FOR IMMEDIATE RELEASE

Egyptian Regional Human Rights Authority
Report of Findings
Case #18-110-9006
Choate Mental Health and Developmental Center

The Egyptian Regional Human Rights Authority (HRA), a division of the Illinois Guardianship and Advocacy Commission, accepted for investigation the following allegation concerning Choate Mental Health and Developmental Center (Choate):

> **Recipients are not receiving adequate and humane care and treatment in the least restrictive environment due to not being allowed adequate outside/fresh air time.**

If found substantiated, the allegation represents a violation of the Mental Health and Developmental Disabilities Code (405 ILCS 5).

Choate provides services to both persons with mental illness and persons with developmental disabilities. The allegations in this complaint focus on the mental health unit at the facility. To investigate the allegation, an HRA team met with Choate administration, staff from all shifts and interviewed recipients at random. Pertinent policies and regulations were also reviewed.

FINDINGS

Interviews: The HRA conducted three site visits over a period of 7 months and interviewed administration, and randomly interviewed direct care staff from both daytime and evening shifts and recipients from different units. The following is a summary of those interviews.

A. Patients:

Patient 1 had been a patient at the facility for approximately 9 months when interviewed. This patient was a transfer from another State Operated Mental Health Facility. When asked about her typical day, the patient said she wakes up around 6:00 a.m., eats breakfast, attends the community and goal setting meeting, then attends recreational education where she plays cards, ping pong, pool etc. Sometimes she attends the seniors program where they play Yahtzee, drink coffee and watch television shows. She goes to sleep at night around 10:00 p.m. These activities are usually indoors. When asked about outside time, this patient stated that she goes outside to the courtyard several times per week when the weather is nice, and the facility also has groups that are held outside. When comparing Choate to her previous facility, the patient stated that the previous facility was stricter regarding outside time and she went outside every other day for approximately 15 minutes. At Choate, when they go outside, they are allowed to stay for longer

periods of time. The patient was on R (unit restriction) level at the time of our interview so was not going outside.

Patient 2 had been a patient at the facility for 3 months when interviewed. He described his typical day as waking up around 6:00 a.m. and going to bed around 9:00 p.m. Throughout the day he participates in groups, talks to his social worker in the hallway and watches television for current events, which occupies 2-3 hours each day. He explained that he has bouts of depression, so he spends a lot of his time during the day resting. He stated that he goes outside to the courtyard approximately once per week, weather permitting, and that sometimes that helps with his depression. He stated that if outside time is offered to him he accepts every time.

Patient 3 had been a patient at the facility for 4-5 months when interviewed. This patient had a level 2 pass (off unit with staff escort) at the time of our interview. His typical day was described as waking around 6:30 a.m. and going to bed around 10:30 p.m. During the day his activities consist of going to breakfast, medication pass, classes, community meeting, lunch, fitness class where he walks around the grounds and sometimes on the unit, playing games in the basement such as pool, cards, darts etc. He stated that he typically goes outside daily with 1-2 staff for 7-14 patients. The HRA asked if more patients want to go outside how that is handled. He responded that patients may rotate inside so others can come out. On certain days, they can go to the swimming pool.

Patient 4 had been a patient at the facility for 11 months at the time of our interview. His typical day is described as waking around 6:00 a.m. and going to bed around 10:30 p.m. He stated that he typically walks the halls for exercise. He does attend arts and crafts class after lunch and attends community meetings. He stated that he does not go outside very often, maybe one time per week. He said it used to be at least twice a week, but lately it has not been offered. When patients go outside, they usually get to stay for around 45 minutes to an hour, depending on staffing levels because there must be staff present. When he is in fitness class, he sometimes gets to walk around campus with staff and occasionally they take him to the café. This patient typically does not choose to go to the swimming pool when asked.

Patient 5 had been a patient at the facility for 8 months when interviewed and was on a level 3 pass (to assigned off-unit areas/no staff escort) at that time. This patient stated that she attends community meetings and goal setting group, art classes, music, recreational education where she plays pool or cards, attends current events group where they watch news on television and discusses world events topics that are featured on the news. Her typical day is being awake at 6:00 a.m. and asleep around 10:30 p.m. She goes outside to the courtyard during set times when staff asks but she stated if there are not enough staff they cannot go outside, but that is the not the case very often. She also stated that some teachers take their classes outside.

Patient 6 had been at the facility for approximately 9 months at the time of her interview. She attends on unit activities and groups. She was recently on 1:1 supervision and the physician wrote an order for her to go outside even though she was on R level. She stated this was because of a treatment meeting where her 1:1 staff suggested going outside. The order was renewed as long as she "stays safe." She stated that she typically can go outside around three times per week.

