Illinois Guardianship
& Advocacy Commission

FOR IMMEDIATE RELEASE

HUMAN RIGHTS AUTHORITY - NORTHWEST REGION

REPORT 14-080-9008
Alden Debes Rehabilitation and Healthcare

INTRODUCTION

The Human Rights Authority (HRA) opened an investigation after receiving a complaint of a possible rights violation at Alden Debes Rehabilitation and Healthcare. The complaint alleged the following:

1. Resident was prohibited from leaving after requests to be discharged.

If found substantiated, the allegation would violate the Nursing Home Care Act (210 ILCS 45), the Skilled Nursing and Intermediate Care Facilities regulations (SN/ICF) (77 Il Admin Code 300) and the Mental Health and Developmental Disabilities Code (MHDD Code) (405 ILCS 5/2-102).

Alden Debes has a male and female psychiatric unit with 54 total beds. The facility also has a sub-acute unit and a long-term care unit. The facility employs 175 staff that include nurses, aides, housekeepers, dietary staff, etc.

COMPLAINT STATEMENT

The complaint states that the facility would not allow the resident to be discharged and held him for 30 days. The resident and his guardian expressed the wish to leave.

INTERVIEW WITH STAFF (5.7.2014)

Staff explained that this specific resident never requested a discharge and left the facility for a physician's appointment and never returned. Staff said that the resident was a resident with behavioral health needs who transferred from another hospital and was admitted for less than 30 days. Staff said that when someone is admitted to the behavioral health unit, they can leave the facility on a pass but the facility policy states that the resident must be admitted to the facility for 30 days before being granted a pass to leave the facility. The residents must follow the facility rules and prove that they are stable enough to leave the facility and be a part of the general public. Even though the resident was not there for 30 days, he was given a pass to go to church. The resident also received a pass to go to an appointment with a gastroenterologist. When the resident left to attend that appointment, he never returned to the facility. He was not discharged by the facility, the resident just did not return from the appointment.

Staff said that the facility psychiatric units were not regulated by the MHDD Code but rather the facility is licensed to serve residents with psychiatric needs and is mandated by Subpart S of the SN/ICF regulations. They also explained that the doors of the unit were closed but not locked. The residents need permission to leave but could also leave against medical advice (AMA) if they chose to leave. Staff explained that while the residents have the right to leave, they would like the residents to be stable when they are discharged from the facility. Staff said that there is an alarm on the unit doors, and while the doors are not locked, if the doors are opened the alarm alerts staff. There is a code used to exit the doors and bypass the alarm and there are also instructions on how to exit the doors without using the code. The HRA toured one of the psychiatric wings of the facility and did not see these instructions.

Staff said that the resident was a voluntary admission and there was no court order dictating that the resident be admitted to the facility. Staff explained that discharge planning starts at the beginning of the admission but the facility does not provide written documentation regarding discharge, such as a pamphlet. The plan of care is discussed upon entering the facility. Staff confirmed via email after the discussion that this resident did have a Healthcare Power of Attorney (POA). Staff did say that a POA is not activated until the individual is considered incompetent. Staff explained that often times the POA information would come directly from the transferring hospital. Staff request from the patient the names of individuals they want involved in their care. In this case, the resident's POA agent was very involved in the resident's care and there was even a time when a nurse documented that the family member told the resident not to take his medication.

Staff explained that the physician has to write orders for the resident to be discharged but the resident can still leave AMA. Residents do not have to provide a written request in order to leave. Sometimes when a resident is being discharged, they will need services within the community that must be coordinated but that is a discussion between the resident and his/her counselor. The actions taken with the discharge and the resident's ability to leave the facility all depend on the situation. There are outdoor areas on the unit and residents are free to go outside but they do not come and go in the facility as they please. Staff said that actions taken by the facility if a resident tries to leave is situational but they will not tackle the individual and force him/her onto the unit.

