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METRO-EAST REGIONAL HUMAN RIGHTS AUTHORITY

REPORT OF FINDINGS

HRA CASE 09-070-9008

GATEWAY MEDICAL CENTER

DECEMBER 11, 2008

Case Summary: The HRA investigated a two part complaint regarding Gateway Medical Center. The first allegation, that the Center committed a rights violation when administering medication, was substantiated. The second allegation, that the Center did not adhere to the guardian's direction regarding discharge, was not substantiated.

INTRODUCTION

The Metro-East Human Rights Authority (HRA) of the Illinois Guardianship and Advocacy Commission has completed its investigation of alleged rights violations at Gateway Regional Medical Center (the Center), a private hospital that provides medical and behavioral services in Granite City. The Geropsychiatric Behavioral Unit serves about twenty-four elderly consumers. The allegations being investigated are that the Center may have violated a consumer's rights when it: 1) administered medication that the consumer was allergic to and 2) did not adhere to the guardians' request regarding discharge.

If substantiated, the allegations would violate the Mental Health and Developmental Disabilities Code (405 ILCS 5/2-102 and 107) and Center policies.

Specifically, the complaint states that the consumer was prescribed Zyprexa, a medication to which the consumer is allergic. Part 2 states that the hospital did not adhere to one of the consumer's co-guardian's requests to have him discharged to a State Operated Facility (SOF) in central Illinois and, instead, had him transferred to a facility in the Metro East region.

METHODOLOGY

To pursue this investigation, the HRA conducted a site visit and interviewed the Administrator, the Unit Nurse Manager (Manager) and the Chief Officer of Quality Control (Chief). Program policies were reviewed and relevant sections of the patient's

clinical record were reviewed with the written consent of his guardian. The HRA Coordinator shared with the HRA portions of correspondence he had with a co-guardian, who verified the appointment of co-guardians of the person.

In an attempt to acquire rules, the Coordinator contacted an Illinois Department of Human Services Regional Administrator and two SOF Administrators.

PART 1 FINDINGS

The Guardian stated that on July 29, 2008 the consumer was given Zyprexa, ordered by the Gateway Medical Center staff when they knew that he was allergic to that medication. The guardian said that during a telephone conversation, a hospital staff member verified with her that Zyprexa was listed in the drug sensitivity section of his record and a charge nurse told her that the Physician prescribed Zyprexa at the request of the consumer. The guardian stated that the medication exacerbated the consumer's condition and resulted in aggressive and combative behavior that may have been avoided had the Physician adhered to documented information. Additionally, the guardian made several requests for the Physician to telephone her and he did not return her calls.

The Administrator explained that the Physician ordered Zyprexa because the consumer requested that medication and at that time the Center had not received documentation that the consumer had a guardian. She stated that the initial assessment, completed with the consumer's input and based in part on the nursing home's transfer sheet, did not identify the co-guardians; however, it referred to them as agents under the consumer's power of attorney. According to the Administrator when the Center determines that a patient has a guardian, the hospital pursues verification of that appointment and consent from the guardian.

The Administrator stated that the Pharmacist discovered that the consumer was sensitive to Zyprexa and he contacted the Physician to alert him regarding the prescribed treatment. The Administrator said that at least one form stated that the consumer was *sensitive* to Zyprexa, rather than being *allergic* to the drug. According to the Administrator, the hospital Pharmacist explained that "sensitivity is an exaggerated response to medication side effects" and "allergy results in an immune mediated reaction; i.e. hives, anaphylaxis."

The Administrator concluded that the Center is in the process of adopting a policy to ensure that it obtains accurate information and documentation regarding guardianship when patients are assessed in the emergency room.

A record review determined that the consumer's guardianship status was not verified, nor was there documentation that informed consent for the administration of psychotropic medication was obtained from the consumer or his guardians, whether they were advised of their rights to refuse medications or whether the consumer had decisional capacity.

The patient transfer form completed by the nursing home and delivered to the hospital at admission on July 17, 2008 identifies the contact person as the consumer's sister; however, it does not identify a guardian. Additionally the form states that the consumer has drug sensitivities to "Thorazine and Zyprexa."

The Gateway Medical Center form 172-53132 states that the consumer is allergic to Zyprexa and Thorazine.

The Master Treatment Plan Activities Log dated July 19, 2008 states that the social worker "completed assessment with the patient and, via telephone with sister [POA]...."

An allergy alert form completed by the pharmacist and dated July 17, 2008 states:

Zyprexa allergy listed and ordered. [Staff] checked with the physician who stated patient requested Zyprexa. When asked patient said does not have an allergy to Zyprexa. Allergy removed and medication entered.

