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Egyptian Human Rights Authority
Report of Findings
Choate Mental Health & Developmental Center
HRA #16-110-9012

The Human Rights Authority (HRA) of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving a complaint of possible rights violations in the care provided to recipients at Choate Mental Health & Developmental Center in Anna, Illinois. The reported allegations are as follows:

1. **Recipients were given medication without informed consent being given.**
2. **The facility failed to file a petition for guardianship for recipients who lacked decisional capacity and were unable to consent to treatment.**

If the allegations are substantiated, they would violate protections under the Mental Health and Developmental Disabilities Code (405 ILCS 5/2 et al) and the Probate Act (755 ILCS 5/11a et al).

Choate Mental Health & Developmental Center is a facility with 79 beds devoted to male and female residents for both civil and forensic mental health admissions. The census at the time of the investigation was 173 on the developmental disabilities units. The allegations were discussed with administrative staff and relevant policies were reviewed. The HRA obtained releases from newly appointed guardians on two of the five recipients and sections of those recipients' records were reviewed with authorization. The other three recipients were still in the process of obtaining a new guardian at the time of our investigation therefore, those charts were not reviewed since they lacked capacity to give the HRA consent.

FINDINGS

I. Interviews:

A. Facility Director and the Residential Services Director: This allegation involved 5 recipients whose guardians had passed away and a successor guardian had not been appointed in several months to years in some cases. However, these recipients remained at the facility and medication was continually given to one of the recipients who routinely took medications. The directors explained that this situation was discovered by their staff and once discovered, action was taken to complete appropriate paperwork to get new guardians appointed and a Petition was filed with the court to obtain permission to continue administering medications for the one recipient who took medications. The facility had consent from the guardian for medications to be administered prior to the guardian's death and the facility contended that it would do more harm to stop the medications than to continue administering them while a new guardian was being appointed. Since the recipient did not object to the medications, the facility did not feel that it was appropriate to petition the court for involuntary treatment. The facility had no policy in place to address this specific issue because it had never been an issue before. The facility was

later advised that they have to file a petition for medication when the current consent becomes invalid therefore, a petition was filed at that point. The other recipient did not take medication.

Once it was discovered that the guardians had died, the facility was going to file emergency petitions for guardianship but was told that it was not an emergency situation, even though no successor guardians were in place. The facility's policy states when a guardian dies and no successor is named, then the facility must petition to have a successor guardian appointed. The facility did that but it took 18 months for that process to be completed by the Attorney General's (AG) office. The facility has to use the AG according to their directives. The AG seeks out family members that would be willing to act as a successor and if none are found then the Office of State Guardian (OSG) is appointed. The directors were not sure how long this process should normally take and explained they just receive notification once the OSG or other successor guardian is appointed.

The directors also explained that once it was discovered that these two recipients' guardians had died, they conducted an audit to ensure that everyone else had active guardians in place. During the audit it was discovered that 4 more recipients' guardians had passed away and corrective steps were taken in those situations as well. It was explained that typical admission paperwork is only done once per year on the civil units because the signed admissions are good for a year and they would not be reviewed unless the facility needed consent for something or needed to notify the guardian of something else involving the recipients. Therefore, if a guardian is not very involved in the recipient's life, it is possible that a guardian could pass away and the staff would not be aware until it was time for the annual paperwork to be renewed. Since these issues, the facility has put new procedures in place to minimize the chances of this happening again. Now, if a successor guardian is not named, staff know to encourage the current guardian to name a successor should something happen to them. Medication consents are reviewed every 3 months during the medication review meeting. If medication consent is coming due or is needed at that time and cannot be obtained from the guardian in a timely fashion, the Psychiatrist and Medical Physician will fill out a petition for medication over objection. The Behavior Analyst is responsible for tracking medications and when a new consent is due. There is no set person to notify a Physician on the status of a recipient's guardianship however, treatment teams meet every morning which includes the Social Worker, Direct Service Person, Qualified Intellectual Disabilities Professional, Nurse, Unit Administrator, Residential Services, Vocational Services, Behavior Analyst and Psychologist. The HRA questioned what the specific process was to have a successor guardian appointed. The directors gave us the general directives and referred us to a social worker for more specifics. It was explained that the Social Worker completes the paperwork and sends it to the AG. The AG reviews the paperwork and seeks out family to see if anyone is able and willing to act as successor guardian. If not, then the AG contacts the Office of State Guardian (OSG). If family is identified, the family will file a Petition for Guardianship. The AG can petition on their behalf if the family cannot afford the attorney fees to have a new Petition for Guardianship completed.

