Appellant about this and the no-harm agreement on December 24, 2025. *Id*. at 229.

On December 29, 2025, Appellant's no-harm agreement expired. However, the social worker referenced reports received by several other residents over the weekend that Appellant was smoking in another person's room and fell asleep on another resident's bed. Respondent's DSS, SUD counselor, and director of nursing services approached Appellant with these reports and Appellant denied them, projecting the behavior on others and alleging that other residents were out to get her. Respondent's representatives informed Appellant that they would be issuing a notice of discharge. *Id*. at 235. The note indicates that Appellant is independent but concerned about housing instability. The DSS advised Appellant that her discharge would be scheduled for [redacted]. *Id*. The note indicated that social services and after care would revisit the discharge plans in 48 hours to give Appellant time to reflect and process thoughts. *Id*.

Respondent's DSS testified that, on December 30, 2025, she met with Appellant's DMH case manager regarding the discharge plan. *Id*. at 236. On December 31, 2025, Respondent's

representatives delivered the notice of discharge. The discharge notice was emailed to the ombudsman's office. *Id*. at 241. Respondent listed a shelter in [redacted] as the discharge location, because Appellant is from that area and was not cooperating with discharge planning. Respondent's DSS testified that the discharge location is a winter ER shelter with no wait list.

Respondent's representatives contacted Appellant's prior physician's office and set up a telehealth appointment prior to discharge. Respondent's representatives submitted a PT-1 form for transportation to the ER shelter. *Id*. at 241. A note from January 2, 2026 indicated that the transportation was confirmed for the discharge on [redacted]. *Id*. at 242-243. Later that day, Appellant reported that she wished to appeal the discharge notice. *Id*. Respondent's representatives collaborated the DMH case manager of discharge plan. *Id*. at 245. Respondent's representatives provided a note documenting the telehealth visit that took place prior to the hearing. Exhibit 5 at 5.

Respondent's representatives offered photos of the drugs, paraphernalia, and contraband. Exhibit 4 at 250-253. Respondent's representatives also provided the behavioral health notes for visits occurring approximately weekly, and other skilled services notes from physical therapy (PT) and occupational therapy (OT). *Id*. at 254-314.

Appellant testified that, while some of the points raised by Respondent's representatives were true, a lot were false. Appellant denied there was any photographic evidence of her purchasing drugs and argued that Respondent's representatives never found any drugs on her. Appellant acknowledged she made some mistakes due to anger and stress. Appellant argued that she asked to see counseling, but all she got was a psychiatrist talking to her for a bit about medication changes. Appellant argued that the Remeron prescribed made her dizzy, fatigued, and made her sleepwalk. Appellant has fallen due to the drowsiness she experiences on Remeron. *See id*. at 13, 21, 26. Appellant claimed that she never met the doctor who authorized the discharge. The notes indicate that she had seen the physician on [redacted] *Id*. at 37, 52, 59, 175. Appellant argued that she only met with the nurse practitioner about four times and the NP only tested Appellant's enzymes.

Appellant testified that her stepson had passed away which caused her grief, but no one would offer her counseling or help for this. Behavioral health notes dated [redacted], and [redacted] refer to Appellant's emotional stress following her stepson's death [redacted]r. *Id*. at 284. Appellant also testified that she asked to see a gastroenterologist (GI) and was never given these appointments. Appellant argued that cirrhosis does not get better. A note from a follow up with the NP dated November 19, 2025 reflects Appellant's request to see a GI doctor, but the nurse noted that Appellant has a full advance directive indicating comfort-care only status. *Id*. at 187. The nurse noted that Appellant appeared conflicted regarding her goals of care and the extent of future medical interventions. The note provides that the provider and social worker will meet jointly with Appellant to review and clarify her advance directive, discuss her current wishes, and determine whether any updates are needed to align with her present goals on the next visit. The nurse noted

that ongoing support and follow-up will be provided as Appellant continues to explore her preferences regarding care. *Id*. Notes from a follow-up visit on November 24, 2025, indicated that Appellant requested lab work be done, but wished to remain comfort-measures only until the lab results came back. *Id*. at 195. Appellant's advance directive is listed in the records as comfort measure, do not resuscitate (DNR), do not intubate (DNI), and do not hospitalize (DNH). *Id*. at 6.

