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HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 10-030-9002

JOHN J. MADDEN MENTAL HEALTH CENTER

Case Summary: The HRA substantiated the complaint that Madden Mental Health Center did not follow Mental Health Code requirements to include the guardian in the recipient's discharge decision making. The facility's response and corrective plan follow.

INTRODUCTION

The Human Rights Authority of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving a complaint of possible rights violations at John J. Madden Mental Health Center. It was alleged that the facility did not follow Code procedures and include the guardian in a recipient's discharge decision making. If substantiated, this allegation would be a violation of the Mental Health and Developmental Disabilities Code (405 ILCS 5/100 et seq.).

Madden Mental Health Center is a 269-bed, Illinois Department of Human Services (DHS) facility located in Hines, Illinois.

To review these complaints, the HRA conducted two site visits and interviewed the Chief of Psychology, the Interim Director of Nursing, the Interim Medical Director, the Social Work Director, and a social worker. Hospital policies were reviewed, and the recipient's clinical records were reviewed with consent. The guardian representative was also interviewed and consented to the review of the Office of State Guardian case notes (herein referred to as guardian representative progress notes).

COMPLAINT SUMMARY

The complaint alleges that the recipient, a ward of the state whose guardianship is handled by the Office of State Guardian (OSG), was discharged from Madden Mental Health Center, was readmitted to the facility, and then transferred out again without the notification of the guardian. The complaint alleges that the recipient was transferred out of the facility after the guardian had personally presented the social worker with a letter asking her to please include the guardian in all decision making regarding the recipient.

FINDINGS

The Madden Mental Health Center (MMHC) record shows that on 12/03/08 at 6:05 p.m. the recipient was petitioned for involuntary admission on the following information: "Pt. presents with violent behavior towards family. Pt. non-compliant with meds. Pt. reports hearing voices." The first certificate, completed at 5:30 p.m. on 12/03/08 states, "35 yr old male with schizophrenia violent towards family." The second certificate, completed at 6:47 p.m. on 12/04/08 states, "Pt. with confusion, vague/evasive/unrelated answers to questions asked, poor judgment/...(illegible), guarded, hypervigilant, seizures, per family pt. attacked sister and nephew physically, leaves house at odd times." The Consent for Services documents, both in English and Spanish, state, "Unable to understand" in the signature section of the forms. The record also contains an Application for Voluntary Admission completed 12/04/08 which indicates "I am the person seeking admission and am 18 or older." In the signature section it states, "Unable to understand." The record also contains another voluntary application for admission, in Spanish, completed on 12/09/08 and this is signed by the recipient but there is no witness signature, no director signature, and it is signed by the social worker. The Rights of Individuals Receiving Mental Health and Developmental Disabilities Services document is signed by the recipient and his social worker on 12/04/08 at 9:20 p.m. The record also contains three Reaffirmation of Voluntary Status documents that were signed (1/02/09, 3/09/09, and 5/09/09) by the recipient and the recipient's social worker. There is no indication in the record that they were given to the guardian.

A Uniform Screening and Referral Form accompanied the recipient to MMHC which had been completed 12/03/08. This document identified the recipient's guardian by name and agency but also stated, "Patient is ward of state but they don't have any communication with him. He is considered AWOL." The Comprehensive Psychiatric Evaluation: Intake Unit, completed 12/04/08, also indicates that the recipient is a ward of the state. In the Social Assessment, completed the same day, there is a statement explaining the recipient's relationship to family and guardian: "Family members are supportive. However, patient is a ward of the state and is non cooperative in receiving assistance from guardianship and advocacy." It is not known how this information was obtained. The record also contains a "No English/Limited English Speaking" form completed for the recipient and it indicates that on 12/04/08 from 17:30 until 17:50 online interpreter services were provided for the social assessment.

The first mention of the recipient's guardian representative in the MMHC Progress Notes appears on 12/17/08 in the Social Work Notes. Here it states, "Attempt to contact patient's guardian to no avail. Social worker was asked to contact [Office of State Guardian representative and agency phone number] for patient's guardianship status." There is no indication of whether a message was left in this initial contact. On 1/09/09 the record indicates that the social worker contacted the guardian representative and a message was left for the representative on her answering machine. On 1/15/09 social work notes state that "Patient and guardian,...,both verbally agreed to explore placement options." On 1/16/09 the social work notes state, "Pt.'s guardian called in last week indicated no history violence/self harm. Pt. with history of ETOH abuse per guardian. Pt. per he [sic] had been at ... but left some yrs. ago. Pt. has history of aggression at sister's house and not recommended he return there." On 1/21/09 the social work notes indicate that the guardian representative suggested placement of the recipient in a shelter.