B. Social Worker: The HRA also interviewed a Social Worker to determine the process that is followed by Choate when they Petition for a successor guardian. The process is as follows:

- If the social worker is making a referral to the OSG, he or she sends the Department of Human Services (DHS) attorney an email notifying that Choate plans to make a referral for successor guardian. For a family guardianship, the social worker contacts the attorney first for direction.

- For OSG referrals, the social worker completes the referral packet and gathers the documents listed on the checklist (a total of 10 items). This takes some time because the social worker has to list any remaining family along with their contact information and document contact with any remaining family regarding successor guardianship. If the family declines guardianship, the social worker is to obtain a statement from them declining as guardian if possible.
- A physician's report also has to be done less than 14 days prior to the date the packet is sent to the OSG. In these cases, a death certificate of the original guardian also had to be obtained, which takes some time and documentation from the recipient's chart also has to be gathered such as progress reports, medication records, evaluations etc.
- When all documents are collected, the social worker writes a cover letter to the OSG, makes photocopies of everything and mails it to the OSG.
- The OSG will call when they have reviewed the referral packet and advise if they have accepted the case or not. After they accept the case, the OSG referral packet is copied and sent to the DHS attorney along with a cover letter with the OSG contact person listed.
- Once the DHS attorney has reviewed the case, he will give it to the AG office and one of their lawyers will contact the social worker to begin Petitioning the court. The AG lawyer will do the petition but the social worker may be asked to testify at the hearing but that is not always needed.

C. Attorney General (AG): A representative from the AG's office that the HRA spoke with stated that Recipient 1's case was opened 1/16/15 and again on 2/20/15. There were two referrals and there was some confusion as to which county was involved. According to their records, his case was assigned to an attorney on 4/26/15, but he did state that it is possible the case was assigned to an attorney prior to that date and then transferred at a later date to this attorney. The initial referral letters were sent 2-3 days prior to the case being opened at the AG's office. There was no explanation given for the 2 month delay from the case being referred until when an attorney was appointed other than the confusion about which county was involved. The AG's office provided copies of the Petition for Appointment of Successor Guardian signed by the Assistant Attorney General and verified by a Choate Social Worker on 3/22/16 and filed 3/24/16. An Order Appointing Successor Guardian was granted and filed on 3/24/16.

As for Recipient 2, his file with the AG's office was opened on 2/10/16 and assigned to an attorney that same day. The case was referred to their office on 1/27/16. The AG's office provided copies of the Petition for Appointment of Successor Guardian which was signed by the Assistant Attorney General and verified by a Social Worker at Choate on 4/4/16 and filed 4/8/16. An Order Appointing Successor Guardian was granted and filed 4/11/16. The representative from the AG's office did not know why there was a 2 1/2 month delay in receiving the case and the petition being filed.

RECORD REVIEW

The following timelines for these two recipients' guardianships were provided to the HRA by the Residential Services Director upon request.

- Recipient 1: The guardian passed away in July, 2014. After the social worker was made aware of the guardian's death (no specific timeframe was given) communication began with a family member about accepting successor guardianship. The family member eventually declined so the process of getting the OSG appointment began (no specific date was provided as to when this process began.) According to the social worker involved in this case, this can be a lengthy process taking two months or more depending on what documentation has to be obtained. The OSG approved the referral on January 8, 2015. Information was submitted to DHS legal on February 5, 2015. The Petition was filed by the AG's office on March 22, 2016 and granted 2 days later. Therefore this recipient was without a guardian from July, 2014 until March, 2016. The last signed consent found in the recipient's chart was dated 9/20/13 which would have expired 9/20/14.

- Recipient 2: The guardian passed away in November, 2013. After the social worker was made aware of the guardian's death (no timeframe given), communication with a family member began. The family member expressed interest in becoming the successor guardian. Communications between the social worker and the family member went on from July 29, 2014 to June 5, 2015. A certified letter was sent on June 5, 2015 outlining that the enclosed documents had to be completed in order to transfer guardianship. On July 9, 2015 the letter was returned to sender as "unclaimed, unable to forward." Attempts to contact that family member via telephone were unsuccessful as numbers were either disconnected or incorrect. An OSG referral was started and sent. The OSG approved the referral October 26, 2015 and information was submitted to DHS legal. Communications between DHS legal and the social worker continued from January 26, 2016 through March 9, 2016 to ensure that all needed materials were sent. The Petition was filed by the AG's office March 28, 2016 and granted April 11, 2016. Therefore this recipient was without a guardian from November, 2013 until April, 2016.

