FOR IMMEDIATE RELEASE

HUMAN RIGHTS AUTHORITY – METRO EAST REGION
REPORT OF FINDINGS

Case #17-070-9003
Royal Living Center

INTRODUCTION

The Human Rights Authority (HRA) opened an investigation after receiving complaint of a possible rights violation involving services with Royal Living Center in Belleville. The allegation was as follows:

1. The facility violates consumers' rights when it fails to make reasonable attempts to obtain informed consent from appointed guardians before making medication changes.

If found substantiated, the allegation would violate the Mental Health and Developmental Disabilities Code (405 ILCS 5/2), the Illinois Probate Act (755 ILCS 5/11a-23) and the Illinois Department of Human Services Rule 115 (59 Illinois Administration Code 115.220, 230).

The Center has 7 Community Integrated Living Arrangements (CILAs) within a 10-mile radius of one another and provides services for a total of 30 residents. The facilities employ 42 Direct Support Personnel, 2 Qualified Intellectual Disabilities Professionals (QIDP), 2 supervisors, 1 Registered Nurse Trainer.

Complaint Statement

The allegations state that the Center failed to inform and obtain consent from a guardian after each medication change. In January 2016, in accordance with state regulations, a client's Lithium was decreased with guardian consent. The client did not tolerate the decrease and the prior dose was restored with guardian consent. The decrease was again ordered months later and the guardian was not notified of this change in medication.

Interview with Staff (5/10/2017)

Prior to the interview, the HRA called and spoke with a QIDP from the Center who acknowledged that guardians are not always notified of changes and stated that the rules they follow (115 & 116) do not require them to do so.

During the onsite interview, staff admitted they did not get consent from the guardian before decreasing the medication, which they stated was because they were aware that the guardian was not in favor of the change. Staff alleges that the physician recommended and prescribed the psychotropic decrease because the Lithium level for this client was toxic. The staff stated the guardian would have refused the decrease because the guardian believed previous decreases were unsuccessful and the client became physically aggressive.

Staff stated their general policy is that only a QIDP interacts with family members or guardians and that the QIDP makes all calls regarding medication changes or incidents. However, they clarified that guardian notification is only made for medical changes when a psychotropic increase is ordered and incidents are only reported if they are serious or severe in nature. There is no staff training on guardian notification because only the QIDP, and no other staff, has contact with guardians and family members. Necessary notification is noted in a patient's chart, as well as medication consent documentation. If changes to medications are made, the QIDP handles all guardian notifications and documents these changes in patient charts. A guardian is kept appraised of a resident's condition through the QIDP only if the QIDP deems it warranted. Staff stated that if a guardian disagrees with a medication or if a recipient or guardian refuses a medication, the staff is obligated to follow the doctor's orders. Medication changes are carried out by a nurse coming to the home and changing the medication on the Medication Administration Record.

Staff stated guardians are included in treatment planning if they express interest and medication is reviewed at treatment planning meetings. Staff is made aware of resident guardianship through chart notation but it is not posted anywhere else.

FINDINGS

Complaint #1 — Violation of consumers' rights by failure to make reasonable attempts to obtain informed consent from appointed guardians before making medication changes.

No Guardian Notification policy, guardian informed consent policy, or trainings regarding guardian notification were available for review because no documentation exists. Because staff admitted to the lack of guardian consent for a resident's medication reduction, no resident's records were requested.

The Mental Health and Disabilities Code 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" (405 Ill. Comp. Stat. Ann. 5/2-107).

Regarding medication administration, the Code requires that, "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" (405 Ill. Comp. Stat. Ann. 5/2-102a-5). Additionally, "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" (405 Ill. Comp. Stat. Ann. 5/2-102).

The Standards and Licensure Requirements for Community Integrated Living Arrangements states the need for a community support team (CST) that includes the QIDP, the individual, the individual's guardian or parent, and the providers of services. This team "shall be responsible for preparing, revising, documenting and implementing a single individual integrated services plan for each individual", which includes health services, and to "convene the CST as required by Section 115.230 to revise the services plan as part of the interdisciplinary process" (Ill. Admin. Code tit. 59, § 115.230, 220).

The Mental Health Code also provides that "…the facility director of each service provider shall adopt in writing such policies and procedures as are necessary to implement this Chapter. Such policies and procedures may amplify or expand, but shall not restrict or limit, the rights guaranteed to recipients by this Chapter" (405 Ill. Comp. Stat. Ann. 5/2-202).

The Illinois Probate Act reads, "Every health care provider and other person (reliant) has the right to rely on any decision or direction made by the guardian, standby guardian, or short-term guardian that is not clearly contrary to the law, to the same extent and with the same effect as though the decision or direction had been made or given by the ward" (755 Ill. Comp. Stat. Ann. 5/11a-23).

