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**FOR IMMEDIATE RELEASE**

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**HUMAN RIGHTS AUTHORITY - PEORIA REGION**  
**REPORT OF FINDINGS**

**Case #17-090-9004**  
**ResCare**

**INTRODUCTION**

The Human Rights Authority (HRA) opened an investigation after receiving complaints of possible rights violations involving services at ResCare. The allegations were as follows:

1. Failure to inform guardian of incidents involving resident.
2. Inadequate staff training on treatment of residents and diffusing behavioral incidents.

If found substantiated, the allegations would violate The Illinois Department of Human Services (DHS) Rule 115 (59 Il Admin Code 115). The Peoria ResCare office has 6 homes in Peoria and Pekin and has 22 residents and employs 44 staff members including management and nursing.

**Complaint Statement**

The allegations stem from two incidents involving residents when direct support staff members used intimidating and threatening language towards residents. Both incidents were recorded in reports by the Office of the Inspector General (OIG). According to the first OIG report, a direct support staff member engaged in a verbal altercation with a resident who was being held by other staff so she would not become involved in a physical altercation. Staff admittedly stated that she told other staff to let the resident go so she would strike the support staff member and then they could contact the police to arrest the resident. According to the report, the resident was released by staff and ran outside into the street where she was almost hit by cars. According to the second OIG report, another staff member called a resident a derogatory name and said that she would treat the resident like the children on the bus where she works while using an expletive. Allegedly, the resident's guardian was never informed that this situation occurred.

**Interview with staff (11/17/2016)**

Staff stated that sometimes they do not know if guardians are contacted. They have had incidents with clients when at other agencies, such as their day training, and Rescare was not

contacted. The staff interviewed was the Executive Director and the Program Director and they started employment at the facility in January 2016 and March 2016. Both were employed at the facility during the incident when the staff member asked other staff to release the resident so she would hit the staff member. They were not employed at the time that the incident occurred when the resident was called a derogatory name but they state that the staff has been released.

Staff explained that Central Illinois Service Access (CISA) serves as the resident's representative. They are the Pre-Admission Screening (PAS) agent for the residents. With each resident a CISA/ISC (Individual Service Coordination) caseworker is involved in the case. Staff stated that now when there is an incident, the Executive Director and administrator (Program Manager) are notified as well as CISA, any guardian, and a Board Certified Behavior Analyst (BCBA). They are notified via email or telephone call, and sometimes both. Depending on the severity, there is a "Critical Instance System" in which the incident report is added to the system. Critical instances would be elopement, fight, attack, police involvement, and anything that is critical to the resident's health and well-being. In general, the Direct Support Professional (DSP) completes an incident report and the Program Manager and Qualified Intellectual Disabilities Professional (QIDP) are notified, as well as the rest of the individuals listed earlier in the conversation. The DSP contacts the management team but not the guardian and the management contacts the guardian. Additionally, medical staff are notified if needed. DSPs receive 40 hours classroom training and 80 hours on the job training.

Staff said that in the past, communication was not the best. The residents would attend day training and the program would contact the OIG or CISA, and ResCare would never be informed about it. They have spoken with the outside agencies and told them that ResCare needs contacted. CISA would witness something and, because of the dynamics, they would contact the OIG. Communication is better than it was before. There was no structure previously and the outside agencies cooperate now but there are still occasional issues. Staff stated that CISA had a meeting with the day training program and explained that they have to contact ResCare. Staff stated that they could not say if the guardian was notified when these incidents occurred. They would be able to provide evidence that the guardian was notified if there was an incident because the emails are placed in the charts. Staff reiterated that they were not employed when the December 2015 incident occurred, so they could not verify if the guardian was contacted and they did not know if the guardian was contacted for the May 2016 incident. They said they would have to review the records and if they were not notified, staff was at fault. Staff said they were familiar with the incident and the client was very challenging and was moved to a different facility. The client was not moved because of this specific incident. Staff were moved to another house and then terminated when the incident came back substantiated. As far as follow-up, there would be an incident report completed and reviewed by staff.

