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**East Central Human Rights Authority  
Report of Findings  
Advocate BroMenn Medical Center  
Case 12-060-9003**

The East Central Regional Human Rights Authority (HRA), a division of the Illinois Guardianship and Advocacy Commission, accepted for investigation the following allegation concerning behavioral health services at Advocate BroMenn Medical Center located in Normal, Illinois.

**Complaint:**

1. Confidential mental health records are not kept private and separate from other patient records.

If found substantiated, the allegations represent violations of the Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110) and the Medical Patient Rights Act (410 ILCS 50.)

Per the hospital website: "Advocate Health Care can help identify and address troubling emotional illnesses affecting you or a family member. We treat issues such as depression, bipolar disorder, drug and alcohol abuse, eating disorders, and post-traumatic stress. Through it all, you will experience our core values of compassion and healing at work."

**COMPLAINANT'S STATEMENT**

According to the complaint, if a patient receives psychiatric or psychological services, all records are kept on the hospital's intranet system. When a patient had asked her physician if placing mental health records on the hospital intranet system is inconsistent with the Confidentiality Act, she reportedly was told, "Yes, but a physician in another hospital determined it was in the greater interest of the patient for all physicians and nurses to have access to this confidential information."

The HRA proceeded with the investigation having received only an anonymous tip regarding the confidentiality of records. To pursue the matter, the HRA visited the medical center where the administrator of the behavioral health unit was interviewed. Relevant practices, policies and a demonstration of how electronic records are accessed were provided to the HRA team.

**INVESTIGATIVE INFORMATION**

## **Interview**

The administrator explained to the HRA that the behavioral health unit is a locked facility but it is open for recipients to come and go. (The nursing station has been upgraded for more privacy for discussion between patients and staff. Staff monitor for privacy and redirect patients as needed to ensure privacy. There are approximately 25 staff members serving patients of the behavioral health unit. The average daily census is 9.8 patients. Individuals stay approximately 6-7 days. Referrals for service come from all over the state, but the main geographical area served is about a 60 mile radius from the hospital. BroMenn is connected to Advocate, a larger hospital system. Regarding BroMenn's policies there is a collaboration of corporate policies with the Advocate affiliation. There are also some corporate policies that are site specific to Advocate BroMenn Medical Center.

There are two phones in the behavioral health unit, 1 is in the nursing station and 1 is in the hallway. Staff monitor for privacy and will redirect a patient if needed to protect the patient's privacy. There is a spectra link phone that patients can take to their rooms; all patients have to do is ask to use it. It is also used for therapeutic purposes such as when the patient needs to connect to outside resources that provide services including state agencies or spiritual care. Regarding patient calls that are received on the unit, all calls go to the nursing station and nurses will not disclose whether or not a patient is on the unit unless the patient has given written permission that the unit can acknowledge that the patient is there. Staff cannot acknowledge a person is in the facility otherwise. Patients can notify family members and others to let them know they are there.

It was explained to the HRA that the hospital has upgraded its electronic system for both safety and confidentiality. Safeguards are in place to protect confidentiality for all medical records. Most records of patients are kept in the electronic system. Staff are able to scan health information into the system. Patient's records are kept by name and hospital ID, by date and record number. Only personnel who are nurses, physicians and behavior health unit staff have access to the mental health records. A technician from another unit filling in when staff are absent cannot access the system without the administrator's permission. Volunteers do not have computer access to behavioral health information. Personnel cannot access a closed chart unless there is a reason. When an authorized individual is accessing the electronic system of the hospital, there is a blue box alert that shows up stating that the information is confidential and confirming interest in accessing before continuing. The system itself identifies who is accessing the chart and management can scan to see who is attempting to access it. Those who access or attempt to access without authorization, are subject to termination. To disclose behavioral health information to a third party, there must be written authorization from the patient. Access to all patient records are password protected and management must have approved the staff person for access to these records. There are multiple steps and layers to access the system.

The HRA team was provided a demonstration of the electronic system. First staff must be approved to have access the system. It indicates that the name entered will trigger patient record information that is confidential. A red light comes up stating, "Please review with discretion." Those who have access must tab, "yes I want to continue." Then, it will allow access to the record.

The hospital representative stated that all staff at orientation are provided Health Insurance Portability and Accountability Act of 1996 (HIPPA) training as well as patient rights and confidentiality training. This also includes role play scenarios with security and staff. Training is refreshed annually.

It was explained that patients are informed of their rights including the right to confidentiality at admission. Rights are explained to the patients and they are given a copy of their rights in an admission packet that is to be taken home at discharge. Rights are posted in the behavioral health unit. Regarding the hospital's grievance process, patients are informed of their right to file a grievance at admission. The grievance policy is also in their take home folder.

