



---

**FOR IMMEDIATE RELEASE**

---

**Metro East Human Rights Authority  
HRA Case #15-070-9015  
Department of Human Services,  
Division of Rehabilitation Services**

The Metro East Regional Human Rights Authority (HRA), a division of the Illinois Guardianship and Advocacy Commission, accepted for investigation the following allegations concerning the Home Services Program at the Illinois Department of Human Services (DHS), Office of Rehabilitation located in Belleville, Illinois:

- 1. The agency has an inadequate worker screening and referral process.**
- 2. The agency does not provide workers with adequate training.**
- 3. Complaints and concerns are not adequately investigated.**
- 4. There is no appeal mechanism.**

If found substantiated, the allegations represent violations of the Department of Human Services (DHS), Division of Rehabilitation Services (DRS), Home Services (HSP) Medicaid Waiver Program (HSP) (89 IL ADC 676 through 686) and the Federal Code of Regulations for Home and Community-Based Services: Waiver Requirements (42 CFR 440.180).

Per the DHS website, the HSP provides services to individuals with severe disabilities so they can remain in their homes and be as independent as possible. This includes: personal assistants (PAs) who provides assistance with household tasks, personal care and with permission of a doctor, certain health care procedures. Personal Assistants (PAs) are selected, employed, and supervised by individual customers.

**INVESTIGATIVE INFORMATION**

Allegedly there was an incident on 12/2/14 between a DRS customer and her caregiver who was a PA through this program. The customer's parents are her guardians. The customer has Downs Syndrome and a tracheotomy. She requires the use of an oxygen tank at all times and a respirator at night. Allegedly the customer called her PA a racial slur when she needed assistance with her tracheotomy, which affects her breathing. The PA reportedly responded by kicking the individual in the buttocks and legs, slapping her breasts, the back of her head, face and feet, punching her in the stomach and chin, scratching her arms, sticking keys in her ears, knocking off her glasses, pushing her to the bathroom floor and bruising her private parts by rubbing them very hard. The customer was allegedly cursed at while she was being beaten. As per the complaint, the PA allegedly destroyed medical equipment and the individual's personal property.

After the incident the guardian reportedly contacted the individual's DRS worker who told the guardian she had been abusing the system. According to the complaint, the DRS counselor would not come out and review with the family the allegations of abuse, nor go in-depth to tell the guardian what had been done regarding the PA who allegedly abused the guardian's daughter who is the customer. There was no letter advising the guardian of what incorrect system abuses needed correcting. As per the complaint, training was inadequate for caregivers and families of those with disabilities. The customer's hours were reduced from 118.25 hours to 112.25 hours. The guardians were reportedly unable to get all the facts regarding the service reduction; no home visit was done by the DRS.

The HRA proceeded with the investigation having received written authorization from the customer's guardian to review her record. The HRA visited the office, where DHS\DRS representatives were interviewed. Relevant practices, policies and sections of the customer's record were reviewed.

### **Interview with Staff**

The HRA asked about services provided through this agency. It was explained that the home services program is for people at risk of nursing home placement. If a person needs help with activities of daily living (ADLs) DRS can pay for it. They can provide payment for such things such as ramps, modifications, various assistive items, support groups and case management. Approximately 360 people are served by the Belleville office. There are 2 coordinators, 2 counselors, and a temporary worker who processes the time reports for services.

The typical process for approving home services for someone such as this customer starts with the referral. Referrals can come from other agencies or from the customer and/or guardian. An application is sent to the customer and the customer returns the completed application in a 2 week time frame. If the customer is at risk of nursing home placement and home services can be provided instead, it has to be at a rate less than the Medicaid payment for nursing services. Next the staff will interview the customers about financial income and assets. The customer must apply for an Illinois Medicaid card, but may still obtain services if denied. A physician statement would be required too. Once the staff obtains all that information then approval for home services benefits can be determined.

The HRA asked what would be the agency's responsibilities to the customer. The staff stated that once DRS is able to determine if a customer is eligible, they determine if an individual needs a counselor. Once that is determined the customer's information would be entered into the system.

The HRA asked what are the customer's responsibilities to obtain services or in this case, how does a customer/guardian maintain services. Once the customer has a determination of need (DON) completed, home services can be determined. There is a redetermination once a year. For customers with traumatic brain injury it would be every 6 months. Staff must review updated medical records every 2 years for customers.

Regarding the appeal process, at the home of the customer, the staff will explain the appeal hearing request form. If a customer decides to appeal, DRS has 35 days to respond to the appeal process. If a customer wants assistance with the appeal, they can go through the client assistance program (CAP). Staff advised that a CAP representative can assist in filling out requests for a hearing and advocates for the customer. Sometimes they can fix a problem before the hearing as well. This information would be on the appeal form that is given to the client. Customers can appeal at any time. The hearing is usually within a month and may be done over the phone. Decisions are usually back within a week. In this case the customer's guardian previously used the appeal process, but did not on the recent incident. After the letter was received the DRS expected to receive an appeal, but the guardians did not file one.

This guardian did use the call in system or electronic verification process with no problems. The HRA asked what is done in an emergency situation or what is the process to insure that clients receive the services they need as in this case after the incident. The staff explained that in this situation the mother/guardian is also a PA for this customer. The mother worked the majority of hours and was paid by DRS. This customer lives with mother and father. The mother was being paid by DRS and Developmental Disability Services (DDS). She was grandfathered in to claim under both systems.

The HRA asked what safeguards are in place to protect customers from abuse and neglect. If someone wanted a new PA, they would make a referral to the Living Independently Now Center (LINC). LINC is contracted through DRS. It does background checks and keeps a list of workers who complete training. Homemaker services are the other option. Staff explained that they are doing some training to insure quality and integrity of PAs. The training takes 2 hours and is fairly inclusive. They process time sheets and make sure they are claiming hours properly. This is the only mandatory training. It includes training for PAs on rights. This guardian completed a Individual Provider Standards (IL 488-2112). There is other extended training available through the community agencies that are contracted with DRS which is optional training.

