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**FOR IMMEDIATE RELEASE**

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HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT #12-030-9002  
Presidential Pavilion

Case Summary: The HRA substantiated the complaint that the recipient was hospitalized in violation of the Nursing Home Care Act. The HRA did not substantiate the complaint that the Presidential Pavilion patio is dirty and unsupervised, allowing for unsafe and unsanitary activity. The facility response is attached.

INTRODUCTION

The Human Rights Authority of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving a complaint of possible rights violations at Presidential Pavilion. It was alleged that the facility did not follow Nursing Home Care Act requirements when it hospitalized the resident because he refused to sign facility papers and the facility patio is dirty and unsupervised, allowing residents to take part in unsanitary and illegal behaviors. If substantiated, this would violate the Nursing Home Care Act (210 ILCS 45 et seq.) the Illinois Administrative Code for Skilled and Intermediate Care Facilities (77 Ill. Admin. Code 300.110 et seq.), the Code of Federal Regulations, Requirements for Long Term Care Facilities (42 C.F.R. 483), and the Mental Health and Developmental Disabilities Code (405 ILCS 5/100 et seq.).

Presidential Pavilion is a 328- bed Intermediate and Skilled Nursing Home located in Chicago.

To review this complaint, the HRA conducted a site visit and interviewed the Presidential Pavilion Administrator and the Nursing Supervisor. Relevant facility policies were reviewed, and records were obtained with the consent of the recipient.

COMPLAINT SUMMARY

The complaint alleges that the staff approached the recipient one day when he was in the milieu and told him that there was paperwork he had to sign. When he refused, the nurse had him sent to a hospital for psychiatric evaluation. The complaint also alleges that the patio area of the facility is dirty and unsupervised, allowing residents to take part in illegal and unsanitary behaviors (selling drugs and urinating in the corner).

## FINDINGS

The record shows that the recipient was admitted to Presidential Pavilion on 7/07/11. His admitting diagnosis was stated as Spinal Arthritis, Chronic Obstructive Pulmonary Disease and Bipolar Disorder. The record contains a consent for psychotropic medication for Haldol, 5 mg and Trazadone, 50 mg. The Medication Administration Record shows that the recipient generally refused this prescribed medication.

The recipient's social services progress notes, treatment planning notes, care conference notes and discharge planning session notes all indicate that the recipient was compliant with the rules and regulations of the facility. On 7/27/11 the record shows that his treatment team met to develop his Initial Care Plan. Notes from this meeting state, "...Recently Res has triggered cognitive impairments, mood problems, and behavioral issues. Res has displayed impaired decision making, poor impulse control, and poor ability to control anger and frustrations. Res. reported feeling down/depressed/ hopeless several day, issues sleeping several (sic), display sad facial expressions. Behaviors displayed include motor agitation (i.e. pacing, restlessness, inability to relax), frequent complaining, he becomes irritable at times. In addition, res. displays paranoid behavior (i.e. suspicious of everyone constantly), he becomes verbally aggressive when agitated. Res. is typically re-directed following several prompts. Res. denies any history of hallucinations but he is observed talking to himself @ times. Res. has been non-compliant with medication (i.e. not taking meds as directed). He is ADL [activities of daily living] compliant and keeps living quarters clean/neat. Res. currently maintains an independent pass 9 a.m. - 9 p.m. and utilizes it daily...."

Nurse's Notes from 7/27/11 at 5:00 pm state, "Resident paranoid, suspicious of people non-redirectable uncooperative. Non compliant with medication, verbal aggressive pacing and talking to self. Moody irritable. Continue monitoring resident. Dr. ...was called. Gave orders to transfer resident to ...hospital for psych evaluation." The notes indicate that the recipient was then transferred to a hospital emergency room at 6:00 p.m.