Patient 7 had been a patient at the facility for approximately 3 months at the time of the HRA's interview. He was on a level 2 pass at that time. He stated that he is "mostly inside" but does go outside to the courtyard 1-2 times per week. He typically participates in classes that are held inside but off the unit and he attends seniors class which meets in the cafeteria. He would like to go outside more often but has not asked. The patient stated that he did not know that patients could request outside time, he thought they were just able to go outside when staff said they could. Some of his classes meet outside too but he mostly is outside when the mental health technicians take groups out. He said that several patients participate in outside time when it is offered, and they enjoy going outside whenever they can

Patient 8 had been a patient at the facility for 4 months when interviewed and was on R level at that time. The patient informed the HRA that she had been outside approximately 4 times since her admission and one of those times was with her 1:1 staff when she went on a walk for her fitness group. She would like more time outside and informed the HRA that she has a Vitamin D deficiency. The facility physician is aware of this condition but has not offered to write her an order for outside time while on R level. She stated that patients in general would like to go outside more frequently but since there were so many patients on 1:1 observation they cannot go outside due to lack of staff.

Patient 9 had been at the facility for a year at the time of the interview and was on R level at that time. She stated that she has been outside in the courtyard approximately 3-4 times since admission. She has requested to go outside a couple of times and was told by the day staff "we'll see." She never heard anything back and did not get to go outside, so she quit asking. She stated that she goes to the activity room, but the air is stagnant in there. She typically spends her day writing in journals, drawing, eating, lying in bed, and listening to music. She does not attend group activities and does not enjoy playing cards or watching television, but she does attend counseling sessions.

Patient 10 had been at the facility for 11 years and was on a level 2 pass at the time of the interview. He stated that he goes outside daily weather permitting, mostly with day shift staff for 30 minutes to an hour. He informed the HRA that when patients are on R level they are not allowed outside time but with a level 1 or higher they are allowed outside courtyard time. He spends his days doing word search puzzles and watching television.

Patient 11 had been at the facility for 2 months and was on R level at the time of the interview. He stated that he has been allowed to go on one walk since admission. Staff tell him he cannot go outside because he is on R level. He does not know when he will promote to a level 1 pass (staff escort off unit) or what he must do to increase levels. He typically works on puzzles during the day.

Patient 12 had been a patient for 5 months at the time of the interview and was on a level 2 pass. The patient said he goes outside twice a day every day to the courtyard, weather permitting, and he is outside once in the morning and once in the evening. He is usually outside 40 minutes to an hour each time. He stated he has not heard other patients complaining about outside time, but he stated that if they are on R level they are not allowed to go outside.

Patient 13 had been a patient for just over 2 years and had a level 2 pass. He stated that he does not go outside, staff does not typically offer outside time to him, but he remembers them asking 1-2 months ago if anyone wanted to go outside to the courtyard. He also stated that he does not ask staff if he can go outside to the courtyard because he "figures they'll get around to it if they have enough staff." He stated that he chooses to stay on the unit daily and participates in on-unit classes and he also watches television.

B. Staff:

Staff 1: The HRA spoke with a Mental Health Technician (MHT) who had worked at the facility for over 20 years. She confirmed that patients must have a level 1 or higher pass to go outside and stated that there are "quite a few [patients] without level 1." There are several patients who stay on R level, but the treatment team update their plan to allow outside time if there is a physician's order. They have sick call for patients daily where they can request to speak with the physician. The Psychiatrist meets every other day with patients. Pass levels are reviewed daily. If a patient is on R level and is not on 1:1 supervision, he or she could get a pass increase after the daily review. This staff person stated they do not go outside regularly, she estimated 3-4 times per month when the weather is nice. Some of the classes take the patients outside occasionally, some she mentioned were the Recycling program, Seniors group, Arts and Crafts, Wellness Recovery and Journaling groups. At the time of our interview, there were 5 patients on 1:1 supervision and 6 additional staff, so 11 staff on the unit for approximately 40 patients. The Staff to patient ratio for the courtyard is 1:7 so at this time the ratio was approximately 1:5 due to the 5 staff being assigned to 1:1 supervisions so they could not take patients outside. When asked if the courtyard is considered an extension of the unit since it is a fenced in locked-gate area, she replied that it was. The HRA asked if there are group times when all patients are together inside the unit, where they could be taken outside instead, and she replied that could be a possibility. Another problem is when staff have allegations filed against them for abuse or neglect of patients, they are taken "out of the count." When a staff is taken "out of the count," it is usually 4-5 months before the issue is resolved and they can return to work on the unit. When that happens, the other staff are called in for overtime shifts. At the time of our interview, there were 10-11 staff "out of the count." She stated that it would help patients' behaviors if they could go outside more and it is the goal to get the patients outside if staff levels are permitting. She stated that she frequently receives complaints from patients about not being able to go outside.

