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Metro East Regional Human Rights Authority
Report of Findings
Alton Mental Health Center
Case #14-070-9019

The Metro East Regional Human Rights Authority (HRA), a division of the Illinois Guardianship and Advocacy Commission, accepted for investigation the following allegation:

The Center violates a consumer's rights when it threatens forced treatment.

If found substantiated, the allegation represents a violation of the Mental Health and Developmental Disabilities Code (405 ILCS 5/1-100 et seq.).

Alton Mental Health Center is a medium security state-operated mental health center that serves approximately 110 individuals from across the state in its forensics program and approximately 10 individuals in its civil program. Individuals receiving civil services are primarily from Randolph, Greene, Bond, Madison and St. Clair Counties.

To investigate the allegations, an HRA team interviewed facility representatives, reviewed a recipient's record, with his consent, and examined pertinent policies and mandates.

Complaint Statement

According to the complaint, forced blood draws were planned for a facility consumer but were halted when a letter from the HRA was sent to the facility. The complaint also states that forced blood draws without a court order or medical emergency are still policy at the facility by merely issuing a Notice of Rights Restriction. The complaint indicates that a physician reportedly stated that at least two other patients under his care had been subjected to this practice since the physician began working at the facility in 2013.

Interviews with Facility Representatives

The HRA team interviewed the facility director and director of nursing who reported that annual blood draws for routine medical check-ups may be waived at the consumer's request, if there are no related health issues. The Center also reported that forensic patients may have court-ordered medications and blood draws are typically included in the court order. The blood draws would be done to monitor the consumer for therapeutic levels of court-ordered medication.

The Center stated that the consumer in this case does not have medical issues requiring a blood draw and thus, no blood draws have been taken per the consumer's request. The consumer was admitted on 02-22-13 and his admission status is not guilty by reason of insanity (NGRI). The Center indicated that the consumer did submit voluntarily to a urine analysis. The Center stated that there is a 03-11-13 physician's order to discontinue an order for the consumer to have labs as the consumer is healthy. The Center stated that it is unaware of any HRA letter on behalf of the consumer requesting that blood draws not be done.

The facility further indicated that it honors a consumer's right to refuse. However, the facility would consider a forced blood draw if the consumer does not consent and the blood draw is medically indicated, the physician ordered it, the treatment team conducted a review and the patient was at imminent risk of harm to self or others. The forced blood draw may or may not involve a physical hold and a restriction of rights would be issued. The facility does not have a specific policy covering forced blood draws.

The facility explained that it does have a grievance process that includes the following options: reporting concerns to staff; completing a complaint form; discussing with the patient/peer advisory committee; and contacting the HRA. The Center reported that HRA contact information is posted. The facility stated that it does not have an active internal human rights committee but does have a risk management committee.

Record Review

The HRA examined the consumer's treatment plans dating back to December 2013. His primary diagnosis is listed as Schizoaffective Disorder, Bipolar Type. His December 2013 treatment plan includes treatment goals related to his psychiatric symptoms, his NGRI status, physical and verbal aggression and substance abuse. The treatment goal related to psychiatric symptoms states that the consumer has been taking his medication as prescribed but has been refusing blood work. The recipient's religious beliefs are noted in the plan. The recipient did not sign off on the plan and there is no indication of his refusal to participate. A 01-07-14 treatment plan indicated that the recipient had met with the treatment team on 12-04-13 and received emergency medication on 01-06-14 for behaviors that included intimidation, blocking doors and standing on chairs to cover the cameras with his hands. Other behavioral incidents are noted as well as his refusal of blood work. The consumer appeared to have signed the January 2014 treatment plan but did not note his agreement/disagreement. The consumer also signed his 02-05-14 treatment plan with no indication of agreement/disagreement; this plan also notes his blood draw refusals. The blood draws are not mentioned in the consumer's 03-04-14 treatment plan which he again signed without indicating agreement/disagreement. This plan does make mention of problems with certain medication causing pain, a decrease in blood pressure, dizziness and numbness. In the consumer's 04-02-14 treatment plan, the consumer signed and indicated disagreement with treatment goals and interventions although it is unclear if he voiced any specific disagreements or if any disagreements were addressed. There is no mention of the blood draws in the April 2014 plan but there is mention of his receiving extra medication although the specific extra medication he received is not identified. The psychotropic medication section does not mention the extra medication and mirrors the content of the March 2014 treatment plan with regard to past problems with medication side effects. The consumer signed his 04-30-14 treatment plan to which he documented agreement. There is no mention of the blood draw and no changes noted in the psychotropic medication section of the April 2014 treatment plan. The HRA did not find where the consumer's emergency treatment preferences were noted in the treatment plans.