The record contains the petition for involuntary admission that was completed at Presidential Pavilion prior to the recipient's departure. It states that the recipient is a person with mental illness who is reasonably expected to engage in conduct that is harmful to himself or others if he is not treated on an inpatient basis and that he is in need of immediate hospitalization. This assertion is based on the following, "Resident paranoid, suspicious of people. Non- redirectable. Uncooperative. Non- compliant- medication. Verbal aggressive, pacing and talking to self, moody, irritable." The petition is signed at 5:00 p.m. and the petitioner certifies that she has provided the recipient with a copy of the petition. There is no indication from the record that there had been a disagreement between the recipient and staff over paperwork.

The HRA made two unannounced visits to the Presidential Pavilion to observe the residents' patio. On both occasions the area was unsupervised and occupied mostly by younger residents and not by older residents or those in wheelchairs. Although there was some trash strewn about the area and it smelled of cigarette smoke it was not dirty and there was no evidence that residents had urinated there. The area can only accommodate a small number of

residents (perhaps 12-15) and the HRA wondered how all the residents are able to enjoy fresh air while residing at Presidential Pavilion. The HRA was unable to determine if any illegal activities are taking place while residents are occupying the patio. It should be noted that at the time of the site visit to the facility several months later, the HRA noticed an increased security presence throughout the building, so the safety of the residents may have improved since the unannounced visits.

#### FACILITY REPRESENTATIVES' REPOSE

Facility staff were interviewed regarding the complaint. They stated that the recipient had not been taking his medication for some time when he became unstable on the day of his hospitalization. Staff did not recall the specific behaviors that the resident demonstrated, however the nursing supervisor stated that the resident's behavior was serious enough that the physician had to be called and that it was on his order that the staff proceeded with the involuntary petition. Staff noted that the recipient had become paranoid and was observed pacing around the building talking to himself and that these behaviors had been recorded in the notes. Staff also stated that while the recipient was a resident at Presidential Pavilion he had been outside the facility for much of the day, usually from 9 a.m until 9 p.m. so perhaps influences from somewhere else had affected his behavior. Although it was not noted in the record, staff stated that the recipient was hospitalized for 5 days before he was readmitted into the facility.

Facility staff were interviewed about the patio. They stated that uniformed security officers observe the patio at all times, except when they would be called away for a situation on one of the floors of the facility. In that case, a CNA would be called to observe the area. Staff stated that the patio opens at 5:00 a.m. and is closed for break at 8:00 a.m., for lunch and for dinner, and then closes at 9:15 p.m. The patio is a locked area, accessible only from inside the building. It is a facility designated smoking area. Staff were asked about the possibility of residents urinating on the patio and they stated that residents would be directed to their floor if security observed this. Staff also indicated that the patio is cleaned daily. Staff noted that residents who wish to get fresh air are taken on therapeutic walks and outings as needed and available. Residents who need assistance are given help in order to access the patio. Those residents who are able to walk can also congregate in the front of the building.

Facility staff were asked if the facility has a Residents Advisory Council and they stated that they have a council that meets monthly. The facility also has an Ombudsman.

#### STATUTORY BASIS

The Nursing Home Care Act states that no resident shall be deprived of any rights, benefits or privileges guaranteed by law, the Constitution of the State of Illinois, or the Constitution of the United States "solely on account of his status as a resident of a facility" (210 ILCS 45/2-101). The Act also states that, "Each resident and resident's guardian or other person acting for the resident shall be given a written explanation, prepared by the Office of the State Long Term Care Ombudsman, of all the rights enumerated in Part 1 of this article and Part 4 of Article III" (45/2-211).

Additionally, the Act states that every resident "shall be permitted to refuse medical treatment and to know the consequences of such action, unless such refusal would be harmful to the health and safety of others and such harm is documented by a physician in the resident's clinical record" (45/2-104 c).

The Nursing Home Care Act states that a facility may involuntarily transfer or discharge a resident only for one or more of the following reasons:

1. for medical reasons;
2. for the resident's physical safety;
3. for the physical safety of the other residents, staff or visitors;
4. for late payment or nonpayment for the resident's stay (210 ILCS 45/3-401).