Staff 2: Another MHT was interviewed and had worked at the facility less than a year at the time of our interview. He also informed the HRA that patients with level 1 pass could go outside to the courtyard and levels 2 and 3 could participate in off unit activities. At the time, there were 42 patients on the unit and of those, approximately 10 went to off unit classes during the day. This staff stated that the courtyard was considered off unit and had a 1:7 ratio. He stated that the MHTs take patients outside to the courtyard approximately twice a week but there have been times that patients refused. Typically, 4-5 patients out of 42 will go out when asked. He has not had many complaints from patients about outside time, and usually staff are asking patients if they would like to go out, but patients decline to do so. He stated that Activity Therapists (AT) take some patients on walks occasionally and that sometimes nurses will help supervise to allow outside time in the courtyard when staff levels are low.

Staff 3: The HRA interviewed another MHT who had worked at the facility approximately 7 years. At the time of our interview there were 42 patients on the unit and typically there are 11 staff. Of the 42 patients, 8 at a time could go outside with AT staff. MHTs also do activities on the unit with patients. AT has Senior groups, yoga, Friday Funday, Karaoke, Café, Swimming Pool and takes patients to the activity room in the basement to play pool, ping pong or watch television. She also stated that some patients choose not to go outside. In addition to these activities, they also have the unit store Monday through Thursday where patients can purchase phone cards, head phones, radios and snacks. The Fitness class sometimes goes on walks and Arts and Crafts takes patients outside for activities at times. Anyone level 1 and up can participate. Typically, patients are taken outside 3 days per week especially with full staff. However, not everyone can go outside, those on R level or 1:1 for safety issues are not allowed outside time unless they have a physician's order. This was explained as a motivation tool to help patients "do better to earn an increase in pass levels and privileges." The HRA also asked about the patients currently on R level and this staff felt that most of those patients would do well in the courtyard. The HRA then asked about different scenarios of staff to patient ratios and inquired what minimum staff would be for 40 patients (20 each unit) and was told that at a minimum, they would need 2 staff and 1 lead worker for each unit, so 6 total if none were on 1:1 supervision. When asked about training he stated that during training he was told of therapeutic benefits of going outside.

Staff 4: This staff person who is a MHT has worked at the facility for approximately 17 years. She stated that typically patients go outside 3-4 times per week when it is nice outside. Staff attempted to take them out more often but that outside time did not always get logged and staff were counseled for that. Recently, staff were told that they have to take patients out twice daily, weather permitting. She said this was due to a human rights complaint that was received. She said there was a delay in implementing that due to the unit undergoing some remodeling, but she thought it was happening regularly now.

Staff 5: The next MHT the HRA spoke with had worked at the facility for approximately 8 months at the time of the interview. He stated that patients are taken out daily for approximately one hour. They typically try to schedule this outside time around 6:00 or 7:00 p.m. which works around the medication passes, 5:00 classes and 8:00 snacks. However, when they are understaffed they cannot always take patients out daily. They typically have 5 staff on his shift. Understaffing occurs due to absenteeism, staff who are "out of the count" and staff performing 1:1 supervision. There is typically at least 1 patient who is 1:1 but usually more than that. Another issue they contend with on his shift is staff availability in covering visitors. Visitation is 6:00-8:00 p.m. through the week and 9:00-11:00 a.m. and 2:00-4:00 p.m. on weekends and holidays. One staff person must be on visitation detail and then other staff are assigned to 1:1 patients, which may only leave 3 or fewer staff to cover the remainder of the unit. Anyone who has a level 1 pass or higher can go outside to the courtyard and anyone on R level must have a physician's order to be allowed outside. He confirmed that there is a 1:7 ratio for the courtyard.

Staff 6: A nursing staff member told the HRA her job duties included running programs, participating in treatment meetings, debriefing of restraints, etc. At the time of the interview there were 43 patients and 10 were on 1:1 supervision or frequent observation. The physician

evaluates levels every 24 hours and R level is the only one that prevents outside time. Upon admission pass levels are explained to patients. She stated that every Friday is "Fun Friday" and patients go off the unit. Patients are assessed every 24 hours and if they are "doing good" they can go to the courtyard. If a person is on 1:1 observation they can only go out to the courtyard with the Medical Director's approval. She stated that a lot of patients, especially younger men, complain about not having enough outside time. She is an advocate for outside time and asked about taking patients to the pool but was denied and was told that AT staff must do that. She also stated that some medications increase sun sensitivity, so they must be careful with outside time for those patients.

Staff 7: Another nursing staff member explained the R levels in more detail. She stated that if the person is on R for medical reasons, they look at outside time on a case by case basis; if it is due to special observation, that may prevent the patient going outside. If the R is for self-harm, that is also looked at on a case by case basis. The staff ratios are 1:9 on the unit and typically they have 7 MHTs and 4 nurses who work on a rotation schedule daily. AT takes patients outside occasionally, but that requires a level 2 or higher pass if it is beyond the courtyard. Elopement has occurred from the fenced in and locked courtyard in the past, but she was not sure how recently. She stated that the day shift is busier, and the courtyard is utilized more in the evening time. Everyone has a schedule for the day so outside time would also depend on their schedule. If there is a patient with behaviors, outside time would be addressed in the treatment plan. When asked if she was aware why Choate's policy viewed outside time as a privilege versus a right, as some other facilities do, she did not know why that was and stated that it has just been that way for at least 14 years. She is not aware of any Department regulations that govern outside or fresh air time.

