



FOR IMMEDIATE RELEASE

HUMAN RIGHTS AUTHORITY- CHICAGO REGION

**REPORT #12-030-9004
Presidential Pavilion**

Case Summary: The HRA did not substantiate the complaint that the recipient was administered forced psychotropic medication for no adequate reason, and did not substantiate that the recipient was denied her pass and prevented from being discharged. The HRA did substantiate the complaint that the facility did not complete a contract for services with the resident. The provider response is attached.

INTRODUCTION

The Human Rights Authority of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving a complaint of possible rights violations at Presidential Pavilion. It was alleged that the facility did not follow Nursing Home Care Act requirements when it administered forced psychotropic medication for no adequate reason, did not complete a contract for services with the resident, denied the resident her pass for no reason, and prevented her from being discharged. If substantiated, this would violate the Nursing Home Care Act (210 ILCS 45 et seq.).

Presidential Pavilion is a 328- bed Intermediate and Skilled Nursing Home located in Chicago.

To review this complaint, the HRA conducted a site visit and interviewed the Presidential Pavilion Administrator and the Nursing Supervisor. Relevant facility policies were reviewed, and records were obtained with the consent of the recipient.

COMPLAINT SUMMARY

The complaint alleges that the resident returned late from a pass and was approached by staff regarding her whereabouts. The staff person allegedly told the resident that they would discuss the situation the following morning, 9/06/11. The next day the complaint indicates that the resident was pushed into her room by the floor nurse, along with a security officer, and given an injection of Haldol and Ativan for no reason. The complaint also states that the resident never

completed a contract for services, was denied her pass for no reason, and was prevented from being discharged for no reason.

FINDINGS

The record indicates that the recipient was admitted to Presidential Pavilion on 6/28/11. Her admitting diagnoses are listed as Hypertension, Diabetes, Hypothyroidism, and Depression. The record contains a Consent for Psychotropic Medication form for Paxil, 40 mg signed by the recipient on 6/30/11, the Admission/Orientation Information sheet signed 6/30/11, the Conduct Contract Between the Resident and the Facility signed 6/30/11, the Resident Incentive and Contingency Management Program signed 6/30/11, an Advanced Directives and Self-Administration of Medications form signed by the recipient on 7/01/11, and the Resident Behavior Contract signed 7/01/11. The record contains no other admissions records signed by the recipient and does not contain a contract for services signed by the recipient.

The record contains a Physician's Order Sheet for 9/06/11 which orders Haldol 5 mg, IM (intramuscularly) and Ativan, 2 mg IM for a one-time administration. This same information is handwritten by the nurse on the same sheet. The Medication Administration Record is provided in the clinical record and it does not show an administration of emergency medication on this day or at any other time for the recipient's stay. There are no Progress Notes which indicate an administration of emergency medication.

The record contains Monthly Summary sheets for July and August, 2011. For July, the summary of the recipient's condition states, "Resident remains in stable condition, no signs/symptoms of distress, ambulates per self, with assist of cane." The Additional Information section states, "Resident cont'd to be non-compliant with meds Tx, and verbally abusive to staff when approached." For August, the notes state, "Condition remains the same, able to make need known ambulates with cane gait steady." The Additional Information section states, "Resident continues to show aggressive behaviors, when approached about TX and medications refuses bathing and accucheck off unit most of the time." The record contains no indication that the recipient was denied a pass.

The record does not contain a written request from the recipient for discharge. The Social Service Progress Notes from 7/1/11 indicate that the recipient expressed an interest in discharge planning services in order to facilitate a move to a less structured environment. A follow-up note written the same day states, "This writer met with the resident to discuss discharge potential. The resident has no definite plan for discharge at this time however is in agreement with the IDT's suggestion to have an assessment done to determine the d/c readiness. The resident was informed that agencies such as ... visit this facility regularly as part of the Money Follows the Person (MFP) program to conduct discharge potential worthiness and readiness/preparation assessments. The resident was notified that a referral may be sent to the ombudsman who is also responsible for making referrals to the MFP program. The resident's discharge readiness will be evaluated regularly and assistance will be provided, as necessary. This resident is responsible for remaining in targeted and recommended programs addressing discharge readiness skills (including but not limited independent living, daily self-care, proper nutrition, use of community resources, maintaining safety, abstaining from substances, remaining in medical and psychiatric

treatment, staying on prescribed medication, practicing harm reduction, shopping, cleaning, maintaining clean laundry). Facility staff will work with the resident towards the goal of a safe, productive, and smooth transition into the community to assure continuity of services and enhanced functional well-being." The recipient signed her own discharge AMA (against medical advice) on 9/20/11.

