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Egyptian Regional Human Rights Authority
Report of Findings
Saline Care Center
Case #12-110-9008

The Egyptian Regional Human Rights Authority, a division of the Illinois Guardianship and Advocacy Commission, accepted for investigation the following allegation:

A recipient of services was given psychotropic medication over her objection.

If found substantiated the allegation represents violations of the Nursing Home Care Act (210 ILCS 45), regulations that govern skilled and intermediate care facilities (77 Ill. Admin. Code 300) and the Mental Health and Developmental Disabilities Code (405 ILCS 5/100 et seq.).

Saline Care Center is a skilled and intermediate care nursing home licensed by the Illinois Department of Public Health and located in Harrisburg, Illinois.

To investigate the allegation, the HRA interviewed the facility administrator and director of nursing, examined pertinent facility policies, toured the facility and reviewed a recipient record, with consent.

COMPLAINT STATEMENT

According to the complaint, a recipient of services was upset over the death of a relative and staff held her down and gave her two shots of Haldol without her consent. The incident reportedly occurred on or around April 13, 2011.

FINDINGS

Interviews

The HRA team began the interviews by requesting information about the facility. The facility is locally owned and is one of three homes owned by the same individuals. Each facility has an administrator and then there is an executive administrator who oversees all three homes.

The facility administrator reported that the Saline Care facility consists of 142 beds with one unit comprised of 72 beds licensed as skilled care and Medicare beds and a separate unit comprised of the remaining 70 beds licensed as intermediate care beds. It was determined during the administrator interview that the complaint to the HRA concerned a recipient on the intermediate unit.

The intermediate care unit primarily serves individuals with behavioral and mental health needs and some individuals with dementia or an Alzheimer's Disease diagnosis and is generally

governed by Subpart S standards for facilities that specifically serve persons with mental illness. However, the administrator reported that the recipient in this case is not subject to Subpart S requirements as determined by the Illinois Department of Public Health. Most recipients in the behavioral health unit are over the age of 50 and most admissions come from hospital psychiatric units. A psychiatrist visits the facility one time per month and is available on-call.

The intermediate care unit offers a variety of services and activities. There are two vans available for outings and shopping trips. An in-house store sells snacks and drinks utilizing a charge system. There is supervised smoking five times per day. Psycho-social programs are offered as well as independent living skills classes such as cooking classes, laundry programs and a bed-making program. The facility employs a Master's level social worker and psychological assessments are completed annually. Medication education is provided and psychotropic medications, if administered, result in the monitoring of behaviors as well as medication side effects. The administrator reported that medication refusals are honored but counseling may occur to educate the recipient on the impact of a medication refusal, especially if the refusal pertains to a health related medication such as insulin. A psychiatrist makes recommendations regarding psychotropic medications, and signatures on written consent forms that include medication education information are secured. Psychotropic medication changes are monitored and documented for 2 weeks. Nursing, dental, podiatry and a range of other medical services are provided. Quarterly care plan meetings are conducted in which recipients and representatives participate.

The administrator reported that the facility offers staff in-serve training each month, and some training is specific to the intermediate care unit covering such topics as behaviors and mental health diagnoses.

The administrator reported that, upon admission, she conducts a meeting with the family. Her card and contact information is provided to the residents and family members. Residents can report complaints to facility staff or through the resident council. The administrator reported that most complaints concern missing clothing items.

With regard to the recipient who is the subject of this HRA case, the administrator and director of nursing reported that she has been at the facility since May 1, 2009. The recipient had a traumatic brain injury resulting from a car accident when she was younger. In addition, she has a diagnosis of schizophrenia and is diabetic. She is 49 years of age and takes a variety of medication for both health related and mental health needs. She is also on a fluid restriction. She sees a physician every 45 days. The recipient can reportedly be explosive at times and behaviors include screaming, yelling, occasional aggression, throwing things and calling 911. She usually attends her quarterly care plan meetings with a relative who is also the agent in a Power of Attorney (POA) for Health Care. Staff reported that her capacity changes due to her mental health needs. Staff also reported that the facility does not administer forced medications. The administrator did report an incident in which the recipient waivered over taking a routine injection stating she was pregnant (which she was not). The administrator stated that staff encouraged her to take it and the recipient agreed but perhaps agreed begrudgedly. The administrator stated that the recipient was not held down for an injection but willingly exposed the area in which the injection was given. According to the administrator, no complaint was ever

filed about forced medication. The facility does not maintain a policy specific to psychotropic or emergency medication as per the administrator, but it does have a policy to address condition changes which was shared with the HRA team.