The HRA team examined a letter from the consumer to the facility director dated 01-09-14 discussing concerns about involuntary shots as ordered by the physician and quoting the Mental Health Code. The letter also stated "Now [the physician] is threatening to take involuntary blood draws without court order. Please do not let involuntary blood draws take place without court order." There are several notes on the letter indicating that the treatment team reviewed on 01-

16-14, that the facility director referred the matter to the medical director on 01-17-14 and a physician met with the consumer on 01-17-14.

The HRA reviewed other documentation related to the blood draws. A 02-24-13 nursing note stated that the recipient refused morning blood work and quoted the recipient as stating that the physician knows he doesn't get lab draws. A nursing progress review dated 03-01-13 stated that "Patient refuses blood draws for labs because it is against his religious beliefs." A 04-22-13 progress note documented the consumer's refusal of lab work and a chest x-ray for Tuberculosis screening. A nursing progress review dated 01-28-14 documents that the consumer continues to refuse lab work due to religious beliefs as does a nursing progress note dated 02-19-14.

Physician's orders indicate orders for lab work on 02-22-13. However, the orders from 02-25-13 state that the consumer does not want a blood draw due to religious beliefs. A physician's order dated 03-11-13 discontinues "the order for labs – pt is healthy." The lab section of the chart only reveals that urine samples have been taken.

Policy Review

The HRA team reviewed policies pertinent to the allegation including policies regarding the treatment planning process, the admission process, laboratory specimen collection, emergency medication, patient rights, rights restrictions and the consumer grievance process.

The treatment planning policy states that "It is the policy of the Alton Mental Health Center (AMHC) that the care, treatment, and rehabilitation of a patient is planned to ensure that a patient's needs are met, and that the care is appropriate, based on assessments that have been conducted and reviewed by the interdisciplinary treatment team." Furthermore, "The plan is developed and implemented by an interdisciplinary team, with each member documenting his/her involvement...." One section of the policy addresses emergency treatment preferences and interventions and states that "At the time of the patient's admission, the RN is to inform the patient that, under certain circumstances, the use of seclusion or mechanical restraints may be needed in order to protect the patient or others from harm. The RN will emphasize that alternative interventions will be used in an attempt to avoid resorting to the use of the aforementioned. The RN is to inform the patient that the use of emergency forced medication, seclusion, or the use of mechanical restraints is a last resort. The RN is to review with the patient the list of alternative interventions that are referenced on the form (Designation of Emergency Preference), and is to obtain from the patient which of the alternatives he or she feels will work best. In addition, the RN is to ask the patient if there are any other alternatives that might work, which were not listed. At the initial treatment planning meeting, the treatment team is to review what the patient indicated were the preferred alternative interventions, and is to develop its own recommendations (based on the awareness of the patient and his/her clinical condition) regarding which interventions are to be used with the patient. The alternative interventions are to be regularly reviewed and updated as necessary. The RN is to proceed to inform the patient that there are certain conditions, which the staff need to be aware of where the use of seclusion or mechanical restraints may be necessary. As such, the physician is to determine if there are any Medical/Physical/Psychological contradictions to the use of such interventions. The physician shall document this conclusion....The alternative (less restrictive) interventions, along with any contraindications, are to be noted in the patient's Aggression

Individual Problem Page, if such a problem is identified, either in the problem description or in the modalities. In addition, they can be referenced in a Behavior Management Plan if one is required." A sample treatment team meeting agenda is attached to the policy and it includes a review of a "Personal Safety Plan." A sample treatment plan is also included which contains a section on the consumer's emergency treatment preferences.

The facility admission policy addresses the admission process for forensic patients and includes an assessment of physical condition, safety, mental status, emergency treatment preferences, etc. One pre-admission checklist form includes lab results. Another admission form documents a physician's statement regarding the consumer's medical stability. Another form documents acceptable lab levels for admission from community hospitals and related testing. For example, a complete blood count is needed to assess whether or not the consumer's white blood count is elevated and if it is, the cause for the elevation needs to be determined by the hospital before admission to Alton Mental Health Center. Or, if a consumer is complaining of chest pain at the hospital, cardiac testing is to be done before admission to Alton Mental Health Center.

