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**FOR IMMEDIATE RELEASE**

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**East Central Regional Human Rights Authority  
Moultrie Beacon  
Report of Findings  
Case #18-060-9007**

*Case summary: The HRA did substantiate the allegation that A Community Integrated Living Arrangement, or CILA, is going to a skilled nursing setting and taking photos of a consumer's private parts in order to document injuries that occurred while the consumer was residing in the CILA. The provider responded to the substantiated allegations and agreed to make those responses public, therefore, the responses are attached.*

The East Central Human Rights Authority (HRA) of the Illinois Guardianship and Advocacy Commission voted to pursue an investigation of Moultrie Beacon after receiving the following complaints of possible rights violations:

**Complaints:**

- 1. A Community Integrated Living Arrangement, or CILA, is going to a skilled nursing setting and taking photos of a consumer's private parts in order to document injuries that occurred while the consumer was residing in the CILA.**

If the allegations are substantiated, they would violate protections under the Illinois Administrative Code (59 Ill. Admin. Code 50.30, 77 Ill Admin Code 300.3220) and the Code of Federal Regulations (45 C.F.R. § 164.530 (c)(1)).

**Investigation**

The HRA proceeded with the investigation after having received written authorization from the consumer's state guardian that serves as plenary guardian, as appointed by the court. To pursue the matter, the HRA visited the facility and the program representatives were interviewed. Relevant practices, policies and sections of the consumer's record were reviewed.

**Interviews:**

On January 24, 2018 at 1:30pm, the HRA met with Moultrie Beacon staff members, including: Executive Director, QIDP, Director of Case Management, Assistant Director of Resident Services, LPN, and current QIDP for Intermittent services. The meeting occurred at 401 W Water St Sullivan, IL. The meeting began with introductions, a review of HRA procedures, and a review of the allegations being addressed in this investigation.

Moultrie Beacon website states that the agency provides day programming and residential and home-based support services for individuals with intellectual disabilities. They also provide community-based mental health services to individuals and enrichment programs for preschool aged children. The staff report that Moultrie Beacon has 8 CILAs with approximately 3-5 beds in each home.

According to staff, the consumer had a small wound (described by the nurse as a cyst) on his coccyx. They had been monitoring the cyst with no change. The consumer developed a fever and was not “acting right” so he was sent to the hospital. The Emergency Department monitored the consumer and ran tests for 8 hours and could not find anything wrong. The consumer was admitted for monitoring. On the second day of admission, the hospital called and stated that the wound (cyst) was in fact a bed sore and the consumer now had sepsis. The consumer’s wound was then debrided and he was moved to a skilled nursing care facility.

Moultrie Beacon stated that they went to the skilled nursing provider to visit and check on the consumer’s condition. Staff did this out of concern for the consumer and as part of their bed hold policy. Staff reported that they were surprised to learn of the seriousness of the wound and took photographs in order to communicate the condition of the wound to the executive director (per the director’s request) and also to maintain as photographic evidence for the Office of the Inspector General (staff noted that they were not specifically told to take the photos for this case by OIG, however, in the past OIG has directed them to photograph injuries for their records). Staff reported that the director of the skilled nursing facility was upset that the photo had been taken without consent. Moultrie Beacon stated that they did not know that they needed consent as they believed the consumer to be their responsibility. It was at that time they were informed that the guardian had not consented to provide Moultrie Beacon access to the consumer’s information at the skilled nursing facility.

Staff stated that all photographs taken for medical purposes are stored confidentially on a drive that is accessed by medical personnel only. They reported that the photos are not available in the files and are not sent electronically for any reason as this would violate the consumer’s confidentiality.

The HRA contacted a representative from the OIG. The representative confirmed that providers are often asked to take photographs of injuries (even in cases where the provider is being investigated). It was stated that the photographs should be taken as soon as possible and be forensic in nature (i.e. they should include various angles, measurement indicators, and include the face of the individual with the injury and appropriate lighting). The OIG confirmed that they offer classes on forensic photography but it is not required.

### **Records Reviews:**

Moultrie Beacon provided the HRA with the following records:

A psychological assessment that gives a social history and a diagnosis history of the consumer states that the consumer has Cerebral Palsy and Fragile X Syndrome, Schizoaffective Disorder, and depression. The physician reported that the consumer is “not able to independently ambulate,

therefore he uses a wheelchair and depends on staff to move him around” requiring 24-hour supervision.