Facility Tour

The HRA Team was given a tour of the facility observing that it is comprised of two separate wings, one for older residents with medical needs and the other for residents with mental health needs. A door separated the two wings. During the time of the tour, residents on the mental health wing were primarily congregated in the dining area; supervised smoking was about to be offered. The HRA team observed the country store, the availability of nursing care staff, the posting of an activity calendar, the posting of resident council meeting minutes and the posting of resident rights information, including contact information for the Illinois Department of Public Health.

Record Review

With resident consent, the HRA examined the record of the resident who was the subject of the HRA case. The record indicated a history of admissions to state-operated mental health facilities. According to the record, the resident has the following diagnoses: Schizoaffective Disorder, Alcohol Abuse, Hypothyroidism, Diabetes, Head Injury, Borderline Personality Disorder, Hyperlipidemia and Dermititas. The HRA examined consents for psychotropic medication, including a consent for Haldol 5mg. intramuscularly (IM) and a consent for Ativan 2mg IM. The consent form included possible side effects and was signed by the resident's agent in a Power of Attorney for Healthcare. The signature date was 04-15-11 but notes at the bottom of each consent form stated that verbal consent from the agent was obtained by a nurse on 04-13-11 and indicated that the medications of Haldol and Ativan were to be administered "now."

The resident's medication order sheet for the time period in question stated that the resident's routine medications included the following: Busipirone 40 mg per day; Simvastatin 10mg per day; Invega 3mg per day; Nvolog and Wanderguard every shift. A telephone order dated 04-13-11 indicated Haldol 5mg and Ativan 2mg were to be administered intramuscularly "now."

The resident's plan of care dated 03-31-11 was reviewed and included the following goals: weight loss, monitor fall risk, oral hygiene, behavior management, anxiety reduction, diabetes management, reduced agitation, reduced verbal aggression, and intact skin integrity. The goal regarding anxiety included interventions of anti-anxiety medication administration and monitoring as well as the monitoring of hypotension. The behavior management goal included the interventions of anti-psychotic medication, fall precautions and the monitoring of hypotension. Notes that accompanied the behavior management goal documented on 06-16-11 that the "resident continues to have delusions that she is not mentally ill. She wants to live on her own and feels that she could make it on her own. She attended her care plan meeting and wants to see the DR. for hearing and leaving. She ended up wearing her sunglasses, and continued to have disorganized thinking. Will continue to encourage her to go to classes and attend activity." On 08-30-11 a care plan note dated 04-13-11 documented the administration of Haldol 5mg. and Ativan 2mg IM "now." An "outcome" note is documented on 08-30-11 and

stated that "…upon entering room - [the resident] screaming et cussing at staff…'you get out of my room'…2 staff heard [the resident] screaming and cussing at peers and staff." A care plan note dated 09-08-11 and reiterated on 03-01-12 stated that the resident "…continues to think is not mentally ill, she has been seen screaming down the halls 2x week." A new intervention was added to the care plan on 09-08-11 to redirect the resident "…to her room to calm…." A new target was added on 12-08-11 that the resident will "reduce screaming to 1x per week." With regard to the goals related to reductions in agitation and verbal aggression, the following interventions were listed: provide 1:1 staff as needed, encourage skills training and provided 1:1 staff when she is in a better mood. An accompanying note documented that on 04-13-11 a "nurse observed [the resident] push peer down by slamming her door"; counseling was unsuccessful resulting in the administration of Haldol and Ativan. A 05-30-11 care plan note stated that the resident was screaming and cussing at staff and peers, that counseling was unsuccessful and Haldol and Ativan were administered.

A February 2012 "care plan/behavior tracking record" was reviewed for "verbal aggression towards peers and staff" with a goal to reduce verbal aggression to four times per week using a calm approach and redirecting the resident to her room. The tracking record listed the psychotropic medications of Buspirone and Invega along with diagnoses of Schizo-affective Disorder and Borderline Personality Disorder. The record did not indicate any incidents of verbal aggression for the first 3 weeks of February although a note dated 02-10-12 stated that the goal was not met and to continue with the intervention.

