HUMAN RIGHTS AUTHORITY - ROCKFORD REGION
REPORT OF FINDINGS

Case #18-080-9006
Mercyhealth Hospital – Rockton Avenue

INTRODUCTION

The Human Rights Authority (HRA) opened an investigation after receiving complaints of possible rights violations involving services at Mercyhealth Hospital – Rockton Avenue. The allegations state that a patient received inadequate care regarding admission, discharge and restraint procedures. If found substantiated, the allegations would violate the Mental Health and Developmental Disabilities Code (405 ILCS 5). The facility has a 14-bed inpatient behavioral health unit that averages 11 patients per day. They have 30 staff including RNs, mental health technicians, and assessors.

Complaint Statement

The complaints state that an individual was petitioned for involuntary commitment, but the hospital failed to provide a second certificate within 24 hours of the patient's admission.

The allegations also state that the patient was administered a catheter for a urine sample without her consent. The patient was requested to provide a urine sample in a cup but asked for more time because she was unable to urinate. Allegedly, the patient was restrained by one arm with that arm fastened to the wall above her head behind the bed and the restraint was unwarranted and uncomfortable.

Interview with staff (5/2/2018)

Staff began the interview by explaining that a urine sample was taken, and the patient was put in physical restraints, but neither were connected. The patient was violent in route to the hospital and the radio room alerted staff in the emergency department (ED). The patient was restrained upon arrival and the ED continued the restraints. The ED physician was there and, in situations like this, the physician immediately assesses the situation so that staff safety is considered in a timely manner. The patient was immediately fighting with staff, so she was put back into restraints. The situation was deemed unsafe which is why restraints were continued. Usually, when a patient enters the ED, staff would order bloodwork and a urine sample. The patient was catheterized, but not against her will, which would be against facility practice. The patient could not urinate, so the catheter was offered. The facility worked under emergency consent and the patient verbally consented to the urine collection and cooperated with the staff. Staff said they would not usually document consent for a catheter and the process is all explained to the patient ahead of time.

The patient was in four locked restraints and was laying back. She had one limb above her head and one limb down and was restrained on an emergency room cart, but not fastened to the wall. Both legs were restrained to the bottom of the cart. The staff explained that the ED does not complete an official emergency restriction of rights. They stated that because she was in the

emergency room, she was being treated as an emergency room patient. Staff explained that they do not know whether people presenting to the ED are behavioral health patients until they are assessed. The patient was put into restraints at 1330 and then released at 1450 according to charting.

Staff said that Haldol and Ativan were provided under emergent consent and given while the patient was under restraint. Staff stated that they could not speak as to whether education was provided for the medications and they would only be taking these actions in an emergency. Staff explained that while on the behavioral unit, all patients receive an emergency and restraint preference sheet, but this is not done in the ED. In the ED the patients can refuse medication if their behavior is not threatening to staff.

Regarding the commitment procedure, there have been some process changes. The patient had presented on the weekend and a change of physicians caused the second certificate to be missed, which was noted in court. The second physician thought that the patient was voluntary and did not complete the second certificate. The first certificate is generally completed by the ED physician and the second is completed in the behavioral health unit by the psychiatrist. If a patient was presented to the ED without a petition, staff would initiate if the patient was a danger to self or others. There is now a patient board that documents the dates and times of the petition and certificate. There is also better communication during the physical handoff of the report to the new physician and a reminder in the electronic record system. The patients do not always come into the facility with the petition and certificate and about ninety percent are voluntary. They usually have the physician assess and they would initiate involuntary commitment if necessary. The physician assesses the patient's capacity and examines the patient within 24 hours. Within 12 hours, the patient receives their rights.

