Õiguskantsler

Merle Lätt
Head manager
Kanepi Home
South-Estonian Care Centre Ltd
merle.latt@hooldekodu.ee

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Inspection visit to Kanepi Home

On 17 August 2021, the Chancellor's advisers carried out two unannounced inspections at the Kanepi Home of the South-Estonian Care Centre Ltd (hereinafter 'the care home'). The first inspection visit took place during the daytime and the second late in the evening.

On the positive side, it may be noted that the care home has the necessary equipment to provide a good-quality care service (shower stretcher, patient lift/hoist, etc). It is considered important that everyone enjoys the possibility to spend time outdoors. Various physical and hobby activities are organised for residents. Lights with movement detectors have been installed in corridors, helping to reduce the risk of falling. A point worth recognition is that, in view of the restrictions imposed to prevent the spread of the coronavirus, the care home offers residents alternative ways of communication (including via Skype) with next of kin.

A problem is shortage of staff. The care home should have more staff so as to be able to take proper care of the residents. Carers must fulfil different working duties and staff numbers are not enough to carry out all the duties. This prevents taking into consideration the individual needs of all the residents in the care home. People's freedom of movement may not be restricted without a legal basis; lawful measures must be found to ensure safety.

A staff call system should be installed in the building. Care plans for residents of the home should be reviewed at least once every six months. People's privacy in carrying out hygiene procedures must always be ensured so that they are treated with dignity. Residents of the care home must be washed at least once a week. Accessibility must be improved and requirements for administering and handling medicines complied with.

Kanepi Home has the capacity to provide a general care service to 128 people. At the time of the inspection visit, 123 people were living at the home. Bedrooms are single- to triple-occupancy. The care home employs four nurses (2.5 staff positions; nursing care is available 100 hours a week). For hobby activities, a hobby room on the semi-basement floor is used, and for health promotion, a health room equipped with various exercise devices, aids and training equipment).

The Chancellor's advisers together with a healthcare expert carried out a tour of the care home's rooms, examined documents and interviewed staff and residents.

1. Freedom of movement

The care home has created a separate department for people with a dementia diagnosis (on the second floor, third department). The doors of the corridor of the department are locked; residents cannot go outside independently. Doors can be opened with a chip card. Residents go outside the department only together with a carer. According to explanations by staff, people accommodated in the locked department are in need of more attention and supervision than normally.

Under § 20 of the Constitution of the Republic of Estonia, the freedom of movement of a person with a mental disorder may be restricted if they pose a danger to themselves or others. However, freedom of movement may only be restricted under specific conditions which have been clearly laid down by law (§ 20(2) Constitution). This may be done only in cases laid down by §§ 105–107 of the Social Welfare Act and §§ 11 and 14 of the Mental Health Act. A legal basis for restriction of freedom must be provided by law. Neither the Social Welfare Act nor the Mental Health Act provides a legal basis to restrict the freedom of movement and integrity of the person of a resident of a general care home. Thus, without a person's consent, a care home may not lock them inside the rooms of the home so that they cannot leave at will.

Certainly, people with challenging behaviour may end up in a care home – for instance, people with a dementia diagnosis who may wander off in a state of confusion or who need to be monitored more carefully because of their problematic behaviour. Regardless, a welfare institution must provide a safe environment lawfully and safely for all its residents.

A suspicion remained during the inspection visit that, in order to prevent people with dementia wandering off, raising the bed barrier has also been used (including an incident on 7 August 2020). A general care home may not restrict a person's freedom of movement in this way. A person in a state of confusion may try to climb over a high bed barrier and suffer a fatal fall. Raising the bed barrier is not an appropriate or lawful measure to prevent a restless resident from wandering off. Similarly, a person may not be restrained in a wheelchair for this purpose. Mechanical restraint, as well as restricting the range of movements, of a person residing in a general care home is not allowed even when a wide support belt is used for this.

Sometimes a person needs stricter supervision, or their health deteriorates to the extent that the general care service no longer guarantees their own safety and that of others. In that case, the service provider must notify the rural municipal, town or city government of the person's residence as recorded in the population register, and the guardian, that the person needs a different kind of service. A person may be placed under care without their consent only on the grounds laid down by § 105(1) of the Social Welfare Act, and a decision on placement in a closed social welfare institution is made by the court.

