



FOR IMMEDIATE RELEASE

**East Central Regional Human Rights Authority
Report of Findings
Case 10-060-9015
Bourbonnais Terrace**

The East Central Regional Human Rights Authority (HRA), a division of the Illinois Guardianship and Advocacy Commission, accepted for investigation the following allegations concerning residential health services at Bourbonnais Terrace located in Bourbonnais, Illinois.

Complaints:

1. A recipient of mental health services was not allowed to review his clinical records.
2. A recipient of services was not offered the opportunity to actively participate in the individualized treatment planning process.
3. A recipient was given psychotropic medications inappropriately.
4. Staff have opened a recipient's mail.
5. A recipient of mental health services was denied the right to vote or worship.

If found substantiated, the allegations represent violations of the Mental Health and Developmental Disabilities Code (405 ILCS 5/1 et seq.), the Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/4 et seq.), the Nursing Home Care Act (210 ILCS 45/2 et seq.), and the Skilled Nursing and Intermediate Care Facilities Code (77 Ill. Admin. Code 300. et seq.).

Bourbonnais Terrace is a skilled nursing home which consists of 197 adult beds. All beds serve individuals with mental health needs. 100 beds are for those needing skilled services the other 97 are those patients needing intermediate care services. The majority of individuals who reside in this facility are from the Kankakee County area. The average length of stay is two years. Each resident has a treatment program that is completely individualized. Each resident works with a multidisciplinary team of psychiatrists, outpatient services, mental health nurses, psychologists, social workers, and clergy.

COMPLAINT STATEMENT

Per the complaint, a resident of this facility was not allowed to review his clinical records. The resident reportedly was not allowed to participate in his own treatment planning. Psychotropic drugs were allegedly administered against the resident's wishes. As per the complaint, staff did not respect the resident's private mail and mail was opened and inspected

before the resident could read the mail. The complaint also states that the resident was not allowed to attend worship services or exercise his right to vote.

The HRA proceeded with the investigation having received written authorization to review the resident's record. To pursue the matter the HRA visited the facility where program representatives were interviewed. Relevant practices, policies and sections of a resident's record were reviewed.

FINDINGS

Interviews

The HRA met with the administrator, nursing staff, direct care staff and social work staff. Per interviews with staff the resident was admitted with diagnoses of Schizophrenia and Major Depression. Staff reported that as per the notes of the hospital from which the recipient was admitted he is delusional and has a history of bizarre behavior. He had previously been hospitalized for behaviors related to schizophrenia. His course of treatment was determined by his psychiatrist, and counseling staff complete an assessment. There is a Comprehensive Functional Assessment (CFA) completed upon entry to the nursing home. The treatment team that determines the course of treatment is his physician, nursing staff, counseling staff, dietary staff and the resident himself. The resident was encouraged to actively participate in his care plan. This plan was reviewed on 02/22/2010 and again on 05/17/10. He attended the 02/22/2010 care plans meeting, and when they came to discussing goals he left the meeting; he chose not to attend on 05/17/10.

In regards to questions about a resident exercising his right to access to records, the HRA was informed that staff would let a resident look at records or make copies as needed. Per staff, the resident reviewed his records and received copies of his records several times. The resident discussed the contents of the records with staff.

The HRA asked about administering psychotropic medications if a patient was noncompliant with medications, and it was explained that they would respect the resident's choice. When asked what would they do if the resident became dangerous or aggressive; would they administer medications involuntarily? The HRA was advised that the resident would be sent to the hospital.

When asked how the facility accommodates a resident's right to worship, it was explained to the HRA that the patient could attend any service he chose. There were also approximately five religious groups that came to the facility to hold services, bible studies, and classes.

When asked how the facility accommodates a resident's right to vote, it was explained to the HRA that residents were taken monthly to register to vote. There are also voter registration forms that are kept at the facility and made accessible to all residents living there. They have absentee voting which is accessible to all facility residents who are registered voters.

When asked what the mail policy is for residents, it was explained that upon admission they ask residents for permission to open business mail only. Written permission is obtained from the resident. We were informed this patient had given his permission to have business mail opened.

The facility explained the policy for a resident using the telephone. There are 3 pay phones in the building. Any toll free number can be dialed at any time. Residents are also allowed to use the phone in the counseling center for free.

