



FOR IMMEDIATE RELEASE

**METRO EAST HUMAN RIGHTS AUTHORITY
REPORT OF FINDINGS
HRA CASE # 15-070-9016
Caseyville Nursing and Rehabilitation Center**

INTRODUCTION

The Metro East Regional Human Rights Authority (HRA) has concluded its investigation of a complaint at Caseyville Nursing and Rehabilitation Center (CNRC), a Nursing Home and Rehabilitation Center located in Caseyville, Illinois. CNRC is a for profit corporation managed by S.W. Management of Skokie, Illinois. The facility has the capacity to serve 150 patients and had a census of 104 patients at the time of the initial HRA site visit. The average patient age at CNRC is 75 and approximately 95 percent of patients have a surrogate decision maker or Power of Attorney (POA).

The allegations being investigated are: 1) Directions from a resident's agent in a Power of Attorney for Health Care were disregarded; 2) A resident's right to retain a personal physician was violated; and 3) The facility grievance process is inadequate. If substantiated, the allegations would represent violations of the Nursing Home Care Act (210 ILCS 45), Regulations that Govern Skilled and Intermediate Long Term Care Facilities (42 CFR 483.10) and the Illinois Power of Attorney Act (755 ILCS 45).

METHODOLOGY

To pursue the investigation, the HRA Coordinator interviewed the consumer's POA agent and the HRA team conducted two site visits at CNRC. During the initial site visit to CNRC, the HRA team interviewed the facility Administrator, Social Services Director, Admissions Director, and a Registered Nurse. During the second site visit, the HRA team interviewed the Director of Nursing along with the Administrator. With consent, the HRA team also obtained and reviewed nursing notes, physician orders, hospital records, agency policies, admission packet information and Illinois Department of Human Services Public Health reports.

FINDINGS

The first complaint indicates that CNRC failed to notify a resident's POA agent before making medication changes. Since the POA agent's consent was not given, medication changes should not have occurred. CNRC policy *Notification of Change in Resident's Condition* states "The facility should notify the resident, his or her primary Physician and a resident legal representative or family member of significant changes in the resident's medical/mental condition." The policy goes on to define a significant change of condition as "a decline or improvement in the resident's condition or status that: a) will not normally resolve itself without intervention by staff... b) impacts more than one area of the resident's health status... c) requires interdisciplinary review

and/or revision to the care plan... d) ultimately is based on the judgement of the clinical staff and the guidelines outlined in the Resident Assessment Instrument.” The policy further states that a resident’s legal representative should be notified when any changes are made in his or her medical care or nursing treatments. The Nursing Notes section of the patient’s chart shows three instances whereby medication changes were ordered by a physician but no indication that the POA agent was notified of the changes. The dates include 12/31/14, 1/10/15 and 1/12/15. Documentation also indicates that the POA agent was notified on other occasions.

In addition, an Illinois Department of Public Health report dated 2/23/2015 shows that CNRC failed to notify a resident’s legal representative when there was a need to alter treatment. The report quotes the CNRC Administrator as stating in an interview: “Families should be notified of medication changes. I know some nurses don’t.” When questioned by the HRA team, the Administrator gave a similar response and stated that it is nursing protocol to notify the POA agent of medication changes or changes in a patient’s condition.

The second part of the complaint alleges that the resident’s right to choose a personal attending physician was violated. Upon admission, each resident receives and is required to sign a copy of the *Choice of Physician and Physician Policy Notification* which states: “...Each resident has the right and obligation under the law to select their own physician for the time he or she is a resident of this facility.” The CNRC did not provide a signed copy of this form to the HRA, and stated that the POA agent failed to sign the form and complete the admission packet.

