FOR IMMEDIATE RELEASE

Peoria Human Rights Authority
Case #15-090-9012
Illinois Department of Human Services/Division of Rehabilitation Services

The Peoria Regional Human Rights Authority (HRA), a division of the Illinois Guardianship and Advocacy Commission, accepted for investigation the following allegation concerning the Home Services Program at the Illinois Department of Human Services (DHS)/Division of Rehabilitation Services (DRS) located in Peoria, Illinois:

Complaints:

1. **Inadequate and inappropriate communication with client regarding issues of concern, protocol and service arrangements.**
2. **Program forms not handled in a timely manner which impacts service provision.**

If found substantiated, the allegations represent violations of the Department of Human Services Division of Rehabilitation Services, Home Services Program (HSP) under the Medicaid Waiver Program (89 IL ADC 676 through 686) and the Code of Federal Regulations of Home and Community–Based Services: Waiver Requirements (42 CFR § 441.302 & 42 CFR 441.303).

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 (PA) who provides assistance with household tasks, personal care and with permission of a doctor, certain health care procedures. PAs are selected, employed, and supervised by individual customers.

INVESTIGATIVE INFORMATION

The HRA proceeded with the investigation having received written authorization from the customer 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.

Per the complaints, there had been issues with documents being lost, caregivers being paid late and inappropriate communication with the customer regarding issues of concern, protocol and service arrangements. The customer had provided a written example of a conversation with a DRS staff on 11/17/14 to the HRA. To summarize, the DRS staff reportedly questioned why the customer had been missing PAs and the customer explained she had no help for the past weekend. The customer explained she had hired a new PA because she needed someone and had submitted the PA packet on 11/12/14. The customer made the statement the packet was lost for a week or DRS staff allegedly didn't start looking for it till last week. The staff reportedly asked who said we (DRS) lost it. The customer replied that a DRS staff person

admitted to losing a PA packet when she said she was looking for it. The customer was reportedly questioned by staff as to why she did not have back up PAs when there are emergencies. The customer let the staff know that her PAs only have certain availability.

According to the complaint, the staff let the customer know that she was required to work on enforcing compliance with submitting PA packets, but she would try have a new PA packet entered by Wednesday (11/19/14). The customer requested the start date for the PA be the 15th, the previous Saturday. The staff person reportedly stated she could not guarantee that and it would have been different if the customer had no PAs, but the customer had five PAs. As per the complaint, staff indicated that the customer should have been able to ask her PAs to switch schedules. The customer explained if the PAs were available it would not have happened, but every single one of her PAs has a second job, because they cannot make it on what they get paid from DRS.

The complaint further states that staff questioned the customer about her what her overnight help did at midnight. The customer told the staff the PA does laundry and cooking. The staff reportedly explained that PAs had told her something different. The customer explained that there was a part of the time where the PA has a little bit of downtime, but it is less than the three hours that the PA is actually working. She explained the PA comes in at midnight, she assists the customer with the bathroom routine, and assists the customer transferring into her bed then, the PA can do things like laundry.

The staff allegedly asked why would an overnight PA do laundry if the customer has PAs during the day. The customer explained there was no reason why she could not appropriate her hours as she needed too. She told the staff "That is my right I have nine hours of service and day and I organize it."

As per the complaint, the staff explained that they had been hearing different stories. The staff reportedly told the customer "…You are going to stick with that?" "I want the truth." And, the customer stated "You want the truth. I am telling you the truth."

The staff stated she would get that packet entered as soon as she could and would notify both the PA and the customer. The customer reiterated that the PA's start date would be the 15th. The staff stated she could not guarantee that, but would let the supervisor know about the situation and let the supervisor handle the decision on the PA's start date.

Reportedly, the customer told the staff "…backdating is available, it has happened before. There is precedent for it."

When the staff asked is there anything else she could do for the customer, the customer stated "Yes, I need you to understand that I am in charge of my PA's hours. I'm in charge of how it's divvied up. I have a certain amount of hours that are given to me and I organize them to make my life work. And I work part time." The staff responded "Within the program guidelines." The Customer stated "I am within the program guidelines."