Progress Notes from the recipient's guardian representative show that on 1/12/09 she met with the recipient's social worker and his physician. At this time, the record shows that the guardian representative informed the social worker and physician that she had talked to the recipient's sister, who reported that the recipient had been violent with her and her family and she asked that the guardian representative find placement for the recipient as he could not return to live with her. The guardian representative also noted that the recipient was an undocumented immigrant, that he was not eligible for funding or for many of the placement opportunities in the community. The record (guardian representative notes and MMHC social work progress notes) indicates that throughout much of the following four months efforts were made by the social worker and the guardian representative to secure a placement for the recipient, however due to his undocumented status and the unavailability of birth records, no arrangements were secured (this included consultation with various community agencies, with the Mexican consulate and with family of the recipient in Mexico). On 3/02/09 the guardian representative notes indicate that a discharge planning session was held with the recipient and social worker at which time they reviewed the recipient's chart and discussed further placement. The guardian representative notes in her record that the social worker "will schedule a meeting with the psychiatrist and asked if I would attend. She will also invite sister." MMHC progress notes also refer to this meeting and whether or not it was being scheduled. The guardian representative notes state that the guardian was never apprised of this meeting and on 6/24/09 the guardian representative visited the recipient for his quarterly meeting to find that he had been discharged the previous week.

MMHC social work progress notes written 6/17/09 state, "Met with patient to discuss post discharge plans. Inquired about current progress. Patient continue to reports (sic) doing well. He has been taking his medications daily and consistently. Patient also continues to participate in groups. Patient have been (sic) accepted to [community placement] for placement. He will receive comprehensive care at placement. Patient is scheduled to be discharge (sic) on 6/19/09. Patient is stable. He socializes and interacts appropriately with his peers. Patient has reach (sic) his maximum level of inpatient psychiatric hospitalization. Patient no longer need (sic) inpatient psychiatric hospitalization." There is no mention in the progress notes that the guardian representative had been notified. The record contains a Notice of Discharge signed by the social worker. There is certification of delivery of the notice (6/18/09), in English, to the recipient and there is no indication on the form or in the record that the guardian representative was notified. On 8/18/09 the Human Rights Authority (HRA) opened a case investigating the inclusion of the guardian representative in the recipient's care and decision making and a week afterwards the MMHC Chief of Psychology (and HRA contact person) called the HRA requesting proof of guardianship. The Letter of Office was forwarded to MMHC at that time.

The guardian representative progress notes indicate that the recipient had been hospitalized after his discharge from MMHC and thereafter was released into the community. He then returned to his sister's home and she notified the police who took him into custody and then released him again into the community. On 9/15/09 the guardian representative contacted a Spanish speaking OSG representative and asked him to contact the recipient's sister to determine the recipient's whereabouts. At this time the recipient's sister stated that the recipient had been readmitted to MMHC where she had visited with him the week before.

On 9/24/09 the recipient's guardian representative delivered a letter to the recipient's social worker asking to be included in the recipient's treatment planning and decision making: "Please find enclosed copies of our Letters of Office showing [recipient] to be a ward of the State Guardians' Office. Please place these copies in his medical chart and note on his admission sheet that I am to be notified when he is admitted into the hospital, be kept advised of his medical and mental status and be advised of his care plans, and especially his discharge plans. I also would like to speak to his assigned medical doctors or psychiatrist regarding his care, if you can please provide me with their names and phone numbers. It is important that you keep me involved in his care plans, which I can attend when properly notified, but especially important will be his discharge planning. I will try to assist you in any way I can. As you know, [recipient] is an illegal alien and is not eligible for any public entitlement programs currently. I have tried in the past to get documents to help correct this problem but was unsuccessful."

The guardian representative progress notes indicate that on 11/02/09 a message was left on her answering machine indicating that the recipient had been transferred to another facility. At that time the social worker stated to the HRA that generally she notified guardians if there was some outstanding event and that the recipient had been discharged without incident, so there was no need to notify the guardian.