The staff reported that the DRS is quick to remove a PA when there is an issue. They prefer to use a third party agency to screen caregivers, to protect clients from abuse or from a PA abusing the amount of hours. In this case the guardians chose to manage the PA. If there are issues a homemaker could be used. Any report of abuse is sent to Adult Protective Services (APS). If a caregiver is accused, they are immediately pulled out and a homemaker is assigned. A report was made to APS regarding this caregiver.

The HRA brought up the concern about this caregiver obtaining another home services position with a DRS customer. The response was no; she had been flagged in the system and could not get another job as a PA for DRS in the state of IL. They have a fraud unit which manages reports of fraud, abuse, neglect. Once they received the report from APS they have her flagged in their system. They do not believe that the flag goes on a criminal background check.

If a customer chooses to do a background check, DRS staff would not see the background check; however, DRS would cover the cost. It goes to the client directly. When asked does the state prohibit sharing the information about the PA with the customer, staff did not think there

was any prohibition on sharing whether a PA had findings on a background check. The staff stated that many times a counselor does share reservations with the customer and the customer normally does not care and still chooses a specific PA. Services will be provided by that PA unless that PA is flagged by DRS as an unsafe provider. Many of the PAs that customers request are individuals that they know or a family member. They usually think that the PA is not going to hurt them. LINC usually recommends that customers not employ family members as PAs.

Regarding background checks completed on PAs, staff stated that they are only completed if a client requests one or uses a referral agency which would require it. When asked if DRS considered doing checks on all PAs, the response was staff would love to see that. It is something they have been talking about for years. The staff had been told that it would be mandatory 3 years ago, but the requirement did not get passed.

When asked if any staff from that office had heard of the work of Illinois Imagines, the staff responded they were familiar with it. The collaborative provided training to DRS supervisors on the protection of customers from abuse.

The HRA asked if PA hours for the customer were reduced after the incident and if so, why. The staff explained that it was because of the service cost. They had made a decision that an LPN was needed because of the nature of the disability, which is more expensive. To keep the original hours would be over the service cost maximum for a LPN and, a homemaker would be less expensive. There was a statement of the action taken and a clear statement for the reason for the action in the service plan. It did include a statement of appeal rights, a hearing request form, and an appeal fact sheet.

When asked if there was a reason why a staff person would refuse to do a home visit in this situation, the staff explained that the guardian wanted the DRS counselor to come out to explain what had happened with the previous PA and to discuss the change in the service plan. The service plan and changes had already been discussed over the phone. The HRA asked what about follow-up to check on the individual. The staff explained that the customer was due for her annual redetermination the next month. The counselor would go out to visit with her then.

According to staff, after the incident the PA showed the counselor the text messages from the guardians who seemed upset because she borrowed some DVDs and some money. It was hard to tell what the guardians were upset about, but it seemed like they may have just wanted to get back at the PA. A couple of days later, after talking to guardians, they had allegations about the PA attacking the customer. The counselor first thought that the issue with the PA was her taking the DVDs, and owing the guardian money, but later realized the guardians were referring to the allegations of abuse to the customer.

When asked has the customer gone without needed services since this incident, the response was no. At first it took time to find an LPN, but staff continued to allow the guardian to be paid until they could find an LPN. The agency then hired two LPNs to divvy up the time. The guardian had asked the nurse to clean the bathroom and other things and so they only have 1 LPN staffed. The guardian is no longer being paid by the DRS, but is still paid by the DDS.

The HRA asked if there were resources in the community that could restore the property lost by this customer; staff were not aware of any for the specific things such as the DVDs and dishes that the PA allegedly broke. If the customer was without food or clothing there are some resources available they could refer her too.

## **Records**

The HRA reviewed an *Individual Provider Standards* document IL488-2112 (R-12-11) signed by the guardian and the PA on 9-15-13. This documents states: “During the eligibility determination process, it was determined you are capable of supervising an individual provider to assist you in your home. Individual providers are defined as a personal assistant, registered nurse, licensed practical nurse, certified nurse assistant occupational therapist physical therapist and speech therapist. Your service plan identifies which types of individual providers will be used to meet your needs.

When customers use individual provider services, they are required to collect and certify the following information for each individual provider. If you do not complete the information on this form and submit it before the individual provider begins employment, it may result in nonpayment to the individual provider and in ineligibility for further services to you.”

Section 10, of document states: “The individual provider’s previous experience and or/training are adequate and consistent with the specific tasks performed for me and my home.” Some of the tasks that would need to be performed included bathing, keeping customer’s room sanitary, assistance with eating, and assistance with exercise and walking. It further stated that this individual provider had demonstrated a satisfactory understanding of universal precautions that meet the customer’s needs.

Attached with the previous document was the *Individual Provider Payment Policies* IL488-2252 (R-6-12) which was signed by both the PA and the guardian. It states: “Home Services Program (HSP) customers and individual providers are responsible for accurately completing and signing all Individual Provider time sheets. Completion of the time sheet will require both parties to sign and verify the information contained on it is correct. Fraudulently completing these documents will result in a formal investigation by the Medicaid Task Force, with possible criminal prosecution by the Illinois State Police (ISP). This document provides critical information for completing a time sheet....”

The document further instructs that “Individual Providers can only be paid for the hours they worked for the customer per the HSP Service Plan. Billing for hours not worked constitutes Medicaid fraud. The services provided in the home are for the customer(s) having a HSP Service Plan. Services for family members, guests, animals, etc. will not be reimbursed. The Service Plan indicates how many days per month specific tasks are required by the customer. Work schedules should follow the Service Plan, which may include hours for such daily tasks as personal care, toileting, meal preparation, etc. However, there is some flexibility in the hours billed per day, such as occasions where the customer may need the individual provider to modify

his/her hours. An example of an inappropriate time sheet would be the individual provider billing the total hours that are available during only one pay period of the month. Individual Providers are required to perform only those tasks outlined on the service plan within the time frames approved.”

Regarding time sheets, “Customers should never pre-sign time sheets and they are expected to review the accuracy of dates and times worked prior to submitting the time sheet on the last day of the payroll window. Time sheets submitted with hours not yet worked will be returned to the customer and could delay Individual Provider payments.”