The policy regarding guests and visitation allows for visitors at any time. The HRA inquired under what circumstances might communication/visitation be restricted. An example given of this would be that a legal guardian does not allow a certain person or family member to visit their ward. The resident in this complaint does not have a legal guardian at this time and does not have a rights restriction.

This facility does have a grievance policy and at this time this resident has not filed a grievance nor has anyone on behalf of the resident. There are also quality assurance measures such as a resident complaint form and a resident satisfaction survey.

Staff members explained that upon admission the resident had all of his rights explained to him and a copy was in his file where he acknowledged by his signature, that he had received a copy of his rights and they had been explained to him.

The HRA viewed the resident's room and talked to him personally. We observed an outside area and a general area for residents to relax, watch television and participate in group activities. On the walkways there were poster boards that listed toll free phone numbers of advocacy agencies and resident rights as well as activity calendars and notices of upcoming events in which residents could participate.

Policy and Record Reviews

The HRA reviewed the petition that the psychiatrist at a previous hospitalization had completed and the corresponding court order. The petition was for the administration of authorized involuntary treatment. The petition documented that the patient allegedly is a person who has a mental illness and needs involuntary treatment for the following: the individual has refused to submit to treatment by psychotropic medication; and the individual lacks capacity to give informed consent, and because of the mental illness may exhibit deterioration of ability to function, suffering or threatening behavior. It documents that the benefits of treatment clearly outweighs the harm and less restrictive services were explored and found inappropriate. The patient was ordered to take the medication for Risperdal, Haldol, and Prolira for three months. A second court order committed the patient to a local hospital for a term not to exceed 90 days from the date of the commitment.

Per the record, the resident did not stay the full 90 days. He was discharged from the hospital and returned to Bourbonnais Terrace on 02/02/10. His medication order from the hospital was appropriately discontinued. A new prescription was documented on the physician's

orders and the medical administration record. Counseling and nursing notes document that the patient was provided education about his medication. These notes also document that there were times the resident consented to taking his medications and there were times when he did not. The times he chose to be noncompliant with taking his medication staff respected his choice. Notes further document that he was encouraged to take his medications and it was explained to him by counseling and nursing why taking his prescribed medications was important for his health. It was also documented repeatedly that he had no insight into his illness.

The HRA viewed documentation of rights discussed with residents and received a copy of the *Illinois Department of Aging (2001) Residents' Rights for People in Long Term Care Facilities* from the resident's file. It had been signed by the resident that these rights were explained to him and he understood them. Per counseling notes the resident reviewed his records and received copies of his records several times. It was documented that he discussed the contents of the records as he reviewed them. When staff were asked by the HRA at a later date if there were actual policies for record access it was explained that Bourbonnais Terrace informs all residents they have access to their records when they receive the residents rights information.

The HRA examined the Bourbonnais Terrace (2010) *Grievance Policy and Procedure for Residents*. This stated "The administration at this facility will make every effort to promptly and satisfactorily address and attempt to resolve any complaint, concern or grievance brought to the attention of the administration." This includes grievances filed concerning missing property and allegations of improper resident treatment. The policy quotes a federal standard as follows:

1. Voice grievances without discrimination or reprisal. Such grievances include those with respect to treatment which has been furnished as well as that which has not been furnished: and
2. Prompt efforts by the facility to resolve grievances the resident or his/her representative may have, including those with respect to the behavior of other residents.

This document went into further detail and included a form in which a person could check a box to share a concern or complaint about missing property, staff behavior, resident behavior, medical/nursing, laundry, food service/meals, environment of care, recreation/leisure therapy, medically related social service and other. It then identified the corresponding supervisor it would be referred to and it left room for the person making the complaint to go into detail. There was also space to document any action taken and the resolution shared with the person making the complaint.

The HRA reviewed the Bourbonnais Terrace (no date) *Resident Survey*. It is an anonymous survey that allows residents to voice their opinions. Here are some of the questions and issues included in the survey:

- quality of the facility meeting the needs of residents
- The care of nursing regarding mental, physical, and psychosocial needs,
- Issues of fear
- Changes in care when there is a shift change
- A nurse's willingness to pleasantly provide care

- Do you have someone you feel comfortable talking to?
- Are visitors welcomed to the facility?
- Mail distribution
- Property protected from theft.
- Food quality and choices
- Comfort of furniture
- Choices regarding personal items kept in the room.
- Are problems addressed adequately with staff?
- Have you been informed of your rights?
- Are you able to talk to someone about your religious and spiritual feelings if you choose?
- Are you allowed to maintain important religious or cultural traditions in regards to clothing, food, and observe traditions?
- Do staff members know what you would like them to know about yourself?
- What do you like in this nursing facility?
- What would you like to see improved?
- Are you satisfied with the medical care your doctor provides?
- Do you feel that your doctor listens to you?

