Illinois Guardianship & Advocacy Commission

FOR IMMEDIATE RELEASE

REPORT OF FINDINGS
INGALLS MEMORIAL HOSPITAL– 08-040-9013
HUMAN RIGHTS AUTHORITY— South Suburban Region

[Case Summary— The Authority made three corrective recommendations regarding one of the allegations, and the service provider accepted two of them. The public record on this case is recorded below; the provider's response immediately follows the report.]

INTRODUCTION

The complaint alleged that the Emergency Department staff did not follow the Code's requirements when it: 1) detained a recipient and did not admonish rights, 2) administered psychotropic medication, and, 3) transferred the recipient to another hospital against his will. This general hospital located in Harvey has a 14-bed psychiatric unit. If substantiated, these allegations would violate the Mental Health and Developmental Disabilities Code (the Code) (405 ILCS 5/100 et seq.).

METHODOLGY

To pursue the investigation, a site visit was conducted on March 26th, 2008, and the complaint was discussed with the hospital's General Counsel and the Attending Emergency Room Physician. A telephone interview was conducted with the recipient and his mother. The recipient's record was reviewed with written consent. The hospital's policies were also reviewed.

The adult recipient maintains his legal rights.

COMPLAINT STATEMENT

According to the complaint, the recipient was transported to the emergency department because he made a homicidal statement during an interview for mental health services. The police reportedly were involved in the recipient's transfer to the hospital. Once at the hospital, the recipient was not allowed to leave the emergency room and was not advised of his rights. The complaint stated that psychotropic medications were given against the recipient's will and in the absence of an emergency. The recipient became upset later that evening when informed that he had been petitioned for involuntary hospitalization and would be transferred to another hospital. The complaint further alleged that the recipient was medicated again without cause prior to his transfer. It was reported that the recipient's mother overheard a staff person saying on the phone that the medication had been requested by the receiving hospital.

FINDINGS

An HRA review of the record confirmed that the recipient arrived by ambulance at the hospital's emergency department on October 22nd, 2007 around 1:00 p.m. A petition and a certificate for immediate involuntary hospitalization accompanied him, which were prepared by a community mental health agency at 12:20 p.m. and 12:15 p.m. respectively on that same day. Although the petition was vague concerning the need for emergency admission, the document stated that the recipient wanted to hurt others. A review of the certificate revealed specific information such as the recipient had threatened to kill everyone while being interviewed at the community agency.

According to the record, the recipient's vital signs were checked during his care at Ingalls. His blood pressure, respiratory and pulse rate were normal. He was agitated but initially cooperative with most instructions. The recipient was oriented to person, place and time when examined by a Certified Physician Assistant. His judgment and insight were normal, but affect was flat. He denied suicidal ideations and having serious thoughts about killing others. A Complete Blood Count and a Basic Metabolic Panel were ordered but refused. There was no evidence that blood was taken over the recipient's objections. He provided a urine sample and tested positive for cannabis. Documentation indicated that the recipient was monitored by a sitter for safety reasons, and the recipient's mother was at his bedside.

The hospital's Central Intake Worker completed a behavioral health assessment by around 2:00 p.m. According to the assessment, the recipient was unemployed and lacked medical insurance. He reported feeling depressed, angry and having problems sleeping. He was candid about smoking cannabis and drinking alcoholic beverages. The hospital's intake worker prepared a second petition at 3:10 p.m. because the first petition was reportedly incomplete. The new petition mirrored the certificate stating that the recipient said "he might as well kill everyone if he does not get help immediately." Also, the recipient reported that he carries a knife and club with him because of frequent conflict with others. The intake worker wrote on the second petition that the recipient denied having homicidal ideations, but his behavior was unpredictable. An outside prescreening agency was called to assess the recipient for admission to a state-operated facility.

The recipient was medically cleared by the supervising physician at 5:31 p.m. Then, around 8:00 p.m., a nurse wrote that the recipient's behavior escalated when informed that inpatient hospitalization was needed. The medication administration record confirmed that Ativan 2 mg was given by mouth at 8:30 p.m. Only signed consent for general treatment was found in the record. There was no indication that informed consent for the medication was obtained. The nurse recorded that the recipient later refused all further treatment. Also, he was uncooperative with the staff's request to be moved to another area adjacent the emergency room while waiting for transfer. At the site visit, the HRA was informed that this holding area has a calmer environment.