The Chancellor recommends discussing with the care home staff situations which may occur while caring for residents with challenging behaviour. In any case, people's safety should be guaranteed lawfully and appropriately. Useful measures for this purpose might be staff training, redistributing working duties, offering additional activities to people, or hiring additional staff. Advice for ensuring the well-being of residents with dementia and adjusting the environment so as to meet their needs can be found in the guidance material prepared by the non-profit association *Elu Dementsusega* (Life with Dementia).

2. Living conditions and quality of service

Bedrooms in the care home are single- to triple-occupancy. As a rule, preference for single- or double-occupancy rooms must be given when accommodating residents. When fitting out rooms, it should be ensured that the size of the rooms, furnishings and arrangement of furniture enable healthcare workers access to beds from both sides. In some rooms it was not possible to move around freely or use the necessary aids (e.g. a wheelchair, a rollator) because there was not enough room (e.g. room No 130). Some beds had been pushed to the wall and were therefore not accessible from both sides.

On the second floor, there was a pass-through bedroom (room No 242). Through this room, the staff moved from one department to another and during every meal a food-serving trolley was also moved through this room. The Chancellor asks that, while accommodating people, it should be kept in mind that a care home is the actual home of the people living there. A pass-through bedroom might not ensure sufficient privacy for its residents. The need to ensure privacy has also been stressed in the quality guidelines for the general care service.

Several care home residents use a commode chair but those rooms had neither screens nor partition curtains. Multiple-occupancy bedrooms where at least one of the residents uses a commode chair must have screens or curtains to ensure privacy.[1] Several residents mentioned that changing diapers while in view of others is extremely disturbing. It is important that a person is ensured privacy during all hygiene procedures (e.g. changing diapers and a urine bag, bandaging) – even if the person themselves does not ask for a screen or curtain. It was noticeable that the door of several toilets could not be locked (e.g. 145, 146, 239). A person must be able to carry out hygiene procedures in privacy both in the bedroom and in shared toilets.

Documents revealed that residents who are unable to wash themselves are washed, as a rule, every ten days. In the third department, people are usually washed once every 14 days. This is not sufficient. In addition to everyday hygiene procedures, residents of the care home must be given a whole-body wash at least once a week. This helps to avoid infections of the skin and dermis. According to health protection requirements, bedclothes must be changed with the same frequency. The healthcare expert also pointed out the need for more frequent washing.

The care home has no staff call system. Two call buttons have been procured but one of them does not work because there is no signal coverage. During the inspection visit, four care workers remained on duty for the evening and night: the care worker of the first department, the care worker of the second department (the department is housed on two floors), the care worker of the third department, and one care worker simultaneously for the fourth and fifth departments. The building has different divisions, with departments located on two floors, so that it may be complicated for residents to signal their needs to staff. Several people were concerned about this. One resident called the carer on their own mobile phone. Most residents are usually unable to use a mobile phone and, moreover, calling for assistance in a care home should not depend merely on whether a person has use of their own phone. Since residents cannot use call equipment, they are forced to call staff by shouting or ask fellow residents to call for assistance. Carers might not always hear

[1] A textbook-handbook for care workers *Hoolides ja hoolitsedes* (Caring and providing care) also draws the attention of carers to respect for the privacy of a person under their care and use of screens or curtains while carrying out intimate and hygiene procedures. (M. Jaanisk et al. Hoolides ja hoolitsedes. Õpik-käsiraamat hooldustöötajatele. Tartu Tervishoiu Kõrgkool. [Caring and providing care. A textbook-handbook for care workers. Tartu Health Care College] Kirjastus Argo, 2015.)

shouting by a resident, especially in the evenings when a carer must move between different floors or departments. Shouting may also be exhausting or degrading for a person and may also disturb the peace of fellow residents.

Since there is no effective assistance call system, some people might be left without assistance or their need for help is noticed too late. In the interests of safety of residents, it would be good if call equipment were available in all departments and by every bed.