The final part of the complaint alleges that the facility grievance process is inadequate. CNRC provided a copy of its *Grievances Policy*, which states: “Any resident, family member, friend, significant other or staff member can file a grievance. Grievances that cannot be resolved within 24 hours will be recorded on the facilities [sic] grievance and general complaint form. Resolution attempts should commence immediately upon receipt of the grievance and in most cases should take no longer than 10 days depending on the nature of the grievance. Within 10 days facility administrative staff should attempt to contact the grievant to discuss the findings and/or resolution of the grievance. The procedure for the grievance process is as follows; 1. Any individual wishing to lodge a complaint or grievance may do so using the grievance and general complaint form. The form should be completed with as much information as possible. Additional information can be included on the back or separate piece of paper if necessary. 2. The individual taking the report should forward it to the Administrator as soon as possible. 3. The Administrator will review the form and forward it to the appropriate department head for additional follow up if required. 4. The department head or designee will be responsible for any investigation that may be required and for any corrective action that is deemed necessary. 5. The department head or designee will return the grievance form with corrective action notations. Additional time may be taken upon approval of the administrator. 6. The department head or designee will be responsible for notifying the grievant of the findings and corrective action. 7. Following notification of the grievant the form will be filed in the social service office.”

During our interview, the Administrator stated that grievances are reviewed daily during morning staff meeting. The Administrator also stated that there is no formal grievance committee and no records are kept detailing grievance discussions and outcomes. The HRA team found no evidence that a formal grievance had been filed for this patient. The Administrator denied that any complaints were ever made prior to this patient leaving the facility although the POA agent claimed that she voiced multiple complaints during the patient’s stay at CNRC.

MANDATES/REGULATIONS

According to the Illinois Power of Attorney Act (755 ILCS 45/4-7):

Sec. 4-7. Duties of health care providers and others in relation to health care agencies. Each health care provider and each other person with whom an agent deals under a health care agency shall be subject to the following duties and responsibilities:

(a) It is the responsibility of the agent or patient to notify the health care provider of the existence of the health care agency and any amendment or revocation thereof. A health care provider furnished with a copy of a health care agency shall make it a part of the patient's medical records and shall enter in the records any change in or termination of the health care agency by the principal that becomes known to the provider. Whenever a provider believes a patient may lack capacity to give informed consent to health care which the provider deems necessary, the provider shall consult with any available health care agent known to the provider who then has power to act for the patient under a health care agency.

(b) A health care decision made by an agent in accordance with the terms of a health care agency shall be complied with by every health care provider to whom the decision is communicated, subject to the provider's right to administer treatment for the patient's comfort care or alleviation of pain; but if the provider is unwilling to comply with the agent's decision, the provider shall promptly inform the agent who shall then be responsible to make the necessary arrangements for the transfer of the patient to another provider. It is understood that a provider who is unwilling to comply with the agent's decision will continue to afford reasonably necessary consultation and care in connection with the transfer.

(c) At the patient's expense and subject to reasonable rules of the health care provider to prevent disruption of the patient's health care, each health care provider shall give an agent authorized to receive such information under a health care agency the same right the principal has to examine and copy any part or all of the patient's medical records that the agent deems relevant to the exercise of the agent's powers, whether the records relate to mental health or any other medical condition and whether they are in the possession of or maintained by any physician, psychiatrist, psychologist, therapist, hospital, nursing home or other health care provider.

(d) If and to the extent a health care agency empowers the agent to (1) make an anatomical gift on behalf of the principal under the Illinois Anatomical Gift Act, as now or hereafter amended, or (2) authorize an autopsy of the principal's body pursuant to Section 2 of "An Act in relation to autopsy of dead bodies", approved August 13, 1965, as now or hereafter amended, or (3) direct the disposition of the principal's remains, the decision by an authorized agent as to anatomical gift, autopsy approval or remains disposition shall be deemed the act of the principal and shall control over the decision of other persons who might otherwise have priority; and each person to whom a direction by the agent in accordance with the terms of the agency is communicated shall comply with such direction.

According to the Code of Federal Regulations, Requirements for State and Long Term Care Facilities (42 CFR 483.10):

Sec. 483.10 Resident rights. 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. A facility must protect and promote the rights of each resident, including each of the following rights:....(9) The facility must inform each resident of the name, specialty, and way of contacting the physician responsible for his or her care....(11) Notification of changes. (i) A facility must immediately inform the resident; consult with the resident's physician; and if known, notify the resident's legal representative or an interested family member when there is— (A) An accident involving the resident which results in injury and has the potential for requiring physician

intervention; (B) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications); (C) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or (D) A decision to transfer or discharge the resident from the facility as specified in § 483.12(a)...(d) Free choice. The resident has the right to— (1) Choose a personal attending physician; (2) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and (3) Unless adjudged incompetent or otherwise found to be incapacitated under the laws of the State, participate in planning care and treatment or changes in care and treatment.... (f) Grievances. A resident has the right to— (1) Voice grievances without discrimination or reprisal. Such grievances include those with respect to treatment which has been furnished as well as that which has not been furnished; and (2) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

