Abuse and Neglect Investigation: Alaska Psychiatric Institute (API)

API Violates Patients' Rights in Handling Patients' Grievances

Issued April 5, 2011
Revised and reissued July 13, 2011[1]

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[1] DLC sent a copy of the initially issued report to API for review and comment. API disagreed with DLC's findings. After reviewing API's comments and concerns, DLC revised the report to make its findings more clear, but DLC's conclusions did not change. DLC has also added specific recommendations to the revised report that it hopes API will follow to ensure that patients' grievances are properly investigated.

I. General Information & Terms

The Disability Law Center of Alaska (DLC) is a private, independent, not-for-profit agency, and is Alaska's federally mandated Protection and Advocacy (P&A) system. Under its federal mandates, one of which is under the Protection and Advocacy for Individuals with Mental Illness Act (PAIMI Act),[2] DLC has the duty and authority to investigate allegations of abuse and/or neglect involving individuals who experience a disability if the incident is reported to DLC, or if DLC determines there is probable cause that an incident of abuse and/or neglect occurred. The PAIMI Act gives DLC the authority to access facilities, records, patients, staff and administration in order to complete its investigation.

Alaska Psychiatric Institute (API) is licensed as a specialized hospital, located in Anchorage, Alaska. API is licensed for 80-beds, is the State's only state-operated psychiatric hospital, and provides evaluation and treatment to individuals experiencing or suspected of experiencing a mental illness, regardless of their home-community within the state. The hospital is certified to receive Medicare and Medicaid funding, and is also accredited under the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). API is a Designated Evaluation and Treatment (DET) facility as identified by the State's Department of Health and Social Services.[3]

Abuse under PAIMI regulations "...means any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with mental illness, and includes but is not limited to acts such as: rape or sexual assault; striking; the use of excessive force when placing an individual with mental illness in bodily restraints; the use of bodily or chemical restraints which is not in compliance with Federal and State laws and regulations; verbal, nonverbal, mental and emotional harassment; and any other practice which is likely to cause immediate physical or psychological harm or result in long-term harm if such practices continue." 42 C.F.R. § 51.2.

Complaint under PAIMI regulations "...includes, but is not limited to any report or communication, whether formal or informal, written or oral, received by [DLC], including media accounts, newspaper articles, telephone calls (including anonymous calls) from any source alleging abuse or neglect of an individual with mental illness." 42 C.F.R. § 51.2.

Neglect under PAIMI regulations "...means a negligent act or omission by an individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to an individual with mental illness or which placed an individual with mental illness at risk of injury or death, and includes, but is not limited to, acts or omissions such as failure to: establish or carry out an appropriate individual program or treatment plan (including a discharge plan); provide adequate nutrition, clothing, or health care; and the failure to provide a safe environment which also includes failure to maintain adequate numbers of appropriately trained staff." 42 C.F.R. § 51.2.

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[2] Under the Protection and Advocacy for Individuals with Mental Illness Act (PAIMI), 42 U.S.C. § 10801 *et seq.*, DLC is mandated to protect and advocate for the rights of people with mental illness.
[3] *See* A.S. § 47.30.915.

II. Factual Findings

On or about January 5, 2011, DLC received a complaint alleging a patient who experiences mental illness was injured as a result of an inappropriate physical restraint by API staff. DLC received another complaint alleging inappropriate physical restraint from a different patient, on or about February 3, 2011. Based on its receipt of those complaints, DLC initiated investigations to determine if the allegations could be substantiated, and if so, to determine if abuse or neglect occurred. DLC learned that both patients, prior to their discharge, filed a formal complaint with API about the incident.

As part of its investigation, DLC requested and received a copy of the hospital's internal investigation into these incidents. Among the documents received was a copy of a letter sent to the patients from API, notifying them of the conclusion of its investigation. After reviewing the information provided by API in connection with its investigations, DLC reviewed API's policies and procedures for the handling of patient grievances as well as the applicable federal regulations for how patient grievances are to be handled.

According to the first patient's records, he filed a complaint about the alleged incident on or about December 5, 2010; it was marked "Urgent." An extension was given the hospital's investigator to complete his investigation until January 1, 2011. The extension was granted by a hospital physician on December 16, 2010, without notifying the patient. The letter to the patient from the hospital informing him of the conclusion of the complaint investigation was dated January 3, 2011.

The second patient's records indicated he filed a complaint about the alleged incident on or around January 18, 2011. DLC did not receive a copy of the original complaint; however an e-mail from the hospital's Consumer and Family Specialist to hospital administration, dated January 19, 2011, asks if the patient's complaint should result in an Unusual Occurrence Report (UOR).[4] It appears the response was in the affirmative, as DLC received a copy of the resulting UOR, which was dated January 19, 2011. A letter was sent by the hospital to the patient informing him of the conclusion of the investigation into his complaint, and was dated February 16, 2011. DLC does not know if an extension was requested or granted, however the investigative report stated it took 20 days to complete the investigation.

