Õiguskantsler

Kairi Nool
Head of Centre
Viljandi Hospital
Welfare Centre
kairi.nool@vmh.ee

24.08.2021 nr 7-9/210690/2105410

Inspection visit to Viljandi Hospital Welfare Centre

On 15−16 April 2021, advisers to the Chancellor of Justice carried out an inspection visit without prior notice to the special care department at Viljandi Hospital Welfare Centre (hereinafter 'the welfare centre' or 'the care home').

New buildings constructed with the help of projects for reorganisation of the special care infrastructure left a good impression. The rooms in these buildings are spacious and bright, and residents of the welfare centre very much liked their new living environment. The attitude of the staff to residents was professional and kindly. Psychiatric care is easily accessible since the welfare centre is in the vicinity of a psychiatric clinic. Another positive aspect is that due to restrictions imposed for combating the spread of the coronavirus the welfare centre offers an opportunity for people to communicate with their next of kin via video calls.

Criticism can be expressed about restricting without legal basis the freedom of movement of people suffering from mental disorders in unstable remission. Cases of seclusion are not properly documented and the register of seclusion has not been filled out. Guaranteeing the safety of a person in seclusion means having to ensure that a seclusion room is safe for them and repairing any broken furnishings in the room.

Not all the activity supervisors have undergone the training required by law. To provide a high-quality service, the care home should have more staff (in particular in the A- and B-buildings) since the care home accommodates many people with an increased need for attention whose health condition may quickly deteriorate, as well as those in need of a special and individual approach. For people referred to the welfare centre under a court order, opportunities should be created for work or work-like activities.

The Chancellor recommends that the welfare centre should comply more carefully with health protection requirements and improve living conditions in the hospital main building's special care department. Activity plans must be properly drawn up and reviewed in time. Problems occur with

administering and handling medicines. The welfare centre must ensure that assistance from a medical nurse is guaranteed to the extent required by law.

People referred to the welfare centre under a court order are provided a 24-hour special care service in the building at Pargi tee 22a (C-building, capacity: 30 service places). The 24-hour special care service intended for people with severe, profound or permanent mental disorder in unstable remission is provided at Saariku tee 8 (A-building, 30 places), Saariku tee 10 (B-building, 30 places) and Pärna tee 3 (on the 8th floor of the hospital main building's B-block, 20 places).

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

1. Restriction on freedom of movement in departments for people suffering from mental disorder in unstable remission

The 24-hour special care service intended for people suffering from severe, profound or permanent mental disorder in unstable remission is provided in departments whose front doors can only be opened by staff with a chip card. Most residents in these departments need constant intensive supervision due to their health condition. They can move outside the rooms in the department only with an escort; the yard area of the A- and B-buildings is also surrounded by a locked fence.

The Constitution allows restricting a person's freedom of movement only in cases and according to procedures laid down by law (§ 20 Constitution). The fundamental right to liberty of a person receiving the 24-hour special care service without a court order may be restricted under specific and exceptional conditions but only for up to three hours by committing them to a safe seclusion room (§ 107 Social Welfare Act). This means that the law does not allow locking these people inside departments of a social welfare institution or a restricted territory so that they cannot leave at will. Under the applicable rules, a social welfare institution must ensure the safety and supervision of such residents (including control over entry to and exit from rooms) by other lawful measures.

It is understandable that residents suffering from mental disorder in unstable remission include those in need of close supervision. This places a difficult task on the departmental staff. However, freedom of movement even of people with restricted active legal capacity who perceive the surrounding world inadequately may be restricted only in cases sufficiently clearly and unequivocally defined by law.

The Chancellor has also previously drawn attention to the fact that freedom of movement of care home residents suffering from mental disorder in unstable remission has been restricted without legal basis. If, due to a person's health condition, in the interests of their own safety or that of others, additional restrictions (including on freedom of movement) are needed in respect of a person receiving the special welfare service, then the **Social Insurance Board must take this into account when assessing the need for the special care service**. Sometimes, while receiving a service, a person's health may also deteriorate to the extent that the 24-hour special care service without a court order no longer ensures their own safety and that of others, so that tighter supervision is needed. 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, about the fact that the person needs a different kind of service.