FINDINGS

The ED flowsheet states that at 1:20p.m., "EMS brought pt. in with restraints applied. Security was called. Moved pt. from one bed to another. Pt was told not to fight and tried getting back off the bed. Pt was then put back into restraints." At 2:45p.m. the patient was out of restraints and it was documented they are no longer needed. The observation flow sheet indicates that the patient was checked every 15 minutes from 1:30p.m. until 2:45p.m. which accounted for the time in restraints. At 4:15p.m. a urine specimen was collected and at 5:05p.m. there is a note that reads "Up to restroom." The ED provider notes read that the patient "… is a 37-year-old female who was sent in by EMS from one of the local [facilities] for altered mental status. According to the paperwork that came with the patient she had flight of ideas had some visual hallucinations and was being sexually inappropriate at the [local] inpatient facility. Paperwork also states that the patient is not compliant with her medications … In route to our facility the patient tried to get away from paramedics and patient was physically restrained. On arrival here in the emergency department she once again tried to escape requiring us to physically restrain her and then give her some medications to help her relax and be compliant with the exam and to protect staff." Another ED note at 3:45p.m. after the restraints were discontinued states that the "Pt offered toileting, however unable to urinate and collect specimen." The patient was provided a document educating the patient and family on seclusion and restraints at 7:25p.m., which according to the events documentation the patient was already on the behavioral unit. The events documentation indicates the patient was admitted at 6:58p.m. onto the unit.

The HRA received a copy of the restraints order which states they were ordered at 1:31p.m. and started at 1:32p.m. and were to end at 5:31p.m. The "Order details" of the restraints stated, "Continuous x 4 hours" and the duration was for "4 hours." It is documented that the restraints were "soft 4-point restraints." In the order, it is documented that the order was canceled due to "Patient Discharge" by the discharge provider on 10/3/17 at 3:34p.m. The process instructions state that "The duration should not exceed 4 hours. Please set the start time to be the time the restraints are initiated." Also, "Restraints must be removed when an alternative is available and effective and/or patient no longer meets criteria." Additionally, the "Orders must be renewed every 4 hours or when discontinued" and "The provider or nurse must conduct a face to face assessment within 1 hour of initiation of restraint order and every 8 hours thereafter." The title of the documents reads "Restraints violent or self-destructive adult (age 18 and older)" and includes an order number but there is no other documentation of the reason for the restraints.

Regarding admission, the consult notes read that the "patient meets the standard criteria for inpatient psychiatric admission as she appears to be experiencing a manic phase marked by psychotic features … She presents with a history of previous suicide attempt and previous inpatient hospitalizations. She is in need of hospitalization to ensure her safety and to stabilize on medications. Petition & Certificate completed on this date. Patient rights will need to be read to patient once she is more awake and alert on E2. Charge Nurse provided with paperwork. Patient did not want to sign a Voluntary Admission form, as she stated, 'I'll do paperwork once I'm more awake.'" The HRA reviewed a court order dated 9/19/2017 that dismissed the petition "… for failure to file second certificate within 24 hours of admission." The HRA reviewed the petition for involuntary admission that was completed on 9/14/2017 at 5:23p.m. but the first certificate was not included in the record provided.

The HRA reviewed two documented instances of the patient receiving Haldol and Ativan in the ED. In the history and physical documentation, it reads that the patient received both drugs intramuscularly while in the ED. This statement is made again in the discharge notes, per the chart reports. Earlier in the report it was stated that the patient was physically restrained and then given "… some medications to help her relax and be compliant with the exam and to protect staff." The HRA reviewed a ED timeline that was provided which read that Ativan and Haldol were given at 1:30p.m., while the patient was in restraints. In reviewing medication orders for Haldol and Ativan, it reads that both the medications were ordered and discontinued at 1:29p.m. and there are no recorded administrations of the drugs. There are two other orders, one for Haldol and one for Benadryl, when the medications were ordered at 2:18p.m. and then both given at 4:57p.m., which is when the patient was out of restraints.

CONCLUSION

The HRA reviewed a policy titled "Involuntary Admission of Adults to Behavioral Medicine Unit – Admission Pursuant to Petition and Certificates." The policy states that a petition and two certificates are needed in the admission process and, the second certificate needs completed "As soon as possible, but not later than twenty-four (24) hours after admission of the recipient, excluding Saturdays, Sundays or holidays, pursuant to a petition for involuntary/judicial admission, the recipient shall be examined by a psychiatrist." The policy states that the psychiatrist may be on staff but not the person who executed the first certificate. Before the examination, the psychiatrist must inform the patient of the purpose of examination, that he/she does not have to speak with the examiner, and that any statements may be disclosed

in court. The policy states that the examiner shall execute the second certificate with the same requirements of the first certificate. The policy also states that "Within 24 hours, excluding Saturdays, Sundays and holidays, after the recipient's admission under this Article, the facility director shall file two copies of the following documents with the court in the county in which the facility is located" and the items named are the petition, first certificate, and proof of service of the petition and statement of rights to the recipient. The policy states "Upon completion of the second certificate, a copy shall promptly be filed with the court."