Appellant admitted to getting into arguments with other residents but denied that she ever pushed her roommate. Appellant protected herself when her roommate pulled her hair. Appellant never used drugs in the facility. Appellant argued that Respondent's representatives found drugs in someone else's room while she was in there. None of the drugs or paraphernalia were hers. Appellant argued that she loved being with her boyfriend and was blinded by love to his behaviors. Appellant argued that there was no argument with another resident over her boyfriend because her boyfriend is medically incapable of intercourse. Appellant argued that her roommate used drugs and would squirt her syringes at the curtains after she cleaned them. Appellant wrote that one of the housekeepers in the facility would attest to changing the curtains at Appellant's request after the roommate squirted the curtains.

Appellant testified that during the telehealth visit with her PCP, the PCP advised Respondent's representatives that he does not agree with the discharge. Respondent's representatives disputed this. Appellant wrote that her PCP in the community disagrees with the discharge and will fax a document in support of this. Exhibit 5 at 17. No document was received from Appellant's PCP.

Findings of Fact

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

1. By letter dated December 31, 2025, Respondent informed Appellant of its intent to discharge Appellant from the facility to a shelter on [redacted]. Exhibit 1.

2. The notice stated that Respondent sought to discharge Appellant because the safety of the individuals in the facility is endangered due to Appellant's clinical and behavioral status. *Id*.

3. The notice explained Appellant's appeal rights and identified the administrator as the person responsible for supervising the discharge. The notice included a sheet that provided contact information for the long term care ombudsman, the disability law center, center for public representation, and two legal assistance offices. *Id*.

4. Appellant filed a timely request for hearing on January 2, 2026. Exhibit 2.

5. Appellant admitted to the facility on [redacted] for hospice services for comfort measures. Appellant's diagnoses include [redacted]

[redacted] Exhibit 4 at 1.

6. Appellant's physician at the facility wrote that Appellant is independent with all aspects of care and ambulates without devices. Appellant has been involved in several resident-to-resident altercations and substance-related activities placing herself and others at risk. The facility has implemented safety measures and harm-reduction with no improvement, making an expedited discharge necessary. [redacted] ordered discharge from the facility because Appellant does not require skilled nursing facility level of care. *Id*.

7. The NP with whom Appellant had frequent visits also medically cleared the discharge. *Id*. at 239.

8. Respondent documented multiple incidents in which Appellant was involved in suspected drug use or related activity, resulting in no-harm agreements. *Id*. at 131, 216, 228; Exhibit 5 at 10, 16.

9. Respondent documented violations of the no-harm agreements, resulting in extensions of the agreement. Exhibit 4 at 132, 136-142, Exhibit 5 at 12, 14.

10. Respondent documented several physical altercations between Appellant and other residents, which Respondent reported to police and state offices. Exhibit 4 at 146-147, 183, 212, 213, 222.

11. The discharge location is an ER shelter in [redacted] with no wait list.

12. Respondent arranged for transportation to the shelter via PT-1 form. *Id*. 241-243.

13. Respondent scheduled and assisted Appellant with a telehealth appointment to Appellant's PCP in the community. *Id*. at 241, Exhibit 5 at 5.

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 action initiated by a nursing facility. Massachusetts has enacted regulations that follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge, and some of the relevant regulations may be found in both (1) the MassHealth Nursing Facility Manual regulations at 130 CMR 456.000 *et seq*., and (2) the Fair Hearing Rules at 130 CMR 610.000 *et seq*.

Per 130 CMR 456.701(A) and 130 CMR 610.028(A), a nursing facility resident may be transferred or discharged 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; or
> (6) the nursing facility ceases to operate.