The Riigikogu has stipulated that the right to move freely may be restricted on the grounds laid down by § 105(1) of the Social Welfare Act in the event of placement in a closed social welfare institution. As a result, it is also possible to lawfully provide the special care service to those whose special needs and health unavoidably require closer supervision and restriction on freedom of movement. For sure, referring a person for a necessary social service is not within the capacity of Viljandi Hospital Welfare Centre. For this reason, the Chancellor asked the **Social Insurance Board to make efforts so that people can receive a service corresponding to their health condition and actual need for supervision without violating their rights**.

2. Security, seclusion room and documenting seclusion

Under a court order, people posing a danger to themselves or others due to mental disorder are referred to a social welfare institution. People suffering from mental disorder in unstable remission may often behave unpredictably. This means that staff of the welfare centre must be prepared to resolve unexpected situations. Many employees have long-term experience and know how to skilfully resolve dangerous situations and calm down residents, and have already learned to know their specific nature.

However, it is a matter of concern that not all activity supervisors can carry an alarm button which could be used to call for assistance in a danger situation. The staff said that they usually call by phone for assistance to colleagues from another department. This might not always be the fastest and most suitable way to call for assistance.

The nurse's rooms and staff resting rooms had some occasional call buttons which can be used to call for assistance from staff of the security firm. However, there are not enough call buttons for everyone. Many interior doors in the departments open with a chip card, so that in a danger situation it may be difficult to find cover to call assistance by phone. Some residents may also become irritated when they see a phone being used. In the C-building, problems also occur with mobile coverage, so that it might not even be possible to call for assistance by phone. The A- and B-building are surrounded by a locked fence, which makes it difficult to go and help colleagues working in another building.

The staff found that one possible solution would be if the alarm signal transmitted through a portable button were to reach, instead of the security firm, the staff in the C-building who could then quickly come to the help of colleagues if necessary. Staff in the C-building are experienced at working with more dangerous people, and there are also more staff on duty in the C-building at night.

The staff described the security plan along with guidelines for action and the role/tasks of several workers. Information given by the staff allows the conclusion that they are prepared to skilfully resolve complicated situations. However, they were not certain how to call for assistance from outside the department – for instance, when it would be absolutely necessary to call for assistance from the acute treatment department of the psychiatric clinic or how to act if only one activity supervisor is present on the floor.

The Chancellor recommends that problems related to supervision and security of residents and the procedure for calling for assistance in emergency should be discussed with staff as soon as possible, in order to guarantee the safety of both residents and staff. To ensure safety, it is extremely important that all activity supervisors can always carry an alarm button and that an effective system is set up for calling for assistance.

Seclusion room

In a situation laid down by § 107(4) of the Social Welfare Act, only a secure room conforming to the requirements for a seclusion room and enabling staff to monitor everything taking place in the room may be used to isolate a resident of a care home. A seclusion room must exist in the department for people referred to the social welfare institution under a court order as well as in units where service is provided to people suffering from mental disorder in unstable remission. No seclusion room exists in the special care department on the 8th floor of the B-block of the main hospital building.

Seclusion rooms in the A-, B- and C-buildings had similar furnishings and design. According to health protection requirements, a seclusion room must be secure, safe, lit, with required temperature and appropriate furnishings. A seclusion room must have a bed fixed to the wall or the floor, or some other kind of bedding elevated from the floor. In the seclusion rooms in the welfare centre the bed was not fixed to the wall or the floor, and the bed in the B-building had been broken by a secluded person (at the time of the inspection visit it had not yet been replaced). The glass covering the opening in the door of the seclusion room in the B- and C-buildings was also broken. The broken bed and door glass must be replaced.

To prevent danger situations and ensure a secure environment, the Chancellor also recommends finding a safe solution for door handles remaining within reach of a secluded person since such protruding elements can be used to self-harm. All sources of danger must be removed from the seclusion room, including loose items which should not be present in a seclusion room – for instance, there was a roller blind in packaging on the windowsill in the seclusion room in the A-building. Loose items in the room may pose a danger to a resident since an agitated person may use them to self-harm.

