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HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 14-030-9008
JOHN J. MADDEN MENTAL HEALTH CENTER

Case Summary: The HRA substantiated the complaint that Madden Mental Health Center did not honor a recipient's Power of Attorney for Healthcare. The facility submitted a corrective action plan which was accepted by the HRA but is not posted.

INTRODUCTION

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

Madden Mental Health Center is a 151-bed, Illinois Department of Human Services (DHS) facility located in Hines, Illinois.

To review these complaints, the HRA conducted a site visit and interviewed the Medical Director, the Associate Medical Director, the Director of Nursing, the Associate Director of Social Work, the Director of Social Work, the Quality Manager, and Chief of Security. Hospital policies were reviewed, and the recipient's clinical records were reviewed with written consent. Power of Attorney documentation has been provided by the recipient's mother.

COMPLAINT SUMMARY

The complaint indicates that the recipient's mother, his agent under a Power of Attorney (POA) for healthcare, attempted to speak with the recipient's physician numerous times while he was a patient at Madden but he would not take or return her calls. The recipient, recently released from a forensic mental health facility, expressed anxiety to his mother about his placement following treatment, and he requested that he not be discharged to a group home. The agent's concerns for her son were voiced and faxed to his physician on 9/11/13, when she indicated that she did not want her son to go to a group home but to UIC for a Community Reintegration Program (inpatient) where he had been accepted. After this call the complaint

alleges that the facility refused to include the POA agent in any aspect of her son's care. On 9/13/13 the complaint indicates that the recipient called his mother from Madden and said that he was coming home. He did not arrive. The mother attempted to find her son but staff told her that he was at a meeting and would return her call, however he didn't, and they could not provide her with his whereabouts for the entire weekend. Later her son called her from a hospital indicating that he had a setback and was admitted to a hospital as a psychiatric patient.

FINDINGS

The record shows that the recipient was voluntarily admitted to Madden on 8/22/13 and discharged on 9/13/13. His diagnosis is Schizoaffective Disorder. The recipient's hospital course is described in the record:

"The patient was admitted to Pavilion 6 where he received multidisciplinary treatment consisting of group, milieu, recreational, and pharmacological therapies. The patient presented as very disorganized and delusional. He reported hearing voices telling him to harm himself and others. He reported that those voices are very stressful to him. He was somewhat religiously preoccupied and grandiose. He reported being the son of God. He also reported that the voices that were talking to him were the devil. He reported that as long as he continued to do something that he enjoyed he was able to ignore the voices. However, they did disturb his sleep at times. He had occasional nightmares. The patient was put on Chlorpromazine 300 BID, Benztropine 0.5 mg BID, Trazodone 100 mg each bedtime, and Diazepam 5 mg BID. He was also put on Fluticasone for his asthma and Dilantin 100 mg TID for his seizures. He was on Aspirin for coronary heart disease, Ensure, and Albuterol inhaler. The patient did fairly well during his course of hospitalization. He kept to himself. His behavior was quite strange. He was talking to himself. He reported hearing strange voices. He was not participating in the milieu. He was constantly reporting hearing voices that were disturbing to him. As a result, he was switched to Paliperidone which was titrated to 2 mg in the morning and 6 mg at bedtime. His Diazepam was decreased due to extreme sedation during the daytime. It was decreased to 5 mg BID. Trazodone remained at 150 mg each bedtime with Benztropine 0.5 mg BID. On that regimen, the patient did fairly well except for approximately 5 days prior to discharge when he started obsessing about one of his female peers and required emergency medication. During the course of his stay, he received emergency medication on 9/02, 9/09, and 9/10. Otherwise, his stay at Madden was fairly unremarkable. He did agree to go to a group home because his mother said that she could not manage him at home. According to his mother, he was making plans to run away from home as soon as he was discharged. However, the patient agreed to go to a group home."

The record does not contain a separate physician statement of decisional capacity, however the recipient signed an application for and was accepted as a voluntary recipient of services upon admission.

The record contains an Authorization to Disclose/Obtain Information which is authorized by the recipient to provide all treatment information to his mother/POA agent and is signed by the recipient on 8/22/13.

There are several Progress Notes from the record that discuss the recipient's discharge. The first is a Psychiatry Progress Note from 9/11/13 which states, "Discharge Assessment/Teleconference with Patient. Patient reports he does not want to go home with his mother or go to UIC. He reports getting angry at mother when he feels wants (sic) to control him. He reports that the only time he hears negative voices is when he is around her. He gave permission to speak to his mother/ she reported that the patient told her that he plans on coming home… and go to Miami [illegible]. She wants him to be transferred to UIC Said he is not a candidate for …He is not willing to go. Mother… [illegible]… will take off to …She will investigate the group home services … Discharge will be cancelled for now."