When questioned as to why the facility provided two discharge policies, one which does not mention patients being discharged AMA, staff said that it is not their policy that residents should leave AMA, so that is why it does not appear in the policy. Also the policy is for discharge planning, so it is not anticipated that the resident would leave AMA. The facility also stated that one policy is for the entire facility and another is for the behavioral unit, so discharging AMA only appears in the behavioral health unit policy. Staff said that they only provide 30 days notice for discharge when discharge is involuntary. The patient rights are posted on the unit and they receive a copy of the rights when admitted. Staff pointed out that in this case, the resident did leave the facility AMA, so the discharge options must have been known. It is documented in the admission paperwork that the residents receive their rights. Residents are not provided any documentation specifically involving discharge but discharge is discussed with the residents. Staff stated that they do not go over AMA discharges on admission. Staff do not encourage AMA discharges because the resident may not be able to take care of themselves in public.

The resident received a care plan while at the facility. There are also quarterly care conferences, and the resident may not have had one because he was there for such a short amount of time. There is an initial care plan that is created 7 days after the initial assessment. The care plan conference is separate from this initial process. All the assessments are completed within 7 days and then 7 days later the care plan is created but there is an interim care plan in the process. Discharge is discussed with every care plan along with the resident's goals. They will not give the resident an actual date for discharge unless it is deemed appropriate. While at the facility, the behavioral health residents are expected to go to group therapy and participate. There is an in-house psychiatrist for the unit but the residents are able to have their own psychiatrist.

The resident was under the care of the in-house physician, so if the resident said that he has ear pain, the staff will let the physician know. The resident's sister wanted to take the resident to an urgent care because of his ear pain. The nurse explained that it was not necessary because the ailment was going to be addressed by the physician during his next visit. It was not considered necessary to go to the urgent care. If there was an emergency, residents are sent to the emergency room.

Staff explained that if a resident wanted discharged, they would approach the counselor who would speak with the clinical director. The clinical director would then talk to a psychiatrist and they would make the decision about discharge. Every resident has a different scenario. When a decision was made, the clinical director would inform the counselor and they would communicate the decision to the resident. If the resident cannot leave, they are informed as to why and the goals to assist them with discharge into the community. Sometimes residents want to be discharged but indicate they have no place to go, so staff try to involve them in the discharge and steps needed to leave and make contacts with people outside the facility who can help them when they are discharged. If the resident wanted to redact the request to leave, that would be in the progress notes.

Staff said that the resident looked like he understood admission. The 30 day policy does allot for the resident to go to physician appointments. Staff believed that the resident's sister spent a lot of time with the staff and counselor and they felt that she understood the policies of the facility as well as the discharge policy.

On 6.4.2014, the HRA discussed the case further with another staff member who did not attend the site visit. Staff explained that the situation was an AMA discharge and that the resident left for a medical appointment and never returned to the facility. The resident's sister came back to the facility and retrieved the resident's belongings. The staff member stated that the topic of discharge was brought up by the resident's sister but not by the resident. The resident's sister did not believe that the resident was in an appropriate place and discharge was offered by the staff. Staff stated that whenever someone is unhappy, they will explain to them that they can leave the facility, and staff and the resident's sister had a long meeting regarding the topic. Staff explained that whenever the topic of discharge was discussed, the resident's sister never stated whether she wanted discharge or not. There was no statement made by her regarding the option of discharge. Staff said that when discharge is desired but staff do not believe the resident is ready, staff will explain to the resident that such a discharge would be against medical advice. The resident never said that he wanted discharge and, in fact, they believed that he enjoyed the facility.

Staff explained that when a resident is admitted, the counselor asks the resident who they want involved in the treatment. The counselor also explains that the residents have the right to leave. The counselor also discusses goals for discharge with the resident. Staff said that everyone has a discharge section in their care plan and the only reason why one would not exist would be if the staff could not yet ascertain where the resident stood with discharge. Staff reviewed the resident's care plan during the discussion and said that he believed that the resident was not there long enough for staff to ascertain when he should be discharged. Staff explained that the discharge care plan needs to be in place within 30 days but this does not make a difference regarding a resident making a discharge request.

The HRA had another conversation with a different staff member who was not present at the initial site visit on 6.5.2014 who stated that she dealt with the resident's sister directly over complaints during the resident's stay. Staff explained that when residents are there for a certain amount of time, they could receive a pass and stay overnight outside of the facility and staff believe the sister was very upset about the pass policy and thought it was too rigid. Staff offered to transfer the resident, but the resident's sister wanted the issues that she had with the facility resolved rather than having the individual be discharged and moved. They never offered discharge to the resident directly because he never had any issues with the facility. He never voiced any concerns. Staff said that being discharged AMA was also explained to the sister.