The HRA reviewed the recipient's record for outstanding events which would generate the notification of the guardian representative. The record demonstrates that in the period of time from the recipient's admission on 12/04/08 until his first discharge on 6/19/09 there had been three Restrictions of Rights Notices issued (12/28/08 "Pt. kicked and attacked another patient without provocation...", 12/29/08 "Pt. presents non-compliant with antipsychotic tx yet remains highly suspicious and paranoid...", and 2/17/09 "Pt. attacked/hit pt. ...without any provocation..."), three Injury Reports written (12/28/08, 1/04/09, and 1/29/09), five incidents of fights between the recipient and other patients (12/12/08, 12/28/08, 1/14/09, 1/29/09, and 2/17/09), and one hospitalization for seizures (1/30/09). There is no documentation that the guardian received notification of injury reports nor did she receive Restriction of Rights notices. There are three Voluntary Reaffirmation documents in the record, all signed by the recipient but no mention of guardian notification. There is one Master Treatment Plan and 13 reviews of this plan in the MMHC record. All of them indicate that the guardian is either not present or not available. There is no indication from the MMHC file that the treatment plans were shared with the guardian representative. Additionally, the guardian stated that she was not given notice of treatment planning sessions. There are two consents for medication in the record with signatures refused by the recipient. One is in English for Olanzapine and Lorazepam and it states that the recipient refuses to sign. It states it is valid until 12/04/08 and is signed on 12/04/08. The box indicating that the recipient agrees to take the medicine listed above is checked yes. Another of the same form is in Spanish and again the signature is refused. It is also valid until 12/04/08 and signed on 12/04/08. Again, the box indicating that the recipient agrees to take the medicine listed above is checked yes. A third consent form for Olanzapine is signed by the recipient on 12/29/08. Neither of the boxes indicating that the recipient agrees or refuses the medication is checked. Also, there is no guardian signature of consent for the medications.

Hospital representatives were interviewed about the allegations during a site visit held on 1/28/10. They stated that the guardian representative had been notified by phone of the

recipient's discharge and transfer and that the guardian had worked with the social worker throughout the recipient's hospital stay to secure a post discharge placement, so she was informed of the progress of the recipient's placement. Due to the fact that hospital staff had not reviewed the recipient's record (which had transferred with the recipient to another facility), the HRA's copy of the record was given to staff for review and another site visit was scheduled for 3/02/10.

On 3/02/10 another site visit convened. At this time the hospital representatives stated that the guardian had made visits to the recipient throughout his stay at MMHC and had been able to review the clinical record and discuss any events which impacted his progress in treatment. Staff affirmed that the guardian had recommended a placement of the recipient in a shelter and the clinical team thought this was an inappropriate placement and had worked to secure other placement. Staff felt that they had communicated the process with the guardian throughout the search for placement and that their only omission was the actual discharge document which was not presented to the guardian. Staff did not know why the guardian was not given Restriction of Rights documentation or injury reports, etc., but stated that generally it was the facility practice to notify guardians of outstanding incidents. They did acknowledge that if there were instances where the guardian was not notified they would train staff to comply with the Code.

Facility representatives were interviewed about the admission process. They stated that interpreters are available at all times to translate for non-English or limited-English speaking recipients. Additionally, their policy is to always notify the guardian at admission. In this case they stated that they did not know the recipient had a guardian and when they realized this, the guardian was notified. Facility staff did not know that they could call the Guardianship and Advocacy Commission's main telephone line to obtain the name of a recipient's guardian. Also, they reported that they did not know they could call the main line and be directed to the OSG representative or to leave a message through the main line for the representative's answering machine.

STATUTORY RIGHTS

The Mental Health Code mandates that from the time that services begin, legal guardians and other substitute decision makers are to be included in all facets of care. Information about a recipient's rights must be shared orally and in writing with the adult recipient upon commencement of services, or as soon as his condition permits, and with the guardian. A recipient aged 12 or older and any guardian must also be informed upon commencement of services of the right to designate a person or agency to receive notice should the recipient's rights be restricted. The recipient is allowed to select a preference for forced emergency treatment and the facility is to communicate a selection to any guardian (405 ILCS 5/2-200). If any guaranteed right under the Mental Health Code is restricted, including the right to refuse medication, then the facility must promptly give notice to the recipient, his guardian, and to any person or agency so designated. (405 ILCS 5/2-201).

