

COUNTY OF MILWAUKEE
Behavioral Health Division Administration
Inter-Office Communication

DATE: July 3, 2013

TO: Supervisor Marina Dimitrijevic, Chairwoman, Milwaukee County Board of Supervisors
Supervisor Peggy Romo-West, Chairwoman, Health and Human Needs Committee

FROM: Kathie Eilers, Interim Administrator, Behavioral Health Division

SUBJECT: Questions and Answers Related to Day-to-Day Operations at the Behavioral Health Division

On April 8, 2013, I returned to Milwaukee County in the role of Interim Behavioral Health Division (BHD) Administrator. When I started at BHD, there were multiple surveys and related Plans of Corrections pending. On day one, I started working with the BHD leadership team to address all pending issues and also to move BHD forward with the implementation of the work plan created by the Mental Health Redesign Taskforce to move toward a community based mental health system. I have been working on the day to day operations of BHD, including all of the various initiatives and surveys, ever since. I have brought various reports to the Board regarding specific questions, initiatives and citations, including a comprehensive report at the June 12, 2013 Health and Human Needs Committee Meeting. Subsequently, on June 18, 2013, Chairwoman Marina Dimitrijevic, as a follow-up to a meeting held earlier, sent an e-mail to the County Executive asking for answers to a number of questions. Below is a list of the questions and responses from me and the BHD leadership team.

1. What were the most recent findings of immediate jeopardy?

The most recent findings of immediate jeopardy occurred on Rehab-Central, which is a licensed Nursing Home and is completely separate from the Acute Inpatient units both in licensure and operations. As of June 12, 2013 Rehab-Central was cleared of any and all Federal citations. Below is an overview of the immediate jeopardy and the timeline of the citations.

Rehab-Central (Nursing Home)

- On January 8 and January 15, 2013 Rehab-Central participated in the annual recertification visit by the State of Wisconsin, Department of Quality Assurance. Central received all standard level citations in this survey. These citations were primarily related to:
 - Environmental issues including door latches, frequency of inspections, and holes in ceiling tiles
 - Completion of paper work regarding minimum data sets (Nursing Home required assessment paperwork)
 - Pressure ulcer and insomnia assessments
 - Medication administration – medications were crushed when they did not need to be
 - Dishwasher temperatures

A Plan of Correction was submitted prior to January 18, 2013 and on February 8, 2013 BHD was informed that the Plan of Correction was approved and there would be no verification visit.

- On February 27, 2013, the Centers for Medicaid & Medicare Services (CMS) conducted a Federal Monitoring Survey. This monitoring survey resulted in the findings of additional deficiencies at an immediate jeopardy level. This was the first Federal Monitoring Survey ever conducted at the Nursing Home. These citations were primarily related to:
 - Failure to identify ways to prevent future restraint use
 - Failure to ensure that residents were free from resident-to-resident abuse
 - Failure to report all allegations of abuse and to ensure those allegations were adequately investigated
 - Failure to develop policies that prohibit abuse of residents by other residents.

A key theme present throughout almost of all the citations was the federal definition of abuse. Rehab-Central had been defining abuse as resident-to-resident abuse that results in injury. The federal inspection defined abuse as any action that could result in physical harm, pain or psychological distress. This is a significantly lower threshold of abuse than the facility had been operating under, subsequently the federal survey revealed many incidents that were not reported or investigated to the extent required based on the different definitions.

A Removal Plan was submitted to CMS and accepted on March 8th, 2013.

- On March 12, 2013, CMS arrived to review progress made regarding the Removal Plan. CMS exited on March 13, 2013 with no further citations; however the facility was informed that additional lower level citations would be arriving shortly. On March 14, 2013 additional citations were received associated with the February 27, 2013 CMS Federal Monitoring Survey. In addition to the immediate jeopardy related tags, these citations were primarily related to:
 - Failure to post survey results on the units, which was immediately corrected
 - Failure to provide weekend activities
 - Failure to ensure comfortable shower temperatures
 - Failure to protect residents from falls and self-harm
 - Failure to post staffing information
 - Failure to include physician participation in QI activities
 - Various environmental issues.

A plan of correction was submitted for all citations and accepted on April 12th.

