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HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 12-030-9001
Edward Hines, Jr. VA Hospital

Case Summary: The HRA did not substantiate the complaint that the facility did not follow Mental Health Code procedure when it deceived a recipient into taking psychotropic medication.

INTRODUCTION

The Human Rights Authority of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving a complaint of possible rights violations at Edward Hines Jr. VA (Hines). It was alleged that the facility did not follow Code procedure when it deceived a recipient into taking psychotropic medication. If substantiated, this would violate the Mental Health and Developmental Disabilities Code (405 ILCS 5/2-107).

Hines is a 471-bed Veterans Administration medical facility that incorporates a 29-bed Behavioral Health unit.

To review these complaints, the HRA conducted a site visit and interviewed the Attending Physician, The Unit Registered Nurse, the Social Work Intern, and the Unit Social Worker. Hospital policies were reviewed, and the adult recipient's clinical records were reviewed with written consent.

FINDINGS

The complaint in this case involves the administration of psychotropic medication to a recipient in her orange juice without her consent or knowledge during a June, 2011 hospitalization at Hines VA.

The recipient was voluntarily admitted to Hines on 5/16/11 and discharged on 6/06/11. Her diagnosis is listed as Paranoid Schizophrenia and Post Traumatic Stress Disorder. The record shows that while a patient at Hines she was prescribed the following medications: Haloperidol, 2 mg at bedtime daily and Risperidone, 25 mg injection every 14 days. In addition, the recipient was prescribed the following PRN or "as needed" medications: Lorazepam 1 mg tab every 4 hours, Lorazepam 1 mg injection every 4 hours, Chlorpromazine 50 mg tab every 4 hours, Chlorpromazine 50 mg injection every 4 hours, and Nicotine gum, one piece every 2

hours. The recipient was placed on one to one monitoring accompanied by a sitter at all times due to suicide risk.

The record indicates that the recipient remained resistive to treatment and abusive to staff throughout her hospitalization, however she was less profane and negative as she remained on the unit, stating on 6/01/11 that she was getting along better with staff because, "they don't bother me as much." The focus during her hospitalization was to return to her home to live independently and this was being arranged by the recipient's guardian along with the treatment team. The Medication Administration Record shows that she generally refused all medication except her nicotine gum. The record does not contain informed consents for her prescribed psychotropic medication- either from the recipient or her guardian, and does not include a physician's statement of decisional capacity. The record does not indicate that the recipient was administered forced or emergency medication or that she posed a threat of harm while at the hospital.

FACILITY REPRESENTATIVES' RESPONSE

Hospital representatives were interviewed about the complaint. They indicated that the recipient was never administered psychotropic medication during her hospitalization- her prescribed medication was generally refused, and the staff honored this refusal. Staff noted that although the recipient's behavior would probably improve with medication, she was able to manage her symptoms without it. Staff indicated that, as was noted in the clinical record, the recipient never received any medication other than her nicotine gum- all medication was refused by the recipient and was not given in any form. Staff also indicated that the recipient did not like to be approached about medication and staff began to expect that she would refuse it, and would not even offer it after they became familiar with her. The staff stated that the goal for the recipient was to return to her home and this was the focus of her attention while at Hines VA and staff did whatever they could to support this decision. Staff indicated that forced, or emergency medication is only used when patients are restrained, and restraint is very rare on the unit. Staff indicated that the recipient, while profane and difficult at times, was never a threat of harm to herself or others, and thus was never placed in restraints or given forced medication, either openly or hidden.

Staff were interviewed about the Mental Health Code procedures for the administration of psychotropic medication, specifically a physician's written statement of the recipient's decisional capacity. Staff indicated that this is not a formalized practice but that decisional capacity may be stated in the physician's notes. Staff were also asked if the recipient is advised orally and in writing of the side effects, risks, benefits and alternatives to prescribed psychotropic medication. They indicated that although they offer recipients education on psychiatric issues, there is no form indicating the recipient's informed consent. Additionally, this information is not presented to the recipients' guardians who have authority to consent to psychotropic medication. The record also does not contain the recipient's preferences for emergency treatment. Staff indicated that recipients are given the Rights of Individuals Receiving Mental Health Services, which includes contact information for the Guardianship and Advocacy Commission, however signs with contact information for the Human Rights Authority are not posted on the Unit.

STATUTES

The Mental Health Code guarantees all recipients adequate and humane care in the least restrictive environment. As a means to this end, it outlines how recipients are to be informed of their proposed treatments and provides for their participation in this process to the extent possible:

"(a) A recipient of services shall be provided with adequate and humane care and service 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, the recipient's substitute decision maker, if any, or any other individual designated in writing by the recipient. The facility shall advise the recipient of his or her right to designate a family member or other individual to participate in the formulation and review of the treatment plan. 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. [Section 2-200 d states that recipients shall be asked for their emergency intervention preferences, which shall be noted in their treatment plans and considered for use should the need arise].

(a-5) 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 communicated. The physician shall determine and state in writing whether the recipient has the capacity to make a reasoned decision about the treatment. 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 [below]...." (405 ILCS 5/2-102).

Should the recipient wish to exercise the right to refuse treatment, the Mental Health Code guarantees this right unless the recipient threatens serious and imminent physical harm to himself or others:

"An adult recipient of services...must be informed of the recipient's right to refuse medication... The recipient...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...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).

Additionally, the Code states that whenever any rights of the recipient of services are restricted, notice must be given to the recipient, a designee, the facility director or a designated agency, and it must be recorded in the recipient's record (ILCS 405 5/2-201).

HOSPITAL POLICY

Hines provided hospital policy and procedure regarding medication orders, monitoring psychotropic medication, distribution of medication and reconciliation of medication, however they did not have policy which described the patients' rights regarding medication and procedures which complied with the requirements of the Mental Health Code.

CONCLUSION

The record shows that the hospital staff at Hines honored the recipient's refusal of her prescribed medication and she did not receive psychotropic medication while she was hospitalized from 5/16/11 through 6/06/11 and thus the HRA does not substantiate the stated complaint. The HRA does, however, note that the hospital is not in compliance with Mental Health Code requirements for the administration of psychotropic medication. The record is missing the informed consent of the recipient and her guardian, the physician statement of decisional capacity, the preferences for emergency treatment, and the contact information for the Guardianship and Advocacy Commission/Human Rights Authority. The HRA asks that as a mental health service provider the Hines VA hospital develop policy and procedure which incorporates these required Mental Health Code protections into their practice.