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HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 10-030-9010  
Chicago Read Mental Health Center

Case summary: The HRA substantiates that the facility did not follow Code procedures when it did not include the guardian in the recipient's care and decision making.

INTRODUCTION

The Human Rights Authority (HRA) of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving a complaint of possible rights violations at the Chicago Read Mental Health Center (Chicago Read). It was alleged that the facility did not follow Code procedures when it failed to include the guardian in the recipient's care and decision making. If substantiated, the allegation would violate the Mental Health and Developmental Disabilities Code (405 ILCS 5/100 et seq.).

Chicago Read is a 190-bed Illinois Department of Human Services (DHS) facility located in Chicago. To review these complaints, the HRA conducted a site visit and interviewed the Director of the Department of Psychology, the Quality Manager, the Social Worker, and the Unit Nurse. Relevant hospital policies were reviewed, and records were obtained with the consent of the adult recipient.

COMPLAINT SUMMARY

The complaint alleges that the recipient was admitted to Chicago Read from a forensic mental health facility without any input from his guardian- the recipient signed consents for treatment and medication although he is developmentally disabled and unable to consent. The complaint alleges that the guardian was notified once when the recipient was placed in restraints, but that he received numerous emergency psychotropic medications without her notification. Finally, although the guardian had been in frequent contact with the staff at the hospital, she received a phone call late in the afternoon on 10/07/09 informing her that her ward would be transferred the next morning at 7a.m. back to the forensic facility. When the guardian called the following morning, the recipient had already been transferred. She did not ever receive written notice of the transfer.

FINDINGS

Chicago Read could not provide their hospital record of this recipient since it was transferred to the forensic treatment facility with the recipient. The record was obtained by the HRA from the forensic unit for the period of time that the recipient was treated at Chicago Read.

The record shows that the recipient was admitted to Read on 9/15/09 after a transfer from a forensic mental health facility. The Application for Voluntary Admission is signed by the recipient as well as the Rights of Individuals Receiving Mental Health and Developmental Disabilities Services. Additionally, the Medication Counseling form for Valproic Acid and Lorazepam, as well as the Consent for Services forms are signed by the recipient. Both of the latter documents have the notation "guardian to sign consent form" handwritten on the bottom however the guardian's written consent was not obtained at that time or later. The Designation of Emergency Treatment Preference and Emergency Notification form states that the guardian is to be notified if the recipient's rights are restricted or there is a medical emergency. There is no indication that the guardian was informed of the recipient's preferences for emergency treatment or that staff shared with her the recipient's rights information. There is also a physician-signed statement indicating that the recipient understands that he is being admitted to a psychiatric hospital and that he understands that release from the hospital may not be automatic and that he can obtain help from the staff to initiate procedures for release. The Admitting Multiaxial System offers the following diagnostic basis for the admission: Axis I Mood Disorder, NOS (not otherwise specified), Axis II Moderate Mental Retardation, Axis III History of Concussion, Asthma, and Allergies, Axis IV Legal Problems, low IQ, and incarceration, and Axis V GAF (global assessment of functioning) 55.

The recipient's Master Treatment Plan indicates that the guardian is in daily contact with the staff and wishes to have the recipient live with her when he is discharged. She is described as "very involved" and "supportive". The Treatment Plan, dated 9/16/09 indicates that the guardian "had input into the treatment plan."

Soon after the recipient's arrival (9/17/09) the record shows that he began to be occupied with inserting objects into the electrical outlets. Additionally, he began a habit of standing at the nurses' desk, staring at staff, and later this developed into touching both staff and peers. These behaviors continued with very little response to redirection and then on 9/27/09 the recipient was redirected for intrusive behaviors and he became angry and threw a waste can at the window of his room and was given emergency psychotropic medication. There is no indication from the record that the guardian was notified. On 9/28/09 the recipient was tampering with the electrical outlet near a television cabinet and staring threateningly at staff. He was administered 2 mg of Ativan intramuscularly (IM) for "potential for violence towards others." There is no indication from the record that the guardian was notified.