The policy and procedures for collecting lab work begins with a physician's order to be implemented by nursing staff who deliver collected specimens to the laboratory with results being available on-line and printed/placed in individual consumer records. Then, procedures for securing various types of lab work are described. The policy does not specifically address lab refusals.

The facility maintains a policy on emergency psychotropic medications which describes that "Upon admission, or as soon thereafter as the condition of the patient permits, the admitting Registered Nurse (RN) shall advise the patient as to the circumstances under which the law permits the use of emergency medication...At the same time the RN shall inquire of the patient which form of intervention the patient would prefer if any of these circumstances should arise. Preferences may include restraint, seclusion or emergency medication." The consumer's preferences are to be documented on a specific form and communicated to the social worker, guardian and other individuals designated by the consumer. "If any such circumstances subsequently arise, the facility staff shall give due consideration to the preferences of the patient regarding which form of intervention to use as communicated to the facility by the patient or as stated in the patient's advance directive. However, the patient will be informed that every effort will be made to honor their preferences, although the circumstances may warrant an intervention other than the patient's preference." The policy goes on to outline some precautions to preserve dignity and safety such as the non-violent principles of Crisis Prevention Intervention, not leaving a violent person alone, calling extra staff to assist if needed, ensuring an exit route, etc. The policy dictates that the consumer's emergency treatment preference should be considered but "The right of a patient to refuse medication/treatment may be overridden (based on the physician's clinical judgment) when it is determined that a patient may cause serious and imminent physical harm to himself or others and no less restrictive alternative is available." The policy then provides timelines for emergency medication consistent with Mental Health Code provisions, including the provision of a restriction of rights notice. The policy does not specifically address lab work refusals.

The facility policy on assuring patient rights explains the process for informing consumers and their guardians of rights and includes the Illinois Department of Human Services rights statement as an attachment. The rights statement specifically states that a recipient does not lose any rights simply because he/she is receiving mental health services, that a recipient is entitled to adequate care pursuant to an individual services plan, and that a recipient has a right to refuse services unless the services are needed to prevent serious harm to self or others or a judge orders it. With regard to medical services, the rights statement documents that "Except in emergencies, no medical or dental services will be provided to you without informed consent."

A policy entitled, "Rights: Restriction By Notice" states that "It is the policy of Alton Mental health Center (AMHC) to respect the rights of patients and not to abridge said rights without cause or due process. Restrictions, as such should have a clinical rationale based on safety (e.g., to protect the recipient or others from harm, harassment, intimidation or a medical or dental emergency exists when delay for the purpose of obtaining consent would endanger the life of adversely and substantially affect the health of a recipient of services). The goal in restricting patient's rights is to ensure safety while continuing to facilitate a therapeutic treatment setting." The policy then states that a physician's order is needed to restrict a right and the restriction is not to exceed the length of time beyond the morning report of the next business day after the initial order. A treatment team review is then required and if in agreement for the continued restriction, the physician is to issue a new order and a new restriction notice defining the behavioral reasons; the new restriction is not to exceed 7 days. Also, if the restriction is an emergency, the notice is to document whether or not the recipient's emergency treatment preferences were utilized and, if not, the reasons thereof.

The HRA team also reviewed the facility grievance process that allows for complaint submittals for facility reviews using a chain of command approach with each level of review requiring time specific responses. A sample complaint form is attached and includes documentation of action taken/resolution.

Mandates

The Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/1-100 et seq.) requires in Section 5-2-102 that: *"A recipient of services shall be provided with 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....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."*

In Section 5/2-107, the Code guarantees the right "*...to refuse medication or electroconvulsive therapy. The recipient and the recipient's guardian or substitute decision maker shall be given the opportunity to refuse generally accepted mental health or developmental disability services, including but not limited to medication or electroconvulsive therapy. If such services are refused, they shall not be given unless such services are necessary to prevent the recipient from causing serious and imminent physical harm to the recipient or others and no less restrictive alternative is available. The facility director shall inform a recipient, guardian, or substitute decision*

maker, if any, who refuses such services of alternate services available and the risks of such alternate services, as well as the possible consequences to the recipient of refusal of such services."

The Code requires in Section 5/2-201 that when rights are restricted, a notice of rights restriction is to be issued to the recipient and other individuals and include the reason for the restriction.