Seclusion rooms were sufficiently lit and the overall impression was of freshness and cleanliness. The toilet is in the vicinity of the seclusion room; drinking water is provided according to need. An activity supervisor can easily monitor a secluded person through a glass opening in the door. Nevertheless, the location of the seclusion room is not optimal since it is next to the room for shared activities. What is taking place in the seclusion room can be seen and heard from the area for shared activities. To ensure the dignity of an agitated person, other residents should not be able to see what happens in the seclusion room.

According to the Chancellor's assessment, the overall condition of seclusion rooms in the welfare centre is good but, in order to ensure the security of a secluded person, the Chancellor asks that all possible danger points in the seclusion rooms be checked and broken furnishings repaired.

Documenting seclusion and the seclusion register

A registration form for applying means of restraint and a violent incident report form are provided for documenting extraordinary incidents at the welfare centre. Data fields on both forms conform to the applicable requirements.

Only violent incident reports were presented to the Chancellor's advisers. These reports did not contain the information required by § 107(8) of the Social Welfare Act (SWA) which must be documented in the event of use of a seclusion room. This means that incidents of seclusion at the welfare centre have not been properly documented. Several activity supervisors were also not aware that they needed to fill out any other documents apart from the violent incident report.

Section 107(8) of the SWA stipulates that more information must be recorded in the event of seclusion.

Seclusion of a resident of the welfare centre constitutes serious interference with fundamental rights and must be verifiable (including judicial review). For this reason, documentation must comply with statutory requirements and be sufficiently thorough, so that the underlying circumstances and reasons for seclusion are unequivocally verifiable retrospectively. In the event of a dispute, a service provider must be able to prove that seclusion was necessary in the specific case and more lenient measures would not have yielded the desired result and that danger to the resident and other people could not have been eliminated. Reasoning should also be recorded in documents so that it is possible to understand whether seclusion was justified.

Instances of seclusion had not been recorded in the seclusion register. The welfare centre has a form of consolidated register on seclusion (the seclusion register) but during the inspection visit the Chancellor's advisers were only able to examine a blank form. The seclusion register plays an important role in preventing the risk of ill-treatment[1] since the purpose of the register is to provide a quick overview of instances of seclusion and whether seclusion was carried out in line with requirements. If seclusion is not properly documented, or some of the information concerning seclusion is only entered in a resident's personal file (or other data files), it is not possible to obtain an adequate overview of instances of seclusion.

The Chancellor asks that all instances of seclusion be properly recorded and also entered in the consolidated seclusion register.

3. Living conditions and quality of service

The A-, B- and C-buildings of the welfare centre were built in 2020 and 2021 with the special nature of provision of the 24-hour special care service particularly kept in mind. People live in single- and double-occupancy bedrooms which offer significantly more privacy in comparison to earlier living conditions. Bedrooms as well as common rooms are cosy, spacious and well lit. It is positive that yard areas have been set up around the buildings and the welfare centre tries to use them for diversifying available activities. A greenhouse has been built next to the A-building, In the yard area of the B-building, there was a swing in need of repair or renewal which the residents are very much awaiting. People can use washrooms as they desire, which is good because washing has a calming effect on some care home residents.

Toilets have been adjusted so that people with challenged mobility can also use them. Unfortunately, the accessibility of the building is not satisfactory. For instance, for people using a wheeled walking frame it was difficult to cross bedroom door thresholds. For some people, it was difficult to get to the second floor (the buildings have no lift). Exit from the building to the yard for people referred to the welfare centre under a court order (C-building) was possible only along the stairs, so that it is difficult for people with challenged mobility to go outdoors. The mobility options of the residents of this department are in any case very limited, so that it is extremely important that access to the yard area should be adjusted to meet the special needs of people with challenged mobility. If the movement path inside the building which is used for exit has not been

[1] Report to the Estonian Government on the visit to Estonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 to 30 September 2003, CPT (2004) 5, para. 103.
See also the Chancellor of Justice circular to providers of the 24-hour special care service of 20 February 2014, para. 2.

adjusted for the needs of people with challenged mobility, they are forced to ask for more assistance from others. This burdens those people providing assistance and may also cause a feeling of inferiority in a care home resident. This can mean that, 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.

