



FOR IMMEDIATE RELEASE

HUMAN RIGHTS AUTHORITY-NORTHWEST REGION

REPORT 10-080-9013
GOLDIE B. FLOBERG CENTER

Case Summary: a rights violation was not found but the facility's visitation policy was found to include errors and was not endorsed.

INTRODUCTION

The Human Rights Authority (HRA) of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving complaints of potential rights violations in services provided at the Goldie B. Floberg Center. It was alleged that the program's visitation policies conflict with the Code in that visitors must provide social security numbers, submit to background checks and get director approval. Substantiated findings would violate protected rights under the Mental Health and Developmental Disabilities Code (405 ILCS 5).

Located in Rockton, the Floberg Center offers residential programs for children and adults with developmental disabilities as well as family assistance, support and behavioral treatment. At the time of this writing they were providing homes to fifty-five minors and thirty-three adults. This review focuses on the adult side and policies affecting consumer visitation rights in Community Integrated Living Arrangements, or CILAs.

The HRA visited the program's main office and discussed the issues with the adult services administrator. A relevant policy was reviewed.

FINDINGS

The administrator explained during our interviews that stricter visiting protocols were implemented in recent times after a resident was sexually assaulted by a family member while on a home visit. Sensing the need for added protections for residents on program property, they decided to require criminal background checks on all visitors to Floberg homes, applying the same prohibitions the state imposes on CILA hiring; in other words, only prohibiting those with the most egregious offenses like sexual or physical assault and drug convictions. In practice, all individuals or guardians as appropriate list the names of people they approve to visit, and visitors must present photo identifications for verification. Now, all prospective visitors will provide their full names and dates of birth as well so that background checks can be completed first.

Checks will be updated annually. About fifty have been done since starting the new practice and no one has failed.

We reviewed the program's written policy on this visitation practice. It states that all persons requesting to visit or pick up a Floberg resident must have a criminal background check to ensure eligibility to be on agency property due to Department of Children and Family Services (DCFS) and Department of Human Services (DHS) licensing requirements. Checks will also be completed on employees and volunteers. It states that the intention is to protect all clients and staff from dangerous people in conjunction with maintaining licensure requirements with DCFS and DHS. Regarding procedure, all persons requested for visitation and pick-up status will be listed on a consent form. Their full legal names, previous names and birthdates will be provided in writing; social security numbers are not required. Human resources will complete the background check, which includes information from Illinois' and Wisconsin's sex offender registries, local county and Wisconsin courts, and inmate and wanted fugitive searches. If criminal histories eliminate prospective visitors from access to program property, as defined by the DCFS and the DHS, the director will be contacted immediately and the resident, if he is his own guardian, and any parent and guardian will be notified in writing. The policy concludes by stating that the program reserves the right to deny access of anyone failing to meet licensing requirements for appearance on Floberg-owned properties.

Floberg provides residents and guardians with a list of rights as required by the Code and CILA administrative rules. The state-issued form notifies them of the right to communicate with other people in private, without obstruction or censorship by staff, and that the right can be reasonably restricted, but only to protect the individual or others from harm, harassment or intimidation.

As mentioned earlier, the administrator explained that only the same prohibitions against hiring will be applied to visitors to program properties. We reviewed the Health Care Worker Background Check Act (225 ILCS 46) and the Health Care Worker Background Check Code (77 Ill. Admin. Code 995), which prohibit health and long-term care agencies including CILAs from hiring persons convicted of one or more identified offenses under the Criminal Code of 1961, the Cannabis Control Act, and the Illinois Controlled Substance Act among others. Those disqualifying offenses include, but are not limited to, various grades of murder, kidnapping, sexual assault, sexual misconduct with children and people with disabilities, battery, armed or aggravated robbery, and abuse and criminal neglect of a facility resident (720 ILCS 5).

CONCLUSION

The CILA Rules state that employees shall inform individuals entering a CILA program that their rights are protected in accordance with Chapter II of the Code (59 Ill. Admin. Code 115.250).

