FOR IMMEDIATE RELEASE

HUMAN RIGHTS AUTHORITY - PEORIA REGION
REPORT OF FINDINGS

Case # 12-090-9011
Kindred Hospital

INTRODUCTION

The Human Rights Authority (HRA) opened an investigation after reviewing a newspaper article about possible rights violations at Kindred Hospital in Peoria. The possible violations were as follows:

1. **Inadequate treatment, a patient's hygiene was not taken care of at the facility, patients were served cold food, and the facility had insufficient staffing levels.**
2. **Inadequate grievance process.**

If found substantiated, the allegations would violate the Medical Patient Rights Act (410 ILCS 50/30), Hospital Licensing Requirements (77 Il Admin Code 250), Federal Hospital Requirements (42 C.F.R. § 482), and the Hospital Licensing Act (210 ILCS 85).

The Kindred Hospital is a long-term, acute care hospital which services patients from local hospitals such as Methodist, St. Francis Hospital, Pekin Hospital, and Bromen. Kindred Hospital receives 70-80% of their patients from Methodist or OSF. The hospital services patients who need long-term extended care, such as respiratory care, wound care, ventilator care, and diabetes management. The patients average 25 days service at the facility which was created by the government so that patients have a place to enter for treatment and service after a hospital stay. Kindred is an adult only hospital that is licensed through the Joint Commission on Accreditation of Healthcare Organizations and the Centers for Medicare and Medicaid (CMS). The hospital staff estimates that less than 1% of their patient population has legal disabilities but they have no exact way to track those statistics. The facility has been in Peoria since 2009, but has only been affiliated with Kindred for the 7 months prior to the site visit. The facility is a for-profit hospital.

The facility offers physical therapy, occupational therapy, and speech therapy. They have 50 beds and average 30 admissions per month and 360 patients per year. 30 beds are usually filled at any time. The facility has 160 total employees, 100 of which are nursing staff.

To investigate the allegations, HRA team members met and interviewed Kindred Hospital staff members and reviewed documentation that was pertinent to the investigation.

Because the HRA did not have releases and were not provided masked records by the facility, the following report is a policy review to assure that the facility policy follows regulation.

Through the Freedom of Information Act (FOIA), the HRA obtained a survey of deficiencies from the Illinois Department of Public Health (IDPH), which stated that Kindred Hospital in Peoria had not met the standards for the following: establishing a process for prompt resolution of patient grievances and informing each patient whom to contact to file a grievance, using data collected to monitor the effectiveness and safety of service and quality of care, and having a registered nurse supervise and evaluate the nursing care for each patient.

The date of the IDPH survey was 12/29/11 and there was no response available. It was stated in the letter that the HRA received from the IDPH that there was a second complaint this year about the facility that was referred to the Joint Commission.

COMPLAINT STATEMENT

This complaint stems from a newspaper article that ran in the Peoria Journal Star on 11/7/11. The article reported that there were complaints against the hospital involving patients receiving cold food and patients being left to lie or sit in feces for hours. The article also stated that a patient's caregiver had concerns regarding staffing levels at the facility and felt as though informal complaints that were made to management were ignored, including one that was life threatening. No specific floor or unit was mentioned in the article.

FINDINGS

Interview with staff (1/10/2012)

The HRA interviewed Kindred Hospital staff regarding the complaints cited in the report. Regarding the first complaint, the staff stated that any visitor or family member can file a complaint. When staff receives a complaint from a recipient or person of concern, the staff member is required to complete a complaint form. The staff stated that it does not matter if it’s a major or minor complaint, it is reviewed. The staff does look to see if they can immediately rectify the situation, and even if they can rectify the complaint instantly, a grievance form is completed.

When the grievance is filled out, it is given to a supervisor for review, after the supervisor it is forwarded to one of the 3 executive administrators, and finally it is sent to the Chief Operating Officer (COO) for review. The COO reviews the action in its entirety and decides if the action taken is satisfactory or unsatisfactory. The facility follows the Joint Commission and Centers for Medicare and Medicaid Services (CMS) grievance process. Even an informal grievance is logged. A complaint is considered something that is resolved immediately and a grievance needs follow-up to come to a resolution. Both complaints and grievances utilize the same form. If it’s a complaint, it's determined whether the resolution needs a letter to the family, and if it does, they receive one in 7 days which is a Joint Commission standard. A complaint is often already resolved, therefore does not need a letter. If it’s a grievance, there will always be a letter. The facility will make the call on whether it’s a complaint or a grievance. The investigative process varies and depends on the situation. The facility will investigate a

grievance even if it's post discharge. If the grievance is post discharge they will still get back to the family. The Director, Managers, or Administrators will investigate the grievance. Upon admission, the patients receive a patient's rights document but not a copy of the policy. Patients are informed who to contact with a complaint. They have never had a complaint internally about the grievance process. The facility strives to resolve the situation, and if the patient is not happy after the grievance has been reviewed, the facility contacts the corporate risk managers. There is no hospital advocate program but the staff would consider themselves to be the advocates through the leadership Rounds.

If staff sees abuse or neglect it is instantly reportable and they immediately contact a supervisor. There also may be an immediate investigation. Staff starts the investigation and if they need to contact various agencies, then they will. Staff explained any employee can call Public Health if they feel the need.