On 9/28/09 the recipient was given an injection of Lorazepam 2 mg with security assistance. The Progress Notes state, "Keeps standing/hanging around the desk. Restless, threatening and verbally abusive towards staff. Took the hamper bag and stole the money (\$2.00) of his roommate. Denied taking it, cursing at staff while pacing around. Broke/removed plastic cover of electric socket by the laundry room earlier." There is no indication from the record that the guardian was notified.

On 9/30/09 the recipient was placed in restraints and administered 2 mg Ativan IM "due to agitation and threaten to run away by breaking out the window in a bedroom. Ongoing agitation and redirection for the past hour trying to avoid medication and restraints but all measures failed. He suddenly came out of his room with a coat on and a bag all packed up. He went directly to the room where he cracked a window Sunday. He stated that 'I [sic] going to break the window and staring at the window. He was in a [sic] unauthorized place...." At this time the recipient was placed in restraints and given emergency psychotropic medication. The Progress Notes indicate that his guardian was notified and she asked staff why her son was usually sedated when she talked with him. She also reminded staff that the recipient was allergic to Haldol. There is a Notice of Restriction of Rights document in the record indicating that the guardian was delivered a copy of the Notice. All forms required for compliance with the Mental Health Code restraint procedure are included in the record.

On 9/30/09 Progress Notes indicate, "Behavioral intervention failed. Lorazepam 2 mg IM given with security assistance. Patient was inside his room when staff heard banging sound in room 102 and found glass window broken. Room search done - found a piece of broken wooden arm rest inside pillow case. Patient denied he cannot remember when he broke and removed the arm rest from the rocking chair in the soothing room. Placed 1:1 observation to prevent further property damage and for safety...." There is no indication from the record that the guardian was notified of this event.

On 10/05/09 Progress Notes state, "...Ativan 2 mg IM given for increased agitation to rt. Deltoid. Keep reaching for dangerous objects like cords from TV and computers, and keep reaching behind nursing...." There is no indication from the record that the guardian was notified of this event.

On 10/07/09 the treatment team convened to discuss the transfer of the recipient back to the forensic mental health facility. The Progress Notes state: "Frequent redirection is required and done all shifts on 1:1 monitoring. Redirected into special 1:1 activities to keep him busy. 1:1 renewed for unpredictable behaviors and team had a [forensic mental health center] review this morning at 9:00 a.m. and they accepted him back. He will leave in the morning 10-08-09 at 7a.m...." The recipient continued to be non-compliant and threatening to staff and at 2:40 a.m. the Progress Notes indicate, "Continued 1:1 monitoring - several redirections and counseling - refused to listen. Ativan 2 mg IM given with Benadryl 50 mg given right deltoid with staff assistance. Pre-occupied of inserting paper/cardboard in the electrical outlet- Stated- I have to put this inside- Potential for dangerous behavior- will continue to observe efficacy of prn medication...." There is a Restriction of Rights Notice in the record for this event which indicates that a staff person had delivered a copy of the notice to the guardian in person at 2:40 a.m.

At 4:45 p.m. on 7/08/09 the recipient was transferred back to the forensic mental health facility. There is no indication from the record that the guardian was notified of the transfer.

The guardian submitted a letter to the Clinical Utilization Review Committee on 10/13/09 objecting to the transfer of her ward to the forensic facility. She stated "I feel that it [the transfer] was not necessary at this time. I feel that this was very excessive...." The Committee

met to hear testimony on the transfer decision on 10/23/09 at which time the panel upheld the treatment team's decision for an emergency transfer. A letter was written to the guardian on 11/09/09 stating the Utilization Review Panel decision.

#### Facility Staff Statement

Facility representatives were interviewed regarding the alleged complaint. They indicated that the facility staff were in contact with the guardian almost daily regarding the recipient, however they did not record that these conversations took place. They stated that the Master Treatment Plan was probably mailed to the guardian but staff did not remember any further detail regarding the discussion of the plan. They also stated that they sent the guardian all the consent documents, and they did not offer an explanation as to why the consents were not in the record, but they felt sure that the guardian gave consent for all the recipient's treatment. Staff also stated that medication regimens from the forensic unit are not changed once the recipient transfers to Chicago Read- it is assumed the recipient has been stabilized on the plan that was prescribed while he was incarcerated.