Recipient 1 Chart: This recipient was housed on the forensic unit as unfit to stand trial (UST) without the expectation of becoming fit. Therefore he has an "out date" of 2/27/2032. The last signed consent for the Behavior Intervention Plan found in the recipient's chart was dated 9/20/13 for restrictive procedures which gave permission for the recipient to be kept on a locked unit, with 15 minute bed checks during the night. The HRA also found 6 Physician Authorization for Treatment forms which were signed by 6 different physicians on different dates ranging from December, 2014 through February 2016. All forms stated that *"a delay for the purpose of obtaining consent for the appropriate treatment of recipient [name] would adversely and substantially affect the health of this recipient. Therefore, since the above recipient is not capable of giving an informed consent, the above statute allows such procedures to be performed."* The form referred to section 2-111 of the Mental Health Code which states *"A medical or dental emergency exists when delay for the purpose of obtaining consent would endanger the life or adversely and substantially affect the health of a recipient of services. When a medical or dental emergency exists, if a physician or licensed dentist who examines a recipient determines that the recipient is not capable of giving informed consent, essential medical or*

dental procedures may be performed without consent. No physician nor licensed dentist shall be liable for a non-negligent good faith determination that a medical or dental emergency exists or a non-negligent good faith determination that the recipient is not capable of giving informed consent." An immunization/vaccine administration/consent for services form was found showing that a Tubersol/Tuberculin immunization was administered on 6/3/14. There was no signature on the consent for services line. A February, 2016 Medication Administration Record (MAR) documented that the recipient was given the following medications: Sodium Chloride, Docusate Sodium, Vitamin, Miralax, Levothyroxine (thyroid), Lacosamide (anticonvulsant) and Lamictal (anticonvulsant). The monthly review dated 9/17/14 has a signature from the Qualified Intellectual Disabilities Professional (QIDP). The Individual Support Plan dated 3/9/15 contained signatures from the QIDP, Nurse, Psychologist, Physician, Direct Care Staff, Social worker and the Unit Director. The recipient's signature was also on the form but there was no guardian signature. The Individual Support Plan dated 3/10/16 was signed by the recipient, the QIDP, a nurse, a Physician, the Unit Director, a Direct Care Staff person and the Social Worker; no guardian signature was on this form.

Recipient 2 Chart: This recipient resides on a different level of care unit than recipient 1 and had a social worker assigned to him so there was more documentation on the successor guardianship process that could be found in the chart of recipient 1. This recipient does not take any medications. There was a monthly review form dated September, 2015 that was signed by the QIDP. A letter dated 12/19/14 was addressed to the recipient's family member who had expressed an interest in becoming successor guardian. The letter from a social worker stated that forms were enclosed that had to be notarized and returned to proceed with the transfer of guardianship. Another letter to this same family member dated 3/3/15 again documented that the same forms were sent and the family was told that they must be returned in order to proceed with transfer of guardianship. Another letter dated 6/5/15 was sent to the family member and stated that it was the third set of papers that had been sent and noted that this was their "FINAL WARNING" stating that if the paperwork was not returned within 30 days another guardian would be sought. The HRA also reviewed 3 pages of case notes dated 5/5/16 from the social worker that documented attempts to obtain a successor guardian for this recipient:

- Guardian deceased November, 2013.
- 6/24/14 new social worker took over case requested status of successor guardianship was told to proceed with petition and certificate for judicial admission if guardianship was not resolved petition and certificate completed on 6/25/14.
- 7/29/14 recipient's family member called expressing interest in guardianship.
- 9/12/14 received email from DHS legal requesting copy of death certificate which was obtained from family member and sent on 10/9/14.
- 12/22/14 Petition for Guardianship along with required paperwork that was mailed to potential successor guardian on 12/19/14 was also emailed to DHS legal.
- 3/3/15 resent paperwork to potential successor guardian for signature and return.
- 4/13/15 called potential successor guardian and was told paperwork was notarized but not mailed yet and assured it would go out that day.
- 5/6/15 attempted to contact potential successor guardian reached voice mail and left message.