Above the guardian and PA signature line was the following statement: **“I acknowledge that the above information has been reviewed and is understood.”**

The HRA reviewed the home services program *Application and Redetermination Eligibility Agreement (R-10-07)* signed by both in the DRS worker and the customer on 5/20/14. This document provides the customer basic general information and eligibility criteria. It explains basic eligibility requirements such as significant financial changes, if the customer is admitted to a facility, and the consequences of fraud. It also requires informing the home services worker, if the customer is a victim of abuse, neglect or exploitation. It states that the DRS home services worker will determine the program level of care to best serve the customers need. The document explains that needs will be met at a cost less than or equal to the cost of nursing services in an institutional setting.

In the section marked, choices, it states: “I have given the choice of nursing facility placement, and instead choose to apply for and receive services in my home if I am eligible. I understand that I have the option to make personal choices concerning how I live my life, but understand that those choices may affect the ability of the HSP program to serve my needs. I have participated in developing my plan of care and in choosing types of services and providers. I understand that I will receive a copy of each service plan and any subsequent changes to the plan. I verified the above information has been given to me.”

Under the Services section, it states: “I understand the services that I receive are for my needs addressed on my service plan and not for the needs of other individuals in my home....”

“...I understand that I can contact the Department of Public Health for information on CNA's or the Department of Financial and Professional Regulations for information on any LPN or RN that I employ for allegations of abuse, neglect or theft. I have been informed that I can request and have been encouraged to request a criminal background check on potential employees. HSP will cover the cost of the background check and it will not affect my services....”

“...If I employ a personal assistant I understand it is my responsibility to ensure the following: ...only the approved hours actually worked by the PA are submitted for payment...The worker and I will review the timesheet for accuracy for all information. The worker will review the service plan with me, understand my needs, have the physical capability to perform the tasks under my direction and not have a medical condition which will be

aggravated by the jobs requirements... **Timesheets will not be pre-signed, nor submitted prior to the last day worked in a billing period.**

Under the rights section of the document, it states: "I certify the HSP appeals fact sheet has been explained and given to me. I understand I have the right to disagree and can appeal any decision or inaction on the part of DRS. I have been informed that my right to appeal includes the right to appeal my service plan. I understand I have 30 days from the date I received the notice of decision (oral/written) to file an appeal, or that I have 35 days from the postmark date on the service notice (IL488-0141) if I am notified by mail. Failure to meet these time frames may result in my appeal request being denied. I was informed that in-home care services will continue during the appeal process unless HSP determines there is evidence of fraud, abuse, or neglect. I verify the above information has been given to me." The document was initialed on each section and signed by the guardian and the HSP worker. The date of the signatures was 5/12/14.

Per the notes completed by a DRS counselor on 12/5/14: "The personal assistant for this customer called and was very emotional in regards to the emotional abuse she is enduring. The PA began to cry and explained to the counselor that she is no longer able to work for this family. She stated the customer had called her the N – Word and had hit her. The customer's mother would not address it and dismissed it because the customer has special needs. The PA stated that the customer does not have consequences for her actions. The customer's mother has claimed that the PA had stolen CDs and other items from the customer's home. The PA began to discuss her work ethic and how false accusations were affecting her. The PA stated she has chosen not to report the abuse from the customer because she loves her and she thought things would get better. She states that she herself needs a counselor to talk to." The DRS counselor asked her if she was taking any medication, which the PA stated she was. The DRS counselor suggested that the PA talk to her physician. The PA then explained that she does have a counselor and actually had just missed an appointment on 12/3/15. The DRS counselor explained that the PA must be healthy in order to provide quality service to her customers. The PA stated she had called in to work the past two days and has been asleep in bed in the dark. The DRS counselor encouraged the PA to contact her personal counselor, and the PA stated she would today. The PA stated she has a support group of church members, family and friends.

In a follow-up note documenting a second phone call from the PA to the home service DRS worker, the PA stated: "She is taking a leave of absence from providing care. When the DRS home service worker asked her to clarify if she plans on returning to work for the customer it was unclear. The PA also stated that the customer's parents are accusing her of stealing objects from the home and that the family loaned her some money and she still owes them \$65." The PA stated she had been receiving some text messages from the family. The DRS worker asked her to bring in the phone so he could read the messages.

On 12/5/15 the customer's parents/guardians called the DRS home services worker and stated: "They wanted to rehire a former PA." When asked what happened to the current PA, he was told that that PA was not reliable. The DRS worker asked if anything else happened and was told no. He explained that the PA had told him she was doing laundry for everyone in the home, was doing housework for the entire house, was not preparing meals for the customer, was

washing all the dishes for the household, and signing timesheets months in advance. The customer agreed that she signed the timesheets prior to filling them out, but stated they only did this to help the PA. They said that the PA was not doing their laundry or housework on the clock for the home services program. They also agreed that all the meals are shared with the customer and they are not preparing her individual meals as they previously indicated. The home services worker explained that there were going to switch to an agency care as the customer is not able to manage a PA and it appears that there may be some fraudulent activity with this case. The customer's guardian stated she would like to investigate other agencies first before DRS would choose one. It was set up to switch the agency care on Friday, 12/12/14. Notes further indicate that a new service plan, service notice, hearing request form, and the appeal fact sheet had been sent to the customer.

On the same day the notes indicate that the PA came into the DRS office and showed the text messages between her and the customer's mother/Guardian. The text messages were threatening to contact the police and take the PA to small claims court. They tell the PA to return a set of DVD's, that she owes \$65 to the family, she broke a picture frame and broke their Nuwave oven, ruined the bathroom wall, broke their humidifier, broke a karaoke machine, broke a plate and numerous glasses, and damaged the floor among other things. There were accusations that the PA was cursing at the customer. According to the notes, the PA denies most of the accusations, but states that she does owe the family \$65 and did break one picture frame. She stated that she was cutting their grass and picking up sticks and the yard to pay off her debt. She stated she was not clocked in for HSP services, when working outside. After some questioning she admitted that the family had her do laundry for the entire household, wash all of the family's dishes, clean rooms that the customer doesn't go into, like the exercise room in the office. She reported that all meals are shared together as a family and that the father prepares the meals. Previously the family had requested more hours for preparing meals because the customer was supposed to be on a special diet.