Allegedly, there were other conversations where the customer was asked invasive questions by staff. In addition, there appeared to be DRS concerns regarding the customer using a newly established system to verify PA hours.

Interview with Staff

When asked about services provided through the agency, the response was DRS provides services to clients with disabilities. The Peoria office serves approximately 1200 people.

The HRA asked how many staff are available to provide services. The response was currently for the home services program, there are 1 HSP counselor, 3 HSP Coordinators and 2 Electronic Visit Verification Representatives. For the Vocational Rehabilitation Program (VR) there are 5 VR Counselors and 4 VR Coordinators.

When asked about the home services program, the response was this is for clients who have a disability and need care in their own home. The main goal of the program is to keep people out of nursing homes so they can live in their homes.

The HRA asked what would be the typical process for approving home services for someone such as the customer involved in this complaint. The staff explained the process of getting approval starts with the referral. It can be a (customer, medical provider, family member, nursing home, or another agency etc.) that makes the referral. Basic information would be collected about the customer (name, SSN, address, disability, why services are needed etc.) The customer is contacted to determine if services are needed immediately based on need and severity of disability. They have a triage process for people in hospitals who are about to be discharged. The intake process starts with an application, then a scheduled appointment is made. The counselor goes out to complete the application process and the counselor remains the same throughout the process. The individual service plan is based on a determination of need. There is a set amount of hours for each customer. Information is provided to the customer about the program and their responsibilities, as well as employer responsibilities if they have an individual provider. After approval the customer maintains the services by keeping track of the hours that they receive. The agency pays the individual provider and processes time sheets, but the client is responsible for managing the individual provider and hours.

The personal assistant is given an identification number. When they arrive at the home of the customer to provide services, they call from the client's phone into an automated service. This process is called the electronic visit verification (EVV.) The PA is also required to record the exact time on the time sheet, and repeat the process for clocking out. The customer records the paper verification of the time sheet while the coordinator checks the electronic version based upon when the PA called.

The HRA asked about customers who cannot afford a phone. Staff advised that they could use the PA's phone in that situation or other options can be examined. Customers are given resources to get things such as a cell phone so that PAs can call in and call out for time sheets. If these things are not available or cannot be gathered, accommodations are made.

The HRA asked what about situations where there are dropped calls, poor phone service or if the electronics fail, would the customer be able to continue receiving benefits. Per the staff, if this would happen, the information can be communicated to the agency, and the paper time sheet would be the main document used for verification. The customer would have to document the issue that stopped the PA from being able to call in.

The HRA asked if there had been any problems with electronic failure of the EVV system reported to staff, such as dropped calls or busy signals and if caregivers would be docked pay when this happens. The staff stated no. The customer is responsible to make sure the PA works within those given hours, but if the PA works more than the given hours, then this is a problem. If an error occurs with the system the PA will not be docked.

The HRA asked what does the term, "unregistered number," mean. Staff explained the EVV calling in process went into effect Jan 1, 2014. Customers were given information on the new system on October 1, 2013. Every customer has to have a number registered with EVV. Home phones or cellphones can be used. An unregistered number is one that is not recognized by the system. If this happens, it is put into a different part of the system and it is not registered with the customer, so it takes time to figure out where the call is coming from. The purpose of calling from a customer phone is to verify the PA is actually there because it has been a problem in the past. A customer using an unregistered number can delay payment, but not stop payment to the PA. In this case noncompliance is why the PA's timesheets took a while to process. There were instances when the PA did not call in or out which is considered noncompliance.

When asked if a customer who changes her phone number would lose benefits, the response was if the customer is inconsistent with having a phone, the PA is not blamed, but it still delays payment if it happens multiple times; they have to rely on the time sheet. If there are issues with the customer, they are addressed as much as possible so that services would not be affected, nor would the payment to the PA. The customer is informed by the agency if there is an issue with timesheets and if the payment will be delayed. Manual time sheets can be used in situations where phones were not working etc. The client does have the right to set up her schedule so that it fits her needs.