Staff said that when residents are admitted, they are given brochures that contain their rights. The behavioral health unit also has residential counselor meetings every month where the residents can discuss concerns and then they would review resident rights. Staff said that during admission, they used to go over the AMA Policy and have the residents sign stating that they understood the policy, but they are not sure if they do that anymore. The resident's sister would not sign records and would not sign the admission contract. Some people want to show the contract to an attorney and then they sign it and bring it back, but in this case the contract was never signed.

FINDINGS (Including record review, mandates, and conclusion)

Complaint #1 – Resident was prohibited from leaving after requests to be discharged.

According to the admission record, the resident was admitted on 5.17.2012. The social services progress notes indicate that the resident left for a physician's appointment on 6.4.2012 and did not return to the facility.

The HRA reviewed documents pertinent to the complaint allegations. The facility provided a copy of a pamphlet titled "Residents' Rights for People in Long-term Care Facilities."

This pamphlet lists residents' rights but does not mention resident discharge as one of the rights. The pamphlet looks to be provided by the Illinois Department on Aging, which is the program affiliated with the Long Term Care Ombudsman program.

The HRA reviewed two facility discharge planning policies. One with a revision date of 8/2011 that appears to be a part of the facility Operations Manual. This is the document that staff said was for the entire facility. This document does not state that a resident is able to leave the facility AMA. The policy states that the resident's potential for discharge will be assessed at specific times and also states what will occur once a resident is considered a candidate for discharge. The policy also illustrates the procedure for discharge planning. One of the steps reads "If a resident's desire to be discharges [sic] is assessed to not be feasible, the Social Service Director or designee will work collaboratively with the resident to educate them on the resources needed to discharge and will document education in the medical chart or electronically and on the plan of care."

The HRA reviewed the second discharge planning policy, which is not dated. The document indicates that it is part of the Alden Behavioral Health Program and was also cited as such in the staff interview. The policy states "This policy and procedure provides guidance for discharge planning for non-emergency discharges, including transfer to another nursing facility or another type of residential facility, or step-down to a less restrictive level of care, such as group home, half-way house, shelter, or private residence. **This policy does not cover residents who are discharged to hospitals; leave against medical advice (AMA), or by involuntary discharge."** [Emphasis added]. The policy states that it is important for residents to participate in discharge planning and lists assistance given to residents for discharge. The policy also states that discharge begins upon admission and starts through the assessment process. The document reads "In addition, the resident's thoughts and wishes regarding discharge are also assessed and documented in the Psychosocial History." The policy also states "Alden is aware that the situations of residents frequently change and that residents may desire a discharge sooner than the IDT believes is in their best interest. Nevertheless, the facility recognizes that residents and their families or representatives have a right to self-determination. Residents may request discharge from this facility to another living arrangement at any time. Staff will arrange a meeting with the resident to review current recommendations of the facility, and discuss the current status of resident's treatment progress. Residents who desire to leave the facility may, in some cases, leave against medical advice. In this situation, staff will implement procedures outlined in the AMA Policy." The policy proceeds to state that "Discharge may occur only upon the written medical order of the resident's physician/psychiatrist … If the resident chooses to leave without a discharge order or if the family wishes to remove the resident without notifying the resident's physician, staff shall notify the physician and ask the family member and resident to complete the AMA form."

The HRA also reviewed an AMA Release policy provided by the facility. The policy states "This information shall be completed whenever a demand is made by a resident (or his/her legal representative) to leave or to be discharged from the facility before the completion of treatment or contrary to the advice of the attending physician." The policy describes the procedure for whom to notify when the resident requests discharge AMA and states that the facility staff are to give the resident or legal representative an explanation concerning the risks involved in leaving the facility. The policy has general documentation guidelines which instructs staff to complete a "Leaving Against Medical Advice" release form and attempt to have the resident or legal representative sign the form. The policy also provides instruction on what to do if the resident or representative refuses to sign and that the circumstances surrounding the decision and referrals or other calls should be documented.