Staff discussed a resident who hit and broke a microwave and the guardian was notified. The incident occurred on a Saturday and the guardian was contacted on a Monday. The microwave situation was resolved by Tuesday. Staff said that if the Office of State Guardian (OSG) was the guardian, and a resident had to visit the emergency department, they would contact the OSG emergency telephone number. In general, the decision by Rescare to formally investigate is based on the incident. If they investigate, they may terminate staff or move them, based on the situation. The QIDP received Rule 50 investigator training. Staff receives one-on-one daily report training that addresses the staff's responsibilities. The BCBA would provide training on the resident's particular behavior plan that includes behavior tracking. Staff are taught how to recognize what they should be documenting. They also have sex offender training

and shared responsibility training. The training is provided every pay period but could be situation specific. They will create training for staff to observe when they receive their paychecks. When hired, the DSPs receive 40 hours classroom training and then site specific training and on the job training at the house. They are not considered DSPs until the training is completed.

The facility has BCBA's that provide trainings for the entire state. The BCBA's also answer questions and provide clarity on behavior plans. Staff working with individuals receive specific training on that plan. Staff received trainings on how to deescalate. Peoria has many residents with significant behaviors and some residents have been relocated to other locations where they can receive better care. ResCare has completed some retraining for staff who may not have received the training previously. All DSPs are required to complete a training packet and there is a database for tracking trainings. As far as the incident in December, staff felt that previously DSPs were being hired to "fill spots" and not based on a skill level. The facility conducts background checks and screenings when hiring. The agency has terminated multiple individuals since they have started. They stated that if staff believes that the position is just a job, then it is not the job for them. They have to be in the position for the right reasons. Sometimes new hires quit during the 40-hour training.

Staff explained that the state requires anyone on psychiatric medications to have a behavior plan. The facility's Human Rights Committee and the resident's team both approve the plan. The Human Rights Committee is composed of people in the community and they are to assure that the residents are receiving appropriate care and resident rights are not being violated. The BCBA trains staff on the behavior plan. The BCBA has done some other staff training such as training on defusing. Staff provide specific training that is individually focused. They no longer have calls to the Office of Inspector General because the trainings are so individually focused. They even train staff on documenting and assist staff in making the connections between all that is done at the facility. Staff explained that a massive training does not work and instead of completing group trainings on topics, they train specific individuals at specific houses. They still have the state DSP mandatory training and staff are still on the healthcare registry. Staff said that the situation that occurred in May was because a system was not in place due to carryover from the previous leadership. A staff member was hired for Quality Assurance and they conduct site visits at all the homes. Every resident's guardian has the Executive Director's business card and phone number. They provide a Code of Conduct for the employees when they start employment. There was no self-reporting occurring before by the facility and they are now being transparent with everyone. It is a different time now than it was before.

## **FINDINGS**

The HRA reviewed resident records and facility policy that pertain to the allegations in this case. With a release, the HRA received records for two different residents receiving services at ResCare.

### **1. Complaint #1 – Failure to inform guardian of incidents involving resident**

The HRA began by reviewing a policy titled "Abuse, Neglect, and Exploitation", which states, "After OIG notifies the Executive Director that an allegation of abuse or neglect has been received, the Executive Director shall notify the victim or his/her legal guardian, if applicable, of

the allegation within 24 hours. If the Executive Director is unable to reach the guardian by phone, a letter of notification shall be sent within 24 hours.”

The HRA read daily progress notes for a resident involved in the OIG report. On 5/29/16 a note was written to “see incident report” but no incident report was provided to the HRA. According to the OIG report, the incident that was allegedly never reported to the guardian was reported on December 10<sup>th</sup>, 2015. In that report, the staff called a resident a derogatory name. The OIG found the facility’s actions constituted mental abuse and were substantiated. The HRA requested the facility send evidence that the guardian was notified of the incident but the facility did not respond.