The HRA asked if documents have been lost. The staff responded to the best of their knowledge no documents have been lost despite the allegations. The packet was not on the worker's desk and she had not received it yet. After informing the customer that they would look, the customer was notified that the packet was found and payment was approved. There was never a need for a new packet or reprocessing etc. There have been many forms of communication to inform the client about the use of the EVV system. The client has not gone without needed services.

The HRA asked what would happen to the customer if she went without this needed service. The response was the customer would possibly not be able to live independently and may need to consider living in a nursing home.

The HRA asked if the process outweighs the needs of the individual served. The response was the agency has the customer's needs in mind the entire time otherwise so many

chances would not be given to her. Services are the priority despite having many forms to complete. Many opportunities were given and services were never cut despite noncompliance. If they did not have that in mind, she would be with a home maker agency and NOT with their agency still.

The HRA inquired about the client assistance program. The staff explained this part of their agency can answer questions about policy, assistance with appeals process, and disagreements with the agency. Clients can contact the client assistance program (CAP) to talk to them and to get help. The client has information about CAP already and was given this information during the intake time and during the reassessment period.

The HRA asked if the client was referred to the CAP program. The DRS staff responded that the CAP process already started with referrals to a homemaker agency and advocacy services.

The HRA commented that usually customers will contact third party agencies as a last resort. Before the case was opened the coordinator advised the customer to file an appeal with the agency. The HRA shared that the customer was reportedly told by staff that she could not file an appeal on these issues. The HRA asked if the customer filed any grievances or appeals. Staff responded that was unknown, but the customer was advised of her right to appeal and signed a document stating she understood this right. Staff send customers appeal rights and an appeal form. They do have that right to file an appeal and are given that information at yearly redeterminations. This customer never asked to file an appeal as per staff.

The DRS informed us that no one has quit caring for the customer for not being paid. There is also no reason why a nighttime caregiver would NOT get paid, unless she worked 5 minutes, got paid 3 hours, but was asleep for 2 hours and 55 minutes of that time (this is the debate). Staff explained that it is a call in process to combat fraud when the customer authorizes the time sheet. They are giving their word that everything is done according to the guidelines. The timesheets have to match up with the calling EVV process. The DRS has a couple of reports from the system that can actually provide data about timesheets. While the format can be challenging, customers are encouraged to call in if they have problems. Sometimes they are putting in the wrong identification numbers and it is not the customer. DRS staff provide the EVV information, a brochure, a cheat sheet and the identification number. If there is a problem they are supposed to contact DRS immediately because they can work with the customer. When problems are reported, they can be addressed and then DRS knows what it is going on. When asked have you found that this process works for most folks, the response was, “yes.”

The HRA interviewed the coordinator who processes the time sheets. The HRA asked about the about the work she does or the type of caseload she has. She explained that a coordinator primarily provides supports to the counselor. There are approximately 1300 cases, about 250-300 per district that the coordinator processes. The HRA asked to discuss some of the alleged invasive questions made by staff such as:

- “How could a caregiver work overnight and then go to work a fulltime job during the day.”

- "Why do you need someone doing dishes and laundry overnight if you have help during the day."
- "Your caregiver sleeps at night."

The coordinator explained these were asked for clarification because the PAs said they were sleeping. She had been given conflicting information. She asked what they did for her at midnight according to the service plan. She asked what do PAs do for the customer between the hours of 1:00 am - 3:00 am. The customer can do what she needs to with her hours as long as it is within the program guidelines.

The HRA asked about an alleged conversation during which the customer said: "she did not know how they wanted her to answer the accusations." The coordinator responded: "They wanted the truth." The customer replied: "She was telling the truth." and the coordinator questioned "So you are going to stick with that?" The coordinator does not remember that being in the conversation.

The HRA asked if anyone considers that those questions might be perceived as being demeaning to the client. The coordinator explained she had to ask both the PA and the customer for clarification and to understand the situation.

When asked about a compromise on how to work the call in process, the coordinator said that they never agreed on a compromise and that the PA was completing the time sheets incorrectly. She does not have jurisdiction to give compromises. The PA and customer were faxing in time sheets, but that is not allowed.