Staff 8: An AT staff member was interviewed who has worked at the facility for over 30 years. At the time of the interview there were 4 AT staff. Some of the rehabilitation classes/programs that are offered are: Fitness Classes are offered Monday through Friday. Patients also go to the gym, swimming pool or go for walks. Recreational education is offered Monday through Friday afternoons. Journaling is offered twice a week and occasionally that class meets in the courtyard. Wellness recovery is offered twice a week and that class also meets in the courtyard on occasion. Seniors group meets Monday through Friday and occasionally meets in the courtyard. Music therapy meets once or twice a week and occasionally meets in the courtyard. AT also holds special events and Friday Fun Day which includes movies, and card tournaments among other activities and these are occasionally held outside. This staff person also informed the HRA that AT staff attend the morning meetings, so they are aware if there is enough staff coverage on the units. AT staff utilize interns along with staff and will adjust their classes to try to get the patients out during class time when they know there is a staff shortage on the units. AT staff to patient ratio is 1:7 but when they have interns present they can take more patients on activities. When asked about how often patients are outside during rehabilitation classes, the staff person stated that they get out several times per week even if they have low pass levels. When asked about how often there are staff shortages, the response was that in the Fall it was frequent but since then they have hired 90-100 new staff and AT was hoping this would reduce the frequency of short staffing levels.

C. Administration: At the time of our interview the current census on the mental health units was 43. Upon admission, patients are given pass level education to better understand what privileges are earned and what restrictions are in place at each level. The HRA discussed the difference between Choate's policy for outside time and policies from two other facilities that the HRA received and reviewed. The HRA explained that those facilities view outside/fresh air time as a right and directed daily outside time if the weather was appropriate, whereas Choate's policy is to allow outside time as a privilege that is earned with the appropriate pass level. When asked about the rationale for the pass levels, the response was that is just how it has always been done. The HRA asked if there was a DHS directive regarding how to handle outside time. Administration replied that if there is a Departmental directive they are unaware of it. When asked if administration and staff have had discussions on ways to get more outside time for the patients, the response was that they have not received many complaints so have not had a need to pursue. Administration informed the HRA that rehabilitation classes often take patients outside during class time and that the day shift is busier and so patients are not out as much as they probably are in the evening time. The HRA asked if the courtyard is considered an extension of the unit and was told that it is. The HRA then asked if it is an extension of the unit, then would it be possible for staff to be stationed outside during certain times to allow patients to come outside if they choose to. The administration stated that they would have to check with staff to see if that would be a possibility or not.

Policy Review:

Master Treatment Planning Policy AID.050 states that *"It shall be the policy of Choate Mental Health Center that a comprehensive, multi-disciplinary, integrated treatment plan shall be developed in written format for each individual admitted for services in order to outline a strategy for symptom alleviation, behavioral improvement, and enhancing quality of life. The strategy shall initially be called an Initial/Admission Treatment Plan, but ultimately becomes a Master Treatment Plan, which shall be developed in collaboration with the individual, family, guardian, or others as appropriate, and the multi-disciplinary treatment team…Treatment plans shall be a flexible, living document, in that goals and objectives shall be attainable, with new or revised objectives and interventions being generated as treatment proceeds. Goals should also be discontinued if no longer appropriate, or if the individual has attained or met the goal/objective. Interventions shall include prescribing skills based and therapy groups to enhance the individuals' progress toward discharge and promote a Recovery oriented philosophy."* This policy requires the plan to be individualized and requires that *"when completing all areas of the Intake Note/Brief History, Initial/Admission Treatment Plan, etc., the RN shall adhere to the rights of the individual, as stated in the MH Code, and shall detail specific psychiatric signs and symptoms. The Personal Safety Plan, MR157 (MSO.062) will be completed as the final component of the Initial/Admission Treatment Plan."* The policy further requires that *"the Master Treatment Plan will utilize a person-centered approach and will incorporate individual strengths and preferences and identify a prescribed list of skills groups and treatment groups."*

Use of Courtyards Policy RSS.039 states *"It is the policy of Choate Mental Health Center to allow patients access to court yard providing they have appropriate pass*

level…C. The Patient Access Log serves as documentation of required face checks when patients are taken to Courtyard. The time patients leave unit and return is recorded on Access Log. D. All patients using the courtyard must have a pass level "1" or greater. If special circumstances exist, staffing ratios can be adjusted to provide more staff supervision as necessary. E. Patients with "R" pass may go to courtyard with doctor's order.
F. Staffing Ratios: 1. This level requires a 1:7, 2:14, 3:21 staff to patient ratio. 2. As always, if special circumstances exist, these ratios can be adjusted to provide more staff supervision as necessary."