Buildings have been designed so that access to bedrooms is from areas for shared activities. Since the welfare centre has many people in need of an individual approach and unable to participate in group activities, they would need a room where they could focus, either alone or in a smaller group, on hobby and therapeutic activities without being disturbed. This may be complicated in open shared activity areas.

A bedroom (room C04) in the C-building had no spot lighting. In view of health protection requirements, this should be installed.

The rooms in the special care department on the 8th floor of the main hospital building B-block looked austere; the furnishings of the rooms were obsolete. The department had several rooms for shared activities as well as a room furnished for hobby groups and therapeutic activities. People in the department in the main building live in double- to quadruple-occupancy bedrooms. According to health protection requirements for special care institutions, up to two people may be accommodated in one bedroom. Overcrowded bedrooms do not ensure sufficient privacy, in particular needed by people suffering from mental disorders. The importance of ensuring privacy has also been stressed in the general care service quality guidelines. Minimum bedroom size and the number of beds has also been established with a view to better protecting the health of care home residents and combating the spread of disease. Cramped conditions may also cause tensions between people. Health protection requirements may not be disregarded. One toilet (room B822) was missing a seat.

Residents of the welfare centre may wear either personal clothes or clothes provided by the care home. However, sometimes after clothes have been washed people cannot get back the same clothes (including underwear) because these are in shared use. Such an arrangement may make a person feel inferior. At least circulation of underwear should be avoided. One possibility would be, for example, washing underwear in separate laundry bags, or marking clothes so that after washing the laundry goes back to the same person.[2] Many care homes use marking of clothes for this purpose. In the view[3] of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), successful rehabilitation requires, inter alia, that a person can wear clothing assigned only to them.

The expert involved in the inspection visit recommended that in provision of meals more attention should be paid to specificities arising from residents' age, gender and health concerns. Welfare centre residents complained that sometimes men remained hungry because all the food portions are of similar size. According to § 3(9) and § 4 of the regulation laying down catering requirements for social welfare institutions, a resident's gender and age must be taken into account in preparing the menu and providing meals (see annex 1 to the regulation), using two weeks' average nutritional energy and nutritional needs as a basis. The required nutritional energy and nutritional needs of younger men and older women may differ by almost one-third. The welfare centre must take this into account in catering.

[2] See also the Chancellor of Justice inspection visit of 11 February 2017 to Koeru Care Centre, page 2.
[3] See para. 179.

An activity plan for people receiving the 24-hour special care service must be drawn up within 30 days as of their arrival in a social welfare institution (§ 85(1) SWA). A service provider must assess activities at least once a quarter (§ 85(2) clause 2 SWA). The activity plans for several people either derived from a previous social welfare institution or no timely assessment had been given regarding implementation of the activities noted in the activity plan. Activity plans for some people had been most recently assessed in October 2020. The staff explained that, because the welfare centre moved, the period before the inspection visit had been more difficult than normal for them. This period also involved discussions about the new format of the activity plan. The Chancellor asks that the requirements and deadlines under the Social Welfare Act be complied with when drawing up and assessing the plans.

The inspection revealed that one of the residents had been injured in autumn 2020 due to intentional action by an activity supervisor. The Chancellor compliments the welfare centre for swiftly notifying the investigative authorities about the incident. In the event of suspicion of ill-treatment, swift notification is certainly necessary since the investigative authorities can assess the incident in effective proceedings and, if necessary, bring the offender to justice. In the event of suspicion of ill-treatment, the Chancellor recommends that healthcare professionals follow the principles of the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the so-called Istanbul Protocol). The manual offers effective guidance in documenting instances of ill-treatment, helping to document an incident so that collected data can later also be used in judicial proceedings.

The Chancellor recommends that the care home should pay more attention to compliance with health protection requirements, improving accessibility and living conditions in the main hospital building. Activity plans must be drawn up properly and people's need for assistance and coping must be assessed within the time-limit laid down by law.

