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Egyptian Regional Human Rights Authority
Report of Findings
17-110-9016
Chester Mental Health Center

The Egyptian Regional Human Rights Authority (HRA), a division of the Illinois Guardianship and Advocacy Commission, accepted for investigation the following allegation concerning Chester Mental Health Center:

A recipient was inappropriately admitted to the facility.

If found substantiated, the allegation represents a violation of the Mental Health and Developmental Disabilities Code (405 ILCS 5/2 et al.) and Chester policies. Chester Mental Health Center is a state-operated mental health facility serving approximately 240 recipients; it is considered the most secure and restrictive state-operated mental health facility in the state.

To investigate the allegations, the HRA interviewed the recipient and staff, reviewed the recipient's record with consent, and examined pertinent policies and mandates.

I. Interviews:

Recipient: The HRA interviewed the recipient with the assistance of a Spanish interpreter via telephone. The recipient seemed to understand broken English better than Spanish. The interpreter would ask questions of the HRA to the recipient in Spanish but the recipient would not answer and would just smile and look at the HRA representatives with a puzzled look on his face. Occasionally he would say a word or two in Spanish such as "si." Eventually the recipient would pick up on words the HRA said and could answer in broken English. When asked why he was at Chester, the recipient said he "got into fight with guard" (in jail) and "went to judge" and the "judge sent here" (to Chester.) He said he was also "hearing voices" when he was admitted but now was "taking medicine feeling much better." He was born in Mexico but said he had a sister near Chicago. When asked if he spoke to her he responded "si" and asked if he would like to move closer to her he also responded "si". When asked what he is told he needs to do to be transferred his response was "walk away." The HRA asked about restraints and he responded he had been in restraints "4 times" about "6 months" ago and he was currently on green level which is the least restrictive at the facility. When asked if he knew that the paperwork he signed was to stay at Chester and he said "yes, ok to stay here."

Guardian: The recipient's state guardian representative was interviewed via telephone. He had recently been assigned to the state wards at Chester Mental Health as their guardian

representative and was reviewing the status of them all since some were voluntary patients and he was not sure they realized what that meant. We agreed to touch base later once he became more familiar with them. A few months later the HRA touched base with the guardian representative. He said that the recipient spoke broken English and Spanish and was hard to understand, but said that he can usually communicate with him well enough by using broken English. He said that he has not signed any admission paperwork for the recipient as he was a transfer from another region and that paperwork was still in effect. When questioned about the subsequent voluntary reaffirmations he said that he had not signed those but agreed that due to recent behaviors, Chester was still the least restrictive environment at that time. When asked if he participates in treatment meetings, he said that he is not told when those are held.

A follow up interview was completed with the guardian a few months later. The guardian said that Chester had started sending copies of the reaffirmations over the past 6 months, but prior to then he had never received them. In regards to the treatment plan meetings, the guardian stated that he is now being notified of those, but the notice is very short.

II. Clinical Chart Review

A. Progress Notes: A nursing note on the day of admission in the early morning hours noted that the recipient was transferred from another state operated facility. The nurse attempted to reach the recipient's state guardian representative to obtain consent for psychotropic medications and reached his voice mail. It was documented that the nurse was instructed to "let day shift work on it." A second case note later that morning at 9:40 (on a Saturday) documented that the on call guardian was reached who gave consent to continue the medications that the patient was receiving at his prior state operated facility. A consent form was also faxed to the recipient's regular state guardian representative and a follow up call was completed to inform the guardian of admission and received verbal consent from the on call worker. Another progress note dated 11/3/16 documented an incident of aggression when the recipient was cursing at staff and yelling "me Papi" then swung at one Security Therapy Aide (STA) then picked up a trash can and threw it at a second STA. He was placed in a physical hold and transported to the restraint room while continuing to struggle and spit at staff. It was documented that the guardian was notified of this incident. On 11/29/16 the same nurse documented that the recipient attacked a peer and was placed in restraints again. It was documented that a restriction of rights form was given to the patient but there was no documentation that the guardian was notified of this incident. Approximately 3 hours later, the physician came to assess the patient and a contingency (as needed) order of Lorazepam was given. 15 minutes later he was released from restraints and was calm and cooperative. There was no documentation that the guardian was contacted about the order for contingency medication.