- 5/12/15 received call from potential successor guardian who assured that paperwork would be sent certified mail on 5/18/15.
- 5/26/15 called potential successor guardian was told paperwork was mailed 5/22/15 but was sent regular mail not certified.
- 6/5/15 letter was sent to potential successor guardian via certified mail stating forms had to be completed and returned for guardianship transfer and gave 30 day deadline.
- 7/9/15 certified letter was received "return to sender, unclaimed unable to forward."
- 8/4/15 social worker and QIDP attempted to call number for potential successor guardian reached a recording "the number dialed is incorrect."
- 10/13/15 letter and packet mailed to Office of State Guardian via certified mail.
- "Beginning of the year (2016)" social worker contacted by OSG notifying guardianship was accepted on 10/26/15 and was at DHS legal.
- 1/25/16 social worker emailed DHS legal discovered they were waiting on OSG referral packet that had not been sent yet along with physician's report and completed petition.
- 2/5/16 emailed DHS legal was assured all necessary information had been received.
- 2/8/16 received email that Assistant Attorney General (AAG) had been appointed to the case.
- 3/9/16 social worker emailed DHS legal to check status was given contact information for AAG.
- 3/15/16 spoke with AG office left voice mail for AAG assigned to case.
- 3/28/16 received Notice to the Court of Suggestion of Death, Petition for Appointment of Successor Guardian, Verification, Certificate of Service and Order to review. A correction to the social worker's title was requested.
- 3/30/16 received corrected documentation, signed, notarized and scanned back to AAG on 4/4/16.
- 4/11/16 Order of appointment of successor guardian received.

POLICY REVIEW

Choate Developmental Center's policy on Guardianship states *"All individuals served by the Clyde L. Choate Developmental Center will be evaluated for their need for guardianship (limited, plenary, temporary or no guardianship.) The individual's preferences will be solicited and interested family, friends or interested persons will be contacted to inquire about their interest in serving as the guardian. The Office of State Guardian will be contacted as a last resort to serve in this capacity…Choate Developmental Center will facilitate actions to execute proper legal documents…when the Interdisciplinary Team has determined the need for guardianship of a person and/or estate of an individual served…When requesting that the Office of State Guardianship, or family member, serve as the guardian for an individual, the process is as follows for a guardianship case to be brought before a court for adjudication: 1. Upon notification by, or in conjunction with the IDT, the Social Worker makes contact with the Department of Human Services, Assistant General Counsel…by sending an email explaining that there is a plan to make a referral to the Office of State Guardianship to request that OSG become the guardian, or that the Social Worker will be assisting a family member with seeking*

guardianship. a. For family guardianship as well as successor guardianship, the Assistant General Counsel office…will provide direction b. for OSG guardianship; refer to the OSG checklist…"

Choate Developmental Center's policy on psychotropic medication states under guiding principles that *"…Guiding Principles: 1. A psychotropic medication is any drug prescribed or adjusted to stabilize or improve a psychiatric diagnosis or behavioral symptom and should be identified as such…8. Written informed consent must be obtained before the administration of any psychotropic medication and must be regularly reviewed…12. Periodic determinations must be made to assure the ongoing necessity for psychotropic medication and that the lowest optimal effective dose is used…Specific Guidelines: 1. All medication used for psychotropic purposes must be clearly identified on order entry and renewed monthly…8. Full informed consent from the individual and/or guardian must be clearly documented and renewed annually…12. All attempts should be made to minimize the use of antipsychotic/neuroleptic agents. When necessary, atypical agents are preferred…19. Physicians must review and renew all psychoactive medications monthly and must include data based comments on the effectiveness of their use…"*

STATUTES

Pursuant to the Mental Health and Developmental Disabilities Code (405 ILCS 5/2-102):