Care plans had been drawn up for residents. It is commendable that everyone essential for residents has been involved in preparing the plans: next of kin, medical staff, carers, etc. Under § 21(5) of the Social Welfare Act, care plans must be reviewed and a person's condition assessed at least once every six months. Care plans of several people had not been reviewed as required even though the deadline for renewal of the plans had recently passed. The Chancellor asks to pay more attention to review of care plans. Regular review of care plans helps to spot residents' health problems or deterioration of health in time.

The building has no lift, so that several second-floor residents need assistance from staff to move to the first floor. The problem was also noted by the healthcare expert involved in the inspection visit. If a resident with challenged mobility needs to go to a doctor's appointment, maintenance workers help to lift them, but every day the same person cannot move from one floor to another. Also, users of a wheelchair and a wheeled walking frame have no access to the semi-basement floor where the activity room and health room are located.

It is difficult for people with challenged mobility to cross high door thresholds. In several places, thresholds had not been levelled out (or the levelling was insufficient for wheelchair users). For example, a wheelchair user said that they had to make maximum effort to cross a door threshold. Some bedroom doors also had thresholds in need of adjusting (e.g. room No 153).

If walkways and exit routes within the building have not been adjusted for needs of people with challenged mobility, people are forced to request more assistance from others. This burdens those people providing assistance and may also cause a feeling of inferiority in a care home resident. In fear of falling or due to an obstacle to movement, a resident may, for instance, refrain from going outdoors or from another activity in which they would be able to participate and in which they are interested. To improve possibilities for movement, it is possible to level out the floor surface, door thresholds can be replaced with thinner boards, or the like.

Residents did not complain about the quality of service. Some residents mentioned that the staff are very busy but communicate in a friendly manner and are ready to help. During the daytime (08.00–19.00) every department usually has two care workers on duty. In addition, two activity supervisors and a mobility supervisor deal with residents. Their task is to offer residents meaningful leisure opportunities, train cognitive skills (including with art-related tasks), do physical exercises with residents, organise events for them, and motivate them to move more. Organisation of hobby activities left a good impression. Residents participating in hobby activities also praised the possibilities offered by the care home, as well as the staff organising mobility activities. People with a dementia diagnosis are also involved in physical exercises every week. At the same time, it was noticeable that many residents were not interested in joint activities. More effort could be made to involve them

The main task of care workers is to assist residents with everyday care procedures and eating, and take care of their well-being. Coping and a decent life for people receiving the general care service

depends to a large extent on staff directly dealing with them. A care home must create a safe environment for its residents and ensure they are able to cope (§ 20(1) Social Welfare Act).

The law does not lay down the minimum staff number for a general care home, but staff numbers must be sufficient to enable them to carry out all the care procedures set out in the care plan and provide other necessary assistance to care home residents. When deciding the required number of care home staff, factors to be taken into account include how many places a care home has, what the need for assistance of its residents is, as well as the specific nature of the building, the grounds, and the institution. In the case of Kanepi Home, it should be kept in mind that the care home building has several floors and a structure with multiple divisions. It should also be taken into account that the care home accommodates residents who are bedridden as well as those with a dementia diagnosis who need more attention than usual. Residents include people with mental disorders whose behaviour may be unpredictable. Staff numbers must be sufficient so that no resident is left without assistance and that care procedures and other necessary tasks are carried out in line with residents' needs. Staff shortages and an excessive workload on staff may also increase the risk of ill-treatment of people.

A large number of residents need assistance with washing and other hygiene procedures. Many of the residents use diapers. Carers are rather burdened and have no time to carry out all the necessary procedures for maintaining people's health (e.g. wash people sufficiently often or assist people with dementia or challenged mobility with going outdoors). It is also difficult to keep an eye on those in need of more support (e.g. young people with an intellectual disability). In the evenings and at nights it may be complicated for carers to take care of bedridden residents who need to be regularly turned: it is difficult to carry out such procedures alone. Staff explained that they help each other and turn bedridden residents together with several people.