B. Application for Voluntary Admission: The original application was dated 12/27/14 and was done at the previous state operated facility at which the recipient resided. It was signed by the recipient, although his complete name was not signed, just a few letters of his first and last name were printed. The psychiatrist signed the form certifying that the recipient had been examined and was considered clinically suitable for voluntary admission, and that the individual has the capacity to consent to voluntary admission. The rights on the form were given to the recipient in Spanish and listed the interpreter's name who explained the rights to him. There was

no guardian signature on this form. A reaffirmation of voluntary status was signed by the recipient on 4/17/17, again in printed letters of his name and witnessed by the psychiatrist. The guardian's signature was not on this form but a box was checked which indicated "a copy of this form was provided to the individual or guardian in English." Although, it could not be determined if the copy was given to the recipient or the guardian as the box had both listed with neither being marked or circled. Another reaffirmation of voluntary status dated 6/16/17 was reviewed. It was signed by the recipient in printed letters of his name and witnessed by the social worker. No guardian signature was on the form and the same box was checked indicating that a copy was provided in English but did not clarify if it was given to the recipient or guardian.

C. Treatment Plan Reviews (TPRs): The recipient's date of admission was listed as 8/20/16. The 21 day TPR dated 9/6/16 was reviewed. It noted that the recipient's voluntary/reaffirmation date was 8/22/16. His diagnoses were listed as Primary: Schizophrenia undifferentiated; and Secondary: Intellectual Disability. The medication plan listed medications he was on and documented that the risk/benefits, alternatives, and alternatives of no treatment were reviewed with the patient. It was not documented if the guardian was also contacted about risk/benefit of medication treatment. It was documented that there was no family input but did not state whether or not the guardian had input in the treatment plan review. The "extent to which benefitting from treatment" section of the TPR stated that the recipient *"continues to benefit from the structured environment of CMHC where behavior can be monitored and he is able to received scheduled and PRN medication until he is able to transfer to a less secure facility. [Recipient] while at less secure facility severely injured patient and staff. [Recipient] intellectual disability and language barrier make it difficult to discuss progress regarding treatment goals. Thus far, [recipient] has not displayed any aggression since this admission. [Recipient] is involved in habilitation programming which he appears to enjoy."* The TPR did include a statement for "dually diagnosed MI/ID certification" which stated that the treatment team was of the opinion that he was appropriately placed at Chester MHC. It also stated that *"The patient was informed of his right to a utilization review hearing, he declined same and the Notice of Certification was presented to the patient as per schedule."* The therapist and the Qualified Intellectual Disability Professional (QIDP) signed the TPR.

The 3/22/17 Comprehensive TPR listed the recipient's legal status as *"voluntary as of 12/27/14 and will sign reaffirmation every 60 days."* The reason for admission was listed as being admitted to Chester on 8/20/16 as voluntary as of 12/27/14. The reason for transfer to Chester was that at the less restrictive state operated facility, he engaged in an unprovoked fight in which punches were thrown and each recipient was scratched. The recipient then bit the finger of the peer and injured two staff (one with a blow to the arm and another via a scratch with his finger nail.) The recipient had 4 physical holds and restraints in the previous 2 months. It was documented on this form that *"Notice of Recipient's Rights were explained to [recipient] upon admission and he appeared to understand them."* One of the Problems and goals listed is his intellectual disability/habilitation plan. It documented that the recipient was diagnosed with mild to moderate intellectual disability and continues to meet criteria based on the following: *"deficits in intellectual functions; per previous records [recipient] has cognitive deficits including English language difficulties. Per psychiatric evaluation on 8/20/16 [recipient] was diagnosed with mild to moderate intellectual disability…record consistently has ID diagnosis*

prior to 18 years." The activity therapist also documented that the recipient *"continues to draw primitive images of people. His drawing ability is at the symbol making stage (ages 6-9). There is a cultural barrier and it is difficult to understand him at times but he seems to enjoy using art as a nonverbal means of communication."* The TPR was signed by the psychiatrist and coordinating therapist. There was no mention of guardian involvement.