Staff remembered calling the guardian regarding the restraint episode and they remembered that the guardian was concerned about the amount of emergency medication that was being administered to the recipient, which also concerned the staff. The unit nurse also stated that she asked the guardian if there were other interventions which had worked in the past to calm the recipient when he became anxious. Staff confirmed that they had discussed with the guardian the possibility that the recipient would be transferred back to the forensic facility if his behavior on the unit did not improve. They stated that although the guardian had initially been opposed to the placement of the recipient at Read, his initial success there had convinced the guardian that the step-down placement had indeed worked, however the recipient began a steady decompensation which resulted in the inevitable decision to return him to the forensic unit.

Facility representatives were interviewed about the numerous events which resulted in emergency medication and the guardian's notification of these events. They stated that the recipient was threatening when redirected- although he had not hit anyone or threatened anyone, he had grabbed objects from the desk and had to be monitored constantly so that he would not put objects in the electrical sockets or harm himself or others. Staff were asked about the Restriction of Rights Notices that are to be completed whenever the recipient's rights are restricted. The record contained only two- one for the restraint episode that occurred on 9/30/09 and one for the emergency medication on 10/08/09. Staff stated that Restrictions of Rights Notices were completed for every incident of rights restriction and that due to the placement of the Notices in the file, they might not have been transferred along with the rest of the record.

Hospital representatives were asked about the guardian's notification that her ward had been transferred. Staff related that they might not have known that the recipient would be transferred at a specific time since this was an emergency transfer. They stated that because the recipient is under the auspices of the correctional system, his movements between facilities are dictated by the security staff. For this reason Chicago Read has little control over the recipient's movements, especially to and from the facility where he had been transferred which is a 7-hour trip from Chicago Read. Unit staff remembered having called the guardian the afternoon of

10/07/09 telling her that the recipient would be transferred, however when staff returned to the unit the following morning, the recipient had already been moved and his record had been moved with him, as is the procedure. The guardian did not receive any further notification of her ward's transfer.

Hospital representatives reported, and it was stated in the Review Panel's response letter to the guardian, that as a result of the guardian's testimony at the Review Panel, the Panel recommended that in the future, the guardian will be given immediate verbal notice of the possibility of an emergency transfer and then staff will immediately refer the matter to the Panel if the guardian verbally objects to the impending transfer. In his response the Facility Director supported this change as a means to shorten the time it takes a guardian to deliver written notice of objection, and afford the hospital time in which to conduct a review panel in advance of the actual transfer.

## STATUTORY BASIS

The Mental Health Code allows any person 16 years or older to file an application for voluntary admission to a mental health facility and they may be admitted if the facility director determines that they are suitable for admission as a voluntary recipient (405 ILCS 5/3-400).

The Mental Health and Developmental Disabilities Code provides for the inclusion of the guardian in all aspects of treatment:

"A recipient of services shall be provided with adequate and humane care 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...."(405 ILCS 5/2-102).

If treatment includes the administration of psychotropic medication, then the guardian must be advised in writing of the side effects, risks and benefits of the treatment:

"If the services include the administration of...psychotropic medication, the physician or the physician's designee shall advise the recipient in writing of the side effects, risks, and benefits of the treatment, as well as alternatives to the proposed treatment, to the extent such advice is consistent with the recipient's ability to understand the information that is 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 the physician's 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." (405 ILCS 5/2-102 a-5).

The Mental Health Code also allows the guardian to refuse treatment for the recipient:

"An adult recipient of services, 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." (405 ILCS 5/2-107 a). Additionally, the Code states that upon commencement of services or as soon thereafter as the recipient's condition permits, the guardian shall be informed orally and in writing of the rights that are guaranteed by the Code which are relevant to the recipient's services plan, and the recipient's preferences for emergency treatment are to be communicated to the guardian (5/2-200).

And, whenever a guaranteed right of the recipient is restricted, the recipient and his/her guardian must be given prompt notice of the restriction and the reason therefore. (405 ILCS 5/2-201 a). The Secretary of Human Services and the facility director of each service provider must adopt written policies and procedures to implement the rights guaranteed by the Mental Health Code (5/2-202).