Federal regulation also limits the use of transfer and discharge and mandates the documentation of this information in the resident's file:

*a) Transfer and discharge--*

*(1) Definition: Transfer and discharge includes movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.*

*(2) Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless--*

*(i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;*

*(ii) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;*

*(iii) The safety of individuals in the facility is endangered;*

*(iv) The health of individuals in the facility would otherwise be endangered;*

*(v) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or*

*(vi) The facility ceases to operate.*

*(3) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)(2)(i) through (v) of this section, the resident's clinical record must be documented. The documentation must be made by--*

*(i) The resident's physician when transfer or discharge is necessary under paragraph (a)(2)(i) or paragraph (a)(2)(ii) of this section; and*

*(ii) A physician when transfer or discharge is necessary under paragraph (a)(2)(iv) of this section. (42 C.F.R. 483.12).*

The Mental Health and Developmental Disabilities Code outlines the process whereby a person 18 years of age or older who is subject to involuntary admission and in need of immediate hospitalization may be admitted to a mental health facility (405 ILCS 5/3-600 et seq.). This process requires a detailed statement of the reason for the assertion that the recipient is in need of involuntary admission, the signs and symptoms of mental illness, and a description of any acts, threats, or behaviors supporting the assertion (3-601).

The Illinois Administrative Code for Skilled Nursing and Intermediate Care Facilities (77 Ill. Admin. Code 300.110 et seq.), states that every facility must have an effective plan for housekeeping "including sufficient staff, appropriate equipment, and adequate supplies (Section 300.2220). It also states, "Each facility shall maintain the grounds and other buildings on the grounds in a safe, sanitary, and presentable condition" (Section 300.2210).

## FACILITY POLICY

Presidential Pavilion provided the facility policy for Involuntary Transfer. It states that residents will not be transferred unless the transfer is necessary for the resident's welfare and his needs cannot be met in the facility, it is appropriate because the resident's health has improved and he no longer needs the services of the facility, the safety of individuals is endangered, the health of individuals is endangered, the resident has failed to pay for his stay, or the facility no longer operates. In the event that an emergency transfer becomes necessary, the facility is responsible for documenting the reasons for the transfer in the resident's record, completing a transfer form and a petition for involuntary admission, completing a discharge summary and listing the reasons for the emergency transfer on the petition. Reasons that are included, but not limited to, are listed as:

- Aggressive, combative, non-redirectable and/or violent behavior.
- Threatening behavior (i.e., threatening one's own safety or threatening the safety and welfare of others.
- Suicidal and/or other forms of self-destructive behavior.
- Sexually aggressive behavior.
- Substance abuse.

Presidential Pavilion provided the Resident Behavior Contract that the recipient in this case signed upon admission. It states, "I understand that taking my medication as prescribed on a daily basis is necessary to regain my stability, and that failure to do so will immediately warrant a recommendation to a more secure facility. In fact, I promise that while I am a resident of this facility, I will comply with my overall treatment plan as established by me, personally and the health care team. Consequences established for non-compliance with this admission contract will be at the discretion of the Administrator, Physician, and Interdisciplinary team Members, and ARE VERY LIKELY TO RESULT IN IMMEDIATE TRANSFER FOR ACUTE PSYCHIATRIC CARE" (caps provided).

Presidential Pavilion provided the facility job description for the floor care person and it states that this employee(s) will be responsible for the daily cleaning of the rooms, hallways, stairwells, entrances, lobby, activity room, dining room, and nurses' station, and follow the cleaning procedures as outlined in the housekeeping policies and procedures manual.