4. The number of activity supervisors

A special care service provider must ensure that the living environment of people receiving the 24-hour special care service is safe and supervised. A service provider must also ensure that a resident of a care home does not endanger themselves or others (§ 100(1) and (2) clause 2, § 102(1), § 103 SWA). In order to do so, it is necessary to protect a resident from risks arising from themselves, from others or from the environment.[4] A service provider must also assist residents in taking care of themselves, develop skills needed for coping independently, and carry out other tasks prescribed by law. In order to ensure a service complying with the requirements, a care home must have enough staff.

On both floors at the welfare centre C-building, two activity supervisors are on duty round the clock. This means that at least four activity supervisors are on duty in the building all the time. In addition, on working days between 8–16 the senior activity supervisor is in the building.

In the A- and B-building, during the daytime (between 8–18) two activity supervisors are on duty on both the first and second floors. In the B-building, one activity supervisor usually deals with individual supervision of autistic residents. In the evenings and at night usually one activity supervisor is on duty on both floors. On working days, the senior activity supervisor is also present in the building (between 8–17).

[4] See paras 63− 63.

In the special care department in the main hospital building B-block, mostly two activity supervisors are on duty during both day and night. The staff have agreed that during morning care procedures (between 7–8) three people are on duty but one during the daytime (between 15–18). That way more workers are present when the need for labour is greatest, and also at night two activity supervisors are present.

The quality of the 24-hour care service is directly affected by the number of activity supervisors dealing with residents. If service is provided to people referred to a care home under a court order, at least one activity supervisor for every 20 people must be on duty round the clock (§ 104(3) SWA). If a care home provides the 24-hour special care service to people suffering from severe, profound or permanent mental disorder in unstable remission, the service provider must ensure that at least one activity supervisor is available to deal with 15 people (§ 104(2) SWA). However, the law only lays down the minimum requirement; when planning staff numbers a service provider must proceed from people's actual need for supervision and guidance.

In view of the specificity of an institution (e.g. the nature and severity of mental disorders of residents in a social welfare institution) and the working duties of activity supervisors (e.g. whether activity supervisors must also do the cleaning) and working arrangements (e.g. holidays), a service provider must also ensure that a sufficient number of staff are present at all times. This helps to safeguard the well-being and security of residents and supervision over all activities.

The special care units at Viljandi Hospital Welfare Centre usually have more than the legally required number of activity supervisors on duty both during day and night, which is positive. The minimum requirement is not fulfilled only in the special care department in the main hospital building B-block, where often only one activity supervisor is on duty during the daytime (between 15–18).

Interviews with staff and residents revealed that activity supervisors have a heavy workload because the welfare centre has many people needing an individual approach. Activity supervisors lack the time to deal with residents individually. People receiving the 24-hour special care service under a court order as well as residents suffering from mental disorder in unstable remission may behave unpredictably, so that they cannot be left without supervision.

Previously, residents at the centre could also go to the activity house and participate in supervised activities in the activity room there. This offered an important change of environment for many residents. During interviews, residents pointed out that options for activities became more reduced once the activities offered in the activity house stopped.

Nevertheless, Viljandi Hospital Welfare Centre offers diverse developmental and meaningful leisure activities. Activity therapists often visit the departments, residents can engage in yoga and play basketball. It is possible to use a gym and go to the sauna. Some residents are interested in gardening (a greenhouse is next to the A-building). The daily schedule includes walking outdoors; sometimes residents go for a walk in the park accompanied by an activity supervisor. Residents are also involved in cleaning. Criticism can be expressed about the welfare centre not having created possibilities for work or work-like activity on-site for people referred to the centre under a court order, as required by law (§ 100(2) clause 5 SWA).

The healthcare expert participating in the inspection visit noted that the care home should have more staff – at least two activity supervisors on each floor. This would also enable involvement of

more passive residents in activities, deal more with people needing more attention and ensure better supervision. This would better enable involving residents in activities (including food preparation) aimed at improving and maintaining the ability to cope independently while also maintaining supervision over them. This would also help to prevent staff burnout. The CPT is of the opinion[5] that low staffing levels place workers under excessive stress which may endanger their health and also affect the well-being of care home residents.