The 6/14/17 TPR again listed the recipient's status as *"voluntary as of 12/27/14 and will sign reaffirmation every 60 days."* This TPR continued in this section however and noted that a telephone interpreter service was used to ensure that the recipient understood what the signing of the voluntary reaffirmation meant. It was documented that he said that he wants to stay at Chester and that he liked it there. The discussion section also documented that the telephone interpreter had difficulty understanding the recipient because he spoke in broken English and Spanish. The recipient stated that he is doing much better. The rehabilitation programing section noted that unit restriction had prevented the recipient from attending many classes this reporting period but it did note that "*he enjoys coming to class and coloring or drawing and interacting with his peers as best as he can with the language barrier."* Another instructor documented that he continues to draw *"primitive images of people and his drawing ability is at the symbol making stage (ages 6-9). There is a cultural barrier and it is difficult to understand him at times, but he seems to enjoy using art as a nonverbal means of communication."* Another instructor noted that the recipient *"is hard to communicate with."* The extent to which benefitting from treatment section documented that the recipient's *"intellectual disability and language barrier make it difficult to discuss progress regarding treatment goals."* The dually diagnosed MI/DD Certification section again stated that the recipient *"was informed of his right to a utilization review hearing, he declined same and the Notice of certification was presented to the patient as per schedule."* The treating psychiatrist and coordinating therapist signed the TPR. There was no mention of guardian involvement and no signature present.

III...Facility Policies:

RI .01.01.02.01 Patient Rights: The Patient Rights policy states that a patient has the right to *"be provided with adequate and humane care and services in the* ***least restrictive environment*** *pursuant to an individual treatment plan…*

IM 03.01.01.03 Treatment Plan: This policy outlines the treatment planning process and responsibilities and states this about treatment plan reviews *"It is the responsibility of all disciplines to participate in the development of a multidisciplinary treatment plan. It is the responsibility of the primary therapist to serve as the coordinator of the treatment plan, ensuring the following:*

A. Treatment plan meetings happen within all the required time frames.

B. All discipline input is gathered and utilized for treatment plan reviews.

C. The plan is comprehensive and individualized based upon the assessment of the individual's clinical needs, strengths and limitations and is written in behaviorally defined and measurable terms.

D. The treatment plan reflects current treatment…

H. *If the patient has a guardian, the therapist will notify the guardian of all scheduled meetings and this will be documented in a progress note, and a copy of the treatment plan will be mailed to the guardian."*

IM .03.01.02.07 Voluntary Admission or Reaffirmation Note policy states that
"*I. Voluntary Admission Note: The coordinating therapist shall document in the progress notes when the patient signs the Voluntary Admission form IL462-2202M. If the patient has a guardian, that person shall be asked for authorization.*
II Voluntary Reaffirmation: After signing the Volunteer Reaffirmation form IL462-0016, the coordinating therapist shall document in the progress notes when the voluntary patient reaffirms his desire to remain voluntary status. Reaffirmation of voluntary status must be completed 30 days after admission, or 30 days after signing for voluntary status, and every 60 days thereafter. If the patient has a guardian, that person shall be asked for authorization for continued Voluntary hospitalization of the patient."