Several staff provided the HRA with timelines giving their perspective to the dates leading up to the consumer’s arrival at the hospital and then to the skilled nursing facility. One staff member noted that on 8/24/17 three staff went to the skilled nursing facility to check on the consumer. The staff “wanted to assess his area to bottom” so they changed him and took photos. There were no other notations, descriptions, and/or orders documented involving the consumer’s injuries or photographs.

Moultrie Beacon’s Employee Confidentiality Policy states “(the employee) shall be responsible to store and dispose of professional records in ways that maintain confidentiality.” The photograph consent is signed by the guardian and is dated 7/18/17. This consent appears to apply to the release of photos to the website and social media outlets only.

The guardian representative provided records to the HRA. The files included the photographs taken at the skilled nursing facility and emailed to the guardian. The photographs are not clear, do not include any measurement indicators, and do not include the consumer’s face for identification that would be needed for use in an OIG investigation.

It should be noted that there is no record of consent for communication between Moultrie Beacon and the skilled nursing facility (in Moultrie Beacon records or Office of State Guardian records).

## **Conclusions**

### **1. CILA is going to a skilled nursing setting and taking injury photos to document injuries that occurred while at the CILA.**

OIG regulations (59 Ill. Admin. Code 50.30 (f)) state: “4) Unless otherwise directed by OIG, initiate the preliminary steps of the investigation by a designated employee who has been trained in the OIG-approved methods to gather evidence and documents and for whom there is no conflict of interest. This may include the need to: A) Secure the scene of the incident and preserve evidence, if applicable; B) Identify, separate potential witnesses, and take statements when applicable; C) Identify and record the names of all persons at the scene at the time of the incident and, when relevant, those who had entered the scene prior to the scene being secured; D) Secure all relevant documents and physical evidence, such as clothing, if applicable; or E) Photograph the scene of the incident and the individual's injury, when applicable.” Moultrie Beacon confirmed that they took the photographs several days after the consumer left their facility by a staff member who was not trained in OIG-approved methods. It should be noted that this staff member would also have had a conflict of interest in an OIG investigation regarding the wound. Staff also confirmed that the photos were not taken to gather or preserve evidence but rather to communicate the consumer’s condition to Moultrie Beacon management.

Nursing Home regulations (77 Ill Admin Code 300.3220) state: “a) The Department, the facility and all other public or private agencies shall respect the confidentiality of a resident's record and

shall not divulge or disclose the contents of a record in a manner which identifies a resident, except upon a resident's death to a relative or guardian, or under judicial proceedings.” The consumer was under the care of a skilled nursing facility and, therefore, entitled to privacy under their care. No consents were provided by Moultrie Beacon or the Office of State Guardian to demonstrate that Moultrie Beacon had permission/authority to obtain information about the consumer while not in their care. Moultrie Beacon reports that their relationship to the consumer at the time the photographs were taken was limited to the CILA’s bed hold.

Health Insurance Portability and Accountability Act (HIPAA) regulations (45 C.F.R. § 164.530 (c)(1)) state the following: “Standard: Safeguards. A covered entity must have in place appropriate administrative, technical, and physical safeguards to protect the privacy of protected health information. (2)(i) Implementation specification: Safeguards. A covered entity must reasonably safeguard protected health information from any intentional or unintentional use or disclosure that is in violation of the standards, implementation specifications or other requirements of this subpart. (ii) A covered entity must reasonably safeguard protected health information to limit incidental uses or disclosures made pursuant to an otherwise permitted or required use or disclosure.” Moultrie Beacon acknowledges that emailing consumer medical photographs would violate the consumer’s confidentiality. The photographs taken by the Moultrie Beacon staff were emailed to the Office of State Guardian without proper safeguards required for email communication.

After completing the interviews, records reviews, and assessing applicable mandates, there is evidence to support the complaint. Moultrie Beacon did not take the photographs consistent with OIG regulations, upon OIG request, or following OIG guidelines. Staff did not have the authority or consent to go into the skilled nursing facility and provide care or gain information about the consumer. While the HRA acknowledges that the provider’s concern for the consumer was heartfelt, holding a bed for a consumer does not extend the provider’s authority or responsibility over the consumer’s care and, therefore, going to the skilled nursing facility and taking photographs violated the consumer’s right to confidentiality under the nursing facility’s regulations. In addition, Moultrie Beacon was adamant that the photographs were stored electronically in an encrypted storage system that only nursing staff have access to and that the documents were not emailed because doing so would violate confidentiality; however, the photographs were emailed to the Office of State Guardian (with consent) in an unencrypted manner which put the consumer’s health information at risk.