The HRA reviewed the facility policy "Physical Restraint Use for Violent/Self Destructive Behavior and Non-Violent/Non-Self-Destructive Behavior." The policy states that "For the safety of patients and others, Rockford Memorial Hospital (RMH) may use the least restrictive methods of effective restraint interventions when it is necessary to prevent harm to a patient or staff. Preserving the patient's rights, dignity and well-being during the use of restraints is foremost in the plan of care when this safety intervention is applied. After it has been determined that a patient is an imminent risk to physical safety or danger to self or other's restraints for non-violent behaviors or restraints for violent behaviors may be applied with ongoing assessments and the intent to remove restraints at the earliest possible moment." The general concept section has an area defining medication as a restraint. The policy states "A medication is used as a restraint; when it is given to control behavior or to restrict the patient's freedom of movement and is not a standard treatment for the patient's medical or psychiatric condition. Rockford Memorial Hospital does not utilize medication as a form of restraint." Another area titled "Emergency Application Situations" reads "An order must be obtained either during the emergency application of the restraint or seclusion, or immediately (within a few minutes) after the restraint or seclusion has been applied." A section of the policy is dedicated to "Restraints Used for Management of Violent or Self-Destructive Behavior" and it stated, "Before restraint is ordered, consideration is given to any potential medical (including psychiatric) contraindication, e.g., history of physical or sexual abuse. When restraint is the appropriate intervention, it is to be used for the shortest possible period, utilizing the least restrictive measure necessary to enable the individual to effectively cope with his or her environment and situation. Individuals in restraint are placed in protective, private, observable environment that safeguards their personal dignity and well-being." There is an additional section regarding restriction of rights which reads "This section applies whenever a patient is a recipient of mental health treatment as provided under the Mental Health and Developmental Disabilities Code, during an admission to the Behavioral Medicine Unit. Assistance in completing and documenting the restriction of rights when restraints have been used should be sought from the Behavioral Health Unit Director/Manager whenever there is a question of behavior related to mental health diagnosis. The Notice of Restrictions of Rights applies to the current episode of restraint only."

The Mental Health Code states that petitions are required to detain anyone up to 24 hours until a certificate is completed (405 ILCS 5/3-600; 604). "The petition shall be accompanied by a certificate executed by a physician, qualified examiner, psychiatrist, or clinical psychologist which states that the respondent is subject to involuntary admission on an inpatient basis and requires immediate hospitalization" (405 ILCs 5/3-602). "As soon as possible but not later than 24 hours, excluding Saturdays, Sundays and holidays, after admission of a respondent pursuant to this Article, the respondent shall be examined by a psychiatrist. …. If, because of this second examination, a certificate is executed, the certificate shall be promptly filed with the court. …. If the respondent is not examined or if the psychiatrist, physician, clinical psychologist, or qualified

examiner does not execute a certificate pursuant to Section 3-602, the respondent shall be released forthwith" (405 ILCS 5/3-610).

Regarding restraints, the Code states, "Restraint may be used only as a therapeutic measure to prevent a recipient from causing physical harm to himself or physical abuse to others. In no event shall restraint be utilized to punish or discipline a recipient, nor is restraint to be used as a convenience for the staff. (a) Except as provided in this Section, restraint shall be employed only upon the written order of a physician, clinical psychologist, clinical social worker, clinical professional counselor, or registered nurse with supervisory responsibilities. No restraint shall be ordered unless the physician, clinical psychologist, clinical social worker, clinical professional counselor, or registered nurse with supervisory responsibilities, after personally observing and examining the recipient, is clinically satisfied that the use of restraint is justified to prevent the recipient from causing physical harm to himself or others. In no event may restraint continue for longer than 2 hours unless within that time period a nurse with supervisory responsibilities or a physician confirms, in writing, following a personal examination of the recipient, that the restraint does not pose an undue risk to the recipient's health in light of the recipient's physical or medical condition. The order shall state the events leading up to the need for restraint and the purposes for which restraint is employed. The order shall also state the length of time restraint is to be employed and the clinical justification for that length of time." (405 ILCS 5/2-108).