RI .03.05.05.01 Communication Assistance for Non-English or Limited English Speaking patients policy requires *"It is the policy of Chester Mental Health Center (CMHC) that all patients shall be provided adequate and humane care and receives services pursuant to an individualized treatment plan. No patient shall be excluded from the treatment process. An inability to communicate by oral or written English will not be a barrier to receiving such treatment. Necessity for interpreter services shall be determined by the patient as well as staff. Appropriate interpreting services should be used if limited English proficiency affects the delivery of services.*

For non-English or limited English speaking patients, CMHC will provide communication assistance via the use of interpreters in the patients' primary language. If necessary, interpreter services will be provided at all levels of treatment including (but not limited) during the admission intake process, during assessment or evaluation procedures, during interviews or examinations whenever medical or psychiatric information is discussed during therapy sessions, when care and treatment information is being conveyed; during discussions regarding discharge or transfer; when informing a patient of his rights, or restrictions thereof; and/or when a patient is being evaluated for involuntary admission or certification… Upon admission, the Admitting Nurse will:
1. To the greatest extent possible, determine the primary language of the patient. Information pertaining to the patient's origin and primary language may be obtained from documentation obtained from the referring hospital or institution as well as the patients' initial forensic placement evaluation, if applicable. In addition, the admitting nurse may ask the patient to identify his primary language using language identification posters posted in the intake area, ask the patient if he would like an interpreter, inform the patient that free interpreter services are available and may be utilized. If the patient requests to use his own interpreter, the admitting nurse will advise the patient that a family member may not be utilized during the admission intake process but may be utilized as deemed appropriate by the treatment team at other times as necessary… Document in the nursing note section of the medical record that the patient was offered interpreter services, whether the patient was agreeable to interpreter services, and what type of services were utilized during the intake process. The charts of those patients who require interpreter services should be flagged (i.e., "Special Attention: Interpreter

required") upon admission. Nursing staff keep track of patients who require interpreter services on the Patient Hand-Off Communication Log. Critical documents that involve the admission process are interpreted or made available in the patients' primary language as soon as feasible. Patients who speak Spanish will receive sight-translation provided by CMHC bilingual staff of these documents in their native language and will be informed that interpretation services are free and available following admission… Following admission, the Unit Nursing Supervisor or Unit Director will assure that:

1. The patients chart is appropriately flagged indicating interpreter services are needed. If a patient arrives on a unit and the staff note that the patient has limited ability to speak or adequately comprehend English (i.e., English not being their primary language), but the chart was not flagged at admission to indicate the need for an interpreter, the RN staff will immediately flag the chart as requiring interpreter services (e.g., "Special Attention: Interpreter Required")… Ensure that interpreter services continue to be provided at all levels of treatment as necessary. Interpretive services are coordinated in conjunction with the provision of treatment based on the on-going assessment of the language proficiency of the patient. Once the patient is psychiatrically and/or medically stable, the treatment team may consider the appropriateness of a referral to the Clinical Director or Director of Rehabilitative Services for an English proficiency assessment…"

Statutes

The Mental Health and Developmental Disabilities Code (405 ILCS 5/2-102) states *"A recipient of services shall be provided with adequate and humane care and 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. The recipient's preferences regarding emergency interventions under subsection (d) of Section 2-200 shall be noted in the recipient's treatment plan."*

The Code (405 ILCS 5/3-204) requires that *"Whenever a statement or explanation is required to be given to a recipient under this Chapter and the recipient does not read or understand English, such statement or explanation shall be provided to him in a language which he understands. Such statement or explanation shall be communicated in sign language for any hearing impaired person for whom sign language is a primary mode of communication. When a statement or explanation is provided in a language other than English, or through the use of sign language, that fact and the name of the persons by whom it was provided shall be noted in the recipient's record. This Section does not apply to copies of petitions and court orders."*