The workload of activity supervisors depends on the types of tasks given to them. A special care service may be directly provided only by an activity supervisor with the required qualification (§ 86 SWA) who must primarily perform working duties forming the substance of the service. Burdening them with additional duties (e.g. cleaning common and sanitary rooms) might not be purposeful. Alongside cleaning rooms an activity supervisor has no time to focus sufficiently on concerns of residents and keep informed of their needs, and it is also difficult for the activity supervisor to monitor the movements and activities of all residents. However, if performing such duties is unavoidably necessary, it is reasonable to discuss working time arrangements and think how to organise duties so that less time is spent on performing them (e.g. it was noticeable that there was no vacuum cleaner in the departments).

The Chancellor emphasises that statutory minimum staff numbers for social welfare institutions might not always be sufficient to provide a high-quality service and ensure residents' fundamental rights. In the interests of the well-being and security of residents, the Chancellor asks that the working arrangements and number of activity supervisors in the welfare centre be reviewed and that a sufficient number of activity supervisors be ensured to be on duty at any time.

5. Qualification of activity supervisors

The safety and well-being of people receiving the 24-hour special care service depend directly on the skills and knowledge of activity supervisors. The staff of the welfare centre said that participation in training is facilitated and employees themselves are also interested in acquiring new skills and knowledge. The welfare centre itself has organised several in-house training events (e.g. further training required to work with people whose behaviour can be dangerous). Nevertheless, according to the data in the register of economic activities, the professional qualification of more than half of activity supervisors does not comply with the requirements laid down by § 86 of the Social Welfare Act, or else data concerning their qualification has not been entered in the register (data as at 1 May 2021). A service provider must ensure that the correct data are recorded in the register (§ 30(5) General Part of the Economic Activities Code Act). Data about 26 activity supervisors was missing in the register of economic activities.

According to the register of economic activities, 24 out of 58 activity supervisors in the care home have completed basic training for activity supervisors. Five employees have registered for training.

According to the register of economic activities, out of 20 activity supervisors working in the C-building, which provides a 24-hour special care service for people referred under a court order, four had completed further training required to work with people posing an increased risk (§ 86(5) SWA). Two employees had registered for the required training.

Out of 38 activity supervisors, 15 have completed further training required to work with people suffering from a severe, profound or permanent mental disorder in unstable remission (§ 86(6) SWA). Five employees had registered for the required training.

[5] See para. 186.

Since 2020, registration for mandatory training is not sufficient to work as an activity supervisor. Under § 83(1) clause 5 of the Social Welfare Act, a service provider must ensure that a person in a contractual relationship with the provider and providing the service directly should comply with the educational requirements laid down by § 86 of the Act.

Special training requirements for care home staff have been established in view of the interests of care home residents and the specific nature of care and assistance needed by people suffering from mental disorders. Due to lack of knowledge, untrained staff might not be able to adequately assess situations. In anxious moments they might not be able to act in residents' best interests or choose the right methods for ensuring their well-being and security. Trained staff are also able to systematically develop and support people suffering from lack of motivation to act (abulia) or those posing an increased risk, or people suffering from mental disorder in unstable remission with challenging and sometimes unpredictable behaviour, and choose adequate methods accordingly.

The Chancellor asks to arrange so that all activity supervisors in the welfare centre are able to attend training required by law. Data in the register of economic activities must also be updated, so that they reflect the actual situation.

6. Handling and administration of medicines

Medicines at the welfare centre are kept in locked rooms of the medical nurse and in working rooms of activity supervisors. Prescription medicines are distributed by welfare centre nurses into drug dispensers according to the treatment scheme. Activity supervisors assist residents in taking medicines and monitor that people take medication according to the treatment scheme. Nurses also administer medicines to residents. The procedure for handling medicines at the welfare centre was carefully considered and staff were informed about the requirements However, some shortcomings were still noticeable.