With limited staff it may also be difficult to cope with situations where a resident becomes aggressive. The care home has had incidents where an agitated resident assaults a worker (incidents of 25 April 2021, 8 August 2021, 6 May 2021). There have also been situations where a resident assaults another resident (incidents of 29 April 2021, 6 May 2021, 7 May 2021, 21 May 2021, 12 June 2021, 2 August 2021). If carers are occupied with care procedures (e.g. two carers together are washing a resident), tense situations may also arise due to lack of supervision (the incident of 27 February 2021). In departments accommodating people requiring individual attention and constant monitoring, at least two care workers should be on duty at all times.

Since 2020, the knowledge and skills of a care worker providing the general care service must comply with the requirements laid down by § 22(4) of the Social Welfare Act. It is in the interests of both residents and staff that carers should have the necessary training. Due to lack of knowledge, untrained staff might not know how to properly assess situations or how to act in anxious moments by taking account of a resident's best interests and choosing the right methods for ensuring their well-being and security. Properly qualified staff are able to prevent the occurrence of many problems. Carers with specialist knowledge (including ergonomics of care) are able to avoid work-related injuries and occupational diseases.

From care workers listed in the duty rota of Kanepi Home, only 16 (11 carers and 5 assistant carers) are recorded in the register of economic activities. The care home employs 21 carers and 6 assistant carers, so that the data on many care workers is not recorded in the register of economic activities. A service provider must ensure that the register contains correct data (§ 30(5) General Part of the Economic Activities Code Act) and that data are submitted to the registrar at the first opportunity and on time.

On several occasions, a care worker without the necessary training had been burdened with more responsibility in fulfilling working duties than allowed by law. An assistant care worker must be supervised by a care worker (§ 22(3) Social Welfare Act). However, based on duty rotas, it could be concluded that sometimes an assistant carer (or a carer without the necessary training) was alone in their department (e.g. in the first, third and fifth departments) in the evening and at night. This should not be so because a care worker should always directly supervise an assistant care worker in carrying out working duties. The Riigikogu has also seen the duties of an assistant care worker in the same way. An assistant care worker has not fulfilled the training requirements of a care worker. Therefore, such working arrangements also affect the quality of the care service.

The Chancellor asks to ensure that the care home constantly has a sufficient number of trained carers on duty, so that procedures meeting the needs of all residents can be carried out and timely assistance provided. Staff must definitely also be enabled to undergo training required by law. Correct data must be recorded in the register of economic activities. The care home should have a functioning staff call system. More attention should be paid to ensuring privacy and improving accessibility.

3. Handling and administration of medicines

Prescription medicines are distributed into drug dispensers by nurses, based on the treatment scheme. Assistance to residents in taking medicines is provided by carers who monitor that people take medication according to the treatment scheme. Since no nurse is present at the care home in the evenings and at weekends, carers must sometimes also decide on administering a prescription drug prescribed to a resident to be administered if necessity arises (e.g. cases of administration of Diazepam drops by carers on 3 July 2020 and 24 August 2020). Administering medicines given according to necessity is not always documented. Therefore, it is not clear who decided that administering the medicine was justified.

The right to protection of life and health under §§ 16 and 28 of the Constitution also means that a decision on administering prescription medicines must be made by a properly trained specialist. Medicines – especially prescription medicines – if used ineptly (including due to their combined and side effects) may endanger a person's life and health. Therefore, administration of prescription medicines must be decided by a specially trained healthcare professional (e.g. a nurse) who is also responsible for ensuring that administering the medicine is justified.

If a person does not have to take a medicine regularly but a doctor has prescribed it only in case of necessity (e.g. in case of deterioration of an illness), two factors need to be taken into account.

First, it must be possible to check whether administering the medicine was justified. A healthcare provider (e.g. a nurse) must ensure that the doctor could also retrospectively check the administration of the medicine if necessary (e.g. to verify the circumstances due to which the medicine had to be administered). Proper documentation helps to prevent the risk that a person is administered medication without medical necessity for another (inadmissible) purpose (such as restraint).

Second, only a healthcare professional (e.g. a nurse), and not a carer, may decide on administering medication. A carer may distribute medication included in the treatment scheme prescribed by a doctor and where distribution does not require assessing the need for administering the medication every time.