Nursing notes revealed that blood work was declined, but the receiving hospital still agreed to accept the recipient. At 11:30 p.m. the recipient was reportedly somewhat cooperative when assessed, but he verbally objected to being transferred to a state-operated mental health

facility. The recipient's mother said "you are going to have trouble with him" referring to the transfer plan. The nurse documented that the emergency room physician agreed to sedate the recipient for transfer as requested by the receiving hospital. According to the medication record, Ativan 2 mg and Haldol 5 mg IM (intramuscular) were administered on October 23rd at 12:35 a.m. There was no documentation that the recipient presented serious and imminent physical harm before the injections were given. An "Authorization for Transfer" form reflected that the recipient was transferred by ambulance about fifteen minutes later.

The second petition and admonishment of rights were briefly discussed during our visit. On questioning, the General Counsel said that the hospital's Central Intake Worker who completed the second petition is trained to do psychiatric evaluations and answer questions. Although the Authority agrees with the attorney that the petitioning community mental health agency should have admonished rights under the Code's Section 5/3-200, the Section also applies to Ingalls because services were initiated by the hospital's staff.

The complaint that medication was given against the recipient's will was discussed with the staff. According to the physician, Haldol is used in the hospital's emergency department for sedative purposes. He said that Haldol and Ativan were administered for that reason. The physician replied no when asked whether the recipient was given an opportunity to refuse the medications or provided with a restriction notice. The receiving hospital's request that the recipient be sedated prior to transfer was also discussed. According to the physician, he would not have ordered the medications unless he believed that they were clinically appropriate. Also, the physician told the HRA that he has refused requests from receiving hospitals concerning this issue. Ingalls' emergency department reportedly does not have a policy regarding psychotropic medications.

A January 9th, 2008 letter from the hospital's General Counsel was reviewed. She wrote that the hospital's emergency department is not a mental health facility as defined by the Code. Recipients who present to the hospital's emergency room receive a medical screening and clearance, but their psychiatric conditions are not treated. According to the attorney, the recipient in question was reportedly transported to Ingalls for "medical clearance prior to his admission to an inpatient mental health facility." It stated that Ingalls never intended to treat or to admit the recipient for inpatient care.

Further review of the January 9th letter described the recipient as follows: 1) highly agitated, 2) under the influence of cannabis, 3) threatening to inflict bodily harm on others, and, 4) very angry when informed that he would be admitted to a mental health facility. According to the letter, the recipient was observed by the emergency room's physician who consulted with the receiving hospital that specifically asked that sedation be administered prior to his transfer. There were reportedly great concerns about the recipient possibly harming others during transport because of extreme agitation regarding hospitalization.

When the January 9th letter was discussed with Ingalls' General Counsel, she said that the role of the hospital's emergency room is stabilization and transport under the Emergency Medical Treatment and Active Labor Act (EMTALA), but the provider has always extended rights to recipients as much as possible. The Authority inquired whether the hospital restricts the

definition of a recipient of services to those who receive inpatient care. The attorney replied that recipients who present to the hospital's emergency department do not have the same rights as those admitted on an inpatient basis. The hospital is reminded that rights start the moment that a recipient is not allowed to leave the emergency room and upon commencement of services, per the Code. Recipients who are hospitalized have additional protections under the Code.

Additionally, the General Counsel was reminded that the hospital reportedly had formed a committee in 2001 and 2002 to review how other providers dealt with psychiatric recipients who presented to their emergency departments. According to the attorney, the hospital hired a full-time "Greeter" because they discovered that individuals with psychiatric problems were leaving before being seen by the emergency room physician. The hospital built a fast track area adjacent to the emergency room to separate psychiatric recipients. This temporary holding area reportedly is for recipients waiting to be transferred to another facility. It consists of nine rooms with subdued lighting and family members can wait with the recipient. The investigation team was informed that the hospital's staff receive ongoing training and outside mental health representatives are sometimes used for training purposes. The attorney stated that the hospital will continue to implement as much law as possible to protect recipients' rights.

According to the General Counsel's letter, the recipient was transferred because he needed a "proper mental health evaluation" which Ingalls could not provide. His transfer reportedly met all requirements under the Emergency Medical Treatment and Active Labor Act. During the meeting, the hospital's attorney said that involuntary recipients are "funneled to state-operated facilities." On questioning, the investigation team was informed that the hospital does accept recipients who require inpatient psychiatric care but lack medical insurance.

Ingalls' "Psychiatric Patients Care" policy states that the emergency room physician will determine based on an evaluation whether the recipient needs psychiatric care. All patients must be medically cleared. The Department of Behavioral Health Central Intake then will be called to evaluate the patient. The Central Intake Counselor is directed to notify the recipient's private physician or psychiatrist on call. If the patient is to be transferred to another facility, the intake counselor will facilitate the transfer.

