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Egyptian Regional Human Rights Authority  
Report of Findings  
12-110-9032  
Helia Healthcare of Energy  
January 15, 2013

The Egyptian Regional Human Rights Authority (HRA) of the Illinois Guardianship and Advocacy Commission has completed its investigation concerning Helia Healthcare of Energy, a 139-bed Intermediate and Skilled Nursing Home located in Energy. The facility is in transition but is currently serving persons with both mental illness and developmental disabilities. The current census is 77 residents. The facility also opened their Arch unit last year which is for short term rehabilitation. Currently 23 Medicare beds make up the Arch unit. The specific allegations are as follows:

**The facility does not recognize the role of agents named in Healthcare Powers of Attorney when the agents are not allowed record access, not notified of incidents and not invited to treatment plan meetings.**

**Statutes**

If substantiated, the allegations would be violations of the Nursing Home Care Act (210 ILCS 45/2-104 and 45/3-302.2a) and the Administrative Code for Skilled Nursing and Intermediate Care Facilities (77 IL ADC 300.690 and 300.3210). The Illinois Power of Attorney Act (755 ILCS 45) and the Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/4) were also referenced.

According to the Nursing Home Care Act (210 ILCS 45/2-104), "Every resident, resident's guardian, or parent if the resident is a minor shall be permitted to inspect and copy all his clinical and other records concerning his care and maintenance kept by the facility or by his physician. The facility may charge a reasonable fee for duplication of a record."

Nursing Home regulations (77 IL ADC 300.690) state, "The facility shall maintain a file of all written reports of each incident and accident affecting a resident that is not the expected outcome of a resident's condition or disease process. A descriptive summary of each incident or accident affecting a resident shall also be recorded in the progress notes or nurse's notes of that resident."

Regulations (77 IL ADC 300.3210) further state, "The facility shall also immediately notify the resident's family, guardian, representative, conservator and any private or public agency financially responsible for the resident's care whenever unusual circumstances such as accidents, sudden illness, disease, unexplained absences, extraordinary resident charges, billings, or related administrative matters arise."

According to the Act (210 ILCS 45/3-302.2a), "Comprehensive resident care plan. 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."

Regulations (77 IL ADC 300.330) define "representative" as "Resident's Representative - a person other than the owner, or an agent or employee of a facility not related to the resident, designated in writing by a resident to be his or her representative, or the resident's guardian, or the parent of a minor resident for whom no guardian has been appointed. (Section 1-123 of the Act)"

The Illinois Power of Attorney Act (755 ILCS 45/2-4) stipulates that the individual may indicate in the Power of Attorney "...the event or time when the agency [written power of attorney] will begin and terminate, the mode of revocation or amendment and the rights, powers, duties, limitations, immunities and other terms applicable to the agent and to all persons dealing with the agent...."

### **Complaint Information**

According to the complaint, the facility does not recognize the role of agents and/or family members named in Healthcare Powers of Attorney by not consistently allowing record access, not notifying the agents of incidents and not inviting the agents to treatment plan meetings.

### **Investigation Information**

The HRA Investigation Team (Team), which consisted of one member, the HRA Coordinator and the HRA Director, spoke with the Administrator and reviewed general facility guidelines including guidelines for new admissions, advance directives, training and grievance policies. A signed release to access files was not received; therefore, this case consists of a policy review only.

The Administrator stated that upon admission, advance directives are discussed and if none are in place, the resident is encouraged to do so and a social service staff person is available to provide assistance. Advance directives are defined in the facility's policy as "Living Will, Do

Not Resuscitate, Feeding Restrictions, and Other treatment restrictions including blood transfusions, tracheotomy, intubation etc..." If an advance directive is in place, it is documented on the intake paperwork and on the first page of the chart on the face sheet. A sample face sheet was provided for review. If there is a Guardian or a Power of Attorney for Health Care, that person is listed there as well. Nursing staff reference face sheets "when needed". The facility relies on family members to report changes in contact information. A resident's code status is reviewed annually. Residents can use their own physician or the facility's. The facility and physician share the responsibility of communicating with the responsible parties. Physicians usually have a copy of the resident's face sheet and the face sheet accompanies residents in the ambulance to the hospital.