- A follow-up to the federal survey and an extended complaint survey was conducted by the State of Wisconsin on behalf of CMS beginning on May 1, 2013 and ending on May 9, 2013. On May 7, 2013 the facility received an immediate jeopardy, which was removed on May 8th. After the removal, the citations were then reissued at lower levels. The facility received the Statement of Deficiencies (SOD) on May 22, 2013. The Plan of Correction (POC) was submitted by June 3rd, 2013. The facility received word that the POC was approved on Friday, June 7th, 2013. Following are some of the key components to the SOD and the POC that was submitted.
 - The majority of the citations were related to one resident that was involved in several incidents of threatening and violent behavior beginning on April 12, 2013 including:
 - Episodes of verbal/ physical aggression that did not result in care plan revisions

- Episodes of verbal/physical aggression that were not investigated sufficiently; reports were filed with the State but did not include witness statements.
 - Episodes of verbal threats that were not reported to the state.
 - The resident was then moved to an Acute Adult unit on April 22, 2013. This resident has been involved in many episodes of aggression and threatening behavior throughout their time on Central and their symptoms make it difficult to safely manage the resident on a Nursing Home unit.
- Contained in the May 22, 2013 memo from the State of Wisconsin was the notice of imposition of fines. The document read:

“As a result of this survey, the Division of Quality Assurance will recommend to the Centers for Medicare & Medicaid Services that all previously imposed remedies continue until such time as your facility achieves substantial compliance or your provider agreement is terminated.

In addition, based on our finding of immediate jeopardy to resident health or safety during the May 9, 2013 survey, the Division of Quality Assurance is recommending the imposition of the following remedies:

- *Federal Civil Money Penalty (CMP) of \$6,000.00 per day for the nine (9) days beginning April 12, 2013 and continuing through April 20, 2013 for a total of \$54,000.00*
- *Federal Civil Money Penalty of \$3,050.00 per day for the seventeen (17) days beginning April 21, 2013 and continuing through May 7, 2013 for a total of \$51,850.00*
- *Federal Civil Money Penalty of \$100.00 per day beginning May 7, 2013 and continuing through and continuing until your facility achieves substantial compliance.”*

Timely payment of the fines without an appeal would result in a 35% reduction in fines.

- BHD staff and leadership are working diligently to address and correct all of the above mentioned issues, including, but not limited to:
 - As clients are being discharged, single room status is being maintained to avoid roommate conflicts.
 - Additional occupational therapy staff is being dedicated to Rehab-Central to provide more therapeutic programming off the unit, which will decrease the density of the unit and thereby the propensity for altercations.
 - Additional therapeutic programs have been added during nights and weekends.
 - Any resident inflicting injury to another resident is immediately removed from the unit and transferred to a facility that can more appropriately meet their needs (i.e. Acute Adult Inpatient)
 - A special Incident and Investigation Review Team has been established and meets every business day. It is comprised of clinicians and the Rehab-Central Administrator with the goal of ensuring that treatment plans are updated in a timely manner. The team also addresses the psycho-social and behavioral needs of the residents.

- The Incident and Investigation Review Team will ensure that any investigations of mistreatment towards residents are conducted promptly and thoroughly and reported to the State authorities, if necessary.
- BHD administration will continue to assess the milieu of each unit by conducting multiple rounds per shift.

On June 10th, 2013 State surveyors arrived for a verification visit and all deficiencies were considered corrected.

2. Has the County's corrective action plan been approved?

- Rehab-Central is currently in full compliance with both State and Federal regulations.
- Acute Adult Inpatient has not yet heard if CMS has accepted the Plan of Correction. The remaining citations for Acute are mainly related to the environment issues, with one standard level citation related to documentation of treatment plans. BHD has heard verbally that the plan related to treatment planning has been accepted and there will likely be no follow up visit, however that information has not yet been provided in writing.
- The Hilltop Plan of Correction was approved on June 19, 2013. On July 2, 2013 BHD received notice from the State that Hilltop is currently in full compliance with both State and Federal regulations and no follow-up visits are required.

3. Can you provide the Board with a written copy of any corrective measures, memos or other documents related to safety problems at the Mental Health Complex?

This information has been provided to Chairwoman Dimitrijevic. Copies are also available in Legistar.

4. As the County moves toward increased community-based services during the next few years, what plans do you have to increase the immediate quality of care and safety at the Complex?