Record Reviews:

The HRA reviewed the home services program Application and Redetermination Eligibility Agreement and Service Plan (R-10-07) signed by both the DRS worker and the customer on 6/23/14. 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…."

In the section marked, choice, 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."

"…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: …All necessary documentation will be provided to the local HSP office prior to the start of employment. 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.

My Personal Assistants will receive a copy of my service plan and any changes to it."

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 customer and the HSP worker. The date of the signatures was 6/23/14. On the service plan, the section called Personal Assistant Back-up: "The Customer has 4 PA's."

According to the records of correspondence, on 12/4/13, the Director of the Division of Rehabilitation Services sent a letter to the providers informing them of the implementation of the new Electronic Visit Verification (EVV) Timekeeping System on 1/1/14. "Through this protocol, Personal Assistants (PA) are required to call in at the beginning of the workday and call out at the end of their shift on the customer's phone. The reason to begin the calls is to verify the length of time the providers are working with their customer. The letter also states that failure to comply with this system can result in a delay of payment."

On 3/17/14, the correspondence record shows that the director of the Division of Rehabilitation Services sent another letter to providers detailing the steps of how the EVV system works,

1. "**Call In & Out** – Providers should call the EVV system from the Customer's telephone at the beginning and end of each visit. The **EVV call-in numbers** are **1-855-347-1770** and **1-855-573-0726.**
2. **Enter your Santrax ID –** Providers should enter their Santrax ID on every call. Be sure to enter your number fairly quickly, with no more than a two-second pause between numbers. If you don't know your Santrax ID, call the **EVV Help Line** at **1-888-713-5139.**
3. **Enter your Task ID** – When you call out, you will be asked to "enter task ID." Task IDs are: 13 for Personal Assistants, 11 for CNAs, 12 for LPN, and 14 for RN.

4. **Write Down the Exact Time** – The phone system will say the exact time of the call. Write this time on the paper HSP Time Sheet (IL488 2251). Be sure to write clearly and include the 'AM' or 'PM.'
5. **Sign & Send In Your Time Sheet** – At the end of each pay period, both Customer and Provider should sign the time sheet and send it to the DRS Office by the Due Date listed on the back of this page."

The *Individual Provider Payment Policies* IL488-2252 (R-6-12) which was signed by both the customer and the customer's PAs on 7/8/14, 10/10/14, and 11/15/14 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 customer and PA signature line was the following statement: **"I acknowledge that the above information has been reviewed and is understood."**

The Division of Rehabilitation Home Service Program sent a letter regarding each one of the customer's 6 PAs on 7/8/14, per the correspondence record. The mail states that it is near the date when the EVV system will be running to the fullest extent. It also reminds the customer that not using the EVV system can delay payment for her PAs.

Notes on 8/1/14, 8/18/14, 8/19/14 document efforts by DRS staff to encourage the customer to allow PAs to use the EVV system

Notes from DRS supervisor document on 8/22/14 "…She was able to talk to one of the PA's, she stated that she works the night shift usually 12:00 am – 6:00 am….The PA stated that she writes the 3 hours she is supposed to work however she stays there until 6 am. When asked why she is not calling in and calling out. She (PA) stated the customer does not want her to use the system. She (the PA) stated she was told not to use the EVV system and she should not be punished for that. She stated that she usually works 9:00 am – 1:00 pm or whenever she is needed. The last PA also echoed the same information as the other 2 PAs.

I (the supervisor) will be following up with a letter to the customer regarding the importance to having the personal assistants calling and calling out since it is mandated to use the system."

Supervisor notes document that she mailed the customer a letter on 9/11/14 about the PAs not using the EVV system for timesheets. In the letter, according to the case notes, it states "That the supervisor requires speaking with the customer by 9/26/14."

Supervisor notes on 9/17/14 document a conversation with the customer explaining if the providers do not use the EVV system eventually they will not be paid. It documents the customer also requesting that the instructions be emailed to her.

Per the case notes on 9/30/14, the staff emailed the customer information on the EVV system ("EVV cheat sheet and EVV brochure front/back").