The HRA was given a copy of the Illinois Council on Long Term Care (2009) *Authorization to Inspect and Open Official Correspondence*. In this agreement it stated: "I understand that I have the right to receive my personal mail delivered to me unopened. However, I do not want important mail affecting my financial or legal affairs to get lost or misplaced. Consequently, I hereby agree to and authorize representatives of this facility to inspect, open and remove the contents of the following mail, realizing that will be informed of issues deemed necessary:

- Social Security Checks
- Pension Checks
- Veteran's Administration Checks
- Correspondence from Illinois Department of Public Aid
- Social Security
- Medicare Insurance
- Doctor and Hospital Bills
- Any correspondence that looks like business"

The HRA observed this resident's signature allowing the facility to open his mail from the above list.

The HRA reviewed the activity calendar for the home for the current month. There was an average of eight times a week that a resident could participate in a group form of worship with five different types of faith. This included two different Baptists church groups, Catholic services (which were offered twice a week), the Church of the Nazarene services, bible stories, spiritual reading, and Tai Chi.

The HRA reviewed the care plan for the resident. In the document it listed 24 issues of care to be addressed for the resident. It listed compliance with medications as well as education of medication side effects. The next issue was learning insight and reasoning in regard to his diagnoses of mental illness. It addressed this issue with group therapy and appropriate redirection by staff. It documented participation with an outside program's goals, objectives and interventions. It also documented counseling and assistance by staff in praising goal directed behaviors. It had a plan to encourage the resident to work towards achievement, self sufficiency and independence to the best of his ability. This plan addressed previous aggressive behaviors. This included a referral for further assessment for psychiatric care if symptoms warranted. It advised staff not to try to talk patient out of hallucinations or delusional thoughts but simply remind the resident that he is safe and secure in the facility environment. It also addressed the patient's history of Major Depression.

Further issues of care addressed in the plan were appropriate, including, hygiene and apparel and the resident's history of past criminal behavior of battery and second degree murder conviction. There was a plan to assist the resident to learn better impulse control and document information learned about the criminal behavior. There was a plan to assist the resident with moving to a less restrictive environment. There were also plans to assist the resident in participating in activities he would enjoy. Issues regarding resident risk of injury, dietary needs, hypertension, arthritis, pain treatment and safe sexual behavior were addressed. This care plan was discussed and updated on 02/22/10 and 05/17/10 with the patient per notes documented in the record by counseling. When staff were asked by the HRA at a later date if there were actual policies for engaging the resident in care planning it was explained that Bourbonnais Terrace explained that all residents have the right to participate in their care planning. There was not a separate policy. Counseling notes document that this resident was encouraged and asked to participate in his plan. During the first care plan the resident participated but then left when the care plan goals were being discussed. Notes document that the PRSC met with the resident after the plan was completed and explained the plan to the resident. The second time that the care plan was updated the resident was asked to participate but did not attend. Notes document that the PRSC met with the resident to discuss the plan with him.

Per Psychiatric Rehabilitation Progress notes: "The resident is delusional, alert, oriented and able to follow directions. He has moderately impaired decision making skills as he is noted as Identified Offender. He is attending Preventing Aggression group where he is attempting to address history of confrontational behaviors. He has difficulty coping with his illness as he lacks insight into his illness. This issue is attempting to be addressed in Coping Skills group. Resident has fair to poor family contact with his godfather as calls frequently and leaves messages, appears he has yet to talk to him. He is aware of church services offered at this facility thru local churches. He is aware of activities offered within and outside the facility and has attended shopping trips. The resident is aware of outside programming but has expressed no motivation to participate at this time. The resident's room can be found disorganized at times as he hoards papers and books. He appears to be adjusting well and expresses no alternative placement at this time. He is his own guardian and expresses no advance directives at this time. His placement and care plan are expected to continue accordingly at this time."