The staff explained that the Kindred Administrators and Leaders have daily leadership "rounding" with the patient's. When a patient is admitted, they are assigned a leader that is part of the team. The leader to whom they are assigned is someone not directly involved in the patient's care. The Kindred administrators or the leaders that are assigned have a list of patients that they have contact with daily and discuss their stay.

The staff explained that if a trend is identified though the grievance process, they address the trend. When a trend is recognized, there will be an all staff education session conducted, and then they will administer one-on-one coaching if it involves a particular person or nurse. They have not seen any call light issues through the grievance process.

The staff said that in reviewing the complaint log, there was a complaint regarding incontinence. What had occurred was a family believed a lift pad to be soiled even though it had been washed. In that case, the hospital got rid of that lift pad and used a disposable lift pad. There were no further complaints after swapping the pads. The staff said that there have not been any changes in hygiene care because of the article in the newspaper. There have been changes because of the new hospital ownership. The staff said they now have electronic records so it is easier to complete a Quality Assurance (QA) review.

As far as staffing in the hospital, the Kindred staff explained that they do not undercut staff, and if anything they overstaff. Often, if a patient feels as though there is a lack of staffing, it is actually just a staff member's issue managing their workload and they need assistance in learning how to do so. The staff explained there is 1:2 to 1:3 staff to patient ratio in the high acuity unit. There is a 1:5 staff to patient ratio on the medical surgery floor. The CNAs (certified nursing assistance) have 6 to 8 patients each. The amount of respiratory therapists varies but there is usually a minimum of one per floor depending on the monitoring needs. The hospital does not have a specific ratio based on Illinois regulations. Kindred staffs the hospital based on the patient's needs. The staff explained that if there is a staffing issue, it is usually just a one time problem and not an overall issue. In general, if a staff member's workload is not being managed, it is covered in the staff orientation. If a staff member is being overwhelmed, the managers will step in and assist them. The Kindred staff explained that there are shift supervisors and managers; the supervisors are on the shift 24 hours a day, 7 days a week and do

not take patients so they are available to assist. They stated that they there has never been an incident due to lack of staff and the ratios are always consistent. If a nurse cannot make her shift, they typically contact another nurse to cover for the shift. They have part time nurses that work as needed. The staff stated that they would have to check the complaint/grievance log to see if there are any complaints due to lack of staff but they did not know of any (The HRA was never provided this follow-up information).

The staff explained that they use an acuity tool for staffing. Staff work 12 hour shifts, 7am to 7pm and then 7pm to 7am. The acuity tool puts a number to the patient so they can determine the amount of staff needed. Because the facility staffs according to the patients, they use the patient acuity tool to determine the amount of staff for the patients needs. The staff stated that there have been no staffing cutbacks. The staff did say that there is no physician on staff, only the physicians from the other hospitals who are caring for the patients.

The staff said that there is not a checklist for specific aspects of hygiene but the facility does have records for each patient to document that everyone receives a bath, brushes their teeth, patients get turned, etc. There is no QA tool in place for checking the call lights. There is a call light system but their current system does not produce a report although the technology staff can have a report run. There is a daily audit to check that the hygiene requirements are being completed. Supervisors review records and walk into patients' rooms to complete a visual inspection. There are also random checks of rooms and patients as a form of quality assurance. The staff said they had no numbers for response time checks. They said that they have done visual audits but they have not done an audit for months. When doing the audit, the managers are the ones who visually watch the staff response time.

As far as room cleaning, the staff explained that there is a room cleaning schedule through the housekeeping and the housekeeping staff is contracted. The housekeeping staff is scheduled between 6am and 10pm. The housekeeping staff follow the Material Safety Data Sheet (MSDS) rules for clean-up. In between, nurses, supervisors, or aides clean as needed. Generally the staff clean and when housekeeping arrives they complete what is left.

On a daily routine, patients will shower and brush their teeth. They can shower again if needed. They want the patients to be as independent as possible. Hygiene is completed daily and then as needed. A nurse, CNA, or staff will help a patient get to a bedside commode or bathroom if they need assistance. If a patient can not get to one, they use a bed pan. Patients are not usually on complete bed rest. The facility does not generally encourage the use of adult protective underwear, but sometimes they do use them during therapy. The patients use a call light to alert the staff when they need to use the bathroom. There are patients with incontinence issues at the facility and staff attempt to return them to normalcy. Patients are "rounded" to check incontinence, which is a specific part of what is checked when doing the rounds. The staff said that they have a policy for what is covered when they perform the rounds. They perform the rounds every two hours. Staff are in and out of the rooms more frequently than every two hours so incontinence would be noticed sooner than that if it occurred. If incontinence is discovered, the patient is immediately cleaned.

Food is cooked on the premises. Generally the food is served in the patient's room. Meals are served at 7:15 am, 12:15 pm and 4:30 or 4:45 pm. The meals are made in the kitchen and the equipment keeps the food warm. Nurses pass out the food trays. If a client cannot feed themselves, the nurses or CNAs feed them. There has been one known complaint regarding cold food and it was addressed on the same day. The complaint dealt with outside food that was carried into the facility so it was not the facility's food that was cold. Microwaves are on the unit. Some patients are slow eaters so they need food warmed up periodically. The complaints in the article were never made at Kindred, only through state agencies. When the Kindred staff read the article, they reviewed the internal processes and felt as thought it was adequate. If food is cold, patients can request a new meal. A heating plate cover keeps the food warm and food does not sit and get cold when it arrives on the floor.