CONCLUSION

According to the following Sections of the Code,

> (a) When a person is asserted to be subject to involuntary admission and in such a condition that immediate hospitalization is necessary for the protection of such person or others from physical harm, any person 18 years of age or older may present a petition to the facility director of a mental health facility in the county where the respondent resides or is present. The petition may be prepared by the facility director of the facility.
>
> (b) The petition shall include a detailed statement of the reason for the assertion that the recipient is subject to involuntary admission,

> including the signs and symptoms of a mental illness and a description of any acts, threats, or other behavior or pattern of behavior supporting the assertion and the time and place of their occurrence. (405 ILCS 5/3-601).
>
> The petition shall be accompanied by a certificate [and] … shall indicate that the physician, qualified examiner, or clinical psychologist personally examined the respondent not more than 72 hours prior to admission. It shall also contain the physician's…clinical observations, other factual information relied upon in reaching a diagnosis…. (405 ILCS 5/3-602).
>
> Psychotropic medication means medication used for antipsychotic, antidepressant, antimanic, antianxiety, behavior modification or behavior management purposes is listed in the AMA Drug Evaluations, or Physician's Desk Reference, or which are administered for any of these purposes. (405 ILCS 5/1-121.1).
>
> If the services include the administration of electroconvulsive therapy or 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 5/2-107 …. (405 ILCS 5/2-102 [a-5]).
>
> An adult recipient of services … must be informed of the recipient's rights to refuse medication …. If such services are refused, they shall not be given unless such services are necessary to prevent the recipient from causing serious and imminent harm to the recipient or others and no less restrictive alternative is available…. (405 ILCS 5/2-107 [a]).

According to Section 5/2-201 of the Code, whenever any rights of a recipient of services are restricted, the recipient shall be promptly given a notice of the restriction.

The Authority does not substantiate that the hospital violated rights related to the recipient's detention and admonishment of rights. The authority to detain a recipient involuntarily for evaluation is initiated by a petition under Section 5/3-601. The record contained a petition completed by a community mental health agency at 12:20 p.m. The Code requires that a petition be accompanied by a certificate for immediate hospitalization. The

certificate was prepared by the outside agency at 12:15 p.m. as well, and both documents accompanied the recipient to Ingalls for his medical clearance.

No clear violations of the Sections or the hospital's policy were found.

The HRA understands that the hospital's intake worker prepared a second petition at 3:10 p.m. because the first petition lacked detailed information concerning the recipient's threats under Section 5/3-601. However, we take issue with this practice because the recipient's ordeal began hours earlier when the first petition was initiated. In Illinois there is only one way to be detained involuntarily for psychiatric evaluation and that is via the Mental Health Code, under which a petition must be completed in order to start the involuntary process and have authority hold any adult. The time at which the petition is initiated is vital as it sets strictly limited time protections and is a legal document that is intended to follow the patient and not be disregarded (405 ILCS 5/3-600 et seq.).

The investigation further revealed that Ativan was administered by mouth after the recipient's behavior escalated when informed that inpatient hospitalization was required. Also, Ativan and Haldol IM were given before he was transferred to a state-operated facility. The record contained signed consent for general treatment only, which does not cover unique informed consent requirements under Section 5/2-107 a-5 of the Mental Health Code. There was no documentation that the drugs and their side effects were discussed with the recipient, that he was given the information in writing or that he had the capacity to provide informed consent. The hospital’s letter suggested that the medications were not given as services or treatment but for sedation. Regardless, they are psychotropic medications for behavioral purposes under the Mental Health Code. The physician said that the recipient was not allowed to refuse medication. He said that receiving hospitals sometimes request that patients be medicated prior to transfer. But, he will only agree if he believes that the medication is clinically justified. The HRA reminds the provider that involuntary medication is allowed under Section 5/2-107 of the Code, only when serious physical harm to the recipient or others seems imminent.

The hospital violates Section 5/2-107 (a) and 5/2-201 because the recipient was not given a choice to refuse psychotropic medication without an emergency and without his rightful opportunity to have anyone notified of what was happening to him.

In regard to the complaint that the recipient was transferred to another hospital against his will, the HRA finds no violations because the Code does not prohibit private facilities from doing so.

RECOMMENDATIONS

1. The hospital shall follow the Code's Section 5/2-107 (a).

2. Complete restriction of rights notices whenever guaranteed rights within the Code are restricted.

3. Follow 5/2-102 a-5 and secure informed consent whenever psychotropic medications are proposed and whenever they are taken willingly.

SUGGESTIONS

1. The hospital should consider developing a policy that addresses the Mental Health and Developmental Disabilities Code's requirements for psychotropic medication.