The Code (405 ILCS 5/3-400) states that *"(a) Any person 16 or older, including a person adjudicated a person with a disability, may be admitted to a mental health facility as a voluntary recipient for treatment of a mental illness upon the filing of an application with the facility director of the facility if the facility director determines and documents in the recipient's medical*

record that the person (1) is clinically suitable for admission as a voluntary recipient and (2) has the capacity to consent to voluntary admission.
(b) For purposes of consenting to voluntary admission, a person has the capacity to consent to voluntary admission if, in the professional judgment of the facility director or his or her designee, the person is able to understand that:
(1) He or she is being admitted to a mental health facility.
(2) He or she may request discharge at any time. The request must be in writing, and discharge is not automatic.
(3) Within 5 business days after receipt of the written request for discharge, the facility must either discharge the person or initiate commitment proceedings.
(c) No mental health facility shall require the completion of a petition or certificate as a condition of accepting the admission of a recipient who is being transported to that facility from any other inpatient or outpatient healthcare facility if the recipient has completed an application for voluntary admission to the receiving facility pursuant to this Section"

The Code (405 ILCS 5/3-401) provides that *"(a) the application for admission as a voluntary recipient may be executed by:*
1. The person seeking admission, if 18 or older; or
2. Any interested person, 18 or older, at the request of the person seeking admission; or
3. A minor, 16 or older, as provided in Section 3-502.
(b) The written application form shall contain in large, bold-face type a statement in simple nontechnical terms that the voluntary recipient may be discharged from the facility at the earliest appropriate time, not to exceed 5 days, excluding Saturdays, Sundays and holidays, after giving a written notice of his desire to be discharged, unless within that time, a petition and 2 certificates are filed with the court asserting that the recipient is subject to involuntary admission. Upon admission the right to be discharged shall be communicated orally to the recipient and a copy of the application form shall be given to the recipient and to any parent, guardian, relative, attorney, or friend who accompanied the recipient to the facility."

The Code (405 ILCS 5/3-404) requires that *"Thirty days after the voluntary admission of a recipient, the facility director shall review the recipient's record and assess the need for continuing hospitalization. The facility director shall consult with the recipient if continuing hospitalization is indicated and request from the recipient an affirmation of his desire for continued treatment. The request and affirmation shall be noted in the recipient's record. Every 60 days thereafter a review shall be conducted and a reaffirmation shall be secured from the recipient for as long as the hospitalization continues. A recipient's failure to reaffirm a desire to continue treatment shall constitute notice of his desire to be discharged."*

Conclusion

The initial complaint was that the recipient was inappropriately admitted to the facility. This was due to the recipient being a Spanish speaking individual who also had a mild to moderate intellectual disability, however he signed himself voluntarily to the facility without a Spanish interpreter. Some staff at Chester had documented that although paperwork said the recipient speaks Spanish, their observation was that he cannot communicate in either language. Upon further investigation, it was learned that this individual was a ward of the state and had a

legal guardian. When the chart was reviewed, the HRA discovered that the voluntary admission paperwork and the subsequent reaffirmations were signed by the recipient but no guardian signature was present. The reaffirmation paperwork did indicate that a copy of the document was provided in English but it could not be determined whether it was given to the recipient or the guardian. There were no case notes indicating that the guardian was involved in the decision for the recipient to remain at the facility. The guardian also told the HRA that he is not involved in treatment plan meetings and that the facility does not communicate with him on the meeting dates. The Mental Health and Developmental Disabilities Code (405 ILCS 5/2-102) requires that "*The Plan shall be formulated and periodically reviewed* ***with the participation of the recipient, to the extent feasible and the recipient's guardian****.*" Another concern was that the recipient spoke Spanish and was not provided an interpreter to ensure that he understood documentation that was given to him. The HRA interviewed the recipient and agreed with the documentation from the treatment team as well as the guardian's statement that the recipient seemed to have trouble understanding both languages and spoke both broken English and Spanish but did not appear to understand either very well. The Code (405 ILCS 5/3-204) requires that *"Whenever a statement or explanation is required to be given to a recipient under this Chapter and the recipient* ***does not read or understand English****, such statement or explanation shall be provided to him in a language which he understands...* ***When a statement or explanation is provided in a language other than English, or through the use of sign language, that fact and the name of the persons by whom it was provided shall be noted in the recipient's record."*** The original voluntary admission paperwork had an interpreter's name listed and a certification by a psychiatrist that the recipient understood the document he signed. The reaffirmation statements from Chester did not document if an interpreter was present or if the legal guardian was involved in that decision.

