



FOR IMMEDIATE RELEASE

HUMAN RIGHTS AUTHORITY - PEORIA REGION
REPORT OF FINDINGS

Case # 13-090-9025
Sharon Health Care Facilities

INTRODUCTION

The Human Rights Authority (HRA) opened an investigation after receiving a complaint of possible rights violations at the Sharon Health Care Facilities. The complaint alleged the following:

1. Improper dietary restrictions, residents not allowed milk during lunchtime, only at breakfast and dinner and without regard to dietary, health care or care planning needs.

If substantiated, the allegation would be a violation of the Skilled Nursing and Intermediate Care Facilities Code (77 ILCS 300) and the Centers for Medicare and Medicaid Services regulations (42 CFR 483.10).

Sharon Healthcare Facilities is a skilled nursing facility located in Peoria, IL. The facility provides services for approximately 94 clients serving both Medicaid and Medicare recipients. To investigate the allegations, the HRA team conducted a site visit at the facility. During this site visit, the HRA spoke with the staff from two Sharon Healthcare Facilities. Facility Policies relevant to the complaint along with resident records authorized by their plenary guardians were reviewed.

COMPLAINT STATEMENT

The allegation stems from the denial of a guardian's request that a resident receive milkshakes or chocolate milk at lunchtime because the resident was not eating. Allegedly, the facility stated that they only serve milk at breakfast and dinner, not lunch, as a means to save money. The facility staff did honor the request for the resident but did not state they would lift the restriction on the rest of the facility.

Interviews

On April 30th 2013, a staff member from the Sharon health care facility was interviewed. According to facility staff, the resident's guardian spoke with the dietary manager. The staff had tried milkshakes with the resident before because he was not eating. Staff said that normally

they serve milk at breakfast and dinner, and at lunch if they have a specific need, if they request milk, or if there is a physician's order. They do not just provide residents milk automatically with every meal. Staff explained that the guardian asked the nurse about a physician's order for milk and the nurse replied that there is no order and the facility only provides milk at breakfast and dinner. Staff explained that the nurse should have contacted dietary staff to explain to the guardian what measures were being taken. According to Staff, there was confusion and the guardian became angry.

At the time, the resident did not have a physician's order for milk and the staff explained that in this case they do not necessarily have to secure a physician's order, but if they have orders on the record it demonstrates that they are addressing additional nutritional needs. Staff clarified that their decision to not have milk with lunch had nothing to do with cost. Staff explained that according to regulations, residents are to be provided 16oz of milk per day and this facility chooses to provide it at breakfast and supper. Staff explained that at one point residents were provided milk at every meal but staff felt that patients were gaining weight.

Staff reported that milk was removed at lunch because individuals were taking 3 to 4 cartons per sitting. However, even with this change, the facility still follows the minimum standard for milk per day. Staff explained that the milk rule is enacted in all Sharon Healthcare Facilities. Staff said that they have one central dietary staff person at one central kitchen and meals are developed at the central kitchen and taken to satellite kitchens throughout the different facilities. The bulk of the meal is cooked at the central kitchen. The individual wings of the facility are responsible for preparing foods that require onsite preparation. According to staff, all residents were counseled about working on individual health and better nutrition. Staff decided residents could request seconds on everything but discourages anything additional or excessive, considering some residents were consuming 15 hotdogs in a setting and gaining weight as a result. Staff explained that if residents needed extra calories, they will address that need individually. The dietary staff and nursing staff consult with a physician to make recommendations. In this specific resident's case, he had just started to limit his food intake. The resident had a g-tube and then pulled it out and refused to have it replaced. The resident has swallowing problems and behavioral needs. Staff were working with the resident on eating specific items because of the swallowing issues but the resident did not want to eat.

According to staff, guardians are usually contacted by phone with issues regarding diets or are informed during facility visits. Milk is only granted at lunch to residents with nutritional needs. If the resident does not have the need, they are not routinely provided milk at lunch or other times aside from breakfast. Although staff try to discourage it, if residents are insistent then they will give them milk and document that it was supplied. Staff said that menus are based on state and federal guidelines and unless residents have a specific need, they use those guidelines. Extra protein or extra calcium would be added to the diet plans but residents would still receive the food guidelines that all residents receive. The meals are individualized based on nutritional need and all plans are developed by the registered dietician.