The Primary Care Physician (PCP) History, dated 5.21.2012 states that the resident denied any questions or concerns. The HRA also reviewed a pass request form, dated 5.28.2012, which states that the resident would like to leave the facility to go to church with his sister. There was also a response to the pass request (of the same date) stating that the resident was determined appropriate for the requested pass.

The HRA reviewed the resident's comprehensive behavioral health assessment, which has a pyscho-social factors section. In that section, there is a question about the resident's attitude toward admission in which they indicate that the resident views the admission as necessary. Also there were no observed or reported "Discussion/Attempt(s) of Unplanned Discharge(s)". In that same document, in the section titled 14-Day of the assessment, it indicates the following: the anticipated length of stay was more than 90 Days; the resident's attitude towards discharge is that it is "Not feasible;" and the resident's attitude matches the feasibility of the discharge plans. There is a question regarding the family's attitude towards discharge that asks if the family's attitude is congruent with the resident's plan; it states that the resident "Remains appropriately placed."

The HRA reviewed the resident's care plan which had no mention of the resident requesting discharge. The care plan had no mention of the resident's discharge plan whatsoever. It was also explained to the HRA that the resident's admission contract was never signed along with the checklist of items that he received upon admission which includes that he received his rights statement. Therefore, the HRA never reviewed a signed rights statement from the facility.

Regarding comprehensive care plans, the Nursing Home Care Act provides that "A facility, with the participation of the resident and the resident's guardian or representative, as applicable, must develop and implement a comprehensive care plan for each resident that includes measurable objectives and timetables to meet the resident's medical, nursing, and mental and psychosocial needs that are identified in the resident's comprehensive assessment, which allow the resident to attain or maintain the highest practicable level of independent functioning, and provide for discharge planning to the least restrictive setting based on the resident's care needs. The assessment shall be developed with the active participation of the resident and the resident's guardian or representative, as applicable" (210 ILCS 45/3-202.2a). The Skilled Nursing and Intermediate Care Facilities Code also states that "As part of the ITP [Individual Treatment Plan], a discharge plan shall be considered by the interdisciplinary team as a component of the individual's comprehensive program plan. This plan shall address the reduction of symptoms and the acquisition of behaviors and prioritized skill deficits that inhibit the individual from moving to a more independent environment" (77 Ill. Adm. Code 300.4060). Part B of the same section of the Code states "b) An ITP shall be developed within seven days after completion of the comprehensive assessment."

The Nursing Home Care Act states that “A resident may be discharged from a facility after he gives the administrator, a physician, or a nurse of the facility written notice of his desire to be discharged. If a guardian has been appointed for a resident or if the resident is a minor, the resident shall be discharged upon written consent of his guardian or if the resident is a minor, his parent unless there is a court order to the contrary. In such cases, upon the resident's discharge, the facility is relieved from any responsibility for the resident's care, safety or well-being” (210 ILCS 45/2-111). The Skilled Nursing (SNF) and Intermediate Care Facilities (ICF) Code mirrors the above citation (77 Il Admin Code 300.3300).

The Nursing Home Care Act reads “A facility shall establish written policies and procedures to implement the responsibilities and rights provided in this Article. The policies shall include the procedure for the investigation and resolution of resident complaints as set forth under Section 3-702. The policies and procedures shall be clear and unambiguous and shall be available for inspection by any person. A summary of the policies and procedures, printed in not less than 12 point type, shall be distributed to each resident and representative” (210 ILCS 45/2-210). The Act also reads “Each resident and resident's guardian or other person acting for the resident shall be given a written explanation, prepared by the Office of the State Long Term Care Ombudsman, of all the rights enumerated in Part 1 of this Article and in Part 4 of Article III. For residents of facilities participating in Title XVIII or XIX of the Social Security Act, the explanation shall include an explanation of residents' rights enumerated in that Act. The explanation shall be given at the time of admission to a facility or as soon thereafter as the condition of the resident permits, but in no event later than 48 hours after admission, and again at least annually thereafter. At the time of the implementation of this Act each resident shall be given a written summary of all the rights enumerated in Part 1 of this Article. If a resident is unable to read such written explanation, it shall be read to the resident in a language the resident understands. In the case of a minor or a person having a guardian or other person acting for him, both the resident and the parent, guardian or other person acting for the resident shall be fully informed of these rights” (210 ILCS 45/2-211). Part 1 includes 210 ILCS 45/2-111 which is mentioned above as the right to discharge. The SNF and ICF Code mirrors the above two citations and also states “b) The facility shall provide copies of these policies and procedures upon request to next of kin, sponsoring agencies, representative payees and the public … d) The resident, resident's representative, guardian, or parent of a minor resident shall acknowledge in writing the receipt from the facility of a copy of all resident rights set forth in Article II of the Act and a copy of all facility policies implementing such rights” (77 Il Admin Code 300.3330).