Tour of the facility

The HRA toured the facility but was only allowed to view a floor where no patients were residing. The HRA did not review the process of bringing patient's food and also did not see a Public Health notice hanging on the floor that they visited. The staff said they would check to see where the notice was hanging but never provided the HRA with this information.

FINDINGS (Including record review, mandates, and conclusion)

Complaint #1 - Inadequate treatment, a patient's hygiene was not taken care of at the facility, patients were served cold food, and the facility had insufficient staffing levels.

The HRA began the review of this complaint by reading a policy titled "Incontinence Skin Care." The policy reads that its intention is to "Maintain perineal skin integrity; prevent/treat perineal dermatitis." The procedure in the policy reads "Check incontinent patients every 2 hours; if applicable, offer bedpan, urinal or assistance to the bathroom. Document the time the patient was checked and the results." The policy proceeds to state "Provide 3 steps to prevent/treat perineal dermatitis" and the three steps are to cleanse, moisturize, and protect/treat. The policy also reads that for fecal incontinence to "Consider the use of a pouching system or collection device to contain stool" and for urinary incontinence it suggests using a catheter.

The HRA reviewed another policy that requires patient inspection. The "Prevention of Skin Breakdown" policy requires that "All patients will be assessed for risk of skin breakdown by nursing staff, at time of admission and routinely thereafter. Appropriate preventative interventions will be implemented." The procedure states that the staff must assess by use of a validated risk assessment tool at least weekly and "complete and document a visual and tactile assessment of the patient's skin during each shift." One of the preventative interventions listed on the document for at risk patients is to turn the patient every two hours when the patient is unable to turn themselves. Another intervention is to cleanse the patient at the time of soiling.

The HRA also reviewed a hand hygiene policy for staff that requests staff to wash hands or use antiseptic hand rub/gel and at different times throughout the day.

In regard to the complaint that patient's received cold food, the HRA reviewed a sheet that reads "Menus are developed to meet the nutritional and therapeutic needs of the patients and

residents within defined dietary restrictions. Regional and ethnic traditions, religious practice, and customary preparations are considered in planning and preparing meals. Food should be appetizing, attractively served, appropriately hot or cold and served promptly in a pleasing environment."

The HRA reviewed a Kindred abuse policy that has a purpose "To communicate Hospital Division policy prohibiting abuse and to describe the procedures for preventing and responding to allegations of abuse, neglect or mistreatment of a patient." The policy also states "The Hospital maintains a strict policy to prevent or respond to allegations of abuse, neglect or mistreatment, including prompt reporting of any alleged abuse incident to hospital leaders and applicable state agencies. Failure to report immediately a suspected abuse incident or cooperate in the appropriate investigation can result in corrective action."

The HRA also reviewed the hospital abuse policy and saw no mention of the hospital contacting the IDPH to report abuse or any mention of IDPH whatsoever. The policy does state "The Hospital maintains a strict policy to prevent or respond to allegations of abuse, neglect or mistreatment, including prompt reporting of any alleged abuse incident to hospital leaders and applicable state agencies." Aside from this statement, there is no mention of the Department or any of the abuse reporting aspects of hospital licensing requirements (77 Il Admin Code 250). Important aspects of missing information include timeframes for reporting the abuse to the Department and that any person may report abuse if they believe it occurred.

In regard to staffing levels, the HRA reviewed a facility policy titled "Patient Classification System" of which the purpose of the policy is partially to "Objectively classify patients according to needs in order to determine appropriate caregiver skill mix for each shift" and to "Predict nursing care requirements of individual patients and assure that staffing hours reflect the volume of patients, acuity and intensity of nursing services provided." The purpose is to also "Determine staff resource allocations based on nursing care requirements for each shift and each unit," "To assist in the management of workload resources more effectively and efficiently," "Improve caregiver satisfaction and recognize the differences in care givers," and "To comply with regulatory requirements and accreditation standards." The policy proceeds to state "The ability to predict nurse-staffing requirements based on projected patient care needs is never an exact science. The Kindred patient classification validity system has been tested and monitored in all facilities during implementation. The patient care attributes, as screened by the nurse caring for the patient, when combined with expected 'events' such as admissions, discharges and special procedures, have proven to provide on the average and over time an accurate predictor of staff requirements for the next shift." The policy also states that the Kindred Hospital Division's patient classification system utilizes the Kindred Hospital Acuity Tool (KHAT). The procedure states that the "Complexity/Acuity screen is determined by whether the patient is 1:1, 1:2, or 1:3 ratio … Patients are screened, utilizing KHAT, each shift with the goal to be completed by 2:00 am/pm to allow time for staffing." The document proceeds to explain the policy and procedure behind the classification system.

The document also states "Each hospital's nursing council (or equivalent forum) meet annually, or as needed, to review reliability and validity or KHAT and make recommendations to the Division National Nursing Council concerning changes … (*Note: Some states require the*

following: At least half of the members of the hospital committee that annually reviews system validity and reliability shall be registered nurses who provide direct patient care.)"