Medicine cupboards contained medicines (psychotropic medication, e.g. Valocordin Diazepam, Diazepeks, Haloperidol) on which no person's name had been marked and which were intended to be administered only in case of need (e.g. in the event of deterioration of an illness). To ensure safety, each medicine pack must have a note indicating for whom it is intended. In the case of each prescription medicine, it must be possible to identify for whom it was prescribed. Handling of medicines at the welfare centre must also comply with the requirements laid down by the Minister of Social Affairs Regulation No 20 of 17 February 2005 on "The rules for keeping records of medicinal products in the provision of healthcare or veterinary services and in social welfare institutions". A medicine prescribed by a doctor may only be administered to the person for whom it was prescribed. Medicines without a marking indicating the person's name may cause a risk of misuse of medicines, a situation that contravenes the rules for keeping records of medicinal products. Separate records must be maintained about narcotic and psychotropic medicines acquired by the welfare centre for general use. No such records were kept about medicines not marked with a name.

Medicine storage rooms had some expired medication (e.g. Lorazepam in the fridge of the medicine storage room on the second floor of the A-building, and Clotrimazole cream in the B-building). In order to protect people's health, 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 life and health.

To some residents of the welfare centre, carers administer medicines in crushed form. Pills are crushed into powder in a pill crusher on which signs of dried medication were visible (e.g. in the C-building). If several medicines have been prescribed to a person under the treatment scheme then they are crushed together. Some cups where medicines had been placed for dissolving could also be seen in departments. No information about crushing or dissolving could be found in treatment schemes.

The Chancellor has recommended that prior to crushing or dissolving a medicine it should be assessed whether the specific medicine may be handled this way, and whether mixing several medicines is allowed. If a person does not want or cannot take medicines, the reason for this should be ascertained and then a suitable form of medication (mixtures, injections, etc.) be found for them. In the event of difficulty with swallowing, the attending doctor must be consulted. Pills may be crushed and dissolved only in the case of exceptional need, immediately prior to administration, and the doctor's instructions to this effect should be recorded in the treatment scheme. Medicine containers must be cleaned of any residues.

Information exchange journals, violent incident reports and interviews with staff revealed that, in an anxious situation (e.g. sudden deterioration of a resident's health), security staff as well as psychiatric nurses from the acute care department of the Viljandi Hospital Psychiatric Clinic are sometimes called to assist in the special care department building. If necessary, residents are injected with medication that has a sedative effect prescribed by the doctor on duty in the acute care department. The acute care department of the psychiatric clinic is in the vicinity of the welfare centre units. This means that high-level specialist psychiatric care is easily accessible for care home residents. The Chancellor emphasises that, outside an in-patient psychiatric care department and without compliance with the requirements laid down in §§ 11−14 of the Mental Health Act, **medication prescribed by the doctor on duty may only be administered with a person's own consent.**

The Social Welfare Act does not authorise a social welfare institution to treat care home residents against their will and administer medication to people without their consent. The Supreme Court has also noted[6] that a person receiving 24-hour special care under a court order may not be treated against their will. This principle also applies to administration of medicines according to a treatment scheme. Although under § 100(2) clause 4 of the Social Welfare Act, a provider of the 24-hour special care service must ensure that residents take medication prescribed by a doctor, this duty can only be fulfilled by methods[7] through use of which a person takes the prescribed medicine voluntarily and knowingly. In the case of need for emergency psychiatric care, a person must be taken to a hospital psychiatric department (including if necessary to administer medication to a person against their will to alleviate symptoms of restlessness).

The Chancellor asks the welfare centre to comply with the requirements for handling and administration of medicines.

7. Nursing care service

A provider of the 24-hour special care service must ensure access to an independent nursing care service for people referred to a social welfare institution under a court order. The nursing care service must be available at least 40 hours a week for every 20 service recipients (§ 102(6) SWA) which means **two hours a week per person.** For people with intellectual disabilities, at least 40

[6] See para. 14.
[7] See paras 18–18.4.

hours of independent nursing care a week for every 40 service recipients must be offered (§ 102(7) SWA). Since 30 people are receiving the 24-hour special care service under a court order at Viljandi Hospital Welfare Centre, then 30−60 hours of nursing care a week should be provided (120−240 hours a month); the exact number of hours depends on the number of residents with intellectual disability. In March and April 2021, nursing care was not available to the extent required by law. For instance, according to the work schedule for the week preceding the inspection visit (5–11 April 2021) a nurse was available for 32 hours. The majority of people referred to a social welfare institution under a court order need at least two hours of nursing care services a week according to § 102(6) of the Social Welfare Act.