A social service care plan dated 02-17-12 stated that the resident has "…verbal aggression towards staff and others 4 to 6 days per week puts limits on her care and interferes with her participation in social interactions and activities. [The resident] has said her overall goal is to be discharged to another facility/institution and that she is not sure if she would want to talk to someone about this. She did not remember if anyone had asked her about returning to community. She does have a Power of Attorney and discharge is not feasible at this time."

The signature pages for care plan reviews indicated that the POA agent participated in a 03-31-11 review but the resident did not. Neither the agent nor the resident participated in care plan reviews dated 01-13-11, 06-16-11 or 09-08-11, according to the signature pages; however, both the resident and agent participated in a review dated 12-01-11.

The HRA also examined nursing notes for the month of April 2011. Notes from 04-13-11 state that "Res pushed peer out of room et slammed door knocking peer to floor ….Peer sustained knot to side of head et reddened area to R shoulder. 1:1 councelling [sic] attempted without success. Resident [has increased] agitation screaming et yelling at this nurse. Cursing staff." The resident's physician was notified and ordered Haldol 5mg and Ativan 2 mg IM now; the POA agent was notified and consent was given at approximately 4:45 pm. A 6 pm note on 04-13-11 stated that the nurse "Entered res room explained that the Dr. ordered a shot for her to help calm her down. Res became [increasingly] agitated shouting et cursing this nurse. Res threatened to call boyfriend et bomb this nurse's house, sue this nurse for all my money, pull all this nurse's hair out. Res then agreed to injection. Res continued to curse et threaten this nurse. Upon leaving res room res came after this nurse. 2 CNA's stopped res at doorway. Will monitor." A 6:30 pm note stated that the "Res came to nurses station stating 'I'm suicidal I need

to go somewhere.' Res then laughed et went back to room. At 6:45 p.m. "Res back at nurse's station threatening to sue this nurse stating 'you better get your money together. You won't have any when I get done.' Res then laughed et went to side I to use phone." At 6:30 pm, the nurse "asked res. If she was going to hurt herself. Res stated 'I'm going to hurt some mother fuckers.' Asked if she had a plan. Res stated 'It is top secret.' Res placed on 15 min checks at this time."

Policy Review

A facility policy entitled, "Change in a Resident's Condition or Status," was reviewed. This policy indicates the reasons for which a resident's physician will be notified by the nurse supervisor, including when "The resident is involved in any accident or incident that results in an injury….There is a significant change in the resident's physical, mental or psychosocial stats…There is a need to alter the resident's treatment significantly…The resident repeatedly refuses treatment or medications (i.e., two (2) or more consecutive times)…The resident is discharged without proper medical authority; and/or…Deemed necessary or appropriate in the best interest of the resident." The resident's representative is also notified for the same reasons. The policy continues by stating that notifications of status changes will occur within 24 hours except for medical emergencies, that the resident will be informed of treatment changes, that changes will be recorded in the resident's record, and that follow-up contact with the physician will be made if the physician has not responded within a certain time frame. Significant changes in a resident's mental condition will result in a comprehensive assessment of the resident's condition. The policy concludes by stating that the facility will verify representative contact information annually and that the facility will notify the resident/representative for billing changes, changes in rights/laws, and changes in facility rules.

A sample psychotropic medication consent form was reviewed and it is slightly different from the consent form signed in April 2011 by the POA agent in the case. The form includes space to document the medication, dosage, and related behaviors. General side effects are listed for each type of medication (e.g. antidepressants, antianxiety, antipsychotic, hypnotic and antiparkinson's) along with a blank line to list additional side effects. The form allows for the signature and date of the resident/representative/guardian, the documentation of a telephone consent and 2 witness signatures.

The HRA examined the rights publication given to residents entitled, "Residents' Rights for People in Long-term Care Facilities," which is published by the Illinois Department of Aging and provides contact information for the long-term care ombudsman program, the Illinois Department of Public Health and Equip for Equality. The rights information includes the right to participate in treatment planning and the right to have a written care plan that meets resident's needs although the right to refuse medication is not listed.

Review of Rights Statements

The HRA examined various publications on rights statements. Besides the rights statement currently being used by the facility for persons in long-term care facilities, the Department on Aging also publishes a rights statement for persons with developmental disabilities that is more thorough and includes the right to refuse medication. The Illinois Department of Human Services has a rights form available on its website for persons receiving mental health and

developmental disabilities services which is also more thorough and includes the right to refuse treatment, including medication.