The HRA also requested staff training documents regarding hygiene and call lights but the HRA never received these documents from the facility. The HRA did receive employee education documents regarding employee education for bloodborne pathogens but those documents did not contain information regarding employee hygiene. The document does state how to handle laundry that has been soiled. The HRA also requested a blank copy of the hospital's hygiene checklist that was discussed in the site visit interview and any policy/procedure regarding the checklist but neither were provided by the facility.

The IDPH hospital regulations state "b) Foods shall be attractively served at the proper temperatures and in a form to meet individual needs" (77 Il Admin Code 250.1670)

The Center for Medicare and Medicaid Services regulations reads " (b) Standard: Staffing and delivery of care. The nursing service must have adequate numbers of licensed registered nurses, licensed practical (vocational) nurses, and other personnel to provide nursing care to all patients as needed. There must be supervisory and staff personnel for each department or nursing unit to ensure, when needed, the immediate availability of a registered nurse for bedside care of any patient." (42 CFR 482.23)

The IDPH regulations also state "b)*The number of registered professional nurses, licensed practical nurses, and other nursing personnel assigned to each patient care unit shall be consistent with the types of nursing care needed by the patients and the capabilities of the staff. Patients on each unit shall be evaluated near the end of each change of shift by criteria developed by the nursing service. There shall be staffing schedules reflecting actual nursing personnel required for the hospital and for each patient unit. Staffing patterns shall reflect consideration of nursing goals, standards of nursing practice, and the needs of the patients*. (Section 15 of the Hospital Report Card Act)" (77 Il Admin Code 250.1120).

The Hospital Liscensing Act reads "(2) Evidence-based studies have shown that the basic principles of staffing in the acute care setting should be based on the complexity of patients' care needs aligned with available nursing skills to promote quality patient care consistent with professional nursing standards … (c) Written staffing plan. (1) Every hospital shall implement a written hospital-wide staffing plan, recommended by a nursing care committee or committees, that provides for minimum direct care professional registered nurse-to-patient staffing needs for each inpatient care unit." (210 ILCS 85/10.10)

The IDPH policy regarding abuse reads "*3) Any hospital administrator, agent, employee, or medical staff member who has reasonable cause to believe that any patient with whom he or she has direct contact has been subjected to abuse in the hospital shall promptly report or cause a report to be made to a designated hospital administrator responsible for providing such reports to the Department as required by this subsection (c) … 5) Upon receiving a report under subsection (c)(3), the hospital shall submit the report to the Department within 24 hours after obtaining such report. In the event that the hospital receives multiple reports involving a single alleged instance of abuse, the hospital shall submit one report to the Department (77 Il Admin*

Code 250.260).

Conclusion - Complaint #1

Due to the fact that the HRA was not provided adequate information to completely investigate the complaint at the facility, the HRA cannot substantiate or unsubstantiate the entire complaint. The HRA cannot determine whether or not patient hygiene is being provided due to lack of evidence. Because the HRA was not allowed to inspect the food area or how food was transported to patients, it cannot determine whether or not the hospital provides warm food (although the policy does require food at the appropriate temperature). The facility policy regarding staffing does seem to comply with regulations.

Because concerns could not be substantiated or unsubstantiated through the investigation, the HRA has no recommendations but offers the following **suggestions**:

- Because the HRA is unsure that this is occurring, the HRA suggests that the facility ensure that patients at the facility are being provided care in the most hygienically sound environment as possible and that patients are being provided food at the temperature that the food is to be served per hospital regulations cited within this report due to the fact that the complaints have been raised but not resolved.
- The HRA is concerned about the call light reaction time not being tracked and reviewed through a QA audit and the fact that the system has not been visually checked in months. If a QA has not been completed in months, the HRA questions how the facility can even know that they are providing adequate response time and care to their patients. The HRA strongly suggests that a regular QA is developed to ensure patients are receiving adequate care via call light responses.
- Checking patients with incontinence issues every two hours does not seem adequate considering that if an incident occurs 30 minutes after the check, the patient would have to wait 1 and a half hours before the next check. The HRA strongly suggests that the time for checking patients with incontinence issues be more frequent.
- Because of the lack of compliance with IDPH 77 Il Admin Code 250, the HRA strongly suggests that facility review the Code and change their policy to comply with the state laws within the Code. The HRA also suggests adding IDPH contact information to the Code so that staff has access to such information in case they need to contact the Department. Ensure that IDPH contact information is posted.

Complaint #2 - Inadequate grievance process.

The Centers for Medicare & Medicaid Services, Department of Health and Human Services regulations state "(2) The hospital must establish a process for prompt resolution of patient grievances and must inform each patient whom to contact to file a grievance. The hospital's governing body must approve and be responsible for the effective operation of the grievance process and must review and resolve grievances, unless it delegates the responsibility in writing to a grievance committee. The grievance process must include a mechanism for timely referral of patient concerns regarding quality of care or premature discharge to the appropriate

Utilization and Quality Control Quality Improvement Organization. At a minimum: (i) The hospital must establish a clearly explained procedure for the submission of a patient's written or verbal grievance to the hospital. (ii) The grievance process must specify time frames for review of the grievance and the provision of a response. (iii) In its resolution of the grievance, the hospital must provide the patient with written notice of its decision that contains the name of the hospital contact person, the steps taken on behalf of the patient to investigate the grievance, the results of the grievance process, and the date of completion." (42 CFR 482.13). Along with the regulations, the CMS provides more detailed interpretive guidelines that are available via the CMS website.