Additionally, the Illinois Probate Act of 1975 defines the duties of the guardian:

"To the extent ordered by the court and under the direction of the court, the guardian of the person shall have custody of the ward and the ward's minor and adult dependent children; shall procure for them and shall make provision for their support, care, comfort, health, education and maintenance, and professional services as are appropriate....The guardian shall assist the ward in the development of maximum self-reliance and independence." (755 ILCS 5/11a-17a).

Also, the Probate Act gives direction to providers to rely on guardian decision making:

"Every health care provider...has the right to rely on any decision or direction made by the guardian...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 states that a facility may transfer a recipient to another state facility if the Director determines the transfer "to be clinically advisable and consistent with the treatment needs of the individual (405 ILCS 5/3-908). When a recipient has been in a state facility for more than 7 days and is transferred to another state facility the Director must give written notice to the guardian as well as the recipient 14 days before the transfer and include therein the reasons for the transfer, a statement of the right to object to the transfer, and contact information for the Guardianship and Advocacy Commission. In an emergency, however, when the health of the recipient or the physical safety of the recipient or others is imminently imperiled and appropriate care is not available where the recipient is located, "a recipient can be immediately transferred to another facility provided that notice of the transfer is given as soon as possible but no more than 48 hours after transfer (5/3-910 b). The reason for the transfer shall be noted in the recipient's record and specified in the notice." Also, a recipient or his guardian may object to the transfer if a written objection is sent to the facility Director within 14 days after the emergency transfer. Upon receipt of the objection the facility must schedule a hearing on the matter within 7 days (5/3-910 c).

## FACILITY POLICY

Chicago Read has developed extensive policy (6 page document) for the development of Treatment Planning (PC-03-30-30.00). This policy ensures that each recipient is given a dynamic and changeable plan of action for their progression through the treatment episode. It includes a multidisciplinary team approach with the aim of: "identifying those problems which interfere with the patient's ability to return to the community; providing appropriate services; and the identification and acquisition of appropriate/continuous follow-up and supports needed to sustain the patient post hospitalization." In Section 2. Participants and Roles, it states, "Although not always possible, the community agency representative and legal guardian (if any) should participate and present any relevant information necessary for development of the treatment plan." The only other mention of the guardian falls under the Section 4. Treatment Plan Review and it states that after each revision or update of the treatment plan there should be a "Discussion of the review outcomes with the patient and/or guardian."

Chicago Read policy on psychotropic medication (PC-RX-06-40-01.00) includes a section on Informed Consent for Legally Disabled Adults:

- a) Prior to prescribing psychotropic medication, a recipient and their guardian, shall be informed of the following in a language appropriate for the individual:
  - i. Proposed psychotropic medication and dosage ranges,
  - ii. Purpose of the proposed medication,
  - iii. Whether the psychotropic medication requires periodic testing/procedures to ensure safety/efficacy,
  - iv. Side effects of psychotropic medication (must be in writing),
  - v. Prognosis and risks without the proposed psychotropic medication,
  - vi. Alternative treatments and their risks, side effects, benefits and efficacy,
  - vii. The right to refuse psychotropic medication (must be in writing),
  - viii. A general understanding of psychotropic medication reduction issues.
- b) The information shall be given in a manner consistent with the recipient's ability and guardian's ability to understand....
- c) The recipient shall be asked if they agree to take the psychotropic medication. If the recipient does not object, informed written consent shall be obtained from the guardian.

Chicago Read policy regarding the restriction of recipients' rights (PC-05-40-70.00) indicates that the charge nurse or designee will complete the Restriction of Rights form. Additionally, this person is to ensure that the original is placed in the recipient's chart and a copy given to the patient, the Clinical Nurse Manager, the office of the Hospital Administrator, the guardian, and anyone else the patient may designate within one business day of the restriction.

Chicago Read policy for Notice of Transfer (PC-09-10-05.00) outlines the procedure for completion of transfer notices:

"1. The Notice of Transfer must be completed whenever a patient has been in the facility for (7) days or more before being transferred; or, whenever there is an emergency transfer to Chester MHC, no matter how long the patient has been in the facility.