2. Instruct all appropriate personnel to stop the practice of disregarding petitions that accompany recipients to Ingalls in favor of writing new ones (405 ILCS 5/3-600 et seq.).

3. Ingalls is encouraged to share rights information with recipients, especially when they spend over eleven hours in the hospital's emergency room. It may be comforting and relieving to some recipients if they know what is going to be happening. Rights information upon commencement of services under 5/2-200 is for all recipients, a separate requirement and not just for "admitees".

COMMENTS

The Authority substantiated case #s 02-040-9008 and 03-040-9004 involving Ingalls Hospital. Although the substantiated complaint issue concerned the use of restraints, the current case reveals the same issue regarding service delivery and the Mental Health and Developmental Disabilities Code in the provider's emergency department. The Associate Counsel asserted that the recipients involved in the closed cases were recipients of emergency medical services until medically cleared. She further stated that the Code does not apply until such time. The HRA closed the cases because the provider agreed to follow the Code's Sections outlined in the reports.

In the January 9th, 2008 letter, the hospital's General Counsel wrote that the hospital's emergency department is not a mental health facility as defined by the Code. The Authority strongly disagrees with the hospital's exclusion of its emergency department because the Code defines a mental health facility, a recipient of services, and treatment as follows:

> A mental health facility is defined as any licensed private hospital, institution or facility **…** or section 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 Section 5/1-114).

According to Section 5/1-123, "a recipient of services" or "recipient" is a person who has received or is receiving treatment or habilitation.

Treatment includes, but is not limited to hospitalization, partial hospitalization, outpatient services, examination, diagnosis, evaluation, care, training, psychotherapy, pharmaceuticals, and other services provided for recipient by mental health facilities. (405 ILCS Section 5/1-128).

We respect Ingalls' commitment to following the EMTALA and reassert that in Illinois, detaining an adult for evaluation and care under petition, executing petitions and treating with psychotropic medications in the emergency department is authorized and driven by the Mental Health and Developmental Disabilities Code.

RESPONSE

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

Ingalls. Ingalls Health System

One Ingalls Drive
Harvey, IL 60426
708.333.2333

September 19, 2008

Via Facsimile (708) 338-7505
and Federal Express
Ms. Theresa Buell, Chairperson
Human Rights Authority
South Suburban Region
Guardianship & Advocacy Commission
1200 S. Hines Avenue
Madden Mental Health Center – Pavilion No. 9
Hines, IL 60141

Re: 08-040-9013

Dear Ms. Buell:

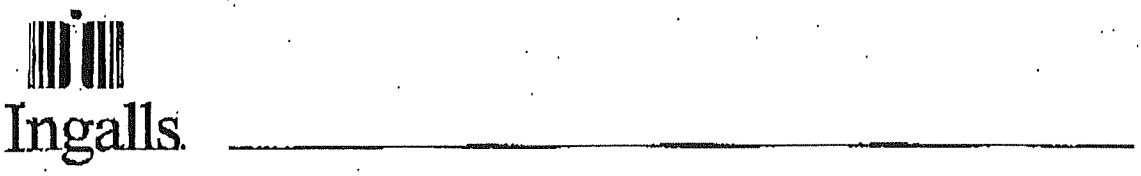
Ingalls Memorial Hospital ("Ingalls") is in receipt of your letter dated August 21, 2008 regarding the above-referenced complaint. We have had the opportunity to review the "Report of Findings" and are writing to you to respond to the recommendations, and comment on the findings.

A. Response to Recommendation and Suggestions:

1. Ingalls agrees that all competent patients have the right to refuse medication or treatment, after they are given proper information and allowed to ask questions and have questions answered. Ingalls will continue to honor all competent patients' rights to refuse treatment or medication and will assure that the Emergency Department personnel are re-educated on these concepts.

2. Recommendation number two assumes that the Mental Health Code governs medical stabilization and medical clearance procedures in the general hospital emergency department. As the Human Rights Authority ("HRA") notes, Ingalls does not agree with this position.

3. As in section one above, Ingalls supports the informed consent process for any medication, including psychotropic medications and will ensure Emergency Department are re-educated on these concepts. Pursuant to your suggestion, Ingalls will seriously consider the development of a psychotropic medication administration policy.



4. Ingalls agrees with the HRA that an initial petition should not be disregarded in favor of a new one. As the HRA knows, the intake worker at Ingalls thought the original petition as poorly done and as only trying to be thorough and diligent. The practice is not to re-draft the petitions and staff will be reminded.

Sincerely,

Diane G. Jacoby
General Counsel

klm

cc: Geraldine Boatman, HRA Coordinator
Jon Burnet, HRA Supervisor
Kurt Johnson