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HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 08-030-9005
ALL AMERICAN NURSING HOME

Case Summary: The HRA substantiated the complaint that the facility did not follow Nursing Home Care Act procedures when it hospitalized a resident for no adequate reason. The HRA also found that the process undertaken in this case did not comply with Mental Health Code requirements as well.

INTRODUCTION

The Human Rights Authority of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving a complaint of possible rights violations at All American Nursing Home. It was alleged that the facility did not follow Nursing Home Care Act procedures when it hospitalized a resident for no adequate reason. If substantiated, this would violate the Nursing Home Care Act (210 ILCS 45/101 et seq.), the Illinois Administrative Code for Skilled and Intermediate Care Facilities (77 Ill. Admin. Code 300.110 et seq.) and the Code of Federal Regulations, Requirements for Long Term Care Facilities (42 C.F.R. 483). Violations of the Mental Health and Developmental Disabilities Code (405 ILCS 5) may also be implicated.

All American is a 144-bed skilled/intermediate nursing care facility for adults located in Chicago. Approximately one third of the Center's population have diagnosed mental illnesses.

To review these complaints, the HRA conducted a site visit and interviewed the nursing home Administrator. Relevant program policies were reviewed as were the resident's records upon written consent. The resident is an adult who maintains his legal rights.

FINDINGS

The record indicates that the resident was admitted to the facility on 4/4/06 with diagnoses of Depression and Bipolar Disorder. On 6/1/06 at 9:00 a.m. there is an entry in the Progress Notes that states, "rec'd resident argumentative with staff and resident lashing out at co-resident, refusing treatment: resident had dental appointment but refused to go, non-directable, danger to self." Forty-five minutes later there is another entry that states, "Dr. ……… called, orders given to wait for ………hospital to call." There are further notations that the Intake Department of the referring hospital was sent a copy of a petition for involuntary admission and a face sheet along with doctor's orders, and, that at 2:45 p.m., the ambulance arrived to transfer the resident to the hospital for a psychiatric evaluation. A 10-day bed hold is noted in the Notes.

During a site visit the facility administrator was interviewed regarding the complaint and he stated that he had no recollection of the hospitalization event. He was not sure what events led up to the hospitalization and he stated that there was no petition in the record and no staff were available who would have been present on the day of the hospitalization. He stated that a nurse completed the petition however she is no longer employed at the facility. The administrator did state that it is customary for the nurse on duty to phone the resident's physician and obtain the order for hospitalization after reviewing the situation with the director of nursing. There is no documentation that a discussion occurred with the director of nursing, however the call to the physician is documented. The physician's order does not describe the reason for the hospitalization.

The resident maintained documentation of the event and presented it for our review. He stated that two days prior to the hospitalization he called the social security office and inquired about his Social Security Income (SSI) check. He had planned to leave for Atlanta after having received and cashed his check on the 1st of June and he wanted to be certain that it would be sent to his post office box instead of the facility. He was told by the SSI staff that it was sent to his post office box, so he went there, received the check and then cashed it at a Currency Exchange. He returned to the facility and at approximately 2:00 p.m. he spoke with the administrator, who asked him if he would require another night at the facility. He said no, that he planned on leaving in the early evening. The administrator did not recall a conversation with the resident at this time.

The resident was in his room packing his belongings at approximately 3:50 p.m. when two ambulance attendants arrived at his door to take him to the hospital. He asked them why he was going to the hospital and they told him they didn't know and he would have to take that up with the staff. He was then sent to the hospital and did not see a doctor for several days. When he did speak with his doctor, he inquired about the reason for his hospitalization, and the doctor stated that the administrator had called and told her that the resident had been acting out.

The resident was discharged from the hospital on 6/15/06. He stated that on the last day of his hospitalization, the social worker at the hospital met with him and told him that All American Nursing Home had been contacted and they did not want him to return to their facility. He was then referred to another nursing home and left the hospital to that placement. The administrator at All American stated that residents are almost always returned to the facility after being hospitalized and he did not feel that the resident had been told that he could not return. The Discharge Summary from the hospital indicates that the resident was medically stable and "agreeable to return to the nursing home", but it does not indicate where he was actually sent.

STATUTORY BASIS

The Nursing Home Care Act states that a facility may involuntarily transfer or discharge a resident only for one or more of the following reasons:

1. for medical reasons;
2. for the resident's physical safety;

3. for the physical safety of the other residents, staff or visitors;
4. for late payment or nonpayment for the resident's stay (210 ILCS 45/3-401).

Federal regulation also limits the use of transfer and discharge and mandates the documentation of this information in the resident's file:

a) Transfer and discharge--

(1) Definition: Transfer and discharge includes movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.

(2) Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless--

(i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(ii) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) The safety of individuals in the facility is endangered;

(iv) The health of individuals in the facility would otherwise be endangered;

(v) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or

(vi) The facility ceases to operate.

(3) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)(2)(i) through (v) of this section, the resident's clinical record must be documented. The documentation must be made by--

(i) The resident's physician when transfer or discharge is necessary under paragraph (a)(2)(i) or paragraph (a)(2)(ii) of this section; and

(ii) A physician when transfer or discharge is necessary under paragraph (a)(2)(iv) of this section. (42 C.F.R. 483.12).