The record documented that the DRS worker signed a timesheet for the PA because she claimed that she worked a few hours on Tuesday, December 2. This was verified through electronic means. "The PA explained that the family had her sign all time sheets in advance, then the family would submit the timesheets. She said she never received a copy of her time sheet. The DRS worker explained she should have signed the timesheet at the end of each pay period to verify the hours she was claiming. He also explained that she should have received a pink copy of the timesheet for her records. The PA was very emotional. She explained that she loved the customer and her family and just wanted to do her job. However she could no longer work for the customer because it was causing too much stress on her. She explained that the customer had hit her head, called her the n- word and had spit on her. She also stated she would send the family a check for \$65 that she owes them and would quit working for them."

Record notations document the customer's mother/guardian called on 12/8/14 requesting phone numbers for homemaker agencies that the counselor had given her. She wanted to check out all agencies, since the customer had a tracheotomy that requires a high skill level and she did not think the agencies would have the workers with the skill level necessary. The worker gave her phone numbers to specific agencies that provide LPN services.



On 12/18/14 the customer's mother/guardian called to report that the family and a specific care company had made a report to adult protective services about the former PA. The mother reported that the former PA had punched, slapped, spit on, and cursed the customer. She also stated that the PA stuck keys in the customer's ear, slapped her feet, rubbed her private parts and made her raw. She also reported that the PA had slapped the customer on the breast and scratched her arm. The mother stated she made the report to Adult Protective Services (APS) as well as the Police Department. The mother reported that the case manager was going to the Police Department to make a video deposition. She also reported that the PA worked for another customer in another area. The DRS worker contacted that regional worker to make them aware of the allegations.

Notations on 12/8/12, 12/10/14, 12/12/14, 12/17/14, 12/18/14, 12/19/14, 12/23/14, 12/29/14, 12/30/14, 1/2/15, and 1/6/15 document the home services workers' attempts assist in locating caregivers that would provide a LPN's care for the individual. Some of the issues for finding caregivers were that it was during the holidays and many were not available. On 1/15/15 there was documentation that the home had been staffed, but there were some issues regarding the guardian not wanting LPNs to take notes during the time that they spend with the customer because it would take up some of the time they have to spend with the customer. There were also issues of the guardian wanting the nurses to do a lot of housework when there was only five hours of housework on the plan for the entire month. There was a need for the nurses to spend most of their time working with the customer's tracheotomy.

On 2/17/15 the PA who allegedly had abused the customer was terminated by the central office of DRS.

The HRA reviewed the home services program service plan (12-14) which stated: "I have given the choice of care in my home or in the nursing home. I choose to remain at home and agree that the plan of services described above will allow me to remain there. I understand that my eligibility for these services and the appropriateness of the service plan will be reviewed yearly, every six months, or more often if my situation changes. I have been given a copy of the service plan and of the customer's rights and responsibilities brochure. These documents have been explained to me and I understand the contents of both." The document listed how many hours per month the customer would need assistance with eating, bathing, grooming, dressing, transferring, toileting, preparing meals, laundry or housework and routine healthcare. The amount documented totaled 27.30 hours per week or 118.75 hours per month at a rate of \$17.14; the total monthly estimated service cost was \$2035 .38 for a homemaker. The addendum to the plan using an LPN, showed a total of 25.75 hours per week, or 112 hours per month, at a rate of \$25.47 with the total monthly service cost at \$2852.64.

The HRA reviewed the circuit clerk's case history for the personal assistant for this customer. There were 25 allegations listed many with convictions by the court which included a conviction of petty theft and transporting a child under the age of eight years old who had not been properly restrained in a car seat. It also included numerous convictions for driving a vehicle without insurance, disregarding stop signs and being unlicensed. There were also allegations of disorderly conduct and living in filthy premises.

**Policies:**

The HRA reviewed the *Home Services Program Appeal Fact Sheet* (R-10-07). It explained that “an appeal is when you disagree with a decision made by your Home Services Program (HSP) representative or feel he/she has failed to act on a request you have made, you have the right to formally challenge the decision or their lack of action. Your dissatisfaction is communicated through a formal appeal that is heard at an Administrative Hearing. An unbiased person called an Impartial Hearing Officer will conduct the hearing.” It explained other options such as arranging a time to discuss reasons for being dissatisfied with a HSP representative in an effort to resolve the problem. Services would not be affected if a customer requests an appeal unless the DRS determines there was evidence of fraud, abuse or neglect.

The fact sheet explained the process and time restrictions: “...When a decision is made, you will receive a service notice informing you of the decision, as well as a request for hearing form. The request for hearing form should be completed and mailed to the address on Page 2 of the form and to your local HSP office. If you do not request a hearing in writing, you must call your HSP office and provide the following information: the date of the decision or inaction and the specific decision made or the request that was not acted on.”

The fact sheet listed resources for assistance in filing the appeal such as asking the customer if he/she knows someone to assist in representing him/her, providing contact information for the Client Assistance Program (CAP), or a customer could seek a legal professional. It stated: “Appeals must be requested either verbally or in writing within 30 days of your request that was not acted on, or 30 days from the time that your HSP representative informed you of their decision, or 35 days if you were notified of the decision by mail.” It also listed ways that appeals could sometimes be resolved by informal resolution with the office supervisor who could discuss and clarify everyone's issues and positions.

There was information about notifying the HSP office of any reasonable accommodations needed. If a customer could not participate in person at the local office because of a disability, they could request to participate by telephone. Customers would be advised on how and when to provide evidence including a list of any witnesses who would appear, as well as any documents that would support their position. It explained that before an appeal a customer would receive a letter informing them of the date, time and place of the hearing. The letter would provide detailed information about the hearing. There would be an impartial Hearing Officer who would hear the facts of the case. The hearing would be taped and the customer could request one copy in an accessible format at no cost.

After the appeal both sides would be notified. When notified of the final decision the HSP office would comply with the action decided upon. The customer would be notified immediately if there are changes that need to be made and the effective date. If a customer disagrees with the decision of the hearing officer they could pursue their case through the local circuit court.