The Mental Health Code allows recipients and their guardians the right to refuse generally accepted mental health services. If these services include psychotropic medication, the

physician must advise the recipient, in writing, of the side effects, risks and benefits of the treatment as well as alternatives to the extent that it can be understood by the recipient. The physician must also determine and state in writing whether the recipient has the capacity to make a reasoned decision about his treatment. If the recipient lacks the capacity to make a reasoned decision about his treatment, the treatment can only be administered to prevent the recipient from causing serious and imminent physical harm to himself or others or upon a court order (2-107, 2-107.1). The physician must also advise the guardian in writing of the side effects, risks and benefits of treatment as well as alternatives to the treatment. (405 ILCS 5/2-102).

The Probate Act of 1975 has the same intentions when it calls for appointed guardians to secure and oversee appropriate care for their wards and to be assured that providers will rely on their directives:

To the extent ordered by the court...the guardian of the person shall have custody of the ward and ...shall procure for them and shall make provision for their support, care, comfort, health...and maintenance...(755 ILCS 5/11a-17).

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).

The Mental Health Code mandates that the facility must give written notice of discharge to the recipient, his attorney, and guardian with a reason for the discharge and a statement of his right to object. When possible, this notice is to be given at least 7 days prior to the planned discharge (405 ILCS 5/3-903).

FACILITY POLICY

Madden Mental Health Center policy and procedure Section 300 Guardians/Wards states that:

“When a patient with a severe mental disability whom [sic] may be unable to exercise some or all of his/her rights or protect his/her interests, referral shall be made to have a court appointed guardian exercise the patients’ rights and be an advocate for the person’s interests. If a guardian is appointed, hospital staff are to provide notification to and request decisions of the guardian, per the guardian’s authority. When the guardian is the Illinois Office of State Guardian, hospital staff are to provide notification and request decisions as described in III., below [Notification of Guardian].

Per OSG, the following events require **prior approval** from OSG regional office staff. These are considered non-emergency in nature.

1. Transfer involving changes in level of care, or transfers from one facility to another irrespective of the change in level of care, transfers between units do not require prior approval. If the situation is unusual obtain prior approval....

The following events require notification to the OSG regional office by the next working day:

1. Injuries/accidents/emergency room treatment/excluding surgery;
2. Hospital admission for general or psychiatric treatment;
3. Emergency psychotropic medication to prevent serious harm to the ward or others;

The following require **immediate notification** (and when appropriate the consent) of the OSG regional office during business or to the after hours emergency service.

- ...4. Alleged physical or verbal abuse of a ward....

An individual with a guardian may be admitted on a voluntary status if the individual comprehends what is happening and consents to admission. The guardian is to be notified of admission **immediately**.

A Voluntary Reaffirmation form must be signed by the patient and filed in the patient's record. Guardians do have to give verbal or written consent to reaffirm the patient's voluntary status. If a voluntary patient who has a guardian refuses to reaffirm, he/she should be treated as if discharge has been requested. The guardian also has a right to object to the discharge. If appropriate, hospital staff shall seek involuntary admission of the patient. The guardian must be notified of the hospital's planned course of action, and is entitled to receive a formal Notice of Discharge.

The Social Work Department will maintain a file of guardianship orders of all patients who have received and/or currently receiving treatment at MMHC. Social Work will distribute copies of guardianship documents to the appropriate treatment unit, Health Information Department, Trust Fund department, and the Recipient Resource Unit. Also, Social Work will obtain guardianship orders from circuit courts of patients who have guardians in cases where the documents are not on file at MMHC.” **(Hospital representatives stated that this practice is not in place and would be too cumbersome to maintain so it will now be discontinued).**

MMHC policy and procedure Section 1100 Patient Movement states:

“It is the policy of the Madden Mental Health Center, in compliance with the Illinois Mental Health and Developmental Disabilities Code, that the facility director or his/her designee shall give written notice of discharge from MMHC to the patient, his/her attorney, and guardian, if any. The notice shall include the reason for discharge and a statement of the right to object”.

CONCLUSION

The Mental Health Code and Madden Mental Health Center policy mandate that legal guardians are to be included in all facets of care once services begin. Madden policy states that

staff are to provide notification to and request decisions of the guardian, even specifying which events require prior approval or immediate notification. For voluntary admission, the hospital policy mandates immediate notification of the guardian. A review of this recipient's admission documents indicates some confusion over whether or not the recipient was able to understand his admission process and nowhere does the record show that the guardian representative was contacted, even though documents that were sent with the recipient to Madden named the guardian representative as well as the Guardianship and Advocacy agency. It is not clear that the recipient understood his rights as a mental health recipient and certainly his guardian representative was not admonished of her rights as mandated by law. Additionally, the record contains three Reaffirmation of Voluntary Status documents and no indication that they were shared with the guardian representative.