"A recipient of services shall be provided with adequate and humane care and services in the least restrictive environment, pursuant to an individual services plan. The Plan shall be formulated and periodically reviewed with the participation of the recipient to the extent feasible and the recipient's guardian, the recipient's substitute decision maker, if any, or any other individual designated in writing by the recipient. In determining whether care and services are being provided in the least restrictive environment, the facility shall consider the views of the recipient, if any, concerning the treatment being provided…If the services include the administration of electroconvulsive therapy or psychotropic medication, the physician or the physician's designee shall advise the recipient, in writing, of the side effects, risks, and benefits of the treatment, as well as alternatives to the proposed treatment, to the extent such advice is consistent with the recipient's ability to understand the information communicated. The physician shall determine and state in writing whether the recipient has the capacity to make a reasoned decision about the treatment. The physician or the physician's designee shall provide to the recipient's substitute decision maker, if any, the same written information that is required to be presented to the recipient in writing. If the recipient lacks the capacity to make a reasoned decision about the treatment, the treatment may be administered only (i) pursuant to the provisions of Section 2-107 or 2-107.1 or (ii) pursuant to a power of attorney for health care under the Powers of Attorney for Health Care Law or a declaration for mental health treatment under the Mental Health Treatment Preference Declaration Act. A surrogate decision maker, other than a court appointed guardian, under the Health Care Surrogate Act may not consent to the administration of electroconvulsive therapy or psychotropic medication. A surrogate may, however, petition for administration of such treatment pursuant to this Act. If the recipient is under guardianship and the guardian is authorized to consent to the administration of electroconvulsive therapy or psychotropic medication pursuant to subsection (c) of Section 2-107.1 of this Code, the physician shall advise the guardian in writing of the side effects and risks of the treatment, alternatives to the proposed treatment, and the risks and benefits of the treatment. A qualified professional shall be responsible for overseeing the implementation of

such plan. Such care and treatment shall make reasonable accommodation of any physical disability of the recipient, including but not limited to the regular use of sign language for any hearing impaired individual for whom sign language is a primary mode of communication."

Section 2-107 states *"An adult recipient of services or the recipient's guardian, if the recipient is under guardianship, and the recipient's substitute decision maker, if any, must be informed of the recipient's right to refuse medication or electroconvulsive therapy. The recipient and the recipient's guardian or substitute decision maker shall be given the opportunity to refuse generally accepted mental health or developmental disability services, including but not limited to medication or electroconvulsive therapy. If such services are refused, they shall not be given unless such services are necessary to prevent the recipient from causing serious and imminent physical harm to the recipient or others and no less restrictive alternative is available. The facility director shall inform a recipient, guardian, or substitute decision maker, if any, who refuses such services of alternate services available and the risks of such alternate services, as well as the possible consequences to the recipient of refusal of such services."*

(b) Psychotropic medication or electroconvulsive therapy may be administered under this Section for up to 24 hours only if the circumstances leading up to the need for emergency treatment are set forth in writing in the recipient's record.

(c) Administration of medication or electroconvulsive therapy may not be continued unless the need for such treatment is redetermined at least every 24 hours based upon a personal examination of the recipient by a physician or a nurse under the supervision of a physician and the circumstances demonstrating that need are set forth in writing in the recipient's record.

(d) Neither psychotropic medication nor electroconvulsive therapy may be administered under this Section for a period in excess of 72 hours, excluding Saturdays, Sundays, and holidays, unless a petition is filed under Section 2-107.1 and the treatment continues to be necessary under subsection (a) of this Section. Once the petition has been filed, treatment may continue in compliance with subsections (a), (b), and (c) of this Section until the final outcome of the hearing on the petition.

(e) The Department shall issue rules designed to insure that in State-operated mental health facilities psychotropic medication and electroconvulsive therapy are administered in accordance with this Section and only when appropriately authorized and monitored by a physician or a nurse under the supervision of a physician in accordance with accepted medical practice. The facility director of each mental health facility not operated by the State shall issue rules designed to insure that in that facility psychotropic medication and electroconvulsive therapy are administered in accordance with this Section and only when appropriately authorized and monitored by a physician or a nurse under the supervision of a physician in accordance with accepted medical practice. Such rules shall be available for public inspection and copying during normal business hours.

(f) The provisions of this Section with respect to the emergency administration of psychotropic medication and electroconvulsive therapy do not apply to facilities licensed under the Nursing Home Care Act,1 the Specialized Mental Health Rehabilitation Act of 2013, the ID/DD Community Care Act, or the MC/DD Act.2

(g) Under no circumstances may long-acting psychotropic medications be administered under this Section.

(h) Whenever psychotropic medication or electroconvulsive therapy is refused pursuant to subsection (a) of this Section at least once that day, the physician shall determine and state in writing the reasons why the recipient did not meet the criteria for administration of medication

or electroconvulsive therapy under subsection (a) and whether the recipient meets the standard for administration of psychotropic medication or electroconvulsive therapy under Section 2-107.1 of this Code. If the physician determines that the recipient meets the standard for administration of psychotropic medication or electroconvulsive therapy under Section 2-107.1, the facility director or his or her designee shall petition the court for administration of psychotropic medication or electroconvulsive therapy pursuant to that Section unless the facility director or his or her designee states in writing in the recipient's record why the filing of such a petition is not warranted. This subsection (h) applies only to State-operated mental health facilities.