FACILITY REPRESENTATIVES' RESPONSE

The facility representatives were interviewed about the complaint. They stated that although there was a physician's order for the recipient to receive an injection on the day the recipient indicated she received an injection, 9/06/11, the record does not show that she was actually given this injection and it was not recorded on the MAR (medication administration record). Staff were asked why the nurse would have called the physician for the order had there not been a precipitating event however staff indicated that the order could have been received and then the decision changed to actually administer the injection. Staff confirmed that if the injection had been administered it would have been logged onto the MAR.

Facility representatives were interviewed about the contract for services that is mandated by the Nursing Home Care Act. Staff stated that the recipient might not have signed a contract for services when this recipient was admitted. They stated that the facility has since then undergone major administrative changes and the new administration has developed and implemented an admission packet that includes a contract for services as well as all the other mandated documents.

Facility staff were asked about the recipient's pass status. They stated that the recipient freely left and returned to the facility- most days she was gone from the facility from 9:00 a.m. until 9:00 p.m. Several times the recipient requested to be taken to a friend's apartment by the facility driver, however when they arrived at the stated address, the friend was not living there. Staff stated that if a resident is in danger of losing her pass the treatment team would discuss this issue in treatment team meetings and the recipient would be part of this discussion. Staff were not aware that the recipient's passes were ever curtailed in any way.

Facility staff were interviewed about the recipient's discharge. They stated that the recipient never submitted a request for discharge, however her discharge and the steps necessary to achieve it had been discussed with the recipient and the treatment team, and progress had been made toward this end. Staff noted that generally when a recipient requests to be discharged AMA they are allowed to do so unless conditions at the time of the discharge place the recipient at a safety risk. Staff stated that the protocol is in place for discharge requests and it was followed in this instance.

Facility staff were asked if the facility has a Residents Advisory Council and they stated that they have a council that meets monthly. The facility also has an Ombudsman.

STATUTORY BASIS

The Nursing Home Care Act 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" (210 ILCS 45/2-101). The Act also states that, "Each resident and resident's guardian or other person acting for the resident shall be given a written explanation, prepared by the Office of the State Long Term Care Ombudsman, of all the rights enumerated in Part 1 of this article and Part 4 of Article III" (45/2-211).

The Nursing Home Care Act states that every resident "shall be permitted to refuse medical treatment and to know the consequences of such action, unless such refusal would be harmful to the health and safety of others and such harm is documented by a physician in the resident's clinical record" (45/2-104 c).

The Nursing Home Care Act states that, "Before a person is admitted to a facility, or at the expiration of the period of previous contract, or when the source of payment for the resident's care changes from private to public funds or from public to private funds, a written contract shall be executed between a licensee and the following in order of priority: the person, or if the person is a minor, his parent or guardian, the person's guardian, if any, or agent, if any...or a member of the person's immediate family. An adult person shall be presumed to have the capacity to contract for admission to a long term care facility unless he has been adjudicated a 'disabled person' within the meaning of Section 11a-2 of the Probate Act of 1975, or unless a petition for such an adjudication is pending in a circuit court of Illinois" (45/2-202 a 3). Also, "At the time of the resident's admission to the facility, a copy of the contract shall be given to the resident, his guardian, if any, and any other person who executed the contract."

The Nursing Home Care Act states, "A resident may be discharged from a facility after he gives the administrator, a physician, or a nurse of the facility a written notice of his desire to be discharged... In such cases, upon the resident's discharge, the facility is relieved from any responsibility for the resident's care, safety or well-being (45/2-111).

FACILITY POLICY

Presidential Pavilion provided the facility policy on Refusal of Medication. It states, "With respect to PRN [as needed] medications ordered by the physician, if the resident refuses the PRN, such refusal shall be noted on the MAR. In addition, the Physician shall be notified if the resident manifests behaviors."

Presidential Pavilion provided the facility policy on Outside Passes. Newly admitted residents are assessed for cognitive status, their degree and severity of mental and/or physical illness, addictive history and present addictive behaviors, community safety skills, ability to follow rules and procedures, and their maintenance of personal grooming and hygiene. The policy states, "Decisions regarding pass privileges, including independent privileges or being accompanied by a responsible individual are at the discretion of administration. As appropriate, pass privileges may be discussed at care plan meetings which the resident is encouraged to attend. The resident is responsible for making staff aware of his/her desire to receive an independent pass privilege." Additionally, "Persons who demonstrate consistent maladaptive and problematic behaviors may not be candidates for independent privileges."