### **Policy Reviews**

The HRA reviewed the Information Systems Security policy (10/07). It requires that all new employees will sign a confidentiality agreement. All staff who have requested use of the information system would have to sign the confidentiality agreement. It covers various system safeguards, including passwords and security codes. It states that standard system access is based on the user's job functions and level of responsibility. Access levels for job roles are developed collaboratively with leadership and human resources. The System Security and Data Confidentiality (10/07) policy was reviewed which covers the protection of confidentiality by staff, physical security, firewalls, virus protection, destruction of data, data recovery, removable storage, and disaster recovery. Included in policy reviews were the hospital's Business and Operating Policies and Procedures regarding HIPPA (10/07), Patient Rights policy (10/09), and Patient Complaints and Grievances policy (10/09).

Regarding the Take Home Folder given to patients at admission, it includes patient rights and responsibilities. Included in the rights, item #11 identifies the right "To have personal and medical information protected." There is a section on how a patient would apply for assistance with his/her bill. There is a patient handbook which explains the basic treatment program, various forms of therapy, education, medication, confidentiality, telephone, mail, safety/personal belongings, food and discharge. The policy for the use of restraints/seclusion is included. Visitation policy, menu planning, fall prevention, infection prevention and pain management are also included in the take home folder.

### **MANDATES**

Pursuant to the Mental Health and Developmental Disabilities Confidentiality Act, Section 110/3 regarding records and communications; personal notes of therapist; and psychological test material it states that "All records and communications shall be confidential and shall not be disclosed except as provided in this Act." Under the next section 110/4, Persons entitled to inspect and copy recipient's record are identified, "(a) The following persons shall be entitled, upon request, to inspect and copy a recipient's record or any part thereof: .... (8) any person in whose care and custody the recipient has been placed pursuant to Section 3-811 of the Mental Health and Developmental Disabilities Code." In section 110/9.4 of the Act for disclosure for treatment and coordination of care is addressed and states "(a) For recipients in a program administered or operated by the Department of Healthcare and Family Services members of an interdisciplinary team treating a recipient for the purposes of treatment and

coordination of care. (b) An interdisciplinary team treating a recipient may disclose the recipient's records without the recipient's consent to other members of the team. (c) The records that may be disclosed under this Section are services rendered, providers rendering the services, pharmaceuticals prescribed or dispensed, and diagnoses. All disclosures under this Section must be made in a manner consistent with existing federal and State laws and regulations, including the federal Health Insurance Portability and Accountability Act (HIPAA). (d) For the purpose of this Section only: 'Integrated health system' means an organization with a system of care which incorporates physical and behavioral healthcare and includes care delivered in an inpatient and outpatient setting. 'Interdisciplinary team' means a group of persons, representing different clinical disciplines (medicine, nursing, social work, psychology, etc.) providing and coordinating the care and treatment for a person with mental illness. The group may be composed of individuals employed by one provider or multiple providers. "

According to the Medical Patient Rights Act (410 ILCS 50/3) the following rights are hereby established: "(a) The right of each patient to care consistent with sound nursing and medical practices, to be informed of the name of the physician responsible for coordinating his or her care, to receive information concerning his or her condition and proposed treatment, to refuse any treatment to the extent permitted by law, and to privacy and confidentiality of records except as otherwise provided by law." In part (d) of the section it guarantees "the right of each patient to privacy and confidentiality in health care. Each physician, health care provider, health services corporation and insurance company shall refrain from disclosing the nature or details of services provided to patients, except that such information may be disclosed to the patient, the party making treatment decisions if the patient is incapable of making decisions regarding the health services provided, those parties directly involved with providing treatment to the patient or processing the payment for that treatment, those parties responsible for peer review, utilization review and quality assurance, and those parties required to be notified under the Abused and Neglected Child Reporting Act, the Illinois Sexually Transmissible Disease Control Act or where otherwise authorized or required by law. This right may be waived in writing by the patient or the patient's guardian, but a physician or other health care provider may not condition the provision of services on the patient's or guardian's agreement to sign such a waiver."

### SUMMARY

Pursuant to the Confidentiality Act 110/9.4 "an interdisciplinary team treating a recipient may disclose the recipient's records without the recipient's consent to other members of the interdisciplinary team which means a group of persons, representing different clinical disciplines (medicine, nursing, social work, psychology, etc.) providing and coordinating the care and treatment for a person with mental illness. The group may be composed of individuals employed by one provider or multiple providers." At the interview of the investigation, the provider stated that only staff directly related to the care of the patient had access to the behavioral health unit's records. The HRA was provided a demonstration of how the electronic system worked and the safeguards set up in that system to prevent unauthorized access by someone who was not providing treatment to that individual. There was no evidence that someone employed at the hospital that was not a part of a patient's behavioral care team could access private information regarding mental health services. Patients from the behavioral health unit are informed of their HIPPA rights and their rights to confidentiality. Based on the interview with staff, the

demonstration of the electronic medical record system and hospital policies the **Complaint**, Confidential mental health records are not kept private and separate from other patient records **is unsubstantiated**.

The HRA would like to thank Advocate BroMenn Medical Center staff for their cooperation with this investigation.