The hospital's policies and procedures for the handling of patient grievances (P&P No. PRE 030-03, effective 10/31/07) states that:

[4] An "unusual occurrence report" (UOR), is a report that documents an "unusual occurrence." An "unusual occurrence" is "...Any occurrence which involves a potential liability, or represents any disruption to the hospital and its normal operations, including any incident which occurs while on API property and occurs to the person or personal property of hospital on-duty staff, students or student interns, visitors, volunteers, or patients, and involves any loss, damage, bodily injury, or occupational injury or illness. It also involves any incident which occurs off API grounds and involves hospital on-duty staff, admitted patients, or volunteers." (API P& P No. LD-020-06, Unusual Occurrences/Incidents, effective 10/16/07)

III. Level I, First Response

F. The Level I reviewer will meet with the patient to discuss the concern and look for resolution. By the fifth (5th) business day after the original date of the patient's filing, the Level I reviewer will write the proposed resolution on the form and discuss it with the patient.

a. If, in the course of the review, it becomes apparent that more time is needed to gather information, a five (5) business day extension can be requested in writing, informing the patient that more time is needed. No more than three (3), five (5) business day extensions may be made.

G. The patient will review the form with the Level I reviewer and mark the response: Agree; Do Not Agree; or Do Not Agree, Submit to Level II.

H. The Level I reviewer will give the patient a copy of the Level I response with the reviewer's and the patient's signature.

I. Complaints and grievances not resolved at Level I and submitted to Level II will be referred directly to the CEO. The CEO may conduct the review or designate an impartial party to conduct the review.

Under a Level II review, the hospital's policies and procedures state:

V. Level II, CEO Review

C. Within five (5) business days, the Level II written response indicating the name of the reviewer, the steps taken on behalf of the patient to investigate the grievance, the results of the grievance process and the date of completion and offered solution will be presented to the patient.

D. The patient may choose Agree or Do Not Agree and signs the form with the staff who reviews the response with the patient.

Based on DLC's review of the documents provided by the hospital in connection with these complaint investigations, it does not appear that any of the elements of the hospital's Patient Grievance Procedures noted above were followed. It appears that instead API followed the policy below in lieu of completing the patient grievance process:

II. Grievances alleging abuse or employee misconduct.

C. Any allegation of employee misconduct which may be illegal or unethical will be immediately reported according to API P&Ps, a UOR filed according to policy, and a Risk Management investigation initiated. The patient will be informed of the process as fully as possible without compromising the investigation, and protected and supported throughout. (Refer to API P&P HR-040-06 Standards of Conduct.)

At the conclusion of a patient grievance investigation API must send notice to the patient of the investigation outcome. The patient grievance policies and procedures state:

V. Level II, CEO Review

C. Within five (5) business days, the Level II written response indicating the name of the reviewer, the steps taken on behalf of the patient to investigate the grievance, the results of the grievance process and the date of completion and offered solution will be presented to the patient.

D. The patient may choose Agree or Do Not Agree and signs the form with the staff who reviews the response with the patient.

In addition to the hospital's own policies and procedures with regard to notice to the patient following completion of the complaint investigation, Federal regulations at 42 C.F.R. § 482.13(a)(2)(iii) requires:

> (iii) In its resolution of the grievance, the hospital must provide the patient with written notice of its decision that contains the name of the hospital contact person, the steps taken on behalf of the patient to investigate the grievance, the results of the grievance process, and the date of completion.

In addition to the above, the hospital's policies and procedures for patient grievances also provides for ways the patient may appeal civil issues and/or redress other concerns related to the investigation:

VI. Additional Provisions

A. Once all levels of administrative redress have been exhausted, the grievant may appeal civil issues to the Alaska Court System under current rules of civil procedure; file a grievance with the Disability Law Center of Alaska; or file a complaint with the Joint Commission on Accreditation of Healthcare Organizations (The Joint Commission).

Based on the information available, it appears that both patients' complaints went straight to a Risk Management investigation track. By API putting these complaints in the Risk Management

investigation track, it appears that API no longer followed the patient grievance policies and procedures that speak to timelines and extensions.