The patient Chronological Medication Record indicates that on July 21, 2008 the hospital administered Zyprexa three times in doses of five milligrams, ten and twenty milligrams. On July 29, 2008, Zyprexa was ordered again; "10 milligrams intra muscularly at bedtime."

The psychiatrist Progress Notes state:

July 21, 2008: Patient intermittently loud and labile....Will honor his request for Zyprexa to replace Seroquel.

July 24, 2008: Patient with complaints. He remains grandiose and intrusive. Will increase Zyprexa as tolerated....

The Center's discharge summary hospital course written by the Physician dated July 31, 2008 states:

...At one point he requested Zyprexa. We talked about his reported allergy in this regard but he stated that he felt it had been helpful to him in the past. But I told him his Seroquel was already up to a total of no more than 700 milligrams per day. He was also receiving, from admission, the valproic acid and benzodiazepine medications. Problem was that at the same time he started seemingly refusing medications and becoming more agitated. I felt that some of this was relative to institutional style behavior and also felt that it was going to take a protracted period of time with regard to stabilization for [the consumer]. The Zyprexa was discontinued and Seroquel was restarted. However his response was limited.

Dictionary.com describes sensitivity as "affected or likely to be affected by stimulus and requiring tact or caution." Allergy is defined as "an abnormal reaction or hypersensitivity of the body to an allergen."

STATUTES AND RULES

Pursuant to the Mental Health and Developmental Disabilities Code:

(a) 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 and the recipient's guardian.... 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. (405 ILCS 5/2-102).

(a-5) If the services include the administration of...psychotropic medication, the physician...or designee shall advise the recipient, in writing, of the side effects, risks, and benefits of the treatment, as well as the alternatives to the proposed treatment, to the extent such advice is consistent with the recipient's ability to understand the information communicated. The physician shall determine and state in writing whether the recipient has the capacity to make a reasoned decision about the treatment. The physician...or designee shall provide to the recipient's substitute decision maker, if any, the same written information that is required to be presented to the recipient in writing. If the recipient lacks the capacity to make a reasoned decision about the treatment, the treatment may be administered only (i) pursuant to the provisions of Section 2-107 or 2-107.1.... (405 ILCS 5/2-102).

(a) An adult recipient of services or the recipient's guardian, if the recipient is under guardianship, and the recipient's substitute decision maker, if any, must be informed of the recipient's right to refuse medication. 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. 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. (405 ILCS 5/2-107).

CENTER POLICY

Gateway Medical Center Policy 2.213U states:

The Pharmacy Department will maintain a patient medication profile....

A profile card will be used by the Pharmacy for patients to keep a record of all medications dispensed by the Pharmacy for the patient, to help from being given medications to which he/she might be allergic or sensitive....

Policy M-1.1 Informed Psychotropic Medication Consent states:

To ensure patients are counseled about medication, its intended effects, the potential side effects and benefits of the medication.

When an order is written for a psychotropic medication, the nursing staff will:

1. Use the computer generated medication education sheets to provide the patient and if applicable the guardian written information regarding prescribed medications.
2. Complete the Psychotropic Medication Informed Consent Form to verify informed consent from the patient and if applicable the guardian.
3. Place the signed completed consent form under the consent section of the medical record.
4. For patients with guardians, notify pharmacy that medication consent has been obtained. In the physician orders, the RN writes consent obtained from the guardian...
5. Notifies the Psychiatrist whenever informed consent is not obtained.

PART 1 CONCLUSION

The Mental Health Code calls for hospitals to provide adequate and humane care and treatment through planning with the participation of a recipient's guardian. According to documentation, the Center did not provide written drug information to the consumer and his guardian as required by the Code and program policy. There is no written Physician statement in the record regarding the consumer's decisional capacity to provide consent and no indication that he and the guardian were informed of the right to refuse medications prior to July 21, 2008 and, per program policy, there is no consent form in the record. The Center's policy states that the Pharmacy will keep records of all medications dispensed by the Pharmacy for the patient, to help from being given medications to which he/she might be allergic or sensitive.

The Center failed to document that the consumer had a guardian and it failed to obtain informed consent. The allegation that the Center violated a consumer's rights when it prescribed Zyprexa, a medication to which the consumer may have allergic reactions, is substantiated.

RECOMMENDATIONS

The HRA recommends that the Center:

1. Adhere to its policy regarding the administration of medication and refrain from the administration of medications that are listed as allergic.
2. Obtain informed consent from the consumer or the guardian as required by the Code when administering psychotropic medication.
3. Complete its policy revision to ensure that guardians are identified and verified with documentation.
4. Ensure that Physicians determine and document each patient's capacity to consent to treatment.

SUGGESTION

The HRA suggests that the Center remind Physicians to return phone calls to guardians and family members when requested.