There was some discussion about when a Power of Attorney becomes effective. The Administrator stated that "the resident trumps the Power of Attorney" and the facility relies on the Physician to determine when the Power of Attorney is effective and when the resident can make his or her own decisions.

The facility also maintains a grievance policy which is given to residents/representatives upon admission along with the Department on Aging's Residents' Rights brochure. The grievance policy involves completing a form describing a complaint and there is staff follow up. An ombudsman is also available to assist with complaints. The facility also conducts annual training. A list of topics covered this past year was produced.

**Allegation 1: Agent is not allowed record access.** To investigate the allegation, the Team interviewed the Administrator and reviewed policies pertinent to the allegation.

#### I...Interview:

During the interview, the Administrator informed the Team that the resident and his or her agent can access records upon written request and access will be granted in 24 hours. Copies can be charged, although specific costs were unknown to him. If just a few pages are requested, there is no charge. The nurse would hand over the record to the agent and/or resident. The Administrator also informed the Team that agents and/or residents can look at their records in the presence of staff. When asked if there was a formal policy stating this or if residents are told this upon admission, he wasn't sure if that was the case or not.

#### II...Policy Review

According to the facility's Admission Agreement under Consents and Notifications, Supplement A10, "you may request to inspect your health records and obtain copies for a reasonable copying fee. If you request your records be sent somewhere else, we cannot ensure their privacy if we do not have a privacy agreement with that agency. You may also request written copies of electronic transmissions." Supplement A10 also states "Although your health record is the physical property of the facility, the information in your health record belongs to you." Also included in this Supplement "As a normal part of your care and treatment, your personal health information is used and shared on a need to know basis for the following reasons: ... notification and communicating with your family members or your personal representative,

unless you object...You may request restrictions on certain uses and disclosures of your health information. We will attempt to accommodate if we can. However, when it relates to your treatment or billing for care provided, we are not required to agree to the restriction."

The Team also reviewed training topics covered this past year. On June 15, 2012 a training was conducted entitled "Resident Rights, Code Yellow, Abuse and Neglect." On October 19, 2012 another training entitled "Abuse/Neglect and Resident Rights...." was conducted.

According to the Administrator, the facility refers to the IL Dept. on Aging's Residents' Rights brochure as guidance on what rights their residents have. Upon review of this brochure, it was noted that the following statement is included "You have the right to all information about your medical condition and treatment in a language that you understand. You also have the right to see your medical records within 24 hours of your request."

### Conclusion

Based on the information obtained, the allegation that residents and/or their agents are denied records access is unsubstantiated. The facility has forms in its Admission Agreement that specifically address records access. However, the following suggestion is made:

The facility's Admission Agreement should include a statement that 24 hour notice is required for all copies of records. It should consider including information about fees recognizing that the Mental Health and Developmental Disabilities Act (740 ILCS 110/4) waives fees for indigent residents.

**Allegation 2... Agents are not notified of incidents.** To investigate the allegation, the Team spoke with the facility Administrator and reviewed facility policies regarding notification of incidents/injuries.

#### I...Interview:

According to the Administrator, responsible parties are notified by staff of any injuries and incidents although notifications may vary from one responsible party to another depending on what they want to be notified. Notification occurs by phone and the notification is documented on the incident report and in the progress notes. The responsible party is also notified of medication, treatment and dietary changes.

#### II...Policy Review

According to the facility's Admission Agreement, Consents and Notifications, Supplement A10 states "As a normal part of your care and treatment, your personal health information is used and shared on a need to know basis for the following reasons: ...Notification and communicating with your family members or your personal representative, unless you object."

The Team also reviewed the training topics covered this past year. The following trainings were conducted: April 20, 2012, Policy and procedure for notification of change of condition to family/POA; June 15, 2012, Resident observation and reporting change of status, use of physical restraints (we are restraint free); July 16, 2012, Notification and documentation when incident/accident occurs; and September 4, 2012, Incident/Accident documentation, I & O documentation, pain flow sheets, wound documentation and assessment.