The HRA reviewed the “Employment Eligibility Certification Form” which is a signed agreement that the employee will follow policies including “[reporting] violations that I may have witnessed pertaining to any ResCare policy or any violations of international, federal, or state/provincial laws with regard to my employment to local/regional management or the Compliance Department.” The HRA reviewed the compliance training revised in May 2006, and specifically the reporting process which states that, “Employees are encouraged to report concerns through local chain of command.” Within the compliance training for employees, HRA read about reporting abuse and neglect, and when abuse and neglect is suspected the staff should “immediately notify your supervisor or another member of the management team of your observations or suspicions and report in accordance to operational policy, regulations and state laws.” The HRA reviewed “The Employee Information Guide” revised in September 2012. Within this guide, a section titled “Standards of Conduct” describes a list of scenarios that are subject to corrective action including “failing to immediately report cases of actual or suspected abuse/neglect or any incident of a reportable nature to a supervisor or other management person.” The HRA reviewed the incident reporting policy which defines incidents that need to be reported “shall include but not limited to: accidents, assaults, injuries, acts of aggression toward a consumer, deaths, fire, theft, unauthorized absences, abuse neglect...”

The Illinois Department of Human Services Rule 115 explains that CILAs are to notify the individual and the individual’s guardian or parent within 24 hours of the instance of abuse or neglect (59 Il Admin Code 115.320).

### *Complaint #1 – Conclusion*

After reviewing the facility’s policies, HRA concluded the facility has a policy requiring guardian contact within 24 hours of an incident, but upon request, the agency was unable provide evidence that the guardian was contacted. Due to the lack of evidence, the HRA finds this complaint **substantiated** and offers the following **recommendations**:

- Provide training to staff to ensure that they are in compliance with 59 Il Admin Code 115.320 and facility policy regarding guardian contact and provide the HRA with evidence of this training.
- The HRA also suggests that guardian notification requirements be documented in individual treatment plans and in a visible location in the chart.

**Complaint #2 – Inadequate staff training on treatment of residents and diffusing behavioral incidents.**

The HRA reviewed the facility policy titled “Employee Development and Training” which reads that, “Direct support staff and personnel shall receive training as part of the Community Alternatives Illinois orientation program. Staff without prior direct contact experience shall receive orientation training before unsupervised responsibility for direct contact unless trained personnel are on the site and available for on-the-job training.” The policy states that within the “first 120 days of employment, direct contact personnel shall satisfactorily complete the orientation training as a condition of employment with Community Alternatives Illinois.” The mandated topics include but are not limited to; “DHS Introduction to Developmental Disabilities,” “DHS Abuse, Neglect and Unusual Incident Prevention, Handling and Reporting,” “DHS Human Rights,” “DHS The Individual Support Plan (ISP),” “DHS Human Interaction and Communication,” “You’re Safe I am Safe, Behavior Training,” and “Interpersonal Skills, Sexual Harassment.” There is also 80 hours of on-the-job training that includes “Introduction to Developmental Disabilities,” “Human Rights,” “Abuse and Neglect Prevention, Recognition and Intervention,” “Human Communication and Interaction,” and “Service Plan Development and Implementation.” According to the OIG reports referenced in the compliance statement, one staff member was hired in 2015 and received abuse and neglect training in the same year and the other employee was hired in 2016 and received abuse and neglect training in the same year. Both allegations were reported in the same year of the trainings.

In the behavior plan of the resident involved in the complaint where staff admitted to wanting the resident to hit her so she could call the police and have the resident arrested, the resident is documented to elope, have verbal aggression/disruptive episodes, be self-injurious, teasing, provoking and non-compliant. In the instances that the resident is verbally aggressive, staff is to take five steps. The first step is to ask her to lower her voice so that staff can help her problem solve. If the resident does not lower her voice, staff is to say something like “I want to help you [resident] because you seem really upset, but I can’t do that while you are screaming at me.’ Then her comments should be ignored.” If the resident is aggressive towards a peer, she is to be asked to go to another location to cool down and if the resident will not, then the peer is to be removed. Once the resident calms down, she is to be offered “verbal support and counseling” and the instance needs recorded. The resident involved in the OIG report where she was called a derogatory name also has a behavior plan. The resident is documented to elope, destroy property, have physical aggression, and be self-injurious and non-complaint. Part of the strategy regarding the self-injurious behavior and physical aggression/property destruction states “Do NOT lecture her, argue with her, or attempt to solve her problem which she is engaged in a behavior.” The strategy also states to not give her a lot of directives while engaged in the behavior and the only directive she should have is to calm down from the behavior. The fourth step reads “Once calm, provide her with attention by either discussing the issue (AGAIN no arguing with her or lecturing her) or engaging her in a positive activity or back to her regular routine.”