Presidential Pavilion provided facility policy on Discharge Against Medical Advice. It states, "residents wishing to be discharged against medical advice are to be counseled on the associated risks and potential consequences, treatment and care options as well as recommendations for post-discharge care. The physician is to be informed of the resident's wishes and the same documented in the clinical record. If any resident decides to discharge himself against medical advice and refuses to sign the AMA discharge form, the resident will be discharged and physician will be notified. Upon release against medical advice; whether signed by the resident or not; the resident releases the facility from any and all responsibility for any ill effects which result from this action."

Presidential Pavilion provided the Resident Behavior Contract that the recipient in this case signed upon admission. It states, "I understand that taking my medication as prescribed on a daily basis is necessary to regain my stability, and that failure to do so will immediately warrant a recommendation to a more secure facility. In fact, I promise that while I am a resident of this facility, I will comply with my overall treatment plan as established by me, personally and the health care team. Consequences established for non-compliance with this admission contract will be at the discretion of the Administrator, Physician, and Interdisciplinary team Members, and ARE VERY LIKELY TO RESULT IN IMMEDIATE TRANSFER FOR ACUTE PSYCHIATRIC CARE" (caps provided).

CONCLUSION

It is impossible to determine from the clinical record whether or not the recipient in this case received an injection of forced emergency medication while she was a resident at Presidential Pavilion. Clearly the physician was contacted and ordered the injection of psychotropic medication on the same day the recipient alleges that she received it, however this cannot be confirmed by staff and is not recorded in the MAR. We do not know if this is because it was not given or just poor recordkeeping. Other more important concerns regarding the facility recordkeeping are evidenced by the lack of a service contract for this recipient- we do not know under what authority the facility received payment for the recipient's services since there is no record of her agreement with the terms and conditions of her stay and she never authorized payment from any source. There is no evidence of the recipient being denied her ability to go out on pass or to be discharged, and the record shows that she was discharged after signing out of the facility AMA. The HRA is unable to substantiate the complaint that the recipient was administered forced psychotropic medication for no adequate reason, and does not substantiate that the recipient was denied her pass and prevented from being discharged. The HRA does substantiate the complaint that the facility did not complete a contract for services with the resident.

RECOMMENDATION

1. Ensure that before a person is admitted into the facility a written contract is executed between the facility and the resident, her guardian, or her representative. Ensure that at the time of the resident's admission to the facility a copy of the contract is given to the resident, her guardian, or any other person who executed the contract.

SUGGESTION

1. The HRA cautions the facility that its Resident Behavior Contract suggests that refusing medication alone warrants an immediate transfer for acute psychiatric care, when in fact residents always have the right to refuse treatment, including medication.

2. The clinical record for this recipient does not include a statement of rights that are guaranteed by the Nursing Home Care Act. The facility should make this available to residents and secure a signed copy for the record and for the resident.

RESPONSE

Notice: The following page(s) contain the provider response. Due to technical requirements, some provider responses appear verbatim in retyped format.

PRESIDENTIAL PAVILION, LLC

8001 S. WESTERN AVE • CHICAGO, IL 60620 • 773-436-6600 • FAX 773-436-5406

VIA FAX AND FEDERAL EXPRESS

July 25, 2012

Jill Quinto, HRA Chairperson
Illinois Guardianship and Advocacy Commission
1200 S. 1st Ave. Box 7009
Hines, IL 60141

Re: Presidential Pavilion- HRA No. 12-030-9004

Dear Ms. Quinto:

This is in response to the Recommendations in the above captioned matter. Upon admission, each resident or legal representative must sign an admission packet, which includes a contract and a resident rights pamphlet. Copies of the contract and resident rights will be offered to the resident or legal representative. In addition, the Resident Behavior Contract has been revised and no longer states that refusal of medication alone may result in transfer or discharge and facility acknowledges each residents right to refuse treatment of medication.

Very truly yours,



Fred L. Berkovits
Administrator

CHICAGO REGIONAL HUMAN RIGHTS AUTHORITY

HRA CASE NO. 12-030-9004

Presidential Pavilion

Pursuant to Section 23 of the Guardianship and Advocacy Act (20 ILCS 3955/1 *et seq.*), we have received the Human Rights Authority report of findings.

IMPORTANT NOTE

Human Rights Authority reports may be made a part of the public record. Reports voted public, along with any response you have provided and indicated you wish to be included in a public document, will be posted on the Illinois Guardianship and Advocacy Commission Web Site. (Due to technical requirements, your response may be in a verbatim retyped format.) Reports are also provided to complainants and may be forwarded to regulatory agencies for their review.

We ask that the following action be taken:

We request that our response to any recommendation/s, plus any comments and/or objections be included as part of the public record.

We do not wish to include our response in the public record.

No response is included.

Freel Berlouits
NAME

ADMINISTRATOR
TITLE

7/24/12
DATE