With regard to medical emergencies, the Code states in Section 5/2-111 the following:

> *A medical or dental emergency exists when delay for the purpose of obtaining consent would endanger the life or adversely and substantially affect the health of a recipient of services. When a medical or dental emergency exists, if a physician or licensed dentist who examines a recipient determines that the recipient is not capable of giving informed consent, essential medical or dental procedures may be performed without consent.*

Restraint use is addressed in Section 5/2-108 of the Code which states that "Restraint may be used only as a therapeutic measure to prevent a recipient from causing physical harm to himself or physical abuse to others. Restraint may only be applied by a person who has been trained in the application of the particular type of restraint to be utilized. In no event shall restraint be utilized to punish or discipline a recipient, nor is restraint to be used as a convenience for the staff." Restraints are to be employed upon a written order after examining the recipient and determining that restraint is justified to prevent physical harm. Emergency restraint use, as long as there is a documented necessity, can be ordered temporarily; an examination is to occur within 2 hours of employment. However, the HRA notes that the Code defines restraint as follows:

> *...direct restriction through mechanical means or personal physical force of the limbs, head or body of a recipient. The partial or total immobilization of a recipient for the purpose of performing a medical, surgical or dental procedure or as part of a medically prescribed procedure for the treatment of an existing physical disorder or the amelioration of a physical handicap shall not constitute restraint, provided that the duration, nature and purposes of the procedures or immobilization are properly documented in the recipient's record and, that if the procedures or immobilization are applied continuously or regularly for a period in excess of 24 hours, and for every 24 hour period thereafter during which the immobilization may continue, they are authorized in writing by a physician or dentist; and provided further, that any such immobilization which extends for more than 30 days be reviewed by a physician or dentist other than the one who originally authorized the immobilization.*
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> *Momentary periods of physical restriction by direct person-to-person contact, without the aid of material or mechanical devices, accomplished with limited force, and that are designed to prevent a recipient from completing an act that would result in potential physical harm to himself or another shall not constitute restraint, but shall be documented in the recipient's clinical record.*

The right to refuse is also addressed in case law. In Threlkeld v. White Castle Systems, Inc., (127 F.Supp.3d 986) the US District Court held a patient's claim for negligence based on a violation of the Mental Health Code as well as a claim for battery. Included in the Memorandum

Opinion and Order is the following statement: "Unless there is a medical determination that treatment is 'necessary to prevent the recipient from causing serious and imminent physical harm to [her] self or others,' a refusal by the patient must be honored. 405 ILCS 5/2-107(a)." The treatment given was psychotropic medication after being restrained.

CONCLUSION

The complaint states that the Center violates a consumer's rights when it threatens forced treatment. The complaint specifically concerns the consumer's refusals of blood draws. The HRA found evidence that the recipient's voiced refusal of blood draws had been honored to date, as per the Code's right to refuse, and that the refusals had been reviewed by the treatment team. In addition, the physician had determined that the blood draws were not needed due to the recipient's health status and the physician discontinued the order for blood work. The HRA found no evidence that the facility had ever threatened blood draws for the recipient in this case. The HRA also did not find evidence of a facility policy or practice that blood draws can be forced by simply issuing a restriction of rights notice.

The HRA did not find any policy statements specific to the refusal of lab work but there were policies in place regarding the collection of lab specimens, medical evaluations upon admission, treatment planning protocols, consumer rights and restrictions of rights. The HRA notes that rights information includes the right to refuse and the right to consent to medical treatment as well as emergency procedures. Policies appear to be consistent with the Mental Health Code sections cited above. And, the facility maintains a policy on emergency treatment preferences. Based on the evidence, the HRA does not substantiate the complaint that the Center violates a consumer's rights when it threatens forced treatment.

Of concern to the HRA is the lack of emergency treatment preferences in the treatment plans reviewed. The HRA also noted the lack of signatures on a treatment plan with no explanation and documented recipient disagreement with another treatment plan with no documented follow-up.

However, the HRA takes this opportunity to offer the following suggestions:

1. Ensure that emergency treatment preferences are included in treatment plans as required by the Mental Health Code and facility policy.
2. Consider the need to address lab refusals in policy.
3. Document recipient participation in treatment plan reviews and document any follow-up on recipient disagreements with treatment plans.
4. Consider developing an internal human rights committee to review rights issues and rights restriction.

The HRA acknowledges the full cooperation of the facility during its investigation.