Conclusion – Complaint #1

The HRA found that the guardian was intentionally not notified of the change in the recipient's medication due to staff admission and this was done because staff believed that the guardian would disagree with the change and that they are obligated to only follow physician's orders even if the recipient/guardian disagrees or refuses, which is an outrageous act of non-compliance with regulations. Also, the facility did not have a Guardian Notification policy, Guardian Informed Consent policy or training. Because of the

stated practice of guardian exclusion, the lack of guardian notification and lack of policy, the HRA finds this complaint **substantiated** and **recommends** the following

- To maintain compliance with the Mental Health and Development Disabilities Code, the facility must immediately begin the practice and policy of informing the guardian, if authorized to consent, with written notification of side effects, risks and benefits of the administration of electroconvulsive treatment or psychotropic medication (405 Ill. Comp. Stat. Ann. 5/2-102a-5).
- Allow the guardian/recipient the right to refuse medication that is afforded to them per the Code (405 Ill. Comp. Stat. Ann. 5/2-107) and create policy and procedure assuring that they are in compliance with guardian notification and refusal regulations and train all staff in these policy and procedures (405 Ill. Comp. Stat.Ann. 5/2-202).
- During the interview, there was a statement made that the guardians are included in treatment planning if they express interest but the HRA reminds the facility to take a more active role in the inclusion of guardians and expresses the importance of guardians in the treatment planning process. Per the Mental Health and Developmental Disabilities Code (405 Ill. Comp. Stat. Ann. 5/2-102), the facility must create and follow an individual services plan that is formulated and periodically reviewed with the participation of the recipient and the recipient's guardian. Per the Standards and Licensure Requirements for Community Integrated Living Arrangements (Ill. Admin. Code tit. 59, § 115.230, 220), guardians must be involved in the community support team as the individual integrated services plan is being formed and implemented, which always includes health and medical services.

RESPONSE

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

Russell-Baum, JoAnn M.

From: Martin Moore <mmoore@royallivingcenter.net>
Sent: Friday, December 15, 2017 12:10 PM
To: Russell-Baum, JoAnn M.
Subject: [External] Case #17-070-9003
Attachments: doc00816120171215115857.pdf

Hello,

Here is the response to recommendations for this case. Attached is our new policy regarding parent/ guardian notification regarding any changes to psychotropic mediations.

The notification for ISP/ Person Centered Plans follow DHS recommendations/ guidelines, which practices that notices are sent out to parents/ guardians, and agencies involved in the plan at least 30 days prior to meeting.

Let me know if you need anything else.

Thank you,

Martin Moore
Executive Director
Royal Living Center
618-514-7168

CONSENT FOR PSYCHOTROPIC MEDICATIONS

REQUIRED APPROVALS

PREPARED BY: Berkley Blackman, RN
Print Name – RN

Sign 15 Feb 2018
Date

APPROVED BY: Jean M Krebs 15 Feb 2018
Executive Director - Print Name

Sign Date

APPROVED BY:
Owner / Management - Print Name

Sign 15 Feb 2018
Date

CONSENT FOR PSYCHOTROPIC MEDICATIONS

1. PURPOSE

1.1. This policy defines the process that Management and/or RN will follow to notify and receive consent/refusal from guardians regarding administration of psychotropic medication.

2. REFERENCES

2.1. Title 59, Chapter I, Part 112.90 Administration of Psychotropic Medications and ECT Act, Illinois Administration Code

3. RESPONSIBILITIES

3.1. Management (QIDP and Director) and RN

3.1.1. Management and RN are responsible for following this policy

3.1.2. RN is responsible to ensure management is trained on this policy.

4. DEFINITIONS

4.1. Informed Consent

4.1.1. The voluntary and knowing choice by a recipient or his/her legal guardian.

4.2. Psychotropic medication

4.2.1. Medication used for antipsychotic, antidepressant, antimanic, antianxiety, behavioral modification or behavioral management purposes.

5. MATERIALS AND EQUIPMENT

5.1. None.

6. PROCEDURE

6.1. When a psychotropic medication is prescribed, increased, decreased or stopped by a physician, Management or RN will call the guardian to gain verbal consent before starting the new medication/new medication dose.

6.2. If verbal consent to begin, stop, increase or decrease psychotropic medication is received:

6.2.1. The medication/medication change will be implemented.

6.2.2. Management or RN will send the Written Consent/Refusal for Psychotropic Medication form and written notification to guardians of side effects, risks and benefits of the medication within 7 business days.

6.3. If verbal consent to begin, stop, increase or decrease psychotropic medication is NOT received:

6.3.1. The medication/medication change will not be implemented.

6.3.2. Management or RN will send the Written Consent / Refusal form to the guardian that must be signed and returned within 7 business days.

6.3.3. Management or RN will notify prescribing MD of guardian's refusal to begin, stop, increase or decrease psychotropic medication.

a. Physician, guardian, and RN will determine appropriate actions to be taken.

6.4. The QIDP / Management or RN must track and ensure that the written consent or refusal is returned and archived in the individual's medical file.

6.5. If the individual serves as their own legal guardian, the individual must sign the written consent or refusal.

7. ATTACHMENTS

7.1. Form: Written Consent / Refusal for Psychotropic Medication

CONSENT FOR PSYCHOTROPIC MEDICATIONS

History

Rev: NEW	Effective Date:
Summary of Changes:	
• None – new policy	
•	

Attachment 1: Written Consent / Refusal for Psychotropic Medication

Written Consent / Refusal for Psychotropic Medication

ROYAL LIVING CENTER

200 S 9th Street, New Baden Il. 62265

I, _____, the guardian of _____, gave verbal □ consent / □ refusal to:

□ begin,

□ stop,

□ increase from _____to _____

□ decrease from _____to _____

the following psychotropic medication: _____

I understand that this medicine has been prescribed by a physician / psychiatric provider and understand that I will be notified in writing of the risks and benefits of this medication.

My signature below confirms my □ consent / □ refusal.

Signature_____

Printed Name: _____

Date_____