On Campus Pass Levels Policy MSO.003 states *"It is the policy of Choate Mental Health Center to have a system in place for which patients are granted pass levels. These levels provide patients access to a variety of programming areas."* The levels are listed in the policy as 1-4 and R and are described as follows:
R (restricted to unit) Must stay on unit except for medical tests or court where they will be supervised. Those on an R level for medical reasons may be allowed courtyard privileges with a physician's order.

1. Imminent risk of harm to self or others.
2. Special Procedures - The presence of harmful behavior requiring restraint or seclusion or special observation (1:1, 2:1, frequent, or combination thereof).
3. Medical Issues - Experiences Acute medical problem.
4. Elopement - Is currently at a moderate or high risk for elopement as determined by ERAT.
5. Legal Issues- Any person who has an outstanding warrant for arrest or wearing a monitor device should be placed on "R" status at time of admission. Treatment Team should review before any increase in pass level.

Level 1 Patients on Level "1" status are escorted and supervised by staff in locked areas. Areas a patient may access with staff escort include Courtyard, and adjacent units for programs.

1. Patients on Level "1" status are escorted and supervised by staff in locked areas.
2. Areas a patient may access with staff escort include Courtyard, and adjacent units for programs.
3. Escorting requires a ratio of 1 staff to 7 patients on Level "1" when only one staff person is escorting. Otherwise the required ratio is 2 staff to 14 Level "1" patients. With each additional staff, seven additional Level "1" patients may be escorted.

It was also noted that *"Newly admitted patients will automatically be placed on Level "1" unless admitting doctor assesses that they meet criteria for Level R. It must be documented by the admitting doctor how/why that patient meets the minimum criteria for the restriction."*

Level 2 Meets criteria for Level "1" pass and held a Level "1" pass for minimum of 72 hours.

1. Patients on Level 2 status may attend off unit appointments, activities, treatment or educational services during daylight hours with staff escort. This includes courtyard, adjacent unit for programs, Goodner Hall, chapel, therapeutic pool and on ground activities
2. Staff escort requires a ratio of 1 staff to 5 patients on Level 2 when only one staff person is escorting. With each additional staff, up to five additional Level 2 patients may be escorted. In any instance of staff escorting, assessment of patient's current clinical condition by staff present, shall determine which patients are escorted off unit

Level 3

1. All privileges of Level 2
2. Go to and from assigned off-unit programs, with 15 minutes before and after class.
3. Must agree to be searched by staff every time upon returning from unsupervised grounds pass.
4. The attending psychiatrist, Medical Director and Hospital Administrator must approve Level "3" passes.

Level 4 (Full Grounds Pass - forensic patients only)

1. All privileges of level 3
2. Go off unit during scheduled grounds pass time
3. Must agree to be searched by staff every time upon returning from unsupervised grounds pass
4. The attending Psychiatrist, Medical Director and Hospital Administrator must approve level "4" passes.

"Assignment and maintenance of pass levels is a clinical function of the Treatment Team. …There are some instances where for legal or administrative purposes, a person's access to the campus may be limited. The Hospital Administrator or Medical Director in these instances may act in an administrative capacity to override a Treatment Team decision. Raising Pass Levels: Changes in pass levels shall be linked to treatment reviews and compliance with all minimal criteria listed for the specified pass level. Greater freedom of movement shall be related to clinical improvement…Reducing Pass Levels: Critical incidents (restraint, seclusion, unauthorized absences, serious injuries, assaults, contraband, etc.) and status of response to treatment shall be reviewed at significant treatment intervals which typically is several times per week and may require reductions in pass level. If an individual's pass level is reduced at a time when the primary treatment team members are not present, i.e., evenings, weekends, holidays, the individual is to be notified of the pass reduction and pass level by the staff reducing the pass level providing the individual an explanation for the pass reduction… Only Clinical Professional staff, (RN, Clinical Psychologist, Licensed Clinical Social Worker or Psychiatrist or MD) are authorized to initiate the Pass Reduction."

For comparison, the HRA obtained policies from two other state operated mental health facilities; one with a similar security level as Choate and another that is a maximum-security facility. Those policies are detailed below.

Similar security level facility – This policy (dated 4/24/07 and last revised 6/21/16) states that the facility *"considers sunlight and fresh air a therapeutic and essential part of a patient's recovery. This respects the rights of the individual and is shown in research to have beneficial effects to the patients physical and mental health. It is the policy of [facility] to provide outdoor access to patients while maintaining safety and security of patients and staff at all times."* The procedure is described as *"Access to the patio on each unit may be available from* ***0800-2000 daily*** *outside of regular program activity times…The patio can also be accessed during unit activity times, including meals and snacks.* ***At a minimum****, patients will be allowed the opportunity to access the patio* ***once on the day shift and once on the evening shift, weather permitting****…The treatment team will assess clinical appropriateness for patients to access the patio. The patio is considered part of the unit. Restricted access will require a Notice Regarding Restriction of Rights of Individual…notification with supportive documentation in the medical record as to the behavioral, or medical risk factors which prevents the patient from participating in outdoor activities. If patients are restricted from access to the patio, this will be reviewed on a daily basis."* The policy continues to outline the staff to patient ratios, positioning of staff while on the patio with patients and other procedures.