Nursing notes document the resident spending most of his days on the phone, sometimes calling free 800 numbers and at another times representing himself as a corporation and requesting free samples of different products. Nursing notes on 6/11/10 document the patient reviewing records wanting to know if he had a guardian, because he was not sure. Notes document that he was offered copies of records but declined and stated he did not want anymore copies.

Individual counseling notes show the patient is cooperative but remains delusional in his thought process. Notes further document that the patient had made progress regarding aggressive behavior and that there have been time periods of non compliance with medications and laboratory tests. The patient did not believe that he has a need for mental health services. He was unwilling to discuss his mental illness.

The patient was also evaluated by another private provider of supportive services to Bourbonnais Terrace. This annual review was completed by a licensed clinical professional counselor and was signed off of by another psychiatrist. Regarding the patient's mental status exam summary, it documented: "Language functions of repetition, reasoning and comprehension were poor. The resident was attentive, alert, and oriented X 3. Both recent and remote were intact. Intellectual functioning appeared to be in the average range. The resident had little insight into his mental illness. Delusional and paranoid ideation was evident. He denied depression and anxiety at this time. Diagnosis: Psychosis, not otherwise specified, code per DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (DSM) (2004) [298.9 Reactive Psychoses, Unspecified] and Major Depression, recurrent code per [296.3 Major Depressive Disorder, Recurrent, Unspecified]." The exam also documented illogical, loose associations, impaired judgment, no insight, and a flight of ideas in the resident thought process. It stated that the resident's response to reality testing was fair to poor. These are the recommendations that were made:

1. Resident's adjustment to this facility and its programs is good. No change in residence is recommended.
2. Medications are well tolerated. Monitor patient for changes in mood or reactions.
3. Continue participation in facility activities and psychosocial groups.

CONCLUSIONS

Complaint 1. A recipient of mental health services was not allowed to review his clinical records.

Pursuant to the Mental Health and Developmental Disabilities Confidentiality Act, any recipient who is 12 years of age or older is entitled to inspect and copy his record upon request (740 ILCS 110/4). Likewise, all residents of nursing homes shall be permitted to inspect and copy all records concerning his care and maintenance under the Nursing Home Care Act (210 ILCS 45/2-104).

Per interview with staff, nursing notes and counseling notes the resident reviewed his records and received copies of his records several times. He even discussed the contents of the

records as he reviewed them in regards to asking staff if he has a guardian. When this resident had his rights explained to him he acknowledged by his signature, that he had received a copy of his rights which included his right to inspect his record. Based on this evidence, the allegation, **a recipient of mental health services was not allowed to review their clinical records, is unsubstantiated.**

Complaint 2. A recipient of services was not offered the opportunity to actively participate in the individualized treatment planning process.

Pursuant to the Nursing Home Care Act, every resident is permitted to participate in the planning of his total care to the extent his condition permits (210 ILCS 45/2-104). The Skilled Nursing and Intermediate Care Facilities Code states the same (77 Ill. Admin. Code 300.3220) and adds that for residents with serious mental illness, an Individual Treatment Plan shall be developed by the interdisciplinary team and shall be signed by all members who participated, including the resident. If the resident refuses to participate or sign, a psychiatric case worker must meet with him as soon as possible to review the plan, evidence of which is to be documented (77 Ill. Admin. Code 300.4030).

The Individualized Treatment Plan for this resident was completed on 02/22/10 and again on 05/17/10. The HRA viewed the plan. The resident did not sign off on the plan but the PRSC documented that the plan was discussed with the resident in both instances and that the resident chose not to attend on 05/17/10. In the document it addressed the issues of care needed for the patient. Based on this evidence, the allegation, **a recipient of services was not offered the opportunity to actively participate in the individualized treatment planning process is unsubstantiated.**

Complaint 3. A recipient was given psychotropic medications inappropriately.

Pursuant to the Nursing Home Care Act, all medical treatment shall be administered as ordered by a physician, and, every resident shall be permitted to refuse treatment unless it is necessary to prevent harm as documented by a physician in the record (210 ILCS 45/2-104).