2. The Notice of Transfer is to be completed for the patient, his attorney, guardian, and responsible relative. Send it by Certified Mail to the attorney, guardian, and responsible relative, if any.

3. The date to be indicated is the intended transfer date, which must be at least 14 days following giving the Notice of Transfer to the required persons, unless the transfer is an emergency transfer. Emergency transfers are to be made as soon as possible. If they cannot be made within 48 hours, the transfer is to proceed as a non-emergency transfer. A recipient may be immediately transferred in an emergency to another facility provided that a notice of transfer is given as soon as possible, but no more than 48 hours after the transfer.

4. The transfer of a patient to another Department facility may occur as long as it is clinically advisable and consistent with the treatment needs of the patient. Objections may be made as indicated on the form.

5. Following receipt of an objection to transfer a Clinical Utilization Review is to be convened within 7 days and transfer is to be deterred pending the review process.

6. If the facility receives an objection to a transfer to Chester Mental Health Center, after the patient has been transferred to Chester, the objection is to be forwarded to the Facility Director of Chester Mental Health Center.

Note: A copy of the "Notice of Transfer" and the "Receipt for Certified Mail" must be retained in the patient's record. Furthermore, indicate next to the signature on the "notice of Transfer" and in the "Progress Notes" in the chart, the date the "Notice of Transfer" was given to the required person. For notification by Certified Mail, allow sufficient time to comply with the fourteen day requirement."

## CONCLUSION

Although the Mental Health Code allows any person 16 and older to sign voluntary admission applications, it provides for the inclusion of the guardian in all aspects of the recipient's treatment: the development of the treatment plan, the education and consent for psychotropic medication, the right to refuse treatment, notice of the recipient's rights and restrictions of the recipient's rights and notice of transfer to another state facility. The Probate Act allows for the guardian to procure and make provision for the recipient's support, care, comfort, health, education and maintenance, and professional services. In fact, this law mandates that providers rely on the direction of the guardian to the same extent and with the same effect as the direction given by their ward. Although the facility staff in the extant case have reported that they were in daily contact with the guardian, the record does not support this claim. Only one event, the restraint episode that occurred on 9/30/09, showed documentation



that the guardian was notified and the only other Restriction of Rights Notice indicates that the guardian was given the notice in person at 2:40 a.m. on the day that the recipient was leaving the facility and this is clearly in error. Additionally, the record contains two consent forms, one for treatment and the other for medication and both of these documents have handwritten notes stating "guardian to sign consent forms", however neither of these forms are signed by the guardian.

The record does not indicate that the guardian was ever given written notification of her ward's transfer as required by hospital policy. Additionally, the guardian made a verbal objection to the transfer on 10/07/09 and written objection to the transfer on 10/13/09, and the Clinical Utilization Review did not occur until 10/23/09. It should be noted that as a result of the guardian's testimony at the Review Panel, the Panel recommended that in the future, the guardian will be given immediate verbal notice of the possibility of an emergency transfer and then staff will immediately refer the matter to the Panel if the guardian verbally objects to the impending transfer, thus eliminating this problem.

The HRA substantiates that the facility did not follow Code procedures when it did not include the guardian in the recipient's care and decision making.

## RECOMMENDATIONS

1. Develop policy and instruct staff to include the guardian in all aspects of the recipient's treatment to include development of the treatment plan (405 ILCS 5/2-102).
2. Develop policy and instruct staff to provide guardians with information regarding the side effects, risks and benefits of prescribed psychotropic medication (405 ILCS 5/2-102 a-5).
3. Develop policy and instruct staff to provide information to the guardians regarding their right to refuse medication for their ward and the conditions under which this right may be restricted (405 ILCS 5/2-107 a).
4. Develop policy and instruct staff that the guardian must be given prompt notice whenever a guaranteed right of the ward is restricted (405 ILCS 5/2-201 a).
5. Develop policy and instruct staff to give written notice of transfer to the guardian within 14 days before a ward is transferred, along with the reasons for the transfer and the right to object. For emergency transfers, ensure that notice is given as soon as possible but no more than 48 hours after transfer, and that the reasons for the transfer are noted in the recipient's record (405 ILCS 5/3-910 c).