(i) The Department shall conduct annual trainings for all physicians and registered nurses working in State-operated mental health facilities on the appropriate use of emergency administration of psychotropic medication and electroconvulsive therapy, standards for their use, and the methods of authorization under this Section."

5/2-107.1. Administration of psychotropic medication and electroconvulsive therapy upon application to a court:

"(a) (Blank) (a-5) Notwithstanding the provisions of Section 2-107 of this Code, psychotropic medication and electroconvulsive therapy may be administered to an adult recipient of services on an inpatient or outpatient basis without the informed consent of the recipient under the following standards:

(1) Any person 18 years of age or older, including any guardian, may petition the circuit court for an order authorizing the administration of psychotropic medication and electroconvulsive therapy to a recipient of services. The petition shall state that the petitioner has made a good faith attempt to determine whether the recipient has executed a power of attorney for health care under the Powers of Attorney for Health Care Law or a declaration for mental health treatment under the Mental Health Treatment Preference Declaration Act and to obtain copies of these instruments if they exist. If either of the above-named instruments is available to the petitioner, the instrument or a copy of the instrument shall be attached to the petition as an exhibit. The petitioner shall deliver a copy of the petition, and notice of the time and place of the hearing, to the respondent, his or her attorney, any known agent or attorney-in-fact, if any, and the guardian, if any, no later than days prior to the date of the hearing. Service of the petition and notice of the time and place of the hearing may be made by transmitting them via facsimile machine to the respondent or other party. Upon receipt of the petition and notice, the party served, or the person delivering the petition and notice to the party served, shall acknowledge service. If the party sending the petition and notice does not receive acknowledgement of service within 24 hours, service must be made by personal service.

The petition may include a request that the court authorize such testing and procedures as may be essential for the safe and effective administration of the psychotropic medication or electroconvulsive therapy sought to be administered, but only where the petition sets forth the specific testing and procedures sought to be administered.

If a hearing is requested to be held immediately following the hearing on a petition for involuntary admission, then the notice requirement shall be the same as that for the hearing on the petition for involuntary admission, and the petition filed pursuant to this Section shall be filed with the petition for involuntary admission….

(4) Psychotropic medication and electroconvulsive therapy may be administered to the recipient if and only if it has been determined by clear and convincing evidence that all of the following factors are present. In determining whether a person meets the criteria specified in the

following paragraphs (A) through (G), the court may consider evidence of the person's history of serious violence, repeated past pattern of specific behavior, actions related to the person's illness, or past outcomes of various treatment options.

(A) That the recipient has a serious mental illness or developmental disability.

(B) That because of said mental illness or developmental disability, the recipient currently exhibits any one of the following: (i) deterioration of his or her ability to function, as compared to the recipient's ability to function prior to the current onset of symptoms of the mental illness or disability for which treatment is presently sought, (ii) suffering, or (iii) threatening behavior.

(C) That the illness or disability has existed for a period marked by the continuing presence of the symptoms set forth in item (B) of this subdivision (4) or the repeated episodic occurrence of these symptoms.

(D) That the benefits of the treatment outweigh the harm.

(E) That the recipient lacks the capacity to make a reasoned decision about the treatment.

(F) That other less restrictive services have been explored and found inappropriate.

(G) If the petition seeks authorization for testing and other procedures, that such testing and procedures are essential for the safe and effective administration of the treatment.

(5) In no event shall an order issued under this Section be effective for more than 90 days. A second 90-day period of involuntary treatment may be authorized pursuant to a hearing that complies with the standards and procedures of this subsection (a-5). Thereafter, additional 180-day periods of involuntary treatment may be authorized pursuant to the standards and procedures of this Section without limit. If a new petition to authorize the administration of psychotropic medication or electroconvulsive therapy is filed at least 15 days prior to the expiration of the prior order, and if any continuance of the hearing is agreed to by the recipient, the administration of the treatment may continue in accordance with the prior order pending the completion of a hearing under this Section.

(6) An order issued under this subsection (a-5) shall designate the persons authorized to administer the treatment under the standards and procedures of this subsection (a-5). Those persons shall have complete discretion not to administer any treatment authorized under this Section. The order shall also specify the medications and the anticipated range of dosages that have been authorized and may include a list of any alternative medications and range of dosages deemed necessary.