MANDATES

The Nursing Home Care Act (210 ILCS 45/2-104c) guarantees the right of every resident "…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." The Act further states in Section 2-106.1 that "A resident shall not be given unnecessary drugs" and that "Psychotropic medication shall not be prescribed without the informed consent of the resident, the resident's guardian or other authorized representative…The Department shall adopt…a protocol for 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…or a licensed nurse about the possible risks and benefits of a recommended medication…." The Act also states, in Section 2-112, that "A resident shall be permitted to present grievances on behalf of himself or others…without threat of discharge or reprisal in any form or manner whatsoever. The administrator shall provide all residents or their representatives with the name, address and telephone number of the appropriate State governmental office where complaints bay be lodged." Section 2-212 requires that "The facility shall ensure that its staff is familiar with and observes the rights and responsibilities enumerated in this Article." With regard to treatment planning, the Act states in Section 3-202.21) that "A facility with the participation of the resident and the resident's guardian or representative, as applicable, must develop and implement a comprehensive care plan for each resident that includes measurable objectives and timetables to meet the resident's medical, nursing and mental and psychosocial needs that are identified in the resident's comprehensive assessment which allow the resident to attain or maintain the highest practicable level of independent functioning, and provide for discharge planning to the least restrictive setting based on the resident's care needs. The assessment shall be developed with the active participation of the resident and the resident's guardian or representative as applicable."

The Illinois Administrative Code regulations that govern skilled and intermediate care facilities (77 Ill. Admin. Code 300) states, in section 300.3220, that "Every resident shall be permitted to participate in the planning of his or her total care and medical treatment to the extent that his or her condition permits…[and 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." Section 300.1630 addresses the administration of medication and requires that "The facility shall have medication records that shall be used and checked against the licensed prescriber's orders to assure proper administration of medicine to each resident." Section 300.1610 requires that "Every facility shall adopt written policies and procedures for properly and promptly obtaining, dispensing, administering, returning and disposing of drugs and medications. These policies and procedures shall be consistent with the Act and this Part and shall be followed by the facility. These policies and procedures shall be in compliance with all applicable federal, State and local laws." According to Section 300.680, "the use of chemical restraints is prohibited." With regard to care planning, the Code states in Section 300.1210 that

"The facility shall provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychological well-being of the resident, in accordance with each resident's comprehensive resident care plan." This section also states that nursing care will include "Objective observations of changes in a resident's condition, including mental and emotional changes, as a means for analyzing and determining care required and the need for further medical evaluation and treatment shall be made by nursing staff and recorded in the resident's medical record." Section 300.686 addresses psychotropic medication and states that "Psychotropic medication shall not be prescribed or administered without the informed consent of the resident, the resident's guardian or other authorized representative…Additional informed consent is not required for reductions in dosage level or deletion of a specific medication. The informed consent may provide for a medication administration program of sequentially increased doses or a combination of medications to establish the lowest effective dose that will achieve the desired therapeutic outcome. Side effects of the medications shall be described…..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 diagnoses and documented in the clinical record….Residents who use antipsychotic drugs shall receive gradual dose reductions and behavior interventions, unless clinically contraindicated, in an effort to discontinue these drugs…."

The Mental Health and Developmental Disabilities Code (405 ILCS 5/100 et seq.) guarantees certain rights to recipients of services who are defined in Section 1-123 as persons receiving treatment. Section 1-128 defines treatment as "… an effort to accomplish an improvement in the mental condition or related behavior of a recipient. Treatment includes, but is not limited to, hospitalization, partial hospitalization, outpatient services, examination, diagnosis, evaluation, care, training, psychotherapy, pharmaceuticals, and other services provided for recipients by mental health facilities." Under the Code a mental health facility is defined in Section 5/1-114 as "…any licensed private hospital, institution, or facility or section thereof, and any facility, or section thereof, operated by the State or a political subdivision thereof for the treatment of persons with mental illness and includes all hospitals, institutions, clinics, evaluation facilities, and mental health centers which provide treatment for such persons." Case law (In re Guardianship of Muellner v. Blessing Hosp., App. 4 Dist.2002, 270 Ill.Dec. 240, 335 Ill.App.3d 1079, 782 N.E.2d 799) has established that a nursing home with a behavioral health unit meets the definition of a "licensed private hospital" under the Mental Health Code definition of mental health facility. Therefore, the HRA contends that Mental Health Code protections apply to the nursing home residents of this facility who are located on the behavioral health wing.