PART 2 FINDINGS

Part 2 states that the Center violated the consumer's rights when it did not adhere to his guardian's request to have him discharged to a SOF in central Illinois and, instead, had him transferred to a facility in the Metro East region.

The guardian stated that when the Center determined that the consumer required treatment in a more secure facility, she requested that he be readmitted to a SOF in Central Illinois where he had lived for several years prior to admission to a nursing home in May 2008. According to the guardian a screening agent from the Metro East area agreed with her regarding that placement. However, the Center disregarded her requests and had the consumer placed at a SOF in the Metro East area.

The administrator agreed that the guardian requested placement at the Central Illinois SOF and she said that the Center made every effort to adhere to her request. The Administrator stated that the nursing home where the consumer had resided notified the Center on July 29, 2008, that they would not accept him back. At that time the Center contacted the Central Illinois SOF and requested transfer. That SOF replied that the consumer could not be admitted directly to its facility because the two hospitals were in

different catchment areas. The Administrator said that at that time Center staff notified the guardian that rules prevented transfer between the two facilities and the guardian stated that a family member would pick up the consumer the next day and take him to the Central Illinois SOF for admission. After consideration, the Center agreed to allow the consumer to be discharged to the guardian or his or her designee; however, the next day no one arrived to transfer the consumer.

The Master Treatment Plan and Discharge Activities log states:

07/29/08: Spoke with Director of Admissions [from the nursing home]. She states 'due to patients behavior they cannot accept him back and they do not need to give a 30 day notice because he had not been with them 30 days.' She also stated that [the regional assessment and placement agency] informed her that they would place the patient. She suggested writer send him back to [the Central Illinois SOF] where he came from. Writer will seek alternate placement when patient is ready for discharge.

A Therapy Progress Note dated July 30, 2008 states:

Spoke with [guardian] to inform her of referral of patient to [Metro East SOF]. The guardian is opposed to this and is requesting writer transfer patient to [the Central Illinois SOF]. Writer explained to [guardian] that in this area the only option is [the Metro East SOF]. She continues to oppose this and has requested patient be discharged to family tomorrow. (As she cannot be here tomorrow). Writer staffed with [Physician] who agrees to hold [Metro East SOF] transfer until family contacted writer tomorrow.

Therapy Progress Note date July 31, 2008 states:

Writer received call from patient's guardian who reports she is unable to find a family member to pick up patient today for discharge purposes. Writer informed [the guardian] that patient had just assaulted two staff members by spitting in their faces and he will need to be transferred to [the Metro East SOF] to ensure staff and patient safety. She continues to oppose this, writer attempted to explain referral process and involuntary committal guidelines in the State of Illinois. However, [the guardian] became upset and chose to terminate the phone call. Prior to this writer had informed her that [the Central Illinois SOF] where she wanted patient sent would not take patient from this area as well as they have no male beds. Assured her [Metro East SOF] is placing him on a transfer list to go to [the Central Illinois SOF].

The Center's discharge summary hospital course written by the Physician states:

.... In conferring with staff, we felt that it was in the patient's best interest

for longer-term intervention through [the Metro East SOF]. Arrangements were instituted.... He told me after the guardian was informed of pursuit of transfer that there was family involvement of guardian. There had been a preference for transfer to [Central Illinois SOF]. However, due to our requirements, that was not possible. Therefore, transfer to [Metro East SOF] proceeded....

The consumer was transferred from Gateway Medical Center on July 31, 2008, to the Metro East SOF and later transferred to the Central Illinois SOF.

The Coordinator contacted the Illinois Department of Human Services Community Mental Health Services Regional Administrator and the Administrators of the two SOFs named in the complaint. The three Administrators agreed that Gateway Medical Center's assessment of the procedure regarding admission to SOFs in the catchment area of the hospital is correct. According to the Administrators, there are no written rules regarding admissions from local hospitals to regional SOFs. The practice as explained has been implemented during Hospital Administrator and Medical Directors' meetings. The Administrators all verified that there was no written policy or procedure regarding admission to catchment areas.

PROBATE ACT

Pursuant to the Illinois Probate Act, the personal guardian shall procure and make provision for the ward's support, care, comfort, health and maintenance. (755 ILCS 5/11a-17). In doing so, "Every health care provider...has the right to rely on any decision or direction made by the guardian...that is not clearly contrary to the law, to the same extent and with the same effect as though the decision or direction had been made or given by the ward." (755 ILCS 5/11a-23 b).

PART 2 CONCLUSION

The Mental Health Code and Probate Act require facilities to include guardians in discharge planning. The Center documented its attempts to provide the placement requested by the guardian. The Illinois Department of Human Services Community Mental Health Services Regional Administrator and SOF Administrators verified that the requested placement was blocked by their department. The allegation that the Center violated the consumer's rights when it did not adhere to the guardian's request regarding discharge is not substantiated.