Staff explained that milk is discouraged to those who do not have the nutritional need, are overweight and whenever there is no need; staff provide residents with nutritional education and

counseling. They will give residents supplements based on nutritional needs as well. Staff have given a salad in the mid-morning and one in the afternoon to people who are hungry all the time.

Record Review

The HRA reviewed parts of 4 different residents' records. The HRA reviewed nutritional assessments (with diet order), nutritional status in the care plans, and weekly weight records. In the 4 records reviewed, the dietary needs, supplements, food plans, changes in plans and concerns/eating issues were logged. For one resident who had surgery, his/her weight gains were monitored either in the progress notes or on a weekly weight record. A desirable weight range and usual range were also documented. One of the residents reviewed was over the weight range on the assessment dated 1/23/13 but had lost some weight according to the March and April weight records. Another resident had weight loss issues that were discussed in the record and monitored. A third resident was 6' 9" and weighed 269 pounds. According to the nutritional assessment, part of the patient's diet order included a sandwich and milk "@ HS" (at night) and the patient was to receive milk at 3pm. A goal in the patient's care plan stated that the patient should have no significant weight gain by 5.20.2013. According to the patient's progress notes, the weight was over the ideal weight range but remained fairly consistent.

For the resident discussed specifically in the staff interview, the HRA saw no reference to milk on the nutritional assessment or in the care plan, only in the progress notes is there discussion of the guardian requesting that the resident receive chocolate milks at lunch, which according to the progress notes was received. In reviewing the resident's record provided, the resident was refusing meals, at a high risk for dehydration, at risk of weight loss, and had issues with swallowing foods.

The HRA reviewed a document titled "Milk at Mealtime Rationale", dated 3/1/13, which is not specified as a policy/procedure but reads more as a memo. The document reads as follows "Milk was recently removed from menu at the dinner meal time. Residents had the choice of whole, chocolate or skim at meals. Residents were taking 3-6 cartons per meal. Our concern was the excess calories this was providing. Obesity has become a major issue for our residents. The menu was changed to provide milk at breakfast and supper (evening) meal. The residents can chose 2% chocolate or skim and may have up to two cartons per meal. IDPH states a minimum of 16oz of milk needs to be provided. The majority of our residents receive 3-4 cartons per day at the breakfast and supper meals. If additional milk is required for a resident, milk is included at noon meal and at snacks (3:30 and HS). The residents' nutritional care plans are closely monitored for nutritional needs." This rationale is taken directly from a letter between staff members that the HRA has reviewed.

The facility's policy/procedure entitled, "Menu Rational- General Diet" states that "the general diet provides between 2000-2500 calories, 4-6 grams sodium and between 82-87 grams of protein, meeting RDA's [Recommended Daily Allowances] of most nutrients for residents in long term care. When a regular diet is ordered by physician, this diet will be served. If terminology such as house diet appears in the diet order, the general diet will be served. Since breakfast is enjoyed and well accepted by the residents, especially the geriatric, a larger meal is

served. The menu offers 2 oz protein and 2 slices of toast. (Cholesterol values are monitored when available to determine any concerns with the number of servings of eggs). "

The facility's policy/procedure entitled, "Diet Orders" states: "To have and maintain a written record of each resident's physician ordered diet. Upon admission, the nursing department is responsible for verifying the physician's order for the resident's diet. The nursing department will then notify the Food Services Department of the resident's correct diet order in writing on the designated form. The designated diet order form is to be used for all written diet orders. The written diet order must contain at least the following information: Resident's name, room number, diet as ordered by physician, special items, snacks or nourishments, tube feeding type, strength rate, time of administration and flush, name of physician, signature of nurse/designee, date, indication of new resident or diet change. The most current, complete written diet order is to be on file in the food service department. Diet orders and the dietary kardex should be audited at least once a quarter to assure that orders are current and accurate."