Notes on 10/2/14 by staff document "Received faxed time sheet is illegible from PA. Called PA left voice mail, that copy is illegible and need new legible one in order to process, reminded her that tomorrow was cutoff."

Case notes document on 10/06/14 and 10/8/14 staff contacting PAs regarding issues of illegible time sheets.

Case notes document on 10/20/14: "A PA came into the office to speak to the staff regarding the customer. Apparently, the customer made a schedule from 10/9/14 thru 10/17/14, but has often not been home when the PA was scheduled to be there to help her. The customer would tell her to wait for over ½ hour or would tell her to return in a couple of hours to [get in some work hours.] The schedule was constantly being changed, without prior notice. The PA states that the customer will NOT let the PA's call in and out or complete their own time sheets. The PA showed the staff a copy of the service plan which had been written for 286 hours per month. The customer has been trying to get the PA's to work non-paid overtime in order to cover 24 hours a day. The staff read over the case notes that showed problems had been consistent. Non-compliance issues have been noted throughout the case. Maybe an agency should be assigned. Staff will discuss this case with supervisor"

Case notes document on 10/23/14 "One of the customer's PAs claims that the customer will not allow the PAs to call in or out [on the customer's registered phone line]. The PA states, that the customer has been calling in and out for the PAs."

Case notes on 11/6/14 document "The staff returned a phone call to a PA [a different one from the previous notations] who was very upset about timesheets being paid late. The staff explained that September was paid late because the fax was illegible and both time sheets non-compliant with the portal so will continue to be paid late if non-compliance continues. The staff explained the EVV process, program rules about hours. The PA admitted she works for customer at midnight until 6 am, only reports hours until 3 am and only works 5 minutes of that shift, as [the] customer and PA are both sleeping... States customer needs turned and asked if she is supposed to call in then 5 minutes later call out. The staff explained yes as the program is not 24 hour care. The PA should not be reporting hours while the customer and her are sleeping. The staff asked if she felt she was warranted in getting paid for 3 hours work while only really working 5 minutes, by her admission, she said yes. I explained that this issue will be discussed with my supervisor…."

In the case notes on the same day, it states that another [4th] PA claims that the customer will not permit the PAs to use the customer's cell phone to call in and out. The PA was upset because her time sheet was processed late.

Per case notes on 11/17/14, "The staff spoke with the customer, who was asking when the packet for a new PA would be entered into the computer system. Staff explained as soon as they could, due to compliance enforcement they are behind. The customer reportedly was unhappy that the information had not been entered. The staff asked the customer as to what activities that her PAs do at night for her. The customer stated that during that time, the PA does laundry and various tasks. She did explain that the PA she had spoken to had told her a different story. The customer stated these are her hours, she is an employer, and she can do what she needs with her hours. The staff explained that is correct as long as it is within program guidelines."

Per the record, the new PA was approved for payment effective 11/18/14. The customer was noticed on 11/20/14.

Policies:

The HRA reviewed the ***Home Services Program Appeal Fact Sheet HSP 1 (R-10-07).*** The document explained the appeal process and how to make complaints. It states: **"**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 also explains that an appeal is not the only option and explains "If you are dissatisfied with a decision or lack of action, you should always arrange a time to discuss your reasons for being dissatisfied with your HSP representative in an effort to resolve the problem before it progresses to an appeal…." It states that services would not be affected unless DRS determines there is evidence of fraud, abuse or neglect. It explains how to request an appeal and the appeal process including the specific decision made or why the request was not pursued. It also explains that the matter can be resolved informally.

The fact sheet also explains that there is help with the appeal process and in representing customers. It gives contact information for the "CAP (Client Assistance Program) to request their assistance at 1-800-641-3929 (Voice) or 1-888-460-5111 (TTY), or mentions the option to be represented by a customer's legal professional. DRS will not be responsible for any legal fees you incur…." It explains that "An appeal 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." Per the website link: http://www.dhs.state.il.us/page.aspx?item=41029, the *DHS form 4199 - Your Rights in the Vocational Rehabilitation Process Client Assistance Program* (CAP) (pdf), states that a customer has the right to "…receive services in an accessible place…. Appeal decision regarding your services."