The HRA reviewed the facility's grievance policy and its compliance with the CMS interpretive guidelines as well as the compliance with the CMS regulations. Like the CMS interpretive guidelines, the Kindred policy differentiates between a "Complaint" and a "Grievance," stating a complaint can be resolved on the spot by the patient while a grievance is a written or verbal complaint that cannot be resolved on the spot by the staff present. The Kindred grievance policy states that the staff must "Inform the patient/patient representative about the Hospital's customer service procedures, including how to make a complaint, as part of the admission process during the hospital stay."

The HRA received a pamphlet titled "ASAP Program" which has a section titled "Resolving Your Concerns" which states "If you have a question, suggestion or concern about our services, please complete an ASAP form and deposit it in the ASAP box. The hospital administrator or department head will contact you as soon as possible." The pamphlet proceeds to outline the grievance policy including a sentence that reads "… our written policy ensures that you receive a response that you can understand." The pamphlet also lists the ASAP hotline number and an email, as well as the number for the Joint Commission. The HRA was also provided information that the facility explained is given to patients and representatives upon admission to the facility. In the "Patient/Family/Surrogate Rights" section of the document, it reads "The patient has the right to present any conflicts or complaints he/she has in regard to the quality of care. Any complaint or concern may be presented by contracting the nursing supervisor at the nurse's desk. All issues will be reviewed, investigated and responded to in a timely manner." The document also provides the phone number for the hospital's CEO with a statement that reads "If you have a complaint or grievance with this hospital, please call or contact the hospital at …" The document also stated that "You or your representative may also report patient care or safety concerns the hospital has not addressed directly …" to the Joint Commission on Accreditation of Health Care Organizations and then provides contact information.

Regarding the time frames of the complaint, the CMS interpretive guidelines suggest 7 days for a resolution (unless it is an abuse case) and if the case will not be complete in 7 days, a letter should be sent to the complainant. The Kindred policy has verbage that follows this requirement. Finally, the CMS interpretive guidelines state that the complainant is to receive a notice of the hospital's determination in a language or manner that the patient understands. The complaint is to include the name of the hospital contact person, the steps taken on behalf of the patient to investigate the grievance, the results of the grievance process, and the date of completion. These elements of the grievance process are expressed in the facility policy with the

exception of a statement requiring the facility provide the grievance statement in a "language and manner the patient or the patient's legal representative understands." Although this statement is not in the grievance policy, it is mentioned in the pamphlet cited above.

Regarding the section of the CMS regulations about the hospital's governing body approving and being responsible for the effective operation of the grievance process unless it delegates the responsibility (42 CFR 482.13), the Kindred policy reads "The Governing Board has delegated the Complaint and Grievance process to the Hospital Quality Council or designated subcommittee." The policy proceeds to state that the hospital has designated responsibilities to administrators in the hospital and states what those responsibilities are.

The CMS regulations have a statement which reads "The grievance process must include a mechanism for timely referral of patient concerns regarding quality of care or premature discharge to the appropriate Utilization and Quality Control Quality Improvement Organization" (42 CFR 482.13) and the Kindred grievance policy have a step that reads "Contact the Quality Improvement Organization (QIO) if a Medicare Patient at *(Insert individual State Information).*" No actual contact information is written in the grievance policy.

Additionally, the Kindred complaint process adds procedure that is not in the interpretive guidelines or regulations which includes logging and managing complaints, an internal procedure regarding whether the COO feels as though the resolution of the complaint is satisfactory or unsatisfactory, and a statement that entries in the complaint/grievance log "shall be summarized, aggregated, analyzed, and trends identified and presented to the Quality Council, Medical Executive Committee and the Governing Board on a regular basis for review and recommendations related to quality improvement."

There are elements of the interpretive guidelines that are not addressed within the facility policy. The interpretive guidelines make the statement that "All verbal or written complaints regarding abuse, neglect, patient harm, or hospital compliance with CMS requirements are considered grievances for the purposes of these requirements" or "Whenever the patient or patient's representative requests that his or her complaint be handled as a formal complaint or grievance or when the patient requests a response from the hospital, the complaint is considered a grievance and all the requirements apply." The omission of a statement that the determination must be provided in a manner in which the patient understands from the policy has also been cited in the body of this report and it was acknowledged that a statement does appear in a facility pamphlet.

Other items mentioned in the interpretive guidelines that are not addressed within the facility policy address the fact that billing issues are not usually considered grievances for the purposes of these requirements, written complaints are always considered grievances, phone calls after a patient's stay would be considered grievances even if they deal with issues that would have only been complaints, and that satisfaction surveys usually do not meet the definition of a grievance but if a written complaint is attached to the survey then it would meet the definition.

There is also a mention in the interpretive guidelines that situations that endanger the patient, such as neglect or abuse, should be reviewed immediately due to the seriousness of the situation and this statement is not included in the policy. The guidelines also state that there may be situations where the hospital has taken "appropriate and reasonable actions on the patient's behalf in order to resolve the patient's grievance" and if the patient still feels unsatisfied the hospital may consider the grievance closed, which is not included in the Kindred policy. The final statement that appears in the interpretive guidelines but not the Kindred policy states that in the hospital's written response to the complainant "the hospital is not required to include statements that could be used in a legal action against the hospital, but the hospital must provide adequate information to address each item stated in this requirement. The hospital is not required to provide an exhaustive explanation of every action the hospital has taken to investigate the grievance, resolve the grievance, or other actions taken by the hospital."