The HRA reviewed the two hour training provided by LINC, the agency contracted with DRS to provide personal assistant orientation. Upon review of the outline it documents the history of independent living philosophy, information about the contract agency, core services,

and confidentiality. It then goes on to explain the home services program roles for each participant, which included DRS, the consumer/employer, and the personal assistant. The next part of the training included the personal assistant referral program. There was a video presentation on the role of the PA and of the consumer/employer relationship. Information on what the contract agency requires of personal assistants or for those caregivers who would be contracted by LINC such as a criminal background check and a Healthcare Worker Registry check would be required. The next part of the session was about matching the consumer to the personal assistants. Information was provided on universal precautions/body mechanics. Lastly was completing the personal assistant packet and orientation on the telephone call in system. Included in the presentation were 176 slides. It explains the home services program, the electronic visit verification (EVV), what to do if there's a problem, slides on Health Insurance Portability and Accountability Act (HIPAA), Adult Protective Services, Neglect, Abuse, Illinois Imagines project, Crime Victims Bill of Rights, fraud, individual provider payment policy potential fraud issues, personal assistant requirements, individual provider payment policies, the US Department of Justice, overpayments, exploitation, Healthcare and Family Services' Office of Inspector General, and the DHS Office of Inspector General contact information.

## FINDINGS

**The agency has an inadequate worker screening and referral process.** Per regulations that govern the Department of Human Services (89 IL Admin. Code 676.10 a), “The Department of Human Services' (DHS) Home Services Program (HSP) is a Medicaid Waiver Program (42 CFR 440.180) designed to prevent the unnecessary institutionalization of individuals who may instead be satisfactorily maintained at home at a lesser cost to the State.”

Per the Department of Human Services Rules, in Subchapter D. Home Services Program (89 IL ADC 684.20): “Procuring an Appropriate Service Provider a) The counselor has the responsibility to identify the appropriate level of service provider based on the customer's approval of the initial service plan. b) A customer has complete discretion in which Personal Assistant he/she wishes to hire, as long as the PA meets the conditions of Section 684.30. A customer is responsible for all stages of the interview and selection process, including the decision of which candidates to interview, the scope of the interview, whether to request a conviction background check, and the timing of the selection decisions. If requested by the customer, the counselor shall assist in identifying available resources for referral of Personal Assistant candidates for the customer to interview.”

Section 686.25 regarding criminal background checks for PAs states: “A Home Services Customer may require any PA candidate to submit to a criminal background investigation and to successfully complete a criminal background investigation as a condition of being selected as the PA to that Customer. In the event that a customer elects to require a PA candidate to submit to a criminal background investigation, the customer shall be obligated only to inform DHS-Division of Rehabilitation Services (DRS) of his/her decision and DHS-DRS will provide the Customer an appropriate form that the Customer may file with the Illinois State Police to initiate the criminal background investigation. The results of the criminal background investigation will be sent directly to the customer, and the customer shall have no obligation to share the results of the investigation with DHS-DRS. Nothing contained in this Section shall restrict a customer

from extending a conditional offer of employment to any PA candidate pending the results of the background investigation.”

Unfortunately, the guardians for this customer did not take advantage of the option of a free background check on this PA and the result was the customer may have been impacted. There was also a potential financial loss incurred by the family. It is probable if the guardians were aware of the PA’s past record they may not have chosen this person to be their daughter’s caregiver. The PA herself admittedly stated she needed medication and a counselor for stress. Per the allegations, when the customer exhibited behaviors, the PA may not have had the capacity to manage the customer’s needs which may have triggered the PA’s behaviors.

Agencies contracted by DHS-DRS such as LINC require criminal background checks and a records check. These are the agencies the customer has the option of using to find a PA. After the incident where the customer was reportedly beaten, the DRS rewrote the service plan that required LPNs to provide services. This was arranged through a service coordination agency that would require background checks.

The entire population served by the DRS home services program are individuals with serious disabilities, who in most cases, would receive care in a nursing home without the home service program. Nursing homes in Illinois are licensed by Public Health and require background checks for all caregivers who work in a nursing facility, per the Nursing Home Care Act (210 ILCS 45/3-206.01): “...A facility shall not employ an individual as a nursing assistant, habilitation aide, home health aide, psychiatric services rehabilitation aide, or child care aide, or newly hired as an individual who may have access to a resident, a resident's living quarters, or a resident's personal, financial, or medical records, unless the facility has inquired of the Department's health care worker registry as to information in the registry concerning the individual...” Even regulations that govern DHS Community Integrated Living Arrangements (CILA) require (59 IL ADC 115.320) that: “An agency shall not employ an individual in any capacity, until the agency has inquired of the Department of Public Health as to information in the Nurse Aid Registry concerning the individual. If the Registry has information of a substantiated finding of abuse or neglect against the individual, the agency shall not employ him or her in any capacity.”

Public Health home health regulations (77 IL ADC 245.71) for the Qualifications and Requirements for Home Services Workers, a) states: “Each agency shall ensure and maintain documentation in the employee file that all persons employed or providing services as an in-home services worker, and who are not otherwise licensed, certified or registered in accordance with Illinois law to render such care, comply with the following conditions: 1) Does not have a disqualifying background check under the requirements of the Health Care Worker Background Check Act without a waiver....”

The staff of this local office voiced concern that customers would avail themselves of the free background checks, but many customers do not. Some of the customers receiving these services may have mental impairments, traumatic brain injuries, and/or physical disabilities which could impact a customer’s ability to advocate for background checks or protect themselves from abuse. The lack of a requirement for a criminal background check for all DHS-

DRS caregivers leaves customers very vulnerable to unscrupulous workers, who could easily exploit them. In this case the PA may not have had the capacity to respond appropriately when the customer had behaviors. It is probable that this PA would not have passed a criminal background check based on the circuit court documentation; and, thus, the incidents and allegations in this case could have been prevented. After the incident was reported to the Adult Protective Services the PA was terminated by the central office of DRS on 2/17/15.

The Code of Federal Regulations (CFR) (42 CFR § 441.300 Section 1915(c)) that govern home and community based services “permits States to offer, under a waiver of statutory requirements, an array of home and community-based services that an individual needs to avoid institutionalization. Those services are defined in § 440.180 of this subchapter. This subpart describes what the Medicaid agency must do to obtain a waiver.”