The HRA reviewed a “Violence in the Workplace Policy” which reads “ResCare is committed to providing a safe environment for the individuals we serve, employees, consultants and visitors. In order to provide a safe workplace, ResCare maintains a zero tolerance for violence.” The HRA also reviewed the job description form for Direct Care Professionals which reads “This position provides support and training, including but not limited to, emotional support, physical support and monitoring, and development of life skills through training programs, all leading to increased independence and participation in community life for persons

with developmental disabilities and/or other related disorders.” The qualifications of the position state “Experience in providing services and supports to individuals with mental retardation ...” The qualifications also state “Must meet agency requirements for pre-employment as required by ResCare and/or State regulations.”

The HRA reviewed some of the Illinois Department of Human Service training modules. One module is titled “Human Interaction and Communication” and includes chapters titled “The Importance of Communication,” “The Communication Process” and “Behavior as a Form of Communication” among others. The module also includes tips for communicating with people who communicate non-verbally, visual supports, causes of communication challenges, and common effects of communication challenges. The HRA also reviewed a DHS training module titled “Individual Service Plan Development and Implementation” which describes individual service plans, the interdisciplinary team, person-centered planning and also has chapters covering community inclusion, resources for vocational opportunities, teaching functional skills, and discovering reinforcers. The HRA also reviewed a module titled “Introduction to Developmental Disabilities” which has chapters that interpret direct support person’s roles and responsibilities, ethics, positive behavior supports, people first language and people first language activity. The HRA reviewed a DHS “Abuse and Neglect Recognition, Prevention and Intervention” training which illustrates abuse reporting. The program has chapters dealing with legally mandated responsibilities, Illinois Rule 50 definitions, reporting abuse and what is reportable, and also examples of inappropriate interaction which includes talking about someone in their presence, raising volume and using degrading nicknames. Another part of the training is a section dealing with facing a stressful situation and diffusing a situation. The facing stressful situation section reads “In order to diffuse a situation, you, as the DSP, can engage in a four-step process called ‘thought stopping’ and the four steps are stop, think, relax and reconsider.” Some of the strategies for diffusing a situation include “Calmly talk to the person about what happened,” “Calmly explain to the person what the options are for doing something differently,” and “Support the individual in taking a quiet rest period to relax.” There are also sections in the training on reducing stress, supporting emotions, and a chapter titled “It’s Not Your Job to Punish or Control” which reads “Punishment or control leads to a power struggle” and “Everyone loses in a power struggle.”

Additionally, Rescare provided a handbook titled “You’re Safe – I’m Safe: Techniques for Achieving Positive Behavioral Results” and the introduction describes the handbook as a curriculum that “... provides practices and procedures that support the company’s commitment to creating safe and supportive environments for people we serve. Staff members providing supports to people ResCare supports will be appropriately trained to meet consumer needs in the most effective and efficient manner possible.” The introduction proceeds to state that “This training is provided as a means to better understand the development of a potential behavioral crisis and the appropriate staff responses that are intended to support individuals to establish and maintain positive relationships rather than act out in violent ways.” The curriculum content consists of 3 modules, one titled “Strategies for Building Positive Relationships”, one titled “Understanding Ourselves,” another titled “Essential Tools for Dealing with Crisis” and also basic and advanced personal safety techniques.

The HRA reviewed the “Compliance Training for Employees” policy revised 2016 noting the “Standards of Conduct, Policies, and Procedures” pages that read “ResCare has policies and procedures in place so that all employees know the right thing to do and can refer to such policies and procedures when questions arise.” ResCare compliance training covers the

code of conduct, monitoring and disclosure, investigation, reporting process, fraud prevention, HIPAA, and more. The compliance discusses creating direction and the employee's commitment. The training reads employees "will do the right thing and know the right thing to do".