The Code (405 ILCS 5/3-400) allows any person to be admitted to a mental health facility as a voluntary recipient for treatment of a mental illness upon the filing of an application with the facility director. The facility director is to then determine and document in the recipient's medical record that the person (1) is clinically suitable for admission and (2) has the capacity to consent to voluntary admission. The Code lists the following criteria to make the determination: "*(b) For purposes of consenting to voluntary admission, a person has the capacity to consent to voluntary admission if, in the professional judgment of the facility director or his or her designee, the person is able to understand that:*
(1) He or she is being admitted to a mental health facility.
(2) He or she may request discharge at any time. The request must be in writing, and discharge is not automatic.
(3) Within 5 business days after receipt of the written request for discharge, the facility must either discharge the person or initiate commitment proceedings." It was documented several times in the chart information that this recipient had both an intellectual disability and a language barrier making it difficult to communicate. However the HRA found no documentation that the guardian was involved in any decision making processes with the exception of the initial attempts upon admission to obtain consent for the recipient's medications to continue. Therefore this allegation is **substantiated**. The HRA makes the following **recommendations:**

1. **Staff should be retrained on the facility policy for Voluntary Admission or Reaffirmation as well as the Mental Health Code requirements for voluntary**

admission and guardian involvement. Administration should ensure that when a patient has a legal guardian, that guardian consents to continued voluntary hospitalization of the patient are secured as per facility policy and Mental Health Code requirements.

2. **Staff should also be retrained on facility policy *IM 03.01.01.03 Treatment Plan* and the Mental Health Code requirements pertaining to guardian involvement in treatment planning. When a patient has a guardian, that person must be notified of all treatment meetings and accommodations must be made for the guardian to participate either by telephone or in person. The guardian can waive participation but has to be given the opportunity to participate and provide any input prior to the meeting. Unit Directors should ensure that the guardian is notified and that notification is documented in the case notes as required by facility policy. The guardian's signature should also be obtained on the treatment plan review indicating agreement with the plan, even if he/she was not able to attend the treatment plan meeting. Any input from the guardian, whether in advance or during the actual meeting, should also be documented in the treatment plan.**

The following suggestions are also offered:

1. Facility Policy RI .03.05.05.01 for non-English or limited English speaking patients requires documentation in the nursing note section of the medical record that the patient was offered interpreter services, whether the patient was agreeable to interpreter services, and what type of services were utilized during the intake process. The HRA found no documentation such services were used.

The policy also requires that the patient's chart be appropriately flagged indicating interpreter services are needed and also states that once the patient is psychiatrically and/or medically stable, the treatment team may consider the appropriateness of a referral to the Clinical Director or Director of Rehabilitative Services for an English proficiency assessment. According to documentation and interviews, this recipient speaks both broken English and Spanish. The treatment team should consider appropriate referrals for assessments or rehabilitation classes that might help facilitate better communication with this recipient. If interpreter services are deemed appropriate for this recipient, accommodations should be made accordingly. Ensure that communication assessments, needs, accommodations, goals and related actions are documented in TPRs.

2. The guardian stated in a subsequent interview that he is now being notified of treatment plan meetings; however the notice given is very short. The HRA suggests that in the future for all patients with legal guardians, the therapist and unit director should ensure that adequate notice is being provided to the guardian to allow him/her the opportunity to participate either by telephone or in person if they so choose.

3. Consider the use of a modified rights statement for recipients with ID/DD such as a statement using pictures.

4. Some recent restriction notices were sent to a previous Guardian Representative rather than the current Guardian Representative. Upon review of the chart, the HRA discovered that both are listed as the recipient’s guardian. The HRA suggests updating the contact information in the chart to reflect only the current Guardian Representative to avoid lack of communication with the current guardian.