In order to provide Homemaker Services under HSP (see 89 Ill. Adm. Code 676.40 (f) (1) (e)), “a Homemaker Service Provider must be in compliance with all Medicaid provider requirements for the Illinois Department of Healthcare and Family Services (HFS) and DHS which includes the Health Care Worker Background Check Act...” Yet there are no requirements for personal assistants providing the same services.

Part of the contents of the request for a waiver in 42 CFR § 441.301 (H) “Include an assurance that interventions and supports will cause no harm to the individual.”

Under state assurances in 42 CFR § 441.302 it states: “Unless the Medicaid agency provides the following satisfactory assurances to CMS, CMS will not grant a waiver under this subpart and may terminate a waiver already granted: (a) Health and Welfare—Assurance that necessary safeguards have been taken to protect the health and welfare of the beneficiaries of the services. Those safeguards must include—

- (1) Adequate standards for all types of providers that provide services under the waiver;
- (2) Assurance that the standards of any State licensure or certification requirements are met for services or for individuals furnishing services that are provided under the waiver....”

Per the Code of Federal regulations for the (HSP) Medicaid Waiver Program, there should be an assurance that interventions and supports will cause no harm to the individual and there should be adequate and consistent standards for all type of providers of caregiving services. Based on evidence in the record and the lack of requirement that all DRS personal assistants must pass a basic criminal background check before they provide home services, **the agency has an inadequate worker screening and referral process is substantiated.**

**The HRA makes the following recommendations:**

- 1. To meet federal standards that require safeguards “to protect the health and welfare of beneficiaries of the services,” at a minimum, require a basic criminal background check on all PAs before they provide home services. The results should be accessible to DRS workers and if a PA does not pass, that PA does not provide home services.**

2. **To further meet federal requirements for safeguarding service beneficiaries, there should also be an inquiry of the existing Illinois Department of Public Health Nurse Aid Registry concerning potential PAs. If the Registry has information of a substantiated finding of abuse or neglect; then that PA should not be hired.**

The HRA **strongly suggests** that if there are substantiated findings that a caregiver has abused a DRS HSP customer, that caregiver should be reported to the Healthcare Worker Registry.

Regarding the complaint, **the agency does not provide workers with adequate training**: “In order to be employed by a customer as a PA ... (7) an individual shall agree that the customer is responsible for locating, choosing, employing, supervising, **training**, and disciplining as necessary the PA...” per the Personal Assistant Requirements in 89 IL ADC 686.10. This DRS office uses LINC to provide training to potential DRS caregivers. At a glance it appears to be very comprehensive training, but it is only 2 hours in duration. There is a video and a slide presentation of 176 slides. The material that is covered is very important. Some of the information in the training is what to do if there's a problem, confidentiality, Adult Protective Services, neglect, abuse, Crime Victims Bill of Rights, fraud, individual provider payment policy, personal assistant requirements, and exploitation. One of the HRA investigative team members included a Professor of Nursing, who had been involved in continuing education for over 30 years. She too uses slides when providing training to nursing students. For training she allows 2-5 minutes of content per slide. Some of the slides that are packed with content for DRS would be on the five minute side, especially since much of this content would be totally new to the PAs. Upon review she would recommend that this training be at least 5 hours and have it over the course of 2 days to allow some review and recap. As it is **this training does not allow even a minute per slide** and there would not be adequate time for PAs to absorb some very good comprehensive training.

What is interesting is that Public Health (77 IL ADC 245.71) training requirements for Home Services Workers requires proof that the home service worker completes a minimum of eight hours of training prior to his or her first assignment as well as competencies in performing certain caregiving tasks. The required training for Home Services Workers includes the following:

- “1) The employee's job responsibilities and limitations;
- 2) Communication skills in areas such as with persons who are hard of hearing, have dementia, or have other special needs;
- 3) Observation, reporting and documentation of client status and the service furnished, including changes in functional ability and mental status demonstrated by the client;
- 4) Performance of personal care tasks for clients, including: bathing; skin care; hair care; nail care; mouth care; shaving; dressing; feeding; assistance with ambulation; exercise and transfers; positioning; toileting; and medication reminding;
- 5) Performance of ability to assist in the use of specific adaptive equipment, such as a mechanical lifting device, if the worker will be working with clients who use the device;
- 6) Basic hygiene and basic infection control practices;
- 7) Maintenance of a clean, safe and healthy environment;

- 8) Basic personal and environmental safety precautions;
- 9) Recognizing emergencies and knowledge of emergency procedures, including basic first aid and implementation of a client's emergency preparedness plan;
- 10) Confidentiality of client personal, financial and health information;
- 11) Behaviors that would constitute abuse or neglect and the legal prohibitions against such behaviors, as well as knowledge and understanding of abuse and neglect prevention and reporting requirements; and
- 12) Any other task that the agency may choose to have the worker perform.” It also recommends that all home services workers complete a minimum of eight hours of annual training.

Again, regulations require for the Home Service Program Waiver (42 CFR § 441.302 (1) (2)) “Assurance that necessary safeguards have been taken to protect the health and welfare of the beneficiaries of the services. Those safeguards must include: Adequate standards for all types of providers that provide services under the waiver and assurance that the standards of any State licensure or certification requirements are met for services or for individuals furnishing services that are provided under the waiver....”

In this case the customer relied on her guardians to provide training to her personal assistant. The guardian who also provided care did not have any documented training. The personal assistant clearly did not understand her responsibility and responsibility to sign her time sheet after the work was completed. She was not even given a copy of her timesheets as required DRS Rules. Per the guardian’s statement she completed timesheets for the caregiver. The PA may not have known what she was getting paid for or if she was working off a loan from the customer’s guardians.

Per the record the PA may have been required to perform duties that were not in accordance with the customer’s service plan which included bathing, keeping customer’s room sanitary, assistance with eating, assistance with exercise, and walking. There was no mention of taking care of the customer’s tracheotomy. Allegedly it was the PA’s care of the tracheotomy that triggered the entire incident. However neither the guardian, nor the PA might have known how to differentiate the duties without any training. The PA may not have been responsible for the individual’s tracheotomy. After the incident, licensed nurses hired by DRS HSP, found caring for the customer’s tracheotomy to be challenging. If the PA had training on abuse, neglect and rights of people with disabilities it might have impacted the situation. There was no documentation of any training for this PA.