The facility's policy/procedure entitled, "Monthly Weight" states the following: "To monitor the resident's weight and track any weight changes at least monthly. All residents will be weighed monthly unless ordered otherwise by physician. Weights must be recorded as part of the resident's permanent medical record. The nursing department will then inform the Food Service Supervisor of any significant weight changes found. The nursing department will be responsible for any reweighs needed to verify the weight change. A significant weight change is as follows: more than 2% change in a week. Five percent or more in 1 month, seven and half percent or more in 3 months, ten percent or more in 6 months. The food service supervisor and or consultant will re-evaluate the resident for dietary needs or intervention based upon the weight change. The assessment will be noted in the medical record and on the residents care plan. The nursing department is responsible for notifying the physician and residents family of weight change. Notification of both parties should note in the medical record."

The HRA reviewed the facility care plan policy which reads "Family members may attend the care plan conference with the resident's permission. Input from either the resident or family should be included in the plan of care." The policy does not mention guardian attendance or input documentation.

MANDATES

Title 77 of Illinois' Public Health Administrative Code Section 300.2050 states as follows: "Each resident shall be served food to meet the resident's needs and to meet physician's orders. The facility shall use this Section to plan menus and purchase food in accordance with the following Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences. a) Milk and Milk Products Group: 16 ounces or more of Grade A whole or low fat pasteurized milk where milk is used for fluid consumption. Calcium equivalents for eight ounces of milk ... g) Meals for the day shall be planned to provide a variety of foods, variety in texture and good color balance. The following meal patterns shall be used. 1) Three meals a day plan: A) Breakfast: Fruit or juice, cereal, meat (optional, but three to four times per week preferable), bread, butter or margarine, milk, and choice of additional beverage. B) Main Meal (may be served noon or evening): Soup or juice (optional), entree

(quality protein), potato or potato substitute, vegetable or salad, dessert (preferably fruit unless fruit is served as a salad or will be served at another meal), bread, butter or margarine, and choice of beverage. C) Lunch or Supper: Soup or juice (optional), entree (quality protein), potato or potato substitute (optional if served at main meal), vegetable or salad, dessert, bread, butter or margarine, milk, and choice of additional beverage.

The Skilled Nursing and Intermediate Care Facility regulations read "b) Physicians shall write a diet order, in the medical record, for each resident indicating whether the resident is to have a general or a therapeutic diet. The diet shall be served as ordered. c) A written diet order shall be sent to the food service department when each resident is admitted and each time that the resident's diet is changed. Each change shall be ordered by the physician. The diet order shall include, at a minimum, the following information: name of resident, room and bed number, type of diet, consistency if other than regular consistency, date diet order is sent to dietary, name of physician ordering the diet, and the signature of the person transmitting the order to the food service department. d) The resident shall be observed to determine acceptance of the diet, and these observations shall be recorded in the medical record" (77 Il Admin Code 300.2040).

The skilled and intermediate care regulations further state the following with regard to care planning: "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 [77 Ill. Admin. Code 300.1210]."

The Medicare and Medicaid Services regulations state "The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility." (42 CFR 483.10). The regulations also state "A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life. (a) Dignity. The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality. (b) Self-determination and participation. The resident has the right to-- (1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care; ... (3) Make choices about aspects of his or her life in the facility that are significant to the resident." (42 CFR 483.15). The regulations also state "The facility must provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident" (42 CFR 483.35).

The Probate Act of 1975 reads "(b) Every health care provider and other person (reliant) has the right to rely on any decision or direction made by the guardian, standby guardian, or short-term guardian that is not clearly contrary to the law, to the same extent and with the same effect as though the decision or direction had been made or given by the ward. Any person

dealing with the guardian, standby guardian, or short-term guardian may presume in the absence of actual knowledge to the contrary that the acts of the guardian, standby guardian, or short-term guardian conform to the provisions of the law. A reliant shall not be protected if the reliant has actual knowledge that the guardian, standby guardian, or short-term guardian is not entitled to act or that any particular action or inaction is contrary to the provisions of the law" (755 ILCS 5/11a-23).