The HRA reviewed the *Call in and Time Keeping* "EVV" policy/procedure on the DHS\DRS link http://www.dhs.state.il.us/page.aspx?item=68869 regarding the Electronic Visit Verification (EVV) System which went into effect on January 1, 2014. DHS document #4090 (N-12-13) states that: "The EVV is a telephone and computer-based system that electronically verifies when services are provided to customers of the Home Services Program (HSP). When an Individual Provider uses the customer's telephone or other device to call in and call out, the system verifies when each visit occurs and records the precise time it begins and ends…." The document explained that this was due to recent legislation requiring the DHS/DRS to acquire and implement a new system of electronic service verification for HSP customers. "The EVV System is mandatory for all Individual Providers, Homemakers, and Home Health Care Agencies and their workers who provide services to customers in the Home Services Program. This includes all classifications of agency workers (Personal Assistant, Homemaker, CNA, LPN, and RN)."

Upon review of DHS document #4365 (R-02-12) *HSP - Managing Providers*, one of the commonly asked questions concerning providers was: "**Can DHS/DRS choose to no longer fund my Provider?** Yes. If you are found to be unable to manage your Provider, have been found guilty of fraud or have violated program policies, a homemaker or other agency provider may be used to continue meeting your needs…."

FINDINGS

Complaint 1. Inadequate and inappropriate communication with client regarding issues of concern, protocol and service arrangements. Per regulations that govern the Department of Human Services (89 IL Amin. 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." Customer rights are assured in the Illinois Administrative Code regulations that govern the HSP (89 IL ADC 677.10) and states that "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." The customer in Section 677.40 has freedom of choice, "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." In part

d), "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."

Regarding Service Planning Limitations, Section 684.70 a) of the regulations state: "For customers served under a Medicaid Waiver program administered by DHS-DRS, all services listed on the Service Plan must be necessary to meet an unmet care need of the individual…" In Section 684.100 j) "HSP services shall be denied or terminated and case closure initiated at any time the customer fails to cooperate (e.g., refuses to complete and sign necessary forms, fails to keep appointments, fails to maintain adequate providers…."

The Code of Federal Regulations (42 CFR § 441.303) requires agencies such as the DRS to "furnish CMS with sufficient information to support the assurances required by § 441.302. Except as CMS may otherwise specify for particular waivers, the information must consist of the following: (b) A description of the records and information that will be maintained to support financial accountability."

Per the record, on 12/4/13, the Director of the Division of Rehabilitation Services sent a letter to the providers informing them of the implementation of the new Electronic Visit Verification (EVV) Timekeeping System on 1/1/14. "…Personal Assistants are required to call in at the beginning of the workday and call out at the end of their shift on the customer's phone. The reason to begin the calls is to verify the length of time the providers are working with their customer." The letter also states that failure to comply with this system can result in a delay of pay. On 3/17/14, follow up correspondence was sent on how to use the procedure with all of the customer's providers. The HRA called the EVV number from several different phones, at different times and it always connected to where the Santrax ID could be entered.

The Individual Provider Payment Policies IL488-2252 (R-6-12) which was signed by both the customer and the customer's PAs on 7/8/14, 10/10/14, and 11/15/14 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."

The Division of Rehabilitation Home Service Program sent a letter regarding each one of the customer's s 6 PAs on 7/8/14, per the correspondence record. It also reminds the customer that not using the EVV system can delay payment for her PAs. Notes on 8/1/14, 8/18/14, 8/19/14, 9/30/14 document efforts by DRS staff to encourage the customer to allow PAs to use the EVV system and information on how to use the system.