The healthcare expert involved in the inspection visit noted that, unless medicines have been prescribed in a resident's treatment scheme to be administered regularly, they may not be distributed for regular administration. A doctor, or a medical nurse in line with the doctor's instructions, must decide on using these medicines according to the situation. The same applies in a situation where the doctor has prescribed a smaller dose of medication for regular use and a larger dose to be administered in the event of need in case of change in a person's health condition. The healthcare expert noted that, in the case of such treatment schemes, a larger quantity of medication had always been placed in the drug dispenser. Carers always distribute to residents all medication placed in their dispenser. This means that people are not administered medication according to the treatment scheme prescribed by a doctor, and such distribution of antipsychotics, sedatives or sleeping pills may be interpreted as amounting to chemical restraint.

Some expired medicines could be found in carers' rooms (Diklofenak in the second department and Duofilm in the third department). In order to protect the health of care home residents, it is important that the institution has an overview of existing medicines and that unusable (with expired shelf life) and unnecessary medicines are properly destroyed. Use of expired medicines may be dangerous to health.

The Chancellor asks to ensure that records are kept about medicines to be administered 'in case of need', so that it is clear according to what treatment scheme the medicine was given to a person and who decided to do so and for what reason. A decision on the need to administer prescription medication must be made by a specially trained healthcare professional and the decision must be documented so that it is possible to retrospectively check the activities of a healthcare professional who is not a doctor. Medication may be administered to a person only in accordance with the treatment scheme. Medicines must be properly handled.

4. Combating the spread of the coronavirus

The care home has had a visit from an infection counsellor with whom possible risks were discussed as well as a Health Board recommendation on precautionary measures to be taken to combat the spread of the coronavirus SARS-CoV-2. The care home also has experience obtained from combating an outbreak of infection. Many employees and most residents are vaccinated against Covid-19.

Employees have been taught to use personal protective equipment. The building structure has multiple divisions and several exits which easily enables creating separate zones in case of risk of infection. The care home had stocks of personal protective equipment. In August, daily measuring of the body temperature of residents was started again, so as to be able to notice any changes in a person's health condition as soon as possible.

In order to combat the spread of the coronavirus, the care home has imposed restrictions on visiting. Visitors are allowed indoors only by prior agreement and in exceptional cases (e.g. to bid farewell to next of kin) and by using personal protective equipment. Once a month residents are allowed to meet with their next of kin outdoors in the yard. A meeting outdoors must also be registered in advance. A health declaration must also be filled out. It is good that information on visiting arrangements can easily be found on the website of the care home.

Parcels may be sent to residents. To communicate with next of kin, residents use a telephone in the department; several people also have a phone of their own. The care home also has a tablet

computer to facilitate contact with next of kin. To make an online call via Skype, a time slot can be booked through an activity supervisor every working day (between 9–16). Activity supervisors have also helped residents with sending e-mails.

Residents consider the possibility of communication with next of kin extremely important. This is particularly important in a situation where visiting opportunities have been restricted for a longer period and it is not known when the situation might significantly improve. In this situation, the care home has a bigger responsibility than before to create possibilities for residents to communicate with next of kin. The longer the restrictions on meetings with next of kin are maintained, the more alternative possibilities for communication should be offered. It is commendable that Kanepi Home has paid attention to this.

As regards the issue of visiting residents, the Chancellor asks to keep in mind that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has not deemed it reasonable to impose a complete ban on visits in social welfare and healthcare institutions. According to the CPT's assessment, consideration should be given to whether residents could have meetings with next of kin in safe conditions, establishing requirements for physical distancing and use of personal protective equipment, as well as a temporal restriction. Therefore, it is good that the care home has well-considered precautionary measures and residents can meet with their next of kin in compliance with those measures.

5. Assessment by the healthcare expert

A copy of the assessment by the healthcare expert involved in the inspection visit is appended to this letter. With regard to the observations and recommendations contained in the healthcare expert's opinion, I ask the care home to formulate their position and submit it to the Chancellor of Justice together with replies to the observations made in the letter.

I expect your opinion by 15 February 2022 at the latest.

Ülle Madise

Appendix: Healthcare expert's opinion

Copy: Ministry of Social Affairs, Social Insurance Board, Agency of Medicines.

Eva Lillemaa 693 8439
Eva.Lillemaa@oiguskantsler.ee