When DRS relies on its customers only to provide training to personal assistants, the agency fails to provide the necessary safeguards to protect the health and welfare of the customers it serves as required in federal mandates. There should be adequate standards of training for personal assistants that provide services in the home services program. The allegation that **the agency does not provide workers with adequate training is Substantiated**.

**The HRA makes the following recommendations:**

1. **Ensure that all PAs providing home services for DRS customers have at least an adequate standard of training to assure that necessary safeguards have been taken**

**to protect the health and welfare of the customers it serves, consistent with federal regulations.**

The HRA also takes this opportunity to make the following suggestion: consider expanding the current training to allow enough time for those taking it to absorb the information and have an opportunity to review. As is, 176 slides of information cannot be absorbed in 120 minutes. Another good example of an adequate standard of training is what home service workers receive by Public Health.

With regard to the allegation **that complaints and concerns are not adequately investigated**, the DRS regulations assure a customer certain rights, Section 677.10, states: “The customer shall be informed of his/her rights at the time of referral, application, eligibility determination, service initiation, change in services, case closure and upon request.”

Section 677.40 c) d) requires that: “Under the HSP, a customer has the following rights; however, the choices made by the customer may affect the services available through HSP for which the customer is eligible or which might otherwise be available.... A customer has the right to choose his/her living arrangement, including the physical dwelling and persons residing in the dwelling. However, such choices may impact the amount or scope of the services received by the customer. HSP will not impose a living arrangement on any customer.

A customer applying for, or receiving, services through HSP shall have the right to choose medical and non-medical service providers. However, payment may only be made to those service providers which meet the standards established by DHS as found at 89 Ill. Adm. Code 686 and who will accept DHS' fees for a specific service approved by DHS, if DHS is to issue payment for the service.”

According to Section 677.70 for the Notice of Action, “Every customer has the right to a written notice of the disposition of any referral, application, or any denial, termination, or change in services....” Per the record written notice was provided to the customer as well as appeal rights when services were adjusted from PA services, to Homemaker services, and then to LPN services.

Home services, as per Section 684.100 g), “shall be denied or terminated and case closure initiated at any time the customer fails to conduct himself/herself in an appropriate manner (e.g., physical, sexual or repeated verbal abuse by a customer against a DHS employee, provider or agent providing services through HSP; knowingly provides false information; or performs illegal activity that would directly and adversely affect the HSP....”

The regulations continue and state, in part j), ‘if a customer fails to cooperate (e.g., refuses to complete and sign necessary forms, fails to keep appointments, and fails to maintain adequate providers....”

Per the record, after the incident, it was the PA who contacted the counselor first on 12/5/14 stating the customer had called her the N – Word and had hit her. She claimed the customer's guardians would not address it and dismissed it because the customer has disabilities.



Per the record, both the PA and the guardian admitted that after the guardians had requested more hours for preparing special meals for the customer, the hours were received, but did not use them to prepare the special meals for the individual.

Both the PA and the guardian stated that the guardian had the PA sign all time sheets in advance. Both parties should have been aware that this was inappropriate because one of the guardians and this same PA had previously signed the Individual Provider Payment Policies IL488-2252 (R-6-12) form which stated: "Home Services Program (HSP) customers and Individual Providers are responsible for accurately completing and signing all Individual Provider time sheets. Completion of the time sheet will require both parties to sign and verify the information contained on it is correct. Fraudulently completing these documents will result in a formal investigation by the Medicaid Task Force, with possible criminal prosecution by the Illinois State Police (ISP). This document provides critical information for completing a time sheet...."

"...Customers should never pre-sign time sheets and they are expected to review the accuracy of dates and times worked prior to submitting the time sheet on the last day of the payroll window. Time sheets submitted with hours not yet worked will be returned to the customer and could delay Individual Provider payments." **This form concludes with the following statement: "I acknowledge that the above information has been reviewed and is understood."** It is understandable for the counselor to question activity since timesheets were not being completed appropriately by both the guardians and the PA. There were also discrepancies on services requested, billing hours received and billing hours worked.

Considering the customer's needs with the tracheotomy, it would seem reasonable for the counselor to switch to an agency care provider pursuant to Section 686.20 a) b) c) regarding services that may be provided by a PA. "A PA may perform or assist with household tasks, shopping, or personal care; and incidental health care tasks that do not require independent judgement, with the permission of the customer and/or family; and monitoring to ensure the health and safety of the customer." On 12/5/15 the customer's guardians called the DRS home services worker and stated that they wanted to hire a former PA back. When asked what happened to the current PA, he was told that that the PA was not reliable. The DRS worker asked if anything else happened and was told **no**. This was 3 days after the PA allegedly abused the customer. This DRS worker did work with the guardian in allowing her to assist in choosing the agency that would provide care.

The cost of services for the customer increased when the customer had to receive all services from nurses. The increased expenses could not exceed costs that the State would pay for institutional care for an individual with a similar DON score pursuant to Section 682.100. When the HRA asked if caregiver hours were reduced after the incident staff explained that the reduction was because of the service cost. They had made a decision that an LPN was needed because of the nature of the disability which is more expensive. To keep the original hours would be over the service cost maximum because a regular homemaker or PA would be less expensive. There was a statement of the action taken and a clear statement for the reason for the action in the service plan that was sent to the customer. It did include a statement of appeal rights, a hearing request form, and an appeal fact sheet. The service amount documented totaled 27.30

hours per week or 118.75 hours per month at a rate of \$17 .14; the total monthly estimated service cost was \$2035.38 for a homemaker. The addendum to the plan using an LPN, showed a total of 25.75 hours per week, or 112 hours per month, at a rate of \$25.47 with the total monthly service cost at \$2852.64. The actual cost of the services were increased even though the hours were reduced.