Maximum-security facility - This policy (last revised 5/6/15 and reviewed 3/28/18) states *"Patients at [facility] will have the opportunity to participate in outdoor activities to promote health in a safe and secure yard area."* The policy then describes the procedures for scheduling the yard. The Patient Participation section of this policy states *"A. When unit staff believes a patient should be kept from the yard for a given day based upon patient behavior, the STA II will enter a progress note in the clinical file documenting the reasons that the patient was not allowed to attend yard. The STA II will review this action with the unit director or unit manager (or in their absence an available therapist) within the same shift for further treatment team review. B. When a physician limits a patient's ability to attend yard for medical reasons, the physician's order will be reviewed according to the treatment plan or if not specified in the treatment plan, the order will be reviewed at least every three days. Medical services will notify the unit director, unit manager, STA II, nurses, and activity therapists assigned to the residential unit of all orders limiting a patient's activities and orders restoring the patient's activities… When temperatures are between 40 degrees Wind Chill and 90 degrees Heat Index, residential units will* ***offer patients yard a minimum of five days per week****. No yard is offered when the temperature is below 40 degrees Wind Chill. If Heat Index temperatures are above 90 degrees, the medical director or designee must approve any scheduled yard activities to be conducted. The following factors will be considered in the decision*

a. Length of time patients will be outside
b. Special needs for patients identified as high risk for heat exposure
c. Sunlight exposure (Since Heat Index values were devised for shady, light wind conditions, exposure to full sunshine can increase Heat Index by up to 15

degrees) … If the minimum staffing standard cannot be met, the unit STA II will notify the shift supervisor requesting deployment of detail staff for the yard activity."

The HRA reached out to the Department of Human Services to see if there was a Departmental directive for state operated facilities regarding outside or fresh air time. A Deputy Director for state operated developmental centers informed the HRA that they do not have a specific policy, however they do have regulations that address schedules and activities to have more than 1 off site activity per month. Each person residing in a facility also has a schedule developed by the Interdisciplinary Team which includes some type of work or other activity during the day along with programming in which most individuals leave their homes to go to a work site. Other outside activities are driven by the IDT and planned around individuals' desires, wants, needs and/or assessments.

The HRA was also informed that there is no Department of Mental Health Directive that specifically addresses the issue of outside/fresh air time in state operated mental health facilities, but the facilities are required to abide by the Mental Health Code and Federal guidelines in regard to respecting human rights and not restricting such rights unless there is a risk to the patient or others. The representative also stated that another state operated mental health facility that has a similar security level as Choate had recently changed their policy to ensure all patients could access outdoors daily and immediately upon admission unless they were assessed to be at high risk for elopement. A copy of that policy was later obtained and is detailed below.

Similar security level facility 2: This policy was revised on 2/14/17 and states *"Every patient will be **given an opportunity to be outdoors as often as is feasible** unless contraindicated for therapeutic or safety reasons. Although the fenced patio areas between or behind the units are considered a secure area, increased supervision and vigilance is required in this area to maintain patient safety and security."* The policy also stated that all patients must be assessed by the unit psychiatrist prior to being given patio privileges and it noted that the staff to patient ratio differed according to which level the patients are on. For "staff supervision" or lower levels, patients allowed to use the patio is limited to groups of no more than 10 patients to 1 staff. However, there is no limit on the number of patients allowed to use the patio area at any one time providing they hold a level of "to and from" or "grounds privileges." This policy also outlines how to address denial of patio privileges and stated *"For patients who have patio privileges, the decision to hold the patients' patio privilege may be made by the Shift Leader based on clinical or administrative reasons in consultation with unit staff and clinical staff. Patients who are denied patio privilege by the Shift leader due to immediate behavioral concerns should be issued a formal Restriction of Rights, with an associated physician's order. This formal patio restriction should never exceed 24 hours and should be re-evaluated by the Treatment Team at the earliest possible juncture. Supporting documentation should be added to the patient's medical records via 'incident charting' by the R.N. Shift Leader. Every unit shall afford a **minimum of one 30-minute patio group within the 7 am-3 pm shift and the 3 pm – 11 pm shift.** A patio group binder will be kept at the tech desk and assigned staff will document the occurrence or approved*

non-occurrence of each scheduled patio group…The shift assignment sheet for 7-3 and 3-11 will designate which staff person is responsible for patio group during the shift. Patio group should occur on each 7-3 or 3-11 shift on each unit unless cancelled by administration due to inclement weather or other issues during business hours…a patient on frequent observation or 1:1 may go to the patio with a written doctor's order. However, all requirements for the special observation must be maintained (e.g., for1:1 staff must maintain continuous direct observation from a distance just beyond arms reach; for frequent observation staff must check patient every 15 minutes and document observation on the flow sheet.)" The policy also requires a monthly tracking sheet to be used documenting when patio time occurred and to document if it is cancelled. This tracking sheet is turned into the Clinical Nurse Manager at the end of each month who shares the data with the Director of Nursing.