When providing the 24-hour special care service for people suffering from severe, profound or permanent mental disorder in unstable remission, nursing care services must be available at least 40 hours a week for every 30 service recipients (§ 102(5) SWA), which means **1.3 hours per person a week**. According to the work schedule for the week preceding the inspection visit (5–11 April 2021), the nurse working in the welfare centre A-building was present for 24 hours. However, nursing care services to 30 residents living in the A-building must be ensured to the extent of at least 39 hours a week. One full-time nurse (40 hours a week) works in the special care department at the welfare centre B-building and in the main hospital building, but considering the number of service recipients (30 places in the B-building and 20 places in the main hospital building) nursing care should be provided at least to the extent of 65 hours every week. In March and April 2021, nursing care was also not available to the extent required by law to residents in unstable remission.

The law only lays down the minimum requirement but in view of the specificity of an institution (e.g. depending on the types of diagnoses of care home residents) nursing care to a larger extent may be required in order to provide a high-quality and proper service. The welfare centre accommodates people suffering from mental disorders who, due to their health condition, are not always able to clearly express their grievances and may get irritated when in pain, thus becoming a danger to themselves and others. There are also people whose health condition may quickly deteriorate. It was noticeable during the inspection visit that nurses in the departments were experienced, communicated professionally and kindly with residents and were familiar with their specific needs and characteristics. Nurses play an important role in monitoring changes in people's health, but to do this it is necessary that nurses are present in the department.

Organisation of nursing care must take into account the specificities and the health condition of care home residents and be sufficiently available for all of them. Even during nurses' illness and regular holidays, the scope of nursing care must be ensured at least to the extent required by law.

The Chancellor asks that care home residents should be ensured nursing care services which take account of the specific nature of the institution and statutory requirements (see also summaries of inspection visits to Uuemõisa Home and Sillamäe Home).

8. Combating the spread of the coronavirus

Care home staff have received counselling from the hospital's infection specialists 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 SARS-CoV-2 virus. The majority of staff and residents are vaccinated.

Staff have been trained to use personal protective equipment and an action plan has been agreed in the event of any of the residents getting infected or the risk of infection arising. The care home had stocks of personal protective equipment. In order to prevent the spread of the virus, staff work only within their own department and are not on duty elsewhere.

The spread of the virus can also be prevented if people are able to wash their hands with soap in every toilet. At several sinks the soap had run out from dispensers or was missing altogether (in the A-building and C-building and in the department in the main hospital building). Due to residents' special needs, it may be complicated to keep detergent by each sink but in that case the availability of better solutions should be considered (washing foam, or the like).

In spring 2020, a restriction on visits was imposed at the care home to prevent the spread of the coronavirus SARS-CoV-2, as a result of which many residents have been unable to meet their loved ones for a long time. When imposing restrictions on visits, the Chancellor asks to keep in mind that the 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.

During the visiting ban, sending parcels to residents was allowed, and contact with next of kin was maintained by telephone. A specific time slot is designated for phone calls every evening. Residents consider the possibility of communication with next of kin extremely important. This is particularly important in a situation where communication has been restricted for a longer period and it is not known when the situation might significantly improve. In this situation, a 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 the welfare centre has paid attention to this. People are enabled to communicate with next of kin via video calls; special computer workstations have been set up and a tablet computer acquired for this. The welfare centre has also given people an opportunity to participate in a religious gathering via the internet. Organisation of video calls left a good impression.

9. 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 September 2021 at the latest.

Ülle Madise

Appendix: Healthcare expert's opinion on 7 pages
Copy: Ministry of Social Affairs, Social Insurance Board, Health Board, Agency of Medicines

Eva Lillemaa 693 8439
Eva.Lillemaa@oiguskantsler.ee