BHD is committed to quality services and safety both within the inpatient and long term care units as well as throughout the network of community based services. BHD has added quality assurance staff in prior years and continues to do so in the 2014 Requested Budget. In addition, training related to safety and BHD policies and procedures is ongoing, including the implementation of the nationally recognized Mandt system, which is a comprehensive, integrated approach to preventing, de-escalating, and if necessary, intervening when the behavior of an individual poses a threat of harm to themselves and/or others. Quality and performance reviews are also conducted of all the community agencies that BHD works with for mental health and AODA services. This will continue throughout the transition to a more community based system of care.

In relation to the above mentioned citations, all program staff that work on the units has been educated on violations and the Plan of Correction, including a sign-off to acknowledge their understanding. In addition, Director Colon and I sent a memo to all staff pointing out the good work done by the majority of staff and emphasizing accountability. (Please see Attachment 1.) A number of town hall meetings for staff have also been held and leadership has emphasized the need for competent, compassionate care.

BHD recognizes that improved quality assurance systems include a multitude of strategies such as audit and feedback, checklists/logs, peer review, computerized monitoring systems, communication and

teamwork, educational strategies and well developed guidelines, policies and procedures. In order to continually improve the care of individuals at the Complex, the Division continues to enhance the structured, integrated approach to reduce the risk of health and safety violations, with further emphasis on prevention. This administration recognizes that leadership is a key component in quality assurance systems and is therefore further re-structuring quality priorities and compliance activities in line with patient/resident safety standards in an effort to improve the patient experience. It is further recognized that involving clinicians, staff, patients and other key stakeholders is key to the success of initiatives and is essential in building a culture of continuous improvement. It is recognized that healthcare quality is complex and that there are many challenges, especially in an organization that is in transition, as well as time constraints and competing initiatives. Efforts to enhance communication, expectations and feedback during this transition will continue.

5. What recommendations have you made and what steps have you taken to recruit, train, and retain staff?

I have been very transparent, in both written and personal communication, with staff about BHD moving toward a more community-based system of care. Many staff has commented that, although they didn't like the message, they appreciated the "straight talk." In addition, ever since I first arrived, I have been working diligently with DHR to craft a retention plan for impacted employees. BHD is working with DHR to fill vacant positions and BHD has recently entered into an emergency contract with a temporary agency to provide nurses in Rehab-Central and Hilltop. The physical medical area has made some key hires and only has one vacancy remaining, which we hope to fill within the next few months. BHD has also signed a contract with a recruiting firm to assist in finding a Medical Director and Director of Nursing.

BHD leadership is also working on future plans to assist employees that are impacted by the closures including: consideration of requiring community providers to interview all BHD staff first for any new positions, working with area higher education organizations to provide discounted training and organizing job fairs and/or an information fair at BHD.

6. In a March 4th article regarding Brandon Johnson, the County Executive's spokesman indicated that state inspectors had visited the Mental Health Complex six times since December and that the County had not been notified of any further problems.

The Journal Sentinel article was referring to State visits on the Acute Adult Inpatient units. The State did return multiple times and no additional citations or issues were noted. This was a separate visit and procedure from the immediate jeopardy that occurred on Rehab-Central. BHD submitted a summary of the multiple visits by the State regarding the Acute Adult Inpatient service on April 29, 2013 (please see attachment 2).

7. Additionally, in an April 29, 2013 memo to the County Board's Committee on Health and Human Needs from DHHS Director Colon, prepared by Kathie Eilers, the Administration noted that "the psychiatric hospital has cooperated with all DHS state monitoring visits which include the following nine announced visits: December 13, 2012, January 11, 2013, January 17, 2013, January 24, 2013, February 07, 2013, February 22, 2013, March 07, 2013, March 21, 2013 and April 05, 2013. Another monitoring visit is expected the week of April 15, 2013. As a result of all these visits, no additional or continued concerns or complaint reviews have been identified."

These statements appear to conflict with a February 22, 2013 email from Director Colon to the Board noting that state surveyors during a visit found two issues that prompted a finding of immediate jeopardy.

Can you provide a rationale for the discrepancy between the noted accounts?

The statements mentioned above under question #6 and in the memo dated April 29, 2013 are all accurate. They are referring to the Acute Adult units and the survey that began in November 2012.