Based on the findings above the East Central Human Rights Authority concludes that the consumer’s rights were violated and, therefore, the complaint is substantiated. The Human Rights Authority recommends the following:

1. Moultrie Beacon will follow Office of Inspector General’s investigation procedures (59 Ill. Admin. Code 50.30). In the event that Moultrie Beacon believes that a situation warrants an OIG investigation, Moultrie Beacon will initiate the preliminary steps of the investigation by a designated employee who has been trained in the OIG-approved methods to gather evidence and documents and for whom there is no conflict of interest. This will include designating staff to be trained in the OIG-approved methods. All investigative actions should be properly documented. If there is question in regard to case

- specific investigative practices, Moultrie Beacon will seek and document OIG guidance before proceeding.
2. Moultrie Beacon will review its right to information without guardian consent during a bed hold when a resident is in another provider's care (and train staff if needed).
  3. Moultrie Beacon will train all staff on HIPAA (45 C.F.R. § 164.530) and ensure that they are aware that health information should always be transmitted with proper safeguards.

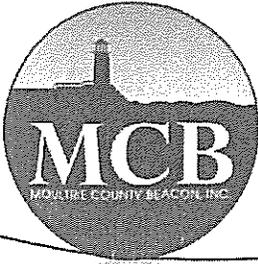
The HRA would like to thank the Moultrie Beacon staff for their cooperation with this investigation.

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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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Moultrie County Beacon, Inc.  
*Lighting the way for people with disabilities*

October 11, 2018

Kelli Martin, Chairperson  
Regional Human Rights Authority  
East Central Regional Office  
2125 South First Street  
Champaign, Illinois 61820

Dear Ms. Martin,

The following represents the Moultrie County Beacon's response to the recommendations from the HRA dated July 27, 2018.

IGAC Recommendation #1

Moultrie County Beacon will follow the Office of Inspector General's investigation procedures. In the event that Moultrie County Beacon believes that a situation warrants an OIG investigation, Moultrie County Beacon will initiate the preliminary steps of the investigation by a designated employee who has been trained in the OIG-approved methods to gather evidence and documents and for whom there is no conflict of interest. This will include designating staff to be trained in the OIG-approved methods. All investigative actions should be properly documented. If there is question in regard to case specific investigative practices, Moultrie County Beacon will seek and document OIG guidance before proceeding.

Moultrie County Beacon Response to Recommendation #1:

The Moultrie County Beacon has appointed a middle management administrative employee to administer the requirements of Il. Admin. Code 50.3. They are fully trained in all aspects of OIG requirements, and work in a position that presents no conflict of interest with direct care staff or programs. This individual works closely with the OIG Investigator who covers our agency, insuring that all procedures are followed correctly.

IGAC Recommendation #2

Moultrie County Beacon will review its right to information without guardian consent during a bed hold when a resident is in another provider's care (and train staff if needed).

Moultrie County Beacon response:

Moultrie County Beacon agency policy now includes the procedure to be followed when a consumer is under "bed hold" status with the Department of Human Services Office of DD. We are also asking for written guidelines from DHS/DD regarding their expectations of community agencies while consumers are in "bed hold" status.

IGAC Recommendation #3

Moultrie County Beacon will train all staff on HIPAA and ensure that they are aware that health information should always be transmitted with proper safeguards.

Moultrie County Beacon response:

All employees are trained on HIPAA requirements, be it as a DSP, a nurse, a QIDP or an administrator. The agency should not have taken the pictures in question regardless of who they were shared with (in this case they were shared with the guardian).

Agency policy states that employees are prohibited from taking and sharing any photos without the expressed approval of the guardian to do so. We are adding the means of encryption that must be employed (if any) before sending photos electronically.\*

\*We are able to respond to OIG requests for pictures and information without guardian approval, as OIG is HIPAA exempt.

I hope that this meets the requirements of the Human Rights Authority. I do appreciate the work of the Board and the staff; even though I would like to avoid any future encounters of this nature. Please give me a call if you have any questions regarding our response.

Respectfully Submitted,

  
Susan Rauch

Executive Director

Moultrie County Beacon, Inc.

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