"(b) Psychotropic medication shall not be prescribed without the informed consent of the resident, the resident's guardian, or other authorized representative. 'Psychotropic medication' means medication that is used for or listed as used for antipsychotic, antidepressant, antimanic, or antianxiety behavior modification or behavior management purposes in the latest editions of the AMA Drug Evaluations or the Physician's Desk Reference. The Department shall adopt, by rule, a protocol specifying how informed consent for psychotropic medication may be obtained or refused. The protocol shall require, at a minimum, a discussion between (i) the resident or the resident's authorized representative and (ii) the resident's physician, a registered pharmacist (who is not a dispensing pharmacist for the facility where the resident lives), or a licensed nurse about the possible risks and benefits of a recommended medication and the use of standardized consent forms designated by the Department."

The Skilled Nursing and Intermediate Care Facilities Code states (77 Ill. Adm. Code 300.686):

"b) *Psychotropic medication shall not be prescribed or administered without the informed consent of the resident, the resident's guardian, or other authorized representative.*

c) Residents shall not be given antipsychotic drugs unless antipsychotic drug therapy is necessary, as documented in the resident's comprehensive assessment, to treat a specific or suspected condition as diagnosed and documented in the clinical record or to rule out the possibility of one of the conditions in accordance with Section 300. Appendix F. "

The HRA reviewed the physicians' orders, medication administration records, nursing notes, counseling notes, and psychiatric evaluations. On the psychiatric evaluation on 02/05/10 medications were ordered to treat the resident's schizophrenia diagnosis by his psychiatrist. This was three days after he was readmitted to Bourbonnais Terrace. Per the record the medications prescribed were explained to him. Numerous times in nursing notes the resident exercised his right to refuse to take his medications. He also declined having laboratory tests drawn. There is no evidence that this facility forced the resident to take psychotropic medications against his wishes. Based on the evidence obtained in the record a **recipient was given psychotropic medications inappropriately is not substantiated**.

Complaint 4. Staff have opened a recipients' mail.

Under the Act (210 ILCS 45/2-108), "Every resident shall be permitted unimpeded, private and uncensored communication of his choice by mail, public telephone or visitation.

(a) The administrator shall ensure that correspondence is conveniently received and mailed, and that telephones are reasonably accessible.

(d) Unimpeded, private and uncensored communication by mail, public telephone and visitation may be reasonably restricted by a physician only in order to protect the resident or others from harm, harassment or intimidation, provided that the reason for any such restriction is placed in the resident's clinical record by the physician and that notice of such restriction shall be given to all residents upon admission. However, all letters addressed by a resident to the Governor, members of the General Assembly, Attorney General, judges, state's attorneys, officers of the Department, or licensed attorneys at law shall be forwarded at once to the persons to whom they are addressed without examination by facility personnel. Letters in reply from the officials and attorneys mentioned above shall be delivered to the recipient without examination by facility personnel."

The HRA viewed the resident's signature stating that staff could open and inspect his mail regarding official correspondence. Per this authorization he did not want important mail affecting his financial or legal affairs to get lost or misplaced. Based on this evidence, the allegation, **Staff have opened a recipients' mail is a true statement but it is not substantiated as a rights violation** because staff opened mail for the resident with his written permission authorizing them to do so.

Complaint 5. A recipient of mental health services was denied the right to vote or worship.

The Act (210 ILCS 45/2-101 and 45/2-109) states that "No resident shall be deprived of any rights, benefits, or privileges guaranteed by law, the Constitution of the State of Illinois, or the Constitution of the United States solely on account of his status as a resident of a facility.... A resident shall be permitted the free exercise of religion. Upon a resident's request, and if necessary at his expense, the administrator shall make arrangements for a resident's attendance at religious services of the resident's choice. However, no religious beliefs or practices, or attendance at religious services, may be imposed upon any resident."

Voting is a fundamental right for all age-qualified American citizens, and the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973) and the Illinois Election Code (10 ILCS 5) ensure that all people with disabilities, including those living in care institutions, have alternative means to register and cast their votes.

Per documentation of the resident's signature, his rights were explained to him including his right to vote and his right to freedom of religion. Per the record, there were numerous opportunities for the resident to worship at the facility. He did not have a rights restriction which would have prevented him from attending worship outside of the facility. There was written documentation that the PRSC assisted the resident in contacting his church of choice on 2/5/10.

Regarding resident's right to vote, there were two different ways the resident could register and there was also a practical process for him to vote as well.

Based on evidence obtained in the record and per interviews with staff, the complaint, **a recipient of mental health services was denied the right to vote or worship is not substantiated**.

The HRA acknowledges the full cooperation of Bourbonnais Terrace during the course of its investigation