Also under the Code, "The recipient and the recipient's guardian or substitute decision make shall be given the opportunity to refuse generally accepted mental health or developmental disability services, including but not limited to medication…unless…necessary to prevent the recipient from causing serious and imminent physical harm to the recipient or others and no less restrictive alternative is available" (405 ILCS 5/2-107). Another section of the Code reads "A medical…emergency exists when delay for the purpose of obtaining consent would endanger the life or adversely and substantially affect the health of a recipient of services. When a medical or dental emergency exists, if a physician or licensed dentist who examines a recipient determines that the recipient is not capable of giving informed consent, essential medical…procedures may be performed without consent. No physician nor licensed dentist shall be liable for a non-negligent good faith determination that a medical or dental emergency exists or a non-negligent good faith determination that the recipient is not capable of giving informed consent" (405 ILCS 5/2-111).

Additionally, regarding rights restrictions, the Code reads "(a) Whenever any rights of a recipient of services that are specified in this Chapter are restricted, the professional responsible for overseeing the implementation of the recipient's services plan shall be responsible for promptly giving notice of the restriction or use of restraint or seclusion and the reason therefor to: (1) the recipient and, if such recipient is a minor or under guardianship, his parent or guardian; (2) a person designated under subsection (b) of Section 2-200 upon commencement of services or at any later time to receive such notice; (3) the facility director; (4) the Guardianship and Advocacy Commission…." (405 ILCS 5/2-201).

In the discussion with the facility, staff admitted to not filing the second certificate needed to complete the involuntary admission of a patient. Additionally, the HRA reviewed court documents that the second certificate was not filed, and the case was dismissed. In accordance with the Code, a second certificate needs filed with the court within 24 hours as part of the involuntary commitment procedure (405 ILCS 5/3-610). This patient should have been released from the hospital earlier, which is a **substantiated** violation of her rights**.** The facility stated that they had taken steps to prevent this action from occurring again and this included a

patient board that documents the dates and times of the petition and certificate, better communication during the physical handoff of the report to the new physician and a reminder in the facility electronic record system.

There is evidence that the patient ultimately did not refuse the urine sample, although she likely assumed by then she had no choice, but there are issues with the restraint order that failed to state why the restraints were needed and employed (405 ILCS 5/2-108), and this case goes further. In this instance, Mercyhealth disregarded Mental Health Code protections for this patient just because she was being assessed in the ED—the Code applies there (405 ILCS 5/1-114). Surely a person who arrives from a mental health facility in restraints with complaints of "flight of ideas, visual hallucinations, being sexually inappropriate and non-compliant with medications", who "tried to get away from paramedics" and "tried to *escape* requiring us to physically restrain her", and who, in addition, was treated with psychotropic medications to stop her behaviors is indeed a behavioral health patient. A medical emergency and the patient's decisional incapacity to override her objections are not clear in this record, only her attempts to leave the hospital were, and the only authority to detain a patient against her will is on the presentation of a petition, which, in this case, came some five hours after she was prevented from leaving the hospital. (405 ILCS 5/3-600 et seq). There was no indication of consent or otherwise a need to prevent harm, rather "restraints and medications to relax her and to comply with the exam" (2-108; 2-107; 2-111), all a **substantiated** violation of her rights.

RECOMMENDATIONS

1. All relevant ED staff must be trained on the Code's involuntary detention and admission process and the completion of the required legal documents within. (405 ILCS 5/3-600 et seq.).

2. All relevant ED staff must be trained on the Code's restraint and right to refuse medication process and ED policies must be reviewed and revised into compliance. (405 ILCS 5/2-107; 108).

3. Complete restriction notices whenever a right under Chapter II of the Code is restricted. (405 ILCS 5/2-201).

SUGGESTION

The hospital's Physical Restraint Use for Violent (and Non-Violent)/Self Destructive Behavior states that they "…*may* use the least restrictive methods of effective restraint interventions when it is necessary to prevent harm to a patient or staff." The HRA suggests revising the word *may* to *should* since least restrictive methods are paramount themes for restraint application under CMS Rules and Illinois' Mental Health Code alike (42 C.F.R. 482.13 and 405 ILCS 5/2-108).