The PA was reported to Adult Protective Services by the guardians and subsequently was flagged which removed her from being a DRS PA again. Section 320 ILCS 20/4 Adult Protective Services Act states: “If any mandated reporter has reason to believe that an eligible adult, who because of a disability or other condition or impairment is unable to seek assistance for himself or herself, has, within the previous 12 months, been subjected to abuse, neglect, or financial exploitation, the mandated reporter shall, within 24 hours after developing such belief, report this suspicion to an agency designated to receive such reports under this Act or to the Department. Under (Definitions) 320 ILCS 20/2 (f-5) (6)...‘Mandated reporter’ means any of the following persons while engaged in carrying out their professional duties: includes: “personnel of the Department of Human Services....”

When asked was there a reason why would staff would refuse to do a home visit in this situation. Staff explained that the guardian wanted him to come out to explain what had happened with the previous PA and to discuss the change in the service plan. The service plan and changes had already been discussed over the phone. Records document that he spoke to the guardian on all the issues in this case and when benefits were adjusted, appropriate notices were sent regarding the services that would be provided to the customer. Based on the evidence in the record, interviews with staff and DRS rules the allegation that **complaints and concerns are not adequately investigated is not substantiated.**

**The HRA takes this opportunity to make the following suggestions:**

1. The DRS counselor should, at a minimum, contact APS when there are allegations of abuse. The DRS counselor should also document this in the customer’s record.
2. In addition, DRS workers should offer to make referrals to other community providers who may be able to provide services to facilitate the healing process when they are aware that customers may have experienced loss and trauma. She also lost property. Also, there was no evidence that the customer was ever medically assessed. Nor was it suggested by staff in the record. The customer, the caregiver, and possibly the guardians may have needed counseling referrals. Considering the reported customer injuries to her groin and breasts, a referral to a rape and advocacy center might have been appropriate. In some communities there are agencies that help replace some of the lost property or medical items. Even if the exact same items were not replaced, it still may help the customer recover some of what she may need and have lost.
3. A home visit by professional DRS staff to visit with the guardians and the customer might have provided some insight why certain changes had to occur. If there were safety concerns, more than one DRS worker could have gone on the

home visit. It might have also provided some insight to the workers of any trauma that the customer may have experienced. It could foster a future environment of cooperation on both sides.

Regarding the complaint that **there is no appeal mechanism**. The Administrative Code (89 IL Admin. Code 677.80) regarding an Appeal of an Action Taken by HSP states: “The customer has the right to appeal an action or inaction on the part of HSP, with certain limitations, as set forth at 89 Ill. Adm. Code 510 – Appeals and Hearings.”

Here are some of the examples, in Section 510.30, of what may not be appealed under this Part:

- a) “Changes in services or procedures over which DHS-ORS exercises no discretion or control;
- b) Changes in services or procedures which are mandated by federal or State law or regulation;
- c) Failure to provide services which DHS-ORS, in accordance with federal or State law, regulations, and the State VR Plan or other plans submitted to the federal government by DHS-ORS as a condition of receiving federal funding cannot provide....”

Section 677.70 for the Notice of Action states: “Every customer has the right to a written notice of the disposition of any referral, application, or any denial, termination, or change in services....”

For service notices, section 510.60 b) c) d) states that: “When an individual applies for VR or HSP services from DHS-ORS, the individual must be informed that DHS-ORS notifies customers whenever it denies, modifies or terminates a service or services, if not mutually agreed upon, and of the right to action within 60 calendar days after a request for an application. DHS-ORS must send the customer a service notice at least 15 working days before the effective date of the action. Any action mutually agreed upon must be so documented in the customer's case file...”

When the HRA team asked about the appeal process, staff explained that the appeal process is discussed with the customer at his/her home; the appeal hearing request form is explained and given to the customer. Customers can appeal at any time. The guardian had filed an appeal before on another case decision on behalf of the customer.

Upon review of the Application and Redetermination Eligibility Agreement (R-10-07) completed by both the DRS HSP worker and the customer's guardian on 5/20/14 it stated: “I certify the HSP appeals fact sheet has been explained and given to me. I understand I have the right to disagree and can appeal any decision or inaction on the part of DRS HSP. I have been informed that my right to appeal includes the right to appeal my service plan. I understand I have 30 days from the date I received the notice of decision (oral/written) to file an appeal, or that I have 35 days from the postmark date on the service notice (IL488-0141) if I am notified by mail.” The document was initialed on each section and signed by the Guardian and the DRS HSP worker. The date of the signatures was 5/12/14.

The HRA reviewed the Home Services Program Appeal Fact Sheet (R-10-07). It explained that “an appeal is when you disagree with a decision made by your Home Services Program (HSP) representative or feel he/she has failed to act on a request you have made, you have the right to formally challenge the decision or their lack of action. Your dissatisfaction is communicated through a formal appeal that is heard at an Administrative Hearing. An unbiased person called an Impartial Hearing Officer will conduct the hearing.” It explained other options such as arranging a time to discuss your reasons for being dissatisfied with a HSP representative in an effort to resolve the problem. And, the fact sheet states that services would not be affected if a customer requests an appeal, unless DRS determines there was evidence of fraud, abuse or neglect.” The appeal process and timelines are included as well as a list of resources to assist in filing the appeal. It also explained that appeals could be resolved by informal resolution with the office supervisor who could discuss and clarify everyone's issues and positions.

There was information about notifying the HSP office of any reasonable accommodations needed. Customers were advised on how and when to provide evidence including a list of any witnesses who would appear, as well as any documents that would support their position. The hearing would be taped and the customer could request one copy in an accessible format at no cost. If a customer disagrees with the decision of the hearing officer they could pursue their case through the local circuit court.

Per the interview with staff, the DRS worker had explained the appeal process when he met with the customer and her guardians. This customer's guardian had filed an appeal on a previous issue. Per the evidence in the record, the customer's father/guardian certified by his signature and initials, that the HSP appeals fact sheet had been explained and given to him. The policy and practices document there is an appeals process that accommodates people with disabilities. The complaint that **there is no appeal mechanism is unsubstantiated.**

The HRA appreciates the full cooperation of the staff at the Department of Human Services, Division of Rehabilitation services located in Bellville, Illinois during the investigation.