The Team also reviewed the facility's "Guidelines for Charting an Incident in a nursing note", "Incident Investigation" form, "Incident and Accident Statement", "Post Fall Investigation" and a blank "Incident Report Form." It was noted that on the "Guidelines..." form, there are specific steps instructing staff to "document each time the physician is called and his/her response" and "document each time family is called and their responses".

### Conclusion

Due to the information obtained during the course of the investigation, the allegation that Agents are not notified of incidents is unsubstantiated. Several staff trainings were conducted that specifically addressed the procedure for notification of accidents and injuries. The forms used to document accidents/injuries specifically address contact with the family and/or agent. The HRA suggests the following:

1. Document resident representative notification requirements in individual care plans.
2. Review individual Power of Attorney documents regarding the terms, authority and effective dates.

**Allegation 3: Agents are not invited to treatment plan meetings.** To investigate the allegation, the Team spoke with the facility Administrator and reviewed facility policies regarding treatment plan notification.

#### I...Interview:

The Administrator described the procedures for treatment plan meetings during the course of our interview. Treatment plans are scheduled for quarterly updates and annual reviews. Written invitations are sent to all team members including the Guardian or other responsible party for the resident. A copy of the invitation letter is kept in the chart to show that they were invited and the Administrator stated that family usually replies by phone if they will attend or not. However, he indicated that no case notes are kept documenting the response and the invitation letters do not have a section to sign off on if the responsible party wishes to notify the facility in writing.

If in attendance, the responsible party is to sign the treatment plan as a participant. If the responsible party cannot attend on the specific date and requests to reschedule, the facility tries to honor that request or at least let him or her know the meeting's outcome. The responsible

party signs off on the treatment plan indicating that he/she approves. However, when questioned, the Administrator indicated that there is no comments section for the agent to include additional comments or concerns should they have any.

## II...Policy Review:

The facility's Admission Agreement was reviewed and nothing was found within the policies that specifically address treatment plans. However, the facility produced a "Resident/Family Participation" form that states "Each resident and his/her family members and/or legal representative shall be permitted to participate in the development of the resident's comprehensive care plan....Residents, their families and/or legal representative (sponsor), are invited to attend and participate in the resident's care planning conferences....A seven day advance notice of the care planning conference is provided to the resident and interested family members. Such notice is made by mail and/or telephone." Along with this form, a blank care plan invitation form was produced. On this form is the date and time of the care plan meeting as well as a signature line and box to mark whether or not the agent will be attending the meeting and a signature of the staff person sending the notification.

## Conclusion

Based on information obtained, the allegation that agents are not invited to treatment plan meetings is unsubstantiated. The facility has specific forms that are utilized for inviting family members and/or agents to the care plan meetings as well as the facility's policy regarding how care plans are scheduled and family is notified. However, the following suggestions are offered:

1. Although the document entitled "Care Plan Invitation" that was produced has a box to mark in writing if the family and/or agent will attend, the Administrator indicated that a telephone response is not documented in the resident's chart. The Team would suggest when a phone response is given, that a notation is made on the letter kept in the chart indicating if the agent will be attending or not.

2. If the agent and or family member is unable to attend the treatment plan meeting, the signature form that is sent with a copy of the treatment plan for signature should include a few lines where additional comments or concerns could be noted for the facility to address if possible.

3. Invite agents and families to participate via phone conferences when they are unable to attend in person.

## Summary

The complaint alleged that the facility does not recognize the role of agents named in Healthcare Powers of Attorney when the agents are not allowed record access, not notified of incidents and not invited to treatment plan meetings. A Release of Information was not given to

the Team to allow specific records access, therefore this investigation was solely for the purpose of reviewing the facility's policies and ensuring that necessary policies were in place to address the allegations set forth in the complaint. The Team found that the facility does have policies and specific forms in place setting out guidelines for records access, notification of incidents and injuries as well as notifying family and/or agents of treatment plan meetings. Without a Release allowing records access, the Team could not review specific records to note whether or not the facility's policies were being implemented in daily practice. Therefore, the Human Rights Authority did not substantiate any of the allegations set forth in the complaint.