Under the Code,

Except as provided in this Section, a recipient who resides in a...developmental disabilities facility shall be permitted unimpeded, private, and uncensored communication with persons of his choice by mail, telephone and visitation. Unimpeded, private and uncensored communication by mail, telephone, and visitation may be reasonably restricted by the facility director in order to protect the recipient or others from harm, harassment or intimidation, provided that notice of such restriction shall be given to all recipients upon admission. When communications are restricted, the facility shall advise the recipient that he has the right to require the facility to notify the affected parties of the restriction, and to notify such affected party when the restrictions are no longer in effect. (405 ILCS 5/2-103).

The Code adds that whenever an established right is restricted the facility must give prompt notice of the reasons why to the recipient, any guardian, and to anyone the recipient and the guardian designates, including the Guardianship and Advocacy Commission. A restriction must be recorded promptly in the recipient's record (405 ILCS 5/2-201).

The HRA believes that Floberg's new visitor policy, at heart, is a diligent attempt to ensure safety and protection for its residents. Its procedure makes determination of potential harm and supplies written notification of any restriction to appropriate parties. In that regard, providing a safe environment for vulnerable adults with disabilities is by no means a rights violation, and the complaint is not substantiated. However, our finding is not an endorsement for the policy and we submit several suggestions for improvement:

SUGGESTIONS

1. The policy states repeatedly that these protections are in place "...in conjunction with maintaining licensure requirements with DHS/DDD and DCFS", "If the proposed visitor has a criminal history that eliminates them from access to the Center's properties, as defined by DHS/DCFS...", and "The Center reserves the right to deny access of any person who does not meet the eligibility standards of the licensing requirements for appearance on Center owned properties." There are no such DHS licensing requirements on the adult side affecting visitor access or appearance (CILA Licensure and Certification Act 210 ILCS 135; CILA Administrative Code 59 Ill. Admin. Code 115), which we verified through the DHS Bureau of Accreditation, Licensure and Certification. In fact, on the adult side property access restrictions only apply to prospective employees, volunteers or other service agents under the Health Care Worker Background Check Act (225 ILCS 46/25), not to visitors. The language is a misrepresentation of the law, and Floberg should separate the policy between DHS and DCFS-regulated programs.
2. The Code states that **"The Secretary of Human Services and the facility director of each service provider shall adopt in writing such policies and procedures as are necessary to implement this Chapter. Such policies and procedures may amplify or expand, but shall not restrict or limit, the rights guaranteed to recipients by this**

Chapter." (405 ILCS 5/2-202). We encourage Floberg to ensure that all parts of this policy are not overreaching and in compliance.

3. Policies should reflect that all residents, regardless of legal status, will enjoy the right to choose visitors and to receive notice of any restrictions (405 ILCS 5/2-103 and 5/2-201).
4. Floberg must be sure that upon commencement of services it informs recipients twelve years of age and older and any guardians of their right to designate then or at any time a person or agency to receive notice whenever rights are restricted (405 ILCS 5/2-200).
5. Floberg must be sure that written notices of visiting restrictions referred to in policy are entered promptly in recipient records (405 ILCS 5/2-201).
6. Floberg must maintain a file of rights restriction notices for a minimum of three years and allow the Guardianship and Advocacy Commission to examine and copy the file's contents upon request (405 ILCS 5/2-201). The program had no such file at the time of this review.
7. The CILA Rules require programs to ensure a process for periodically reviewing human rights issues (59 Ill. Admin. Code 115.320). Floberg is encouraged to float this new policy through any committee or process it has, if not done already.
8. In keeping with individual approaches to services (405 ILCS 5; 59 Ill. Admin. Code 115), there must be a process for exceptions in the policy, say when a resident's friend or relative is in town for a few hours and they're typically not included on the visitor's list but they want to stop by for a quick visit. There would be no time to complete a background check. Also, we are concerned about how disqualifying determinations are ultimately made and whether there are more exceptions. For example, credit card fraud and practicing nursing without a license are listed as disqualifying offenses under the Background Check Act--that makes sense when considering employment, but we cannot imagine how a person convicted of credit card fraud presents harm while visiting a home where staff are on site and where they should have no access to residents' money.