The second Progress Note related to discharge is a social service note entered on 9/13/13. It states, "Pt. in need of housing resource, life skills training, psych med management, and MISA [Mental Illness/Substance Abuse] screening. Pt. does not wish to harm himself or others. Pt. has stated that he will comply with all after care plan. Pt. stated that he did not want to be discharged to his mother's home and that he needed train (sic) on how to live independently as he is an adult and he felt that his mother did not have his best interest in mind. Pt. stated that his mother was also receiving food stamps for him while he was not living in the home. Social worker call (sic) Pt.'s mother and she stated that she wanted him discharged to an inpt. Program at UIC. This worker explained that Pt. did not want that level of care according to the Madden treatment team. Pt.'s mother became irate and stated that she 'knows what he needs.' Pt. discharged to [outreach program] wherein his psych meds will be administered; pt. will receive life skills training, pt. will be housed and fed and all medical appts will be attended. CEO, …, will also help Pt. to set up his own bank account…. Pt.'s group? Is located at ….. Pt. also has psych med mgt. appt. and MISA scheduled for… Dr…. will transport……."

The record contains a Discharge/Transfer document completed on 9/13/13. It indicates that here was a discharge staffing held on 9/05/13. There are no notes in the record regarding this planning session except for the following: "Pt. for discharge medically stable. No complaints -no reported seizures. Dilantin level -15:1. Patient to follow up with PMD post discharge." This note does not indicate that the POA was notified of the meeting or that she had any input into the meeting. The Discharge Summary contains an area which indicates that a copy was given to the recipient or mailed, faxed, or emailed, however this section was not completed. There is an area for the recipient's/guardian's signature and this area contains an initial that does not appear to belong to either.

The final Progress Note is entered on 9/13/13 at 11:17 a.m. It states, "Pt. is discharged today to group home picked up by [staff person]. All meds given and instructed to….with outpatient follow up explained, Pt. verbalized understanding. All belongings were returned. No SI [suicidal ideation]/ HI [homicidal ideation] reported. Pt. denies any discomfort so far."

The clinical record contains the POA document faxed by the recipient's mother to the facility and signed by the recipient and two witnesses. There is no mention in the record of the POA and the mother is not identified as the POA.

FACILITY REPRESENTATIVES' RESPONSE

Facility staff were interviewed about the complaint. They indicated that recipients' decisional capacity is determined at admission and that recipients are presumed to have decisional capacity unless otherwise indicated by the attending physician. Staff indicated that recipients must lack decisional capacity in order for the clinical team to consider the preferences of the POA if the POA is in conflict with the recipient. In this case the clinical team determined that the recipient was appropriately recommended for placement in a group home. Although this conflicted with his POA's recommendation, the staff honored the recipient's decisional capacity to make treatment decisions for himself. Staff indicated that in the past they had discussed the issues regarding the authority of the POA with this parent, and they had informed her that in order to exercise the authority she felt was necessary, she should seek to obtain guardianship. Staff was not sure why the parent had not obtained guardianship for the recipient.

Facility staff were asked about the inclusion of the POA in the discharge planning and eventual discharge. They stated that the POA had been contacted by the recipient's social worker as documented in the progress notes and at that time she was given the name and address of the group home where the recipient would be transferred. On the day of transfer a staff person from the transferring agency picked the recipient up at Madden and took him to the new placement. Staff did not know what occurred after the recipient's discharge.

STATUTES

The Mental Health Code guarantees all recipients adequate and humane care in the least restrictive environment: "A recipient of services shall be provided with adequate and humane services 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." Also the Code states, "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 [to prevent harm]…." (405 ILCS 5/2-102 a-5).

The Illinois Power of Attorney Act states that, "The health care powers that may be delegated to an agent include, without limitation, all powers an individual may have to be informed about and to consent to or refuse or withdraw any type of health care for the individual and all powers a parent may have to control or consent to health care for a minor child" (755 ILCS 45/4-3).

The Illinois Power of Attorney Act details the duties of health care providers and others in relation to health decisions made by POA's:

"Each health care provider and each other person with whom an agent deals under a health care agency shall be subject to the following duties and responsibilities:

(a) It is the responsibility of the agent or patient to notify the health care provider of the existence of the health care agency and any amendment or revocation thereof. A health care provider furnished with a copy of a health care agency shall make it part of the patient's medical records and shall enter in the records any change in or termination of the health care agency by the principal that becomes known to the provider. Whenever a provider believes a patient may lack capacity to give informed consent to health care which the provider deems necessary, the provider shall consult with any available health care agent known to the provider who then has power to act for the patient under a health care agency.

(b) A health care decision made by an agent in accordance with the terms of a health care agency shall be complied with by every health care provider to whom the decision is communicated, subject to the provider's right to administer treatment for the patient's comfort, care or the alleviation of pain; but if the provider is unwilling to comply with the agent's decision, the provider shall promptly inform the agent who shall then be responsible to make the necessary arrangements for the transfer of the patient to another provider. It is understood that a provider who is unwilling to comply with the agent's decision will continue to afford reasonably necessary consultation and care in connection with the transfer"` (755 ILCS 45/4-7 Sec. 4-7a and b).