The Nursing Home Care Act (210 ILCS 45) states:

Sec. 2-104. (a) A resident shall be permitted to retain the services of his own personal physician at his own expense or under an individual or group plan of health insurance, or under any public or private assistance program providing such coverage. However, the facility is not liable for the negligence of any such personal physician. Every resident shall be permitted to obtain from his own physician or the physician attached to the facility complete and current information concerning his medical diagnosis, treatment and prognosis in terms and language the resident can reasonably be expected to understand. Every resident shall be permitted to participate in the planning of his total care and medical treatment to the extent that his condition permits. No resident shall be subjected to experimental research or treatment without first obtaining his informed, written consent. The conduct of any experimental research or treatment shall be authorized and monitored by an institutional review board appointed by the Director. The membership, operating procedures and review criteria for the institutional review board shall be prescribed under rules and regulations of the Department and shall comply with the requirements for institutional review boards established by the federal Food and Drug Administration. No person who has received compensation in the prior 3 years from an entity that manufactures, distributes, or sells pharmaceuticals, biologics, or medical devices may serve on the institutional review board.

CONCLUSION

The first part of the complaint, claiming that directions from a resident's agent in a Power of Attorney for Health Care were disregarded, **is substantiated**. The facility failed to meet the requirement of notifying a resident's legal representative as outlined in the Illinois Power of Attorney Act and the Requirements for State and Long Term Care Facilities. On multiple occasions, medication changes were made without notification to the POA agent which is supported by the Nurses' Notes documentation or the lack thereof. Without the documentation there is no evidence that regulatory requirements were met for this resident. The Administrator readily admitted in an HRA interview and in a Public Health investigation that not all nurses notify the POA agent of changes in treatment.

The second part of the complaint regarding the violation of a resident's right to retain a personal attending physician to oversee care is **not substantiated** because the admission paperwork was not thoroughly completed by the POA agent. Consequently, the HRA could not conclude that CNRC was at fault.

The third complaint regarding the facility grievance process is **substantiated**. Although the facility has a grievance policy, there is no documentation to support that the facility follows the grievance policy and records are not kept as supportive data.

RECOMMENDATIONS

1. Follow Federal nursing home regulations, the Illinois Power of Attorney Act and facility policy that require a facility to immediately inform the resident; consult with the resident's physician and, if known, notify the resident's legal representative and/or interested family member when there is a change in the resident's condition or a need to alter treatment (i.e., discontinue an existing form of treatment or commence a new form of treatment). Staff should be trained on a regular basis on whom to notify if there is a change in condition or treatment. Such training sessions should be documented in employees' files. In addition, an alert should be placed on the front of the patient's chart indicating there is a POA, guardian, or family member who should be contacted. Name and contact information should be readily available
2. To guarantee compliance with the facility grievance policy and regulations, ensure that the grievance form is completed and accurately documents the facility's progression in addressing the grievance through the facility grievance process.

SUGGESTIONS

1. Include a Physician Election form in the admission packet to ensure that the patient's right to retain his/her own physician is upheld. This form should also include a signature section to ensure compliance. If a resident or his/her representative fails to complete admission forms, including the Physician Election form, re-approach the resident/representative to seek the form's completion.
2. Update policies and procedures and organize them into a more user-friendly Policy and Procedure Manual. Ensure that the manual is easily accessible by all staff. Review policies on a regular basis; each policy should include a policy number, date implemented, and dates reviewed. The licensed professional responsible for overseeing policy development should sign and date each policy to indicate it has been thoroughly researched, constructed and reviewed to ensure that evidence-based practices are followed.
3. Establish a formal Grievance Committee to meet and review grievances on a regular basis and ensure that minutes are kept in order to facilitate the complaint/grievance process.