When the facility transfers or discharges a resident, the resident's clinical record must contain documentation to explain the transfer or discharge. 130 CMR 456.701(B); 130 CMR 610.028(B). If the discharge is necessary because the safety of individuals in the nursing facility is endangered, the documentation explaining the discharge must be made by a physician or PCP. 130 CMR 456.701(B)(2), 130 CMR 610.028(B)(2)

Prior to discharge or transfer, the nursing facility must hand deliver to the resident and mail to a designated family member or legal representative (if the resident has made such a person known to the facility), 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.

130 CMR 610.028(C).

The notice of discharge or transfer must be made by the nursing facility at least 30 days before the date the resident is to be discharged or transferred except in certain circumstances identified in 130 CMR 610.029 (*see also* 130 CMR 456.702(B) and (C):

(B) In lieu of the 30-day-notice requirement set forth in 130 CMR 610.029(A), the notice of discharge or transfer required under 130 CMR 610.028 must be made as soon as practicable before the discharge or transfer in any of the following circumstances, which are considered to be emergency discharges or emergency transfers.

(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.

(C) When the transfer or discharge is the result of a nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, the notice of transfer or discharge, including that which is required under 130 CMR 456.429: *Medical Leave of Absence: Failure to Readmit*, must comply with the requirements set forth in 130 CMR 456.701: *Notice Requirements for Transfers and Discharges Initiated by a Nursing Facility*, and must be provided to the resident and an immediate family member or legal representative, if such person is known to the nursing facility, at the time the nursing facility determines that it will not readmit the resident.

(D) Appeals of discharges and transfers listed in 130 CMR 610.029(B) and (C) are handled under the expedited appeals process described in 130 CMR 610.015(F).

Per 130 CMR 610.032(C), a nursing facility resident has the right to request an appeal of any nursing-facility initiated transfer or discharge. A nursing facility resident must appeal a written notice of an emergency discharge pursuant to 130 CMR 610.029(B) within 14 days. 130 CMR 610.015(B)(5).

Further, Mass. Gen. Laws ch. 111, §70E provides that "[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." Finally, federal regulations require that a nursing facility "**provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility**. This orientation must be provided in a form and manner that the resident can understand." 42 CFR 483.15(c)(7) (emphasis added).

In this matter, Respondent initiated an emergency discharge. The notice at issue is sufficient and cites a permissible reason for the discharge pursuant to 130 CMR 456.701(A)(3) and 130 CMR 610.028(A)(3), and a permissible reason for an emergency discharge pursuant to 130 CMR 610.029(B)(1) and 130 CMR 456.702(B)(1). Appellant's physician and NP at the facility documented the reason for discharge. Respondent's testimony and records show attempts to engage Appellant in discharge planning and the efforts made by Respondent to help Appellant transition, including securing transportation to a shelter local to Appellant's hometown and setting up an appointment with the outside provider.

Regarding the reason for discharge, Respondent has adequately documented numerous incidents of Appellant's behavior putting the safety of others at risk. Appellant denied many of Respondent's allegations, arguing that she never took or purchased drugs and did not assault other residents except in self-defense.

In all, Respondent's testimony was more credible than Appellant's and was supported by records. Moreover, the undisputed evidence demonstrates the many chances Respondent gave Appellant before noticing the discharge. Appellant's attempts to poke holes in Respondent's argument were not convincing. Appellant has not presented evidence showing that Respondent violated its obligations when issuing the discharge. Accordingly, this appeal is denied. Respondent may go forward with the discharge after the stay as set forth in 130 CMR 456.704(B).[1]

[1] Earlier versions of 130 CMR 456.704(B) and 130 CMR 610.030(B) allowed for a five-day stay after a hearing decision for discharges issued on an emergency basis. The current revisions of 130 CMR 456.704(B) and 130 CMR 610.030(B) do not appear to contain the correct reference to the regulation for an emergency discharge, presumably due to a

Order for Respondent

Proceed with the discharge as set forth in the notice dated [redacted] after a five-day stay from 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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc: Respondent: [redacted]

drafting error.