In the policy review, the HRA saw no examples of informal complaints (including one that was life threatening) that were ignored due to the fact that the HRA was not provided that information. Also, in the interview, the facility staff stated that they would have to check the grievance logs to see if there were any complaints regarding lack of staff. The HRA never received verification on that question.

The HRA reviewed the facility policy titled "Grievance Procedure Disabled Employee/Patient/Visitor" which has a stated purpose "To set an established procedure for the handling of a grievance by a disabled employee, patient or visitor in order to address any environmental inadequacies identified and to provide for the prompt and equitable resolution of complaints alleging any action prohibited by the Rehabilitation Act of 1973 or the US Department of Human Services regulations implementing the act." The procedure for the policy states that any disabled employee, patient or visitor presents the grievance to a Department Manager and that manager reviews the complaint and responds to the grievance within 10 working days. If the complainant remains dissatisfied, they present the grievance to the CEO who provides a written response within 10 working days. If the individual is still unsatisfied, they can request the grievance be forwarded to the Regional Vice President of Operations who will respond in 30 days. The procedure also does state that the time limits established are not intended to be exact. This grievance policy does not follow the guidelines above for a grievance policy and the HRA saw no evidence within the regulations that a facility should have a separate grievance policy for individuals with disabilities.

Conclusion - Complaint #2

Although Kindred Hospital has complied completely with the CMS regulations, there are aspects of the CMS interpretive guidelines that do not appear in the grievance policy/procedure that the HRA feels are an important part of the process as well as being items that are regulated to be covered within the policy. Because of this, the HRA finds the complaint **substantiated** and offers a **recommendation.** The HRA acknowledges that the policy is only in noncompliance in the fact that elements of the CMS guidelines do not exist in the policy. The HRA does not have any evidence that informal complaints were ignored by the facility. The recommendation is as follows:

- The HRA recommends that the facility review the CMS interpretive guidelines regarding grievances and update the policy to acknowledge all aspects of the guidelines. The HRA also requests that the facility staff is educated in these changes and evidence is sent to the HRA that this education has been completed.
- The HRA recommends that the facility discontinue use of the grievance procedure intended for disabled employees, patients, and visitors due to the fact that this is not a part of regulations for a hospital and it could be viewed as discriminatory on the grounds that individuals with disabilities are being treated differently than others within the facility.

The HRA also offers the following **suggestions:**

- The HRA is concerned that the hospital grievance policy (for staff not for patients) does not have contact information for specific agencies located within the policy, for example the contact information for the Quality Improvement Organization (QIO). The HRA strongly suggest the facility complete this information as soon as possible so that when the policy is viewed, the individual viewing the policy will be presented with as much information as possible.

RESPONSE

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

REGIONAL HUMAN RIGHTS AUTHORITY

HRA CASE NO. 12-090-9011

SERVICE PROVIDER: Kindred Hospital

Pursuant to Section 23 of the Guardianship and Advocacy Act (20 ILCS 3955/1 *et seq.*), we have received the Human Rights Authority report of findings.

IMPORTANT NOTE

Human Rights Authority reports may be made a part of the public record. Reports voted public, along with any response you have provided and indicated you wish to be included in a public document will be posted on the Illinois Guardianship and Advocacy Commission Web Site. (Due to technical requirements, your response may be in a verbatim retyped format.) Reports are also provided to complainants and may be forwarded to regulatory agencies for their review.

We ask that the following action be taken:

__X__ We request that our response to any recommendation/s, plus any comments and/or objections be included as part of the public record.

_____ We do not wish to include our response in the public record.

_____ No response is included.

Robert Wright
NAME

CEO
TITLE

11/13/12
DATE

Kindred Hospital
Peoria

Dedicated to Hope, Healing and Recovery

November 14, 2012

Meri Tucker, Chairperson
Regional Human Rights Authority
RE: HRA 12-090-9011

Dear Ms. Tucker,

Kindred Hospital Peoria is in receipt of your investigational results and suggestions regarding case RE: HRA 12-090-9011.

It is our understanding that the first complaint that led to this investigation involved alleged patient hygiene, food temperature and insufficient staffing levels that occurred a year or more prior to Kindred Healthcare's involvement in the operation of this facility.

Kindred Healthcare devotes significant resources to the development, implementation and monitoring of various policies and procedures designed to ensure compliance with these and other aspects of patient care and safety.

In October, Kindred Hospital Peoria was successfully surveyed by the Joint Commission on Accreditation of Healthcare Facilities and received many positive comments from the Surveyors regarding the cleanliness of the facility and the "Excellent" care that our patients were receiving.

The survey included an inspection of all food storage, preparation and food service areas and a review of food temperature logs documenting that temperatures for hot and cold foods are appropriate at the time of preparation and are maintained until they are served to patients.

Later that month these same food storage, preparation and food service areas were surveyed by the Peoria County Board of Health and received a score of 92 out of 100.