The Mental Health Code states in Section 2-102 that "A recipient of services shall be provided with adequate and humane care and services in the least restrictive environment, pursuant to an individual services plan. The Plan shall be formulated and periodically reviewed with the participation of the recipient to the extent feasible and the recipient's guardian, the recipient's substitute decision maker, if any or any other individual designated in writing by the recipient…. If the services include the administration of…psychotropic medication, the physician or the physician's designee shall advise the recipient, in writing, of the side effects, risks and benefits of the treatment, as well as alternatives to the proposed treatment, to the extent such advice is consistent with the recipient's ability to understand the information communicated. The physician shall determine and state in writing whether the recipient has the capacity to make a

reasoned decision about the treatment….If the recipient lacks the capacity to make a reasoned decision about the treatment, the treatment may be administered only pursuant to the provisions of Section 2-107…a power of attorney for healthcare…or a declaration for mental health treatment…." Section 2-107 guarantees the right to refuse treatment, including medication. The Code specifically states that provisions in 2-107f allowing emergency administration of psychotropic medication over objection to prevent imminent physical harm do not apply to facilities licensed under the Nursing Home Care Act.

CONCLUSION

The complaint stated that a service recipient was injected with psychotropic medication without her consent around the date of April 13, 2011 when she was upset over a family death.

The record stated that both in the care plan and the nursing notes that the recipient slammed a door that resulted in a peer's fall and injury and, subsequently, staff attempted to counsel her without success and notified the physician and POA agent. The physician ordered shots of Haldol and Ativan and the POA agent consented. The nurse approached the resident about the shots, and according to the notes, the recipient agreed to the injection after counseling by staff and after the recipient made several threats. There was no documentation that the recipient was held down by staff when the injection was given and the administrator stated that recipients are not held down for medication. Based on the documentation, the HRA does not substantiate the complaint; however, it does take this opportunity to offer some comments and suggestions based on its review of records and policies.

1. The Nursing Home Care Act, skilled and intermediate care regulations and the Mental Health and Developmental Disabilities Code all guarantee the right to refuse medication. The rights publication provided to residents does not specifically mention the right to refuse treatment, including medication. Because the facility is subject to provisions of both the Nursing Home Care Act and the Mental Health Code, the HRA strongly suggests that information regarding Mental Health Code Rights, including the right to refuse, also be provided to residents on the behavioral health side of the facility. The Illinois Department of Human Services publishes a rights statement on its internet site that could be distributed to recipients on the mental health side in addition to the current publication being disseminated. The HRA also suggests that the facility ensure that its staff are trained on the right to refuse treatment.

2. The skilled and intermediate care regulations also require that the facility adopt a policy regarding medication administration. However, the facility indicated that it did not have a medication policy and referred, instead, to a condition change policy. The HRA strongly suggests that the facility develop a medication policy consistent with regulatory requirements.

3. The Nursing Home Care Act and the Mental Health Code both require treatment planning with the participation of the recipient and representative to the extent feasible. Included in the treatment plan is to be a discharge plan to facilitate independent living to the maximum extent possible and services in the least restrictive environment. The recipient's care plan in this case does not address discharge planning even though the

recipient has voiced a desire to pursue discharge. The HRA suggests that the facility include discharge planning goals in the recipient's treatment plan. The HRA also notes that the recipient only participated in one care plan review in the past year; the POA agent participated in two reviews as per care plan signature pages. There was no evidence that the facility reviewed the treatment plans with the recipient when she did not attend the meeting. The HRA suggests that the facility encourage the resident's participation in the treatment plan and, when she doesn't attend, review the outcome of the review meetings with her. Document recipient and POA agent participation in care planning.

4. The Mental Health Code requires that the physician determine and state in writing the decisional capacity of a recipient when considering the administration of psychotropic medication and if the recipient lacks capacity, the consent of the surrogate decision maker is to be sought. There was no decisional capacity statement made by the physician in the recipient's record that would trigger the consent by the POA agent. The HRA strongly suggests that a decisional capacity statement be provided in writing consistent with Mental Health Code requirements.

The HRA acknowledges the full cooperation of the facility during its investigation.