## CONCLUSION

The Nursing Home Care Act allows for residents to be involuntarily transferred for medical reasons, for the resident's or others' physical safety, or for late or non-payment. The resident in this case was involuntarily hospitalized because, as the record states, he was "paranoid", "suspicious of people", "non-redirectable", "uncooperative", "non-compliant with his medication", "verbally aggressive", "pacing and talking to himself", "moody", and "irritable". We do not know what the recipient was directed to do that he refused, we don't know what he was not cooperating with, or what he said that was aggressive. He is certainly allowed to refuse medication, to be paranoid and suspicious of people as well as to be moody and irritable without being forced into treatment at a hospital. Additionally, the resident had earned and maintained day-long passes, and the record describes an independent, cooperative and overall compliant resident. The record does not hint at what precipitated the recipient's decline, and the documentation simply does not make the case that this recipient was in need of immediate hospitalization. Additionally, the HRA cautions the facility that its policy suggests that refusing medication alone warrants an immediate transfer for acute psychiatric care, when in fact residents always have the right to refuse treatment, including medication. The HRA substantiates the complaint that the recipient was hospitalized in violation of the Nursing Home Care Act.

The complaint alleges that the patio is dirty, unsupervised, and allows for unsanitary and possibly illegal activity. On the two occasions when the HRA made unannounced visits to the patio, it was observed to be somewhat messy but not unreasonably so, given that it is one of the smoking and outside areas for a facility of 238 people. The more important issue is its supervision, and again, on the two visits, the patio appeared to be unsupervised, however the HRA could not confirm that this caused unsafe or unsanitary conditions, and the facility appears to have increased its security since that time. The HRA does not substantiate the complaint that the Presidential Pavilion patio is dirty and unsupervised, allowing for unsafe and unsanitary activity.

## RECOMMENDATION

1. Review with staff the law which guides the involuntary transfer of a recipient to a hospital/psychiatric unit and ensure that the clinical documentation supports the need to override the recipient's right to refuse treatment.
2. Review the Resident Behavior Contract which states that refusal of medication may result in immediate forced transfer. Refusal of medication alone does not warrant an immediate transfer to another facility.

## SUGGESTION

1. The clinical record for this recipient does not include a statement of rights that are guaranteed by the Nursing Home Care Act. The facility should make this available to residents and secure a signed copy for the record and for the resident.

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## **RESPONSE**

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

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# **PRESIDENTIAL PAVILION, LLC**

8001 S. WESTERN AVE • CHICAGO, IL 60620 • 773-436-6600 • FAX 773-436-5406

VIA FAX AND FEDERAL EXPRESS

July 25, 2012

Jill Quinto, HRA Chairperson  
Illinois Guardianship and Advocacy Commission  
1200 S. 1<sup>st</sup> Ave. Box 7009  
Hines, IL 60141

Re: Presidential Pavilion- HRA No. 12-030-9002

Dear Ms. Quinto:

This is in response to the Recommendations in the above captioned matter. The Facility has in-serviced nursing staff regarding the laws associated with involuntary transfer of a resident to the hospital. The in-service included discussion on the need for the clinical record to support the determination and that said determination must override the residents right to refuse treatment. In addition, the Resident Behavior Contract has been revised and no longer states that refusal of medication alone may result in transfer or discharge. Finally, it is the policy of the facility to complete an admission packet, which includes a contract and resident rights pamphlet.

Very truly yours,



Fred L. Berkovits  
Administrator

**CHICAGO REGIONAL HUMAN RIGHTS AUTHORITY**

**HRA CASE NO. 12-030-9002**

**Presidential Pavilion**

Pursuant to Section 23 of the Guardianship and Advocacy Act (20 ILCS 3955/1 *et seq.*), we have received the Human Rights Authority report of findings.

**IMPORTANT NOTE**

**Human Rights Authority reports may be made a part of the public record. Reports voted public, along with any response you have provided and indicated you wish to be included in a public document, will be posted on the Illinois Guardianship and Advocacy Commission Web Site. (Due to technical requirements, your response may be in a verbatim retyped format.) Reports are also provided to complainants and may be forwarded to regulatory agencies for their review.**

We ask that the following action be taken:

We request that our response to any recommendation/s, plus any comments and/or objections be included as part of the public record.

We do not wish to include our response in the public record.

No response is included.

      Fred Berkowitz        
NAME

      ADMINISTRATOR        
TITLE

      7/24/12        
DATE