CONCLUSION

The HRA recognizes that the IDPH requires a minimum of 16 ounces of milk be provided per day to residents (77 Il Admin Code 300.2050) and the facility appears to be fulfilling this requirement. With that being said, the Medicare and Medicaid Services regulations state that the residents have the right to "Make choices about aspects of his or her life in the facility that are significant to the resident." In this case, the resident's guardian made a request for the resident to have additional milk that is beyond the facility policy and IDPH requirements and advocated for the resident to receive that milk, which the resident did receive, but the concern lies with other patients who may not have an individual to advocate for them and how this change affects their choices and right to self-determination. Additionally, The Skilled Nursing and Intermediate Care Facility regulations state that the individual should have milk at breakfast, lunch or supper, and have their "choice of beverage" at the main meal (77 Il Admin Code 300.2050)

Also, the guardian's request is not documented in the resident's care plan and the care plan regulations require the participation of the resident and guardian (77 Il Admin Code 300.1210). The provision of milk during lunch is not included in the individual care plans, even a plan in which the guardian specifically requested that the resident have milk. Although the facility may not be in violation of IDPH nutrition requirements, it is a violation of care plan regulations and Medicare and Medicaid Services regulations concerning choice and care planning. Therefore, the HRA finds this complaint **substantiated** with regard to resident self-determination/choice and care planning.

- To ensure compliance with state/federal regulations as well as the Illinois Probate Act, document guardian/resident requests and results of requests in care plans.
- Assure resident choice when creating facility policy and adjust the milk policy to also ensure that resident's are allowed choice. If a resident is found to have issues with weight, the issues should be reviewed individually and any possible dietary allowances should be documented in the resident's care plan.
- When implementing new policies/practices that are "blanket" in nature, ensure that residents' individual needs are not compromised. Evaluate the need for individualized reviews and the potential impact of the changed policy/practice on residents who could be negatively affected.

The HRA also offers the following **suggestions**:

- The diet orders policy seems to need further information added to the actual diet order per 77 Il Admin Code 300.2040. The regulation requires that the date the order was sent to dietary and the signature of the person transmitting the order be documented; however, this information was missing from the orders reviewed by the HRA.
- Staff indicated that a physician's order was not needed in this case but the "Diet Orders" policy indicates that a physician's diet order is needed. Assure that staff is aware of facility policy.

RESPONSE

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

REGIONAL HUMAN RIGHTS AUTHORITY

HRA CASE NO. 13-090-9025

SERVICE PROVIDER: Sharon Healthcare Facilities

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.

C. Stribling
NAME

Administrative
TITLE

3/31/14
DATE

Gene Seaman

Human Rights Authority

Illinois Guardianship and Advocacy Commission

401 Main Street, Suite 620

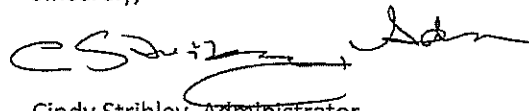
Peoria, Il 61604

Dear Mr. Seaman,

Attached, you will find the response to case #13-090-9025, along with copies of the facility's policy revision effective 2/24/14, and staff inservice training conducted on 2/26/14.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Stribley". The signature is fluid and cursive, with a large loop at the end.

Cindy Stribley, Administrator

Sharon Willows Facility Response for HRA: Case #13-090-9025

The facility welcomes resident input at meal time. Residents/guardians may bring a request at any meal service. If a resident/guardian has an ongoing/specific request, it will be addressed and will be documented on the resident care plan.


The facility provides 8 ounces of milk at 2 meals per day. If a nutritional need is identified by the RD or physician, milk will be provided at all meals. The resident has the choice of skim, 2% or chocolate milk. Additional beverage choices at meal time include, but are not limited to, tea, coffee, juice, lemonade and water.

Individual need will be addressed through the RD, DM, physician, and IDT, with guidance from the resident/guardian, with needs documented in the resident plan of care.

The meal service policy has been revised to better address resident choice, provision of milk at meals, additional beverage choice, and the documentation of resident need in the plan of care (attachment #1).

The diet order policy was revised 2/24/14, to reiterate all information that needs to be included with a diet order (attachment #2).

Inservicing of these dietary policies were conducted on 2/26/14 (attachment #3).

 3/31/14
Cindy Stribley, Administrator