So while your report stated that the matters that were the subject of this first complaint could not be substantiated or unsubstantiated, surveys performed by independent agencies since Kindred Healthcare became involved in the ownership and management of Kindred Hospital Peoria in June of 2012 substantiate that this hospital does meet the Conditions of Participation required by the Centers for Medicare and Medicaid Services and the Food service Division of the Peoria County Board of Health.

500 W. Romeo B. Garrett Avenue • Peoria, Illinois 61605
309.680.1500 • 309.680.1486 fax • 309.680.1557 Central Referral Number • IL TTD/TTY# 800.526.0857
309.680.1557 Admissions • 800.354.1712 Admissions fax • www.khpeoria.com

Kindred Hospital
Peoria

Dedicated to Hope, Healing and Recovery

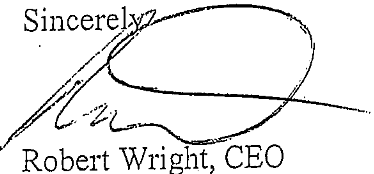
Nonetheless, we appreciate your recommendations in regard to these issues and will certainly consider them as part of our ongoing process improvement initiatives.

We understand your concern regarding the second complaint to be in regard to how we attend to written complaints after discharge. Our surveys include a section for written complaints or improvements. Other recommendation regarding verbiage changes and discontinuing a core policy will be reviewed by other offices within Kindred in order to assure continued adherence to the law and interruptive guidelines.

As of today, we have followed the recommendations for additional notification and contact information on the related policies and forms that are under the guidance of our Quality Council.

Should you have any further questions regarding this matter please feel free to contact me at extension 1502 or any member of our Hospital Administrative Team. Once again, thank you for bringing this matter to our attention.

Sincerely,



Robert Wright, CEO

500 W. Romeo B. Garrett Avenue • Peoria, Illinois 61605
309.680.1500 • 309.680.1486 fax • 309.680.1557 Central Referral Number • IL TTD/TTY# 800.526.0857
309.680.1557 Admissions • 800.354.1712 Admissions fax • www.khpeoria.com

STATE OF ILLINOIS
Pat Quinn
Governor

GUARDIANSHIP & ADVOCACY COMMISSION
Dr. Mary L. Milano, Director

HUMAN RIGHTS AUTHORITY
LEGAL ADVOCACY SERVICE
OFFICE OF STATE GUARDIAN

December 4th, 2012

Robert Wright, CEO
Kindred Hospital
500 W. Romeo B Garret Ave
Peoria, IL 61605

RE: HRA 12-090-9011

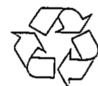
Dear Robert Wright:

At its November 28th, 2012 Human Rights Authority meeting, the HRA reviewed the facility's response regarding case #12-090-9011 and voted to table the case for further information. The facility states in their response that "We understand your concern regarding the second complaint to be in regard to how we attend to written complaints after discharge. Other recommendation regarding verbiage changes and discontinuing a core policy will be reviewed by other offices within Kindred in order to assure continued adherence to the law and interruptive guidelines." The HRA would like to clarify that their concerns involve sections of the CMS interpretive guidelines not appearing in the facility grievance policy as well as the facility utilizing a policy that may be considered discriminatory. Recommendations requested in the HRA report #12-090-9011, which was provided to the facility on September 25th, read as follows:

- The HRA recommends that the facility review the CMS interpretive guidelines regarding grievances and update the policy to acknowledge all aspects of the guidelines. The HRA also requests that the facility staff is educated in these changes and evidence is sent to the HRA that this education has been completed.
- The HRA recommends that the facility discontinue use of the grievance procedure intended for disabled employees, patients, and visitors due to the fact that this is not a part of regulations for a hospital and it could be viewed as discriminatory on the grounds that individuals with disabilities are being treated differently than others within the facility.

The sections of the HRA report #12-090-9011 that refer to interpretive guidelines that do not appear in the Kindred report read as follows:

"The CMS regulations have a statement which reads 'The grievance process must include a mechanism for timely referral of patient concerns regarding quality of care or premature discharge to the appropriate Utilization and Quality Control Quality Improvement Organization'



(42 CFR 482.13) and the Kindred grievance policy have a step that reads 'Contact the Quality Improvement Organization (QIO) if a Medicare Patient at *(Insert individual State Information)*.' No actual contact information is written in the grievance policy." (page 10)

"There are elements of the interpretive guidelines that are not addressed within the facility policy. The interpretive guidelines make the statement that 'All verbal or written complaints regarding abuse, neglect, patient harm, or hospital compliance with CMS requirements are considered grievances for the purposes of these requirements' or 'Whenever the patient or patient's representative requests that his or her complaint be handled as a formal complaint or grievance or when the patient requests a response from the hospital, the complaint is considered a grievance and all the requirements apply.' The omission of a statement that the determination must be provided in a manner in which the patient understands from the policy has also been cited in the body of this report and it was acknowledged that a statement does appear in a facility pamphlet.

Other items mentioned in the interpretive guidelines that are not addressed within the facility policy address the fact that billing issues are not usually considered grievances for the purposes of these requirements, written complaints are always considered grievances, phone calls after a patient's stay would be considered grievances even if they deal with issues that would have only been complaints, and that satisfaction surveys usually do not meet the definition of a grievance but if a written complaint is attached to the survey then it would meet the definition.