(a-10) The court may, in its discretion, appoint a guardian ad litem for a recipient before the court or authorize an existing guardian of the person to monitor treatment and compliance with court orders under this Section.

(b) A guardian may be authorized to consent to the administration of psychotropic medication or electroconvulsive therapy to an objecting recipient only under the standards and procedures of subsection (a-5).

(c) Notwithstanding any other provision of this Section, a guardian may consent to the administration of psychotropic medication or electroconvulsive therapy to a non-objecting recipient under Article XI a of the Probate Act of 1975.4

(d) Nothing in this Section shall prevent the administration of psychotropic medication or electroconvulsive therapy to recipients in an emergency under Section 2-107 of this Act.

(e) Notwithstanding any of the provisions of this Section, psychotropic medication or electroconvulsive therapy may be administered pursuant to a power of attorney for health care

under the Powers of Attorney for Health Care Law or a declaration for mental health treatment under the Mental Health Treatment Preference Declaration Act.

(f) The Department shall conduct annual trainings for physicians and registered nurses working in State-operated mental health facilities on the appropriate use of psychotropic medication and electroconvulsive therapy, standards for their use, and the preparation of court petitions under this Section."

The Probate Act (755 ILCS 5/11a et al) outlines appointing of a guardian as follows:

"11a-3 Adjudication of disability; Power to appoint guardian. (a) Upon the filing of a petition by a reputable person or by the alleged person with a disability himself or on its own motion, the court may adjudge a person to be a person with a disability, but only if it has been demonstrated by clear and convincing evidence that the person is a person with a disability as defined in Section 11a-2. If the court adjudges a person to be a person with a disability, the court may appoint (1) a guardian of his person, if it has been demonstrated by clear and convincing evidence that because of his disability he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the care of his person, or (2) a guardian of his estate, if it has been demonstrated by clear and convincing evidence that because of his disability he is unable to manage his estate or financial affairs, or (3) a guardian of his person and of his estate.

(b) Guardianship shall be utilized only as is necessary to promote the well-being of the person with a disability, to protect him from neglect, exploitation, or abuse, and to encourage development of his maximum self-reliance and independence. Guardianship shall be ordered only to the extent necessitated by the individual's actual mental, physical and adaptive limitations."

"11a-4. Temporary guardian. (a) Prior to the appointment of a guardian under this Article, pending an appeal in relation to the appointment, or pending the completion of a citation proceeding brought pursuant to Section 23-3 of this Act, or upon a guardian's death, incapacity, or resignation, the court may appoint a temporary guardian upon a showing of the necessity therefor for the immediate welfare and protection of the alleged person with a disability or his or her estate on such notice and subject to such conditions as the court may prescribe. In determining the necessity for temporary guardianship, the immediate welfare and protection of the alleged person with a disability and his or her estate shall be of paramount concern, and the interests of the petitioner, any care provider, or any other party shall not outweigh the interests of the alleged person with a disability. The temporary guardian shall have the limited powers and duties of a guardian of the person or of the estate which are specifically enumerated by court order. The court order shall state the actual harm identified by the court that necessitates temporary guardianship or any extension thereof.

(b) The temporary guardianship shall expire within 60 days after the appointment or whenever a guardian is regularly appointed, whichever occurs first. No extension shall be granted except:

(1) In a case where there has been an adjudication of disability, an extension shall be granted:

(i) pending the disposition on appeal of an adjudication of disability;

(ii) pending the completion of a citation proceeding brought pursuant to Section 23-3;

(iii) pending the appointment of a successor guardian in a case where the former guardian has resigned, has become incapacitated, or is deceased; or

(iv) where the guardian's powers have been suspended pursuant to a court order.

(2) In a case where there has not been an adjudication of disability, an extension shall be granted pending the disposition of a petition brought pursuant to Section 11a-8 so long as the court finds it is in the best interest of the alleged person with a disability to extend the temporary guardianship so as to protect the alleged person with a disability from any potential abuse, neglect, self-neglect, exploitation, or other harm and such extension lasts no more than 120 days from the date the temporary guardian was originally appointed.
The ward shall have the right any time after the appointment of a temporary guardian is made to petition the court to revoke the appointment of the temporary guardian."
The Probate Act (755 ILCS 5/11a-15 Successor guardian) further states that *"Upon the death, incapacity, resignation or removal of a guardian of the estate or person of a living ward, the court shall appoint a successor guardian or terminate the adjudication of disability. The powers and duties of the successor guardian shall be the same as those of the predecessor guardian unless otherwise modified."*