FACILITY POLICY

Madden has provided the HRA with its policy regarding the rights of Surrogate Decision Makers (#200 Patients Rights Specific). It states:

"A. As a general rule, all patients at Madden have a right to make informed decisions about their health care and thus may refuse treatment.

B. A guardian or POA may consent to treatment on behalf of a patient who lacks Decisional capacity. He or she may not, however, consent to the administration of psychotropic medications, ECT, or psychosurgery against a patient's will. Such treatments shall be administered on an involuntary basis only under the circumstances put forth in the Illinois Mental Health Code.

C. Patients who are diagnosed with medical conditions which do not have potentially catastrophic, irreversible, or life threatening sequelae shall not be administered treatments for these conditions against their will without the consent of the legal guardian.

D. Decisions whether to forgo life sustaining or any other form of medical treatment involving an adult patient with decisional capacity may be made by the patient.

E. Decisions whether to forgo life sustaining treatment on behalf of a patient who lacks decisional capacity may be made by a surrogate decision maker or makers in consultation with

the attending psychiatrist and/or internist in accordance with the conditions set forth in the Health Care Surrogate Act.

F. A patient is presumed to have decisional capacity in the absence of actual notice to the contrary.

G. If a patient at Madden is diagnosed with a medical condition with potential serious, life threatening or irreversible sequelae the physician who has made the diagnosis shall enter his or her findings in the medical record along with the diagnosis, prognosis, and potential consequences of refusing treatment. The patient shall be informed of his or her condition along with the treatment recommendations, their risks, benefits and side effects, and potential consequences of refusal. If the patient refuses treatment, the attending psychiatrist shall make a determination as to whether the patient has decisional capacity to a reasonable degree of medical certainty and shall document his or her findings in the medical record. If the psychiatrist determines that the patient lacks decisional capacity, the determination shall set forth the attending psychiatrist's opinion regarding the cause, nature and duration of the patient's lack of decisional capacity. The patient shall then be examined by a second psychiatrist who shall make an independent determination regarding decisional capacity and who shall set forth his or her determination in writing in the patient's medical record. The attending psychiatrist or internist shall inform the patient of the determination and that a surrogate decision maker will be making life sustaining treatment decisions on behalf of the patient.

Madden staff shall make a reasoned inquiry as to the availability and authority of a healthcare agent under the Power of Attorney for Health Care Law. When no health care agent is authorized and available Madden staff will make a reasonable inquiry as to the availability of a possible surrogate. An attempt shall be made within 24 hours after a determination that a person lacks decisional capacity to contact an identified surrogate. The surrogate decision makers are then authorized to make decisions regarding treatment as specified under the Health Care Surrogate Act. After the Surrogate is identified, the name, address, telephone number, and relationship to the patient shall be entered into the record. The patient shall be informed of the identity of the surrogate decision maker."

CONCLUSION

The Mental Health Code allows designated persons to be included in the development and implementation of recipients' care plans: "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." Even if the designated person is not the POA, he or she may participate in the recipient's treatment plan formulation and implementation. An additional and more legal layer of oversight is the POA, which also gives decision making powers when the recipient does not have the capacity to make reasoned decisions for himself. Whether or not the facility ever requires the input of the substitute decision maker, that person must be included in the treatment planning process, especially since they may be called upon at some point to intervene on behalf of their

recipient. This does not mean that the recipient cannot make treatment decisions or refuse treatment- it only means that these substitute decision makers are included in the planning process and available should the recipient lack capacity. In the extant case, there is no indication that the facility recognized the POA. The POA is referred to as "mother" and never as a designated substitute decision maker. She was not included in the discharge planning session, and the discharge transfer summary does not indicate that she was given a copy. Although the social work note written on 9/13/13 gives the name of the facility where the recipient was being transferred, it does not state that this information was given to the POA. This oversight caused great stress to both the recipient and his POA and deprived the recipient of the valuable advocacy that was established specifically for this purpose. The HRA substantiates the complaint that the facility did not honor a recipient's Power of Attorney for healthcare.

RECOMMENDATIONS

1. Train staff in the rights and duties of the POA and that inclusion of the POA (or any person designated by the recipient) does not mean that the recipient relinquishes his right to make treatment decisions but that he is afforded advocacy, and in the case of the POA, has a substitute decision maker who can express his preferences when he is not able to. Inclusion of the POA in treatment planning when the recipient has decisional capacity ensures that his preferences are followed when he does not.

SUGGESTIONS

1. Ensure that in keeping with the Mental Health Code and facility policies regarding the administration of psychotropic medication, that a physician statement of decisional capacity is included in the record.

2. Ensure that the discharge summary/plan is signed by the recipient and/or by his substitute decision maker.