There is also a mention in the interpretive guidelines that situations that endanger the patient, such as neglect or abuse, should be reviewed immediately due to the seriousness of the situation and this statement is not included in the policy. The guidelines also state that there may be situations where the hospital has taken 'appropriate and reasonable actions on the patient's behalf in order to resolve the patient's grievance' and if the patient still feels unsatisfied the hospital may consider the grievance closed, which is not included in the Kindred policy. The final statement that appears in the interpretive guidelines but not the Kindred policy states that in the hospital's written response to the complainant 'the hospital is not required to include statements that could be used in a legal action against the hospital, but the hospital must provide adequate information to address each item stated in this requirement. The hospital is not required to provide an exhaustive explanation of every action the hospital has taken to investigate the grievance, resolve the grievance, or other actions taken by the hospital.'" (page 11)

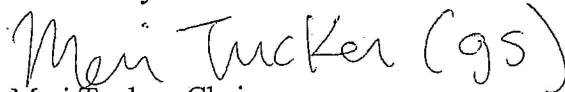
The HRA requests evidence that these recommendations requested in the report have been followed. Please send documented evidence to the attention of Gene Seaman, by **January 7th**,

2012, at:

Illinois Guardianship and Advocacy Commission
401 Main Street, Suite 620
Peoria, IL 61602

Thank you and should you have any questions, please feel free to contact Gene Seaman, HRA Coordinator, at 309-671-3030.

Yours truly



Meri Tucker, Chairperson
Regional Human Rights Authority

MT:gs
cc: Terri Hicok

Dedicated to Hope Healing and Recovery

Meri Tucker, Chairperson
Guardianship and Advocacy Commission
Peoria Regional Office
401 Main Street, Suite 620
Peoria, Illinois 61602

RE: HRA 12-090-9011

January 14, 2013

Dear Ms. Tucker:

We are in receipt of your letter dated December 4, 2012 that clarifies recommendations of the Commission relating to our Patient Complaint and Grievance Processes.

In response to your recommendation that "the facility review the CMS interpretive guidelines regarding grievances and update the policy to acknowledge all aspects of the guidelines":

Kindred Healthcare owns and operates 120 long term acute care hospitals across the country. To assure a uniform level of compliance by each of those hospitals with the many rules and regulations that hospitals must adhere to, Kindred Core Policies (of which "Patient Complaints and Grievance Process H-PC 05-007" is one) are reviewed periodically by Support Center and Hospital staff to ensure they meet applicable federal and state regulations. In order to accommodate state-specific provisions, amendments to these Core policies are made after appropriate review and approval by our Board.

In this case, the individual State contact information was inadvertently omitted. We have corrected that error and have amended the policy to include the contact information for the Illinois Department of Public Health, the Office of Civil Rights and the Quality Improvement Hotline as you suggested.

In response to your recommendation that "facility staff is educated in these changes and evidence is sent to the HRA that this education has been completed"

Our CEO, CCO and DQM have responsibilities under the Kindred Patient Complaint/Grievance Process Policy that require an understanding of the CMS Interpretive Guidelines. They have reviewed the proposed Addendum including the CMS Interpretive Guidelines and understand how these relate to the Policy.

Our Staff receive education regarding our Complaints and Grievances Policies during their initial Orientation and again during annual Competency Training.

In response to your recommendation that "the facility discontinue use of the grievance procedure intended for disabled employees, patients, and visitors due to the fact that this is not a part of regulations for a hospital and could be viewed as discriminatory on the grounds that individuals with disabilities are being treated differently than others within the facility".

We respectfully disagree with this interpretation. All hospitals and those receiving its services are in fact included within Section 504 of the Rehabilitation Act of 1973 (the "Act"), which prohibits discrimination in the provision of its services to those protected by the Act..

According to a "Fact Sheet" on the HHS.gov website,

http://www.hhs.gov/ocr/civilrights/resources/factsheets/504.pdf

"Section 504 of the Rehabilitation Act of 1973 is a national law that protects qualified individuals from discrimination based on their disability. The nondiscrimination requirements of the law apply to employers and organizations that receive financial assistance from any Federal department or agency, including the U.S. Department of Health and Human Services (DHHS). These organizations and employers include many hospitals, nursing homes, mental health centers and human service programs."

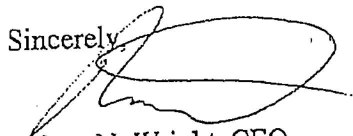
"Section 504 forbids organizations and employers from excluding or denying individuals with disabilities an equal opportunity to receive program benefits and services. It defines the rights of individuals with disabilities to participate in, and have access to, program benefits and services".

The language references in our policy are intended to reflect compliance with the Act and must be retained. We also do not believe that our Core Policy "Grievance Procedure H-PC 03-009" is discriminatory either in language or its application. All complaints and grievances are handled in a similar fashion, with some prioritization based on the urgency of a particular concern.

Therefore, in addition to following our Core Policy for "Patient Complaints and Grievance Process H-PC 05-007" with our proposed addendum for all patient complaints, we intend to continue to follow or Core Policy "Grievance Procedure H-PC 03-009" for patients when allegations regarding discrimination related to a handicap are involved as well.

We appreciate very much your agency's visit and would be happy to respond to any additional concerns or questions you may have. I can be reached at 309-680-1501.

Sincerely,



Robert N. Wright, CEO