The Mental Health and Developmental Disabilities Code outlines the process whereby a person 18 years of age or older who is subject to involuntary admission and in need of immediate hospitalization may be admitted to a mental health facility (405 ILCS 5/3-600 et seq.). This process is initiated by the petition, and the Code describes in detail the required components:

3-601. Involuntary admission; petition.

(a) When a person is asserted to be subject to involuntary admission and in such a condition that immediate hospitalization is necessary for the protection of such person or others from physical harm, any person 18 years of age or older may present a petition to the facility director of a mental health facility in the county where the respondent resides or is present. The petition may be prepared by the facility director of the facility.

(b) The petition shall include all of the following:

1. A detailed statement of the reason for the assertion that the respondent is subject to involuntary admission, including the signs and symptoms of a mental illness and a description of any acts, threats, or other behavior or pattern of behavior supporting the assertion and the time and place of their occurrence.
2. The name and address of the spouse, parent, guardian, substitute decision maker, if any, and close relative, or if none, the name and address of any known friend of the respondent whom the petitioner has reason to believe may know or have any of the other names and addresses. If the petitioner is unable to supply any such names and addresses, the petitioner shall state that diligent inquiry was made to learn this information and specify the steps taken.
3. The petitioner's relationship to the respondent and a statement as to whether the petitioner has legal or financial interest in the matter or is involved in litigation with the respondent. If the petitioner has a legal or financial interest in the matter or is involved practicable or possible for someone else to be the petitioner.
4. The names, addresses and phone numbers of the witnesses by which the facts asserted may be proved.

(c) Knowingly making a material false statement in the petition is a Class A misdemeanor.

The Illinois Administrative Code mandates that facilities have written policies and procedures governing all services that are provided:

a) The facility shall have written policies and procedures, governing all services provided by the facility which shall be formulated by a Resident Care Policy Committee consisting of at least the administrator, the advisory physician or the medical advisory committee and representatives of nursing and other services in the facility. These policies shall be in compliance with the Act and all rules promulgated thereunder. These written policies shall be followed in operating the facility and shall be reviewed at least annually by this committee, as evidenced by written, signed, and dated minutes of such meeting.

b) All the information contained in the policies shall be available to the public, staff, residents, and for review by department personnel.

c) These written policies shall include, at a minimum the following provisions:

1) Admission, transfer and discharge of residents including categories of residents accepted and not accepted, residents that will be transferred and discharged, transfers within the facility from one room to another, and other types of transfers.

2) resident care services including physician services, emergency services, personal care and nursing services, restorative services, activity services, pharmaceutical services, dietary services, social services, clinical records, dental services, and diagnostic service. (77 Ill Admin. Code 300.610).

ALL AMERICAN NURSING HOME POLICY

All American Nursing Home does not have policy that addresses the involuntary transfer or hospitalization of residents for psychiatric evaluation and treatment.

CONCLUSION

The resident in this case was transferred out of his nursing home and involuntarily hospitalized on the day he had planned to be leaving for another state. There is no petition in his clinical file to offer the justification for this hospitalization, and the meager description of the event in the Progress Notes is not enough to make a convincing argument that he was either a danger to himself or to anyone else. Stating that he was "argumentative", "non-directable", or "refusing treatment" (which he has every right to do by law), does not mean he was in need of hospitalization. Additionally, there is no supportive documented indication that he posed any danger to himself. In fact, by virtue of his efforts to get his check, cash it, pack his clothes and leave for another state, it appears he was doing everything in his power to take care of himself.

The complaint that the facility did not follow Act procedures when it hospitalized a resident for no adequate reason is substantiated. We also find that the process undertaken in this case did not comply with Mental Health Code requirements as well.

RECOMMENDATIONS

1. Ensure that if a resident is involuntarily discharged, it is only for the reasons stated in the Nursing Home Care Act to include medical reasons, the physical safety of the resident or others, or late or non-payment (210 ILCS ILCS 45/3-401).

2. Follow the Federal regulations that limit the use of transfer and discharge of residents and mandates the documentation of this information in the resident's file (42 C.F.R.483.12).

3. Ensure that if a resident is petitioned for involuntarily admission to a psychiatric hospital that all requirements for this process are adhered to as mandated by the Mental Health Code. This should include the fully completed petition that gives a detailed reason for the assertion that the resident is subject to involuntary admission, and includes the signs and

symptoms of a mental illness along with descriptions of acts, threats, or behaviors that support the assertion (405 ILCS 5/3-600 et. seq.).

4. Develop policy that addresses the process of transferring a resident involuntarily (77 Ill Admin. Code 300.610). Ensure that staff are trained in this policy.

SUGGESTIONS

1. Include the Mental Health Code's mandatory petition requirements for involuntary psychiatric detention in facility discharge/transfer policy (405 ILCS 5/3-600 et seq.).

2. The Nursing Home Care Act allows for the involuntary transfer of a resident for the resident's safety or the safety of others. This threat of harm should be documented in the clinical record to the extent that it rises above the level of hearsay. Involuntary transfer to a psychiatric facility is sufficiently traumatic to the resident that it warrants careful consideration, and this consideration should be detectable from the record. Also, a copy of the petition for commitment that is initiated in the facility should remain in the clinical record to establish the justification for detention.