Service Planning Limitations, Section 684.100 j) of HSP regulations states that: "HSP services shall be denied or terminated and case closure initiated at any time the customer fails to cooperate (e.g., refuses to complete and sign necessary forms…." The Application and Redetermination Eligibility Agreement (R-10-07) signed by both in the DRS worker and the customer on 5/20/14 states: "…If I employ a personal assistant I understand it is my

responsibility to ensure the following: …All necessary documentation will be provided to the local HSP office prior to the start of employment. 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….” In this case several of the customer’s PAs had complained to DRS staff stating they were being asked to stay 6 hours a night, they would only be paid for 3 hours, and in one case only worked 5 minutes. All stated they slept on this shift most of the time they were being paid by the HSP program to work. The DRS’ HSP is subject to federal Centers of Medicare and Medicaid (CMS) mandates (42 CFR § 441.303) requiring the HSP to: “…furnish CMS with sufficient information … to support financial accountability.” The PAs stated that the customer would not allow access to her phone so they could use the EVV system. It is reasonable and possibly required of DRS HSP staff to question the customer regarding what her PAs are doing when they had received different stories from the PAs. This was documented by supervisors and staff. Based on the evidence, the complaint, **Inadequate and inappropriate communication with client regarding issues of concern, protocol and service arrangements <u>is unsubstantiated</u>**.

Regarding Complaint 2. Program forms not handled in a timely manner which impacts service provision, per the record, on 12/4/13, 1/1/14, 3/17/14 follow up correspondence was sent on how to use the EVV system. The Individual Provider Payment Policies IL488-2252 (R-6-12) which was signed by both the customer and the customer’s PAs on 7/8/14, 10/10/14, and 11/15/14 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.” The Division of Rehabilitation Home Service Program sent a letter regarding each one of the customer’s 6 PAs on 7/8/14 that it is near the date when the EVV system would be running to the fullest extent. It also reminds the customer that not using the EVV system can delay payment for her PAs. Notes on 8/1/14, 8/18/14, 8/19/14, 9/30/14 document efforts by DRS staff to encourage the customer to allow PAs to use the EVV system and information on how to use the system. Per the record there is no evidence that the customer or the PAs had followed the EVV process. The customer and the PAs had received documentation that failure to follow the EVV would delay payments.

It was documented in the record on 10/2/14, 10/6/14, 10/8/14 and 11/6/14 that there was discussion with the customer regarding illegible faxed time sheets instead of the original being submitted. If the time sheets were illegible they could not be processed.

Regarding the conversation on 11/17/14, both the customer and staff’s versions are similar. As far as the document being lost, the DRS staff never said she lost it, but that she had to look for it. This PA started on 11/15/14. Considering this worker has to process payments for 250-300 customers bi-monthly that would seem to be a reasonable comment. As it was the PA’s paperwork was processed on 11/18/14 and the customer was notified by 11/20/14. Regarding backdating, the HRA did not find policy or rules to substantiate the DRS failed in providing timely services. The Application and Redetermination Eligibility Agreement (R-10-07) signed by both in the DRS worker and the customer on 6/23/14 stated **“…All necessary documentation will be provided to the local HSP office prior to the start of employment….”** Per DHS Rules regarding Section 684.50, Service Plan Content, “…if the customer is receiving

PA services, the customer's plan for backup if the usual PA is not available to provide the services...." Per the customer's service plan there was back-up because she had 4 PAs. Based on the evidence, **Complaint 2. Program forms not handled in a timely manner which impacts service provision <u>is unsubstantiated.</u>**

The HRA takes this opportunity to make the following suggestions on both complaints:

1. Remind customers of their right to appeal decisions. DHS Rules in Section 677.80 state "The customer has the right to appeal an action or inaction on the part of HSP…"
2. Encourage staff to be mindful of the tone used when there are issues and disagreements between staff and customers. Regardless of who is right or wrong, DRS staff are the professionals.

Even though there is no documented abuse, the environment of PAs not getting paid sets the customer up for risks. Federal mandates (42 CFR § 441.302) requires states to provide certain assurance, including the following: "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." Current HSP requirements make worker background checks optional. For the benefit of the customer, to help ensure the welfare of the beneficiaries, and consistent with other agencies that provide services to persons with disabilities, the HRA would also like the DRS to consider the following suggestions:

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. 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 appreciates the full cooperation of the staff at the Department of Human Services, Division of Rehabilitation services during the investigation.