The Nursing Home Care Act also requires that “(a) Before a person is admitted to a facility, or at the expiration of the period of previous contract, or when the source of payment for the resident's care changes from private to public funds or from public to private funds, a written contract shall be executed between a licensee and the following in order of priority: (1) the person, or if the person is a minor, his parent or guardian; or (2) the person's guardian, if any, or agent, if any, as defined in Section 2-3 of the Illinois Power of Attorney Act; or (3) a member of the person's immediate family.” (210 ILCS 45/2-202).

Under the Mental Health and Developmental Disabilities Code, “'Mental health facility' means any licensed private hospital, institution, or facility or section thereof, and any facility, or section thereof, operated by the State or a political subdivision thereof for the treatment of persons with mental illness and includes all hospitals, institutions, clinics, evaluation facilities, and mental health centers which provide treatment for such persons" (405 ILCS 5/1-114).

The SNF and ICF Code also reads "The facility shall have written policies and procedures governing all services provided by the facility" (77 Il Admin Code 300.610).

Complaint #1 – Conclusion

The HRA saw no evidence that the facility did not allow the individual discharge or that the individual requested discharge from the facility. Because of this, the HRA finds the complaint **unsubstantiated** but offers the following **suggestions:**

- The SNF and ICF Code (77 Il Admin Code 300.3330) indicates that the resident or guardian are to "acknowledge in writing the receipt from the facility of a copy of all resident rights set forth in Article II of the Act and a copy of all facility policies implementing such rights" but the facility stated that there was no such acknowledgement on file. The HRA appreciates that the resident's sister would not sign documents but the facility should still have maintained some compliance rather than having no signed documents.
- The Nursing Home Care Act (210 ILCS 45/2-111) indicates that the resident may be discharged from a facility after giving written notice, which does not appear in the facility discharge policy. The HRA suggest the facility update their policy in compliance with the Act.
- The facility stated that there was no contract signed by the resident/guardian on the record, which is a violation of 210 ILCS 45/2-202. It was explained by the facility that the POA agent wanted to show it to an attorney and then return the contract but never did. The HRA is still concerned that the individual was admitted to the facility without a signed contract. The HRA suggests the facility comply with the mandates regarding contracts.
- In accordance with 210 ILCS 45/3-202.2a and 77 Ill. Adm. Code 300.4060 discharge planning should occur within the resident's care plan but there does not appear to be any indication that the care plan had any discharge planning. Staff stated that they may not have had an inclination regarding discharge at that point in the stay, but the mandates do not provide for exclusions of the discharge planning. The HRA suggests the facility comply with the discharge planning regulations.
- Alden Debes Rehabilitation and Healthcare falls into the definition of mental health facility as defined by the MHDD Code (405 ILCS 5/1-114) and therefore should comply with the Code. The HRA suggests the facility review the MHDD Code to assure that the facility is complying with all regulations. Also review case Muellner v. Blessing Hospital.
- In discussing these complaints with several staff, it appears that information was not documented in the record regarding the resident's stay (ex. discussions with the staff about discharge or transfer). The HRA suggests that when incidents occur that directly impact with the resident's care or placement, the facility document these incidents.
- The HRA received clarification via email from facility staff that the facility has no written policy concerns the preparation of care plans. In order to comply with the SNF

and ICF Code 77 Il Admin Code 300.610, the HRA suggests creating a care plan policy/procedure for the facility.

- During the site visit, the statement was made that the POA is only activated when the resident is considered "incompetent." The statement made is generalized and may be more complicated than what is understood by staff. The HRA encourages the facility to seek education regarding POAs and the POA Act to ensure they are following mandates and to ensure that the facility is honoring directives from the appropriate source.