The HRA reviewed a "Standards of Conduct" policy, which reads, "ResCare maintains that certain rules and regulations regarding employee behavior are necessary for the efficient operation of the Company and for the benefit and safety of all employees and the persons we serve. Conduct that interferes with operations or is offensive is not acceptable. Each supervisor is responsible for communication the Company's standard of conduct and for ensuring compliance." Some of the items on the list of actions that would be in violation include "Any acts of disrespect, exploitation, abuse, and/or neglect toward the individuals we serve" and "Fighting with and abusive, disrespectful, or threatening conduct or speech towards any individual(s) we serve, fellow employee(s), supervisory staff, vendors or visitors."

The HRA reviewed the "Abuse, Neglect, Exploitation and Retaliation Statement of Policy and Employee Acknowledgement" which explains that there will be disciplinary actions, up to and including termination, if abuse, neglect, exploitation and retaliation occur. This policy states "any person who intentionally or knowingly abuses, neglects, or exploits a person served by ResCare, in a manner that threatens that person with imminent bodily injury may be prosecuted for a misdemeanor in accordance with applicable state law", and, "an employee who knowingly fails to report, or attempts to cover up the reporting of incidents where he/she has cause to believe that a person's physical or mental health or welfare has been or be further adversely affected by abuse, neglect, or exploitation may be prosecuted under applicable laws."

The HRA reviewed the policy titled "Behavior Support Programs" revised on 3/30/16, which reads that "It is the operating standard of Community Alternatives to facilitate prompt implementation of appropriate and effective, individualized programs to minimize challenging behavior and increase adaptive behavior, as well as to maximize the opportunities for growth and development available to all consumers." The policy outlines procedures for behavior support programs which include a discussion/definition of challenging behavior and states that support services must be designated through the interdisciplinary team. It also includes a "General Consideration" section which reads "Each behavior support program should be directed toward the full and complete growth and development of the individual. This shall be accomplished by incorporating methods which emphasize positive approaches" and also discusses the role of psychotropic medication in the individualized support management program. The policy includes illustration of the behavior support program development, the content of behavior support programs, and also a "Challenging Behavior Procedure Hierarchy" which has steps dealing with challenging behavior along with the definitions of the steps. The steps include extinction (ignoring behavior), verbal prompts, redirection, verbal counseling, removal of reinforcement, and hands on which is "A physical touch/contact used to escort a consumer, prevent risk of physical injury and/or protect the individual or others from danger." The facility also has "Adaptive Behavior Procedures Hierarchy" which includes non-verbal approval, verbal praise, physical touch such as a pat on the shoulder or handshake, and eventually graduated silence which is explained as "Physical touch can be used to shape a behavior, guide, and instruct the consumer. Fade out the level of assistance once the person performs the behavior with less help needed. Ultimately, all assistance is faded and consumer has added the skill to his/her repertoire." The HRA reviewed another policy titled "Behavior Support" which reads that "It is the operating standard of Community Alternatives Illinois to maintain the rights, dignity, and

respect of all individuals. Behavior Support is a system by which new behaviors are taught to a person in order to minimize or otherwise render challenging behaviors non-functional.” The procedure for the policy states that behavior support techniques should be formalized into a support plan and also defines “challenging behavior.” The policy states the program must be approved by the Human Rights/Behavior Management Committee, including any restriction of rights, and there must be informed consent by the consumer or consumer’s guardian. The policy also reads “All Community Alternatives Illinois personnel, as part of their orientation training, shall receive training in both Behavior Support and Behavior Support Programs. Thereafter, training shall be provided in an ongoing manner. Also, staff shall receive training in the implementation of individual behavior support programs and the consumer for whom they are developed.”