Unit Information:

The HRA requested unit movement logs, which document off unit time for patients, as well as staff logs for day and evening shifts for four random weeks: October 16-22, 2017; April 16-22, 2018; May 7-13, 2018 and June 4-10, 2018. The outside time for those 4 weeks is summarized below:

Date	**Staff Working each shift**	**Total Patients**	**Patients on R Level**	**1:1 freq. obs.**	**Patients goi outside**
10/16/17	13/10	41	9	5	1 +9 to Rec Ed
10/17/17	12/10	41	9	5	2 +6 to Rec Ed
10/18/17	16/13	41	10	5	10+5 to Rec E
10/19/17	17/7	42	9	5	1 +10 Rec/Recycle/P
10/20/17	12/10	42	10	5	4 +2 to Rec Ed
10/21/17	11/10	42	10	5	2
10/22/17	14	42	10	5	2
4/16/18	14/10	43	16	7	1 +1 to Rec Ed
4/17/18	14/10	43	17	7	7
4/18/18	15/9	43	14	7	15 +2 to R Ed
4/19/18	Incomplete	Information	for this	6	day
4/20/18	15/12	43	7	5	3
4/21/18	13/10	42	8	5	10
4/22/18	14/11	42	10	6	0

5/7/18	14/12	42	12	9	4 +6 to Rec Ec
5/8/18	17/12	43	9	7	4 +2 to Rec Ec
5/9/18	15/14	42	10	7	4 +8 to Rec Ec
5/10/18	17/11	43	10	6	16 +1 to RecE
5/11/18	12/11	43	9	6	4 +12 to Frida fun day
5/12/18	13/?	43	9	6	4
5/13/18	11/15	43	10	6	8
6/4/18	12/9	43	12	5	4
6/5/18	12/11	42	11	5	4 +7 to Rec Ec
6/6/18	17/11	42	9	5	3 +1 to Rec Ec
6/7/18	14/12	41	9	5	5 + 5 to Rec E
6/8/18	15/11	41	9	6	3
6/9/18	16/12	41	13	6	0
6/10/18	13/11	41	13	6	0

STATUTES

The Mental Health and Developmental Disabilities Code (405 ILCS 5/2-100) guarantees equal rights for persons with disabilities and states *"(a) No recipient of services 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 the receipt of such services. (b) A person with a known or suspected mental illness or developmental disability shall not be denied mental health or developmental services because of age, sex, race, religious belief, ethnic origin, marital status, physical or mental disability or criminal record unrelated to present dangerousness."*

The Code (405 ILCS 5/2-102) requires *"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. The facility shall advise the recipient of his or her right to designate a family member or other individual to participate in the formulation and review of the treatment plan. 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. The recipient's preferences regarding emergency interventions under subsection (d) of Section 2-200 shall be noted in the recipient's treatment plan."*

The Code (405 ILCS 5/2-201) requires that *"(a) Whenever any rights of a recipient of services that are specified in this Chapter are restricted, the professional responsible for overseeing the implementation of the recipient's services plan shall be responsible for promptly giving notice of the restriction or use of restraint or seclusion and the reason therefor to:*

(1) the recipient and, if such recipient is a minor or under guardianship, his parent or

guardian;

(2) a person designated under subsection (b) of Section 2-200 upon commencement of services or at any later time to receive such notice;
(3) the facility director;
(4) the Guardianship and Advocacy Commission, or the agency designated under "An Act in relation to the protection and advocacy of the rights of persons with developmental disabilities, and amending Acts therein named", approved September 20, 1985, if either is so designated; and
(5) the recipient's substitute decision maker, if any.

The professional shall also be responsible for promptly recording such restriction or use of restraint or seclusion and the reason therefor in the recipient's record.
(b) The facility director shall maintain a file of all notices of restrictions of rights, or the use of restraint or seclusion for the past 3 years. The facility director shall allow the Guardianship and Advocacy Commission, the agency designated by the Governor under Section 1 of "An Act in relation to the protection and advocacy of the rights of persons with developmental disabilities, and amending Acts therein named," approved September 20, 1985, and the Department to examine and copy such records upon request. Records obtained under this Section shall not be further disclosed except pursuant to written authorization of the recipient under Section 5 of the Mental Health and Developmental Disabilities Confidentiality Act."