The email from Director Colon on February 22, 2013 was related to the Rehab-Central units and was sent out to Board members while the survey on Rehab Central was in process. Director Colon wanted to ensure that Board members were notified as soon as possible once BHD learned of the citations. The Acute Adult and Rehab-Central survey processes are completely separate even though the dates overlapped in 2013. The e-mail in February was specifically and exclusively related to Rehab-Central.

8. A March 23, 2013 Milwaukee Journal Sentinel article notes that the complex was cited for insufficient follow-up after reports of beatings of patients by other patients....and two patient claims of rape.

BHD is unaware of any charges of sexual assault or rape that occurred at BHD that are referenced in this article. BHD reports all instances of sexual contact to the Sheriff for investigation regardless of nature or circumstance. To BHD's knowledge no instances of reported sexual contact have resulted in any charges being issued.

In regard to the March 23, 2013 Journal Sentinel story, the following information might be helpful:

- There is a critical distinction between the term "sexual incident" and the term "sexual assault." At BHD, any report of a potential sexual contact, verbal or physical, is investigated as a "sexual incident" whether or not it is found to have occurred. A very small percentage of those incident reports meet the criteria set by Wisconsin State Statutes for "sexual assault" and typically no charges are filed either because it did not meet the criteria, because a patient declines to press charges, or because there is no basis to the claim. This is a very important distinction.
- When sexual contact occurs between two patients with developmental disabilities who are adjudicated incompetent and unable to consent, neither person should be described as the "perpetrator" because neither is considered more capable of willful action than the other.

9. Are the recent reports of alleged violence at the Mental Health Complex accurate and are they ongoing?

The recent reports related to violence are focused on the Rehab-Central units and are in reaction to the federal survey that resulted in an immediate jeopardy citation, as outlined in Question 1. As mentioned in the HHN meeting in May, it is important to note that this is the first time in the history of Rehab-Central's existence (over 20 years) that Federal surveyors conducted a follow-up survey to State surveyors. State surveyors had always been the only surveying entity and they conduct certification visits every year. State surveyors were in the facility reviewing incidents and documentation for the prior year in January 2013. As a result of that State survey, BHD was issued the standard level citations

mentioned previously. These are the lowest level of citations in terms of severity and BHD submitted Corrective Actions, which were approved and the determination was made that no follow up visits were necessary to verify the corrections. This is fairly typical for standard level citations.

Subsequently, Federal surveyors conducted a follow-up survey and issued the immediate jeopardy citations for many of the same incidents that were reviewed approximately one month before with no citations issued by the State. As was mentioned at HHN, the primary reason for this is the definition of abuse that the Federal surveyors used, which was significantly different than the State had been using. For example, if a resident struck another resident and injured that resident historically this was a situation that would be reported to the State per regulation. BHD was not required to report incidents of aggression that did not result in injury to the resident based on the definition of abuse that was in place. The Federal definition includes lower levels of physical aggression and verbal aggression, therefore, according to the Federal surveyors, BHD was indeed required to report those types of incidents in order to comply with Nursing Home regulations. This was counter to what BHD had been doing with the State for its entire history. The State was aware of these incidents because reports were written for many of these incidents, and they were in agreement that they did not rise to the level that required reporting. The same issue was cited related to updating of treatment plans and conducting thorough investigations.

BHD and Rehab-Central are dedicated to minimal use of restraint; however given the population that currently resides on the Nursing Home units we cannot guarantee that further incidents will not occur. BHD is now reporting all incidents of abuse, regardless of their severity.

10. If the reports of alleged violence are accurate, what is being done right now to combat it?

BHD has been working diligently to address the issues noted in Rehab Central and the steps that have been taken to reduce the number of violent incidents are listed above in Question #1. These actions have made a significant improvement in the number of aggressive or violent incidents. At this point, it is too early to determine if this is a trend but preliminary results are quite promising. One of the key components to the corrective action is the reduction in census. Because of several discharges and a reorganization of resident location, each resident now has their own room, which has helped significantly. BHD will continue to review the needs of all units and make the necessary adjustments to ensure safe, quality services are provided throughout the complex.

Summary

In conclusion, in 2013 BHD has experienced an extraordinary amount of surveys and media attention. The BHD team and I have come together to address many issues immediately and we have submitted successful Plans of Correction on all of the citations. At the same time, BHD has maintained their commitment to working toward a more community based system of care by working with Family Care and DSD to close