The HRA reviewed other staff training records that were not dated and had handwritten trainings documented in the record. A training indicated that there was one-to-one observation training and another indicated there was training that defines one-to-one supports and responsibilities. Another undated training was for “ABC Behavior Training” which involves tracking what occurs before and after a behavioral incident. Another training titled “Shared Responsibility” reads “If you do not report issue to Program Director, QIDP, or House Managers you are as responsible as the person that is making a bad decision” and “You are responsible for intervening if you see a staff doing something that is abusive or violates their rights.” The record also states “These are not your kids.” There is another training for staff to sign that they have read and understand all the ISP and BSP (behavioral support plans) in the house. The HRA also reviewed the DHS on the job training program which dealt with trainings such as the communication process, documentation, injury reporting, recreation planning, transportation, and assisting with eating. The HRA reviewed a training titled “How Attitudes Affect Living Environments” which has the activities of reviewing sections on the abuse, neglect and exploitation module that cover “creating and maintaining a respectful, healthy, environment; attitude; stress and burnout; and Haim Ginott’s quote regarding the impact attitudes have on the individuals’ environments.” The staff is also to complete self-awareness questionnaires. There is another training on supporting the emotions of people with intellectual disabilities and creating and maintaining a trust-producing, healthy, engaging environment. This is also a training on respectful interactions and supporting individual rights.

The DHS Rule 115 reads “1) Direct service employees and any other compensated persons with responsibility for direct care of individuals served shall demonstrate competence in training areas listed in subsections (d)(1)(A) through (M) as a part of an orientation program. Anyone specified in this subsection (d)(1) without previous experience in direct service to individuals shall receive training and demonstrate competence prior to unsupervised responsibility for direct service unless trained employees are on site and available for on-the-job training ... All direct service employees and any other compensated persons, regardless of staffing model, shall receive training and demonstrate competence as documented in employee records in the following training areas ... B) Concepts of treatment, habilitation and rehabilitation including behavior management, normalization, age appropriateness and psycho-social rehabilitation depending on the needs of the individuals served or to be served ... D) Abuse, neglect and unusual incident prevention, handling and reporting; E) Individual rights in accordance with Chapter II of the Code and maintaining confidentiality in accordance with the Confidentiality Act; ... I) Development and implementation of an individual integrated services plan; ... J) Formal assessment instruments used and their role in the development of the services



plan; ... L) Other training which relates specifically to the type of disability or treatment and intervention techniques being used specific to individuals living in CILAs geared toward assisting employees to execute objectives obtained in the services plans ... 2) After completion of training specified in subsection (d)(1) of this Section, each direct service employee shall participate in ongoing employee development activities as outlined in the agency's employee development plan. 3) All training shall be documented and shall be readily available for review by Department surveyors. 4) The agency shall implement a written training plan which lists training to be offered to meet the requirements of this Part, the methods used for completion of any required training, and the process used to determine competency.” (59 Il Admin Code 115.320).

*Complaint*

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*Conclusion*

The HRA reviewed facility policy and ResCare training appears to be in compliance with Rule 115 (59 Illinois Administrative Code 115.320). With that being said, the two incidents cited in the OIG reports differ considerably from actions that would be taken by adequately trained staff, which causes the HRA a great deal of concern about facility compliance. Staff training is not transforming into how staff are performing and it is crucial that the facility administration discover the gap and resolve the mistreatment of residents. Because training appears to comply with Rule 115, the HRA finds the complaint **unsubstantiated** but **strongly suggests** that the administration act to assure that staff stop treating residents in this manner through the use of additional training and expanding quality control. The HRA also offers the following **suggestions**:

- In the job description for direct support staff, the HRA saw the term “Mental Retardation” used and **suggests** the facility delete this term from documentation and update to verbiage that would be considered less degrading. Intellectual/Developmental Disability is the currently recognized language.
- In the documentation sent to the HRA, there was a random letter regarding a resident that for whom the HRA had no release. The HRA **suggests** the facility take steps to assure confidentiality for residents when providing documentation to outside agencies.
- Whenever any complaints regarding staff behavior are reported, thoroughly investigate and consider the need for additional training.
- Review mechanisms for internal monitoring and reporting of staff behaviors. Ensure that staff are aware of their obligations to report. Consider mechanisms to continually check in with residents, guardians and family members.
- Review mechanisms for retaining and recognizing qualified staff who adhere to the code of conduct.