The first patient's grievance was handled as follows:

Patient Grievance Track	Patient Grievance Policy Provisions Not Followed
Grievance made on December 5, 2010	
Investigator Granted an extension on December 16, 2010 to complete investigation by January 1, 2011	Patient was not asked to approve the extension per the patient grievance policy.
Patient notified of grievance outcome on January 3, 2011	Patient only notified that his complaint was not substantiated and not notified of other problems concerning his care and treatment were found; however, because those findings are noted solely in a protected document (i.e., Quality Assurance/Peer Review), DLC was also unable to notify the patient what was found by the hospital.[5] Missing from the notification were: the name of the reviewer; the steps taken on behalf of the patient to investigate the grievance; the date of completion; and the offered solution (with an opportunity for the patient to either agree or disagree and sign).
Level II CEO Appeal	Not offered to patient
Notice of appeal to Alaska Court System or the ability to file complaints with outside agencies	Not included in notice to the patient

The second patient's grievance was handled as follows:

Patient Grievance Track	Patient Grievance Policy Provisions Not Followed
Grievance made on January 18, 2011	
Investigation to be completed by January 25, 2011	Investigation exceeded 5 business days and there is no record of an extension requested or granted by the patient
Patient notified of grievance outcome on February 16, 2011	Missing from the notification were: the name of the reviewer; the steps taken on behalf of the patient to investigate the grievance; the date of completion; and the offered solution (with an opportunity for the patient to either agree or disagree and sign).
Level II CEO Appeal	Not offered to patient

[5] *See* 42 U.S.C. § 10806(a); also A.S. § 18.23.030.

Notice of appeal to Alaska Court System or the ability to file complaints with outside agencies.	Not included in the notice to the patient

As the above tables note, several aspects of the patient grievance process and API's policies and procedures were not followed in processing these patients' grievances.

III. Conclusions and Recommendations

While DLC understands the value of internal investigations and found the hospital's investigations and reports to be thorough, it cannot rely solely on its internal review process to the detriment of the patient grievance process. Federal regulations for hospitals require a patient grievance process be in place. While API has such a process, DLC is concerned with how API is conducting patient grievance investigations (e.g., allegation of abuse against a staff member). Although these complaints were filed with the hospital as a patient grievances, API is processing these grievances in a manner that does not follow all the elements of how patient complaints are required to be handled according to the hospital's own policies and procedures or federal regulations and generally excludes the patient from the process to resolve his or her grievance.

Moreover, with regard to the notices sent to patients at the conclusion of an investigation, DLC has some concerns about the way that particular policy and procedure is written concerning patients ability to seek additional redress. Specifically, as the policy is written, it implies that a patient's ability or right to redress by filing a complaint with DLC and/or JCAHO[6] may happen only after all levels of administrative redress have been exhausted. This is simply not the case; the patient may file a complaint with either entity at any time. In addition, such notice should also include the patient's right to file a complaint with the State's Survey and Certification agency. Finally, since there are timelines that apply to filing an appeal within the Alaska Court System upon exhausting all administrative avenues within API, API must explicitly notify patients of their ability to file a court appeal and the time in which they have to do so.[7]

Whether or not the hospital elects to have patient complaints of this nature placed on dual tracks (e.g., both under Risk Management and Patient Grievance) or develops some other system, the fact that a Risk Management investigation takes place does not relieve the hospital from meeting both its own as well as the federal requirements for the handling of patient complaints. Thus, DLC concludes that the facts substantiate the complaint of neglect as to the handling of both patients' grievances.

In order to better serve patients, meet the federal regulatory criteria and comply with its own policies and procedures DLC makes the following recommendations:

1. Carefully document when patient grievances are referred to Risk Management and ensure that all steps in the patient grievance process, including applicable timelines, extensions and patient notification, are followed in conformance with the patient grievance policies and procedures;

[6] The Joint Commission (JCAHO) is an independent, not-for-profit organization, JCAHO accredits and certifies more than 19,000 health care organizations and programs in the United States. API is accredited by JCAHO.
[7] Alaska Rules of Appellate Procedure Rule 602(a)(2).

2. Fully inform patients of the outcome of patient grievances as indicated by the policies and procedures. Simply stating that the allegation is unsubstantiated is both unsatisfying for the patient and conveys very little information to the patient about his or her concern. If the patient grievance policy and procedure is followed the patient will at least know the steps taken by API to investigate the grievance regardless of the outcome;
3. Accurately convey in the patient notification letter the patient's other options to file a complaint with outside agencies such as DLC, State Certification and Licensing or JACHO and that the option to file a complaint with any of these agencies can be done at anytime;
4. Explicitly include in patient notification letters when the notification is a final agency decision and subject to appeal to the Alaska Superior Court, including the applicable timeline the patient has to make such an appeal; and
5. Ensure that the written explanation provided to patients about how to submit written or verbal grievances is clear and easily understandable to patients. DLC found the policies and procedures governing patient grievances convoluted and not particularly easy to follow. Information available to patients should be in simple language that clearly explains what patients should expect after filing a grievance.