CONCLUSION

The complaint was that patients are not receiving humane care and treatment due to not being allowed to have fresh air/outside time frequently enough. The HRA spoke with several patients at random from different units over a period of 7 months as well as staff from different shifts and units. The HRA received inconsistent information as to how often patients were being taken outside. The patients' responses included: outside time daily, weekly, 3 times a week, monthly, only 3-4 times in a year. The patients' responses were consistent that anyone on a R level cannot go outside unless they have a physician's order and most patients, when asked, were not aware that obtaining a physician's order for outside time was an option. The patients were also consistent in saying that with rehabilitation classes and groups they occasionally receive fresh air time. They also consistently stated that there are often times when there are not enough staff to take the patients outside due to ratios and the number of patients on 1:1 observation. When the HRA reviewed unit movement logs, it was noted that typically only a few patients went outside on most days. There were a few days when it was documented that 10-16 of the 41-43 patients on the units went outside.

Staff responses were also inconsistent regarding frequency of patient outside time and ranged from daily to several times per week. Staff were also consistent in saying that some patients choose not to go outside but are encouraged to do so and if a patient refuses frequently it is addressed in treatment planning. There was no clear answer given to questions about staff coverage for the outside area. The same questions were posed to administration and the HRA was informed that coverage depends on how many staff and 1:1 patients there were and the HRA was informed that the courtyard needs more supervision although it is considered an extension of the unit. The HRA questioned this as the courtyard is fenced and locked and it was explained

that past patients have eloped or attempted to elope from the courtyard so extra caution is used. Also, consideration must be given to patients who might have self-harm tendencies.

The HRA reached out to the Department of Human Services and other state operated facilities and learned that there is no Department directive, but facilities are to follow the requirements of the Mental Health Code regarding guaranteed rights and restrictions. The policies from other state operated facilities, even facilities with more restrictive settings than Choate, had policies that required outside time. The Mental Health Code guarantees that *recipients of services 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 the receipt of such services* (405 ILCS 5/2-100). The Code also requires *"adequate and humane care and services in the least restrictive environment, pursuant to an individual services plan"* (405 ILCS 5/2-102) Choate's current policy which views outside time as a privilege to be earned, rather than a right, is inconsistent with other state operated facilities' policies and violates rights guaranteed under the Mental Health Code. Therefore, this allegation is **substantiated.** The following **recommendations** are made.

1. **The Use of Courtyards policy should be revised to be in line with other state operated facilities' policies which view outside and fresh air time as a right and therapeutically beneficial for the patients rather than a privilege to be earned.**

2. **The blanket policy that all recipients on R level are not allowed outside time without a doctor's order is not consistent with individualized treatment planning per the Mental Health Code (405 ILCS 5/2-102.) The policy revision should allow equal outside time to all patients unless the treatment team determines otherwise based on individualized needs. When it is determined that an individual should be restricted from outside access for a brief period of time, a formal restriction of rights form should be given as required in the Mental Health Code (405 ILCS 5/2-201) and reviewed daily by the treatment team**.

   The HRA offers the following suggestion:

   Staff shortages were consistently provided as a reason for preventing outside access for patients. The revised policy should address the issue of outside time when there are staff shortages. Perhaps pulling staff from other areas for certain time periods throughout the day as indicated in the maximum-security facility's policy or possibly setting up the courtyard as a station where staff is assigned at certain times each day, so patients have access to fresh air.

RESPONSE

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

HRA Case # 18-110-9006
December 18, 2018

Finding/Recommendations/Suggestions	Response
1). The HRA recommends the use of Courtyards policy should be revised to be in line with other state operated facilities' policies which view outside and fresh air time as a right and therapeutically beneficial for the patients rather than a privilege to be earned.	Choate Mental Health Center strongly believes that individuals in our care should have the right to access outdoor areas beyond their living units. Therefore, the policy and procedure (RSS.039) entitled: Use of Courtyards has been updated to reflect our principles. This new policy and procedure was revised on 7/26/18 and states that all individuals in the care of Choate Mental Health Center will receive the opportunity to access outdoor areas beyond their living unit unless contraindicated for therapeutic or safety reasons. In addition, all staff members on our units have been re-trained in understanding and adherence to this plan.
2). The blanket policy that all recipients on R level are not allowed outside time without a doctor's order is not consistent with individualized treatment planning per the Mental Health Code (405 ILCS 5/2-102). The policy revision should allow equal outside time to all patients unless the treatment team determines otherwise based on individualized needs. When it is determined that an individual should be restricted from outside access for a brief period of time, a formal restriction of rights form should be given as required in the Mental Health Code (405 ILCS 5/2-201) and reviewed daily by the treatment team.	If courtyard access needs to be restricted, a Restriction of Rights will be completed, and the clinical rationale will be documented in the medical record. A physician's order will be required for such a restriction, not to exceed 24 hours and will be re-evaluated by the treatment team at the earliest possible juncture. At a minimum, individuals will have access to the courtyard once on day shift and once on evening shift, weather permitting. The Access to Campus Monitoring Log (CMHDC620) serves as documentation of required face checks when individuals are taken to the courtyard. In addition, all staff members on our units have been re-trained in understanding and adherence to this plan.