Conclusion

The first allegation was that recipients were given medication without consent from a guardian. Upon investigation the HRA discovered that Recipient 1 was given medication after the guardian had passed away in July, 2014 and the last release that was signed was invalid after September, 2014. The Mental Health Code states that if the recipient lacks the capacity to make a reasoned decision about the treatment, the treatment may be administered only upon Petition and Order of the court, or pursuant to a power of attorney for health care under the Powers of Attorney for Health Care Law or a declaration for mental health treatment under the Mental Health Treatment Preference Declaration Act. Psychotropic medication can be administered in an emergency situation if the patient is at risk of serious and imminent physical harm to himself or others. However, medication cannot be administered for a period in excess of 72 hours, excluding Saturdays, Sundays, and holidays, unless a petition is filed with the court and the emergency continues to exist. The Code further states that *"A surrogate decision maker, other than a court appointed guardian, under the Health Care Surrogate Act may not consent to the administration of electroconvulsive therapy or psychotropic medication. A surrogate may, however, petition for administration of such treatment pursuant to this Act."* Therefore, even though 6 physicians had completed Authorization for Treatment forms which stated that a delay for the purpose of obtaining consent for the treatment would adversely and substantially affect his health and that the recipient is not capable of giving an informed consent to allow such treatment, the physician forms should have been used when presenting the case to the Court for ruling on medication administration and not in lieu of a consent or Court Order. Therefore, this allegation is **substantiated**. The following **recommendations** are made:

1. **In the future, no medication should be given to a patient without informed consent except in an emergency situation as allowed under the Mental Health Code (405 ILCS 5/2-107 and 107.1) or by Petition to the Court.**

2. **Retrain staff on the Mental Health Code requirements regarding medication administration and necessity for Petitions to the Court in situations where a guardian's signature cannot be obtained. Administration should also ensure that annual trainings are provided for physicians and registered nurses on the appropriate use of psychotropic medication, standards for their use, and the**

preparation of court petitions as required by the Mental Health Code (405 ILCS 5/2-107.1)

The second allegation was that the facility failed to file a petition for guardianship for recipients who lacked decisional capacity and were unable to consent to treatment. The first recipient's guardian passed away on 7/9/14. The last signed release was dated 9/20/13 expiring a year later. A guardian was not appointed until 3/24/16 so this recipient was without a guardian for approximately 20 months. The HRA discovered that Choate staff began communication with a family member about accepting guardianship who eventually declined and then the process began for OSG appointment. Approximately 1 year passed from the time that the Department of Human Services legal received information and when the Attorney General's office filed the petition and an order was granted for successor guardian (February, 2015 to March, 2016).

The second recipient's guardian passed away on 11/11/13 and the Social Worker began discussions with a family member in July, 2014 through June, 2015 about possible successor guardianship. After communications with this family member ceased, a referral was started for OSG appointment which was approved in October, 2015, referred to DHS Legal in January, 2016. Communication between DHS legal and the Social Worker continued through March, 2016 and the Petition was filed by the AG's office 3/28/16 and granted on 4/11/16. This recipient was without a guardian for approximately 28 months.

The Probate Act states that *"upon a guardian's death, incapacity, or resignation, the court may appoint a temporary guardian upon a showing of the necessity therefore for the immediate welfare and protection of the alleged person with a disability."* Although Choate staff began contacting family members once it was discovered that the guardians had passed away, nothing was initiated upon the guardians' death for the court to appoint a temporary guardian until a successor could be appointed as required by the Probate Act. Therefore, this allegation is **substantiated.** The following **recommendations** are made.

1. **The HRA acknowledges that the facility has put new procedures in place to help prevent this situation from occurring again. The HRA recommends that administration revise the guardianship policy to include this new procedure, train staff on said policy and provide the HRA with a copy of this policy once completed.**

2. **In the future upon discovery of a guardian's death when no successor is named, staff should immediately begin procedures to have a temporary guardian appointed while the process of appointing a successor is finalized.**

The following **suggestion** is also offered:

1. Social Workers should consider contacting guardians more frequently than once per year when annual paperwork is due to provide updates on the patient's status and to keep the communication lines open with guardians which could possibly encourage more involvement by the guardian, assist with the guardian's annual report to the court and prevent delays in successor guardians being appointed upon a guardian's death.