A similar situation occurred with the recipient's discharge. Hospital policy states that prior approval of the guardian is needed for transfers involving level of care, or transfers from one facility to another. However in the present case these guidelines were not followed, and even with the intervention of the HRA, the guardian representative was not notified when the recipient was twice discharged from the facility. This is made even more grievous given the tendency of the recipient to elope to his sister's home where he had been physically violent with her and her family. Although the record shows that Madden staff worked with the guardian representative to secure placement for the recipient, the actual discharge occurred without the prior knowledge of the guardian, denying the recipient his advocacy and his guardian the right to object to his discharge. Notification in this case is not enough- as stated in Madden policy, prior guardian approval is necessary.

The HRA, in its statutory duty to advocate for the disabled, must also note that the clinical record of this recipient contained numerous events in addition to discharge, which required, but were not given, guardian notification. These events were unknown before the review of the record, however they deserve mention here. The facility's override of the recipient's right to refuse medication, his injury reports, his hospitalization and his involvement in physical fights on the unit, are all instances where guardian input and decision making is not only mandated by law but by the dictates of best practices in the delivery of mental health services. The Madden staff is reminded that each of these omissions is a violation of the recipient's rights. It is the HRA's hope that Madden staff recognize the seriousness of these omissions and address them adequately.

The HRA substantiates the complaint that Madden Mental Health center did not follow Code procedures when it did not include the guardian in the recipient's discharge decision making.

RECOMMENDATIONS

1. Train staff to honor the court appointed authority of the guardian by following the mandates of the Mental Health Code and Madden Mental Health Center policy. This includes the immediate notification of the guardian when the recipient is admitted for medical or psychiatric treatment, the prior approval for any transfer or discharge, as well as the ongoing

reliance on the input and participation of the guardian in decision making for the recipient's well being.

2. Ensure that when documents requiring recipient signature indicate that the recipient is unable to understand, that further effort is made to clarify the content and obtain signature.

SUGGESTIONS

1. Ensure that documentation demonstrates that the guardian is given rights information, is included in treatment planning, is apprised of medication benefits, effects and changes, is given preferences for emergency treatment, and is notified when the recipient's rights have been restricted.

2. Madden should revisit the reaffirmation policy to ensure there are no conflicts with an adult recipient's right to choose admission and reaffirm pursuant to 405 ILCS 5/3-400 and 5/3-404.

RESPONSE

Notice: The following page(s) contain the provider response. Due to technical requirements, some provider responses appear verbatim in retyped format.

**JOHN J. MADDEN MENTAL HEALTH CENTER**

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June 7, 2010

Ray Hemphill, HRA Chairperson
Guardianship and Advocacy commission
1200 S. 1st Ave Box 7009
Hine, Ill. 60141

Re: HRA No. 10-030-9002

Madden clinical staff will be trained to honor the authority of the court appointed guardian by following the mandates of the Mental Health Code and Madden Mental Health Center policy, PPM 305,. This training will focus on the importance of immediately notifying the guardian when the recipient is admitted for medical or psychiatric treatment, obtaining the guardian's prior approval for any transfer or discharge, as well as involving the guardian in treatment planning and relying on the input and participation of the guardian in decision making for the recipient's well being.

The training will also address the necessity of giving the guardian pt rights information, apprizing the guardian of medication benefits, effects and changes, informing the guardian of the pt's preferences for emergency treatment and any restrictions of the pt's rights. All of these efforts should be documented.

Clinical staff will also be trained to make sure that when documents requiring recipient signature indicate that the recipient is unable to understand, that further effort is made to clarify the content and obtain signature.

Treatment Coordinators were trained at the Social Work Dept. meeting that took place on May 18, 2010.

Nursing staff training will take place over the course of the next 2 weeks.

Psychiatrists will be trained at the next Medical Staff Organization.

All of the training will include review of PPM 305, the facility policy on guardianship

It should be kept in mind that should a pt with a guardian who was admitted voluntarily request to be discharged and the treatment team finds no reason to seek court commitment, the pt would have to be discharged. The guardian could object to the pt's discharge. The treatment team's

ethical obligation at all times is to act in the best interests of the patient.

Sincerely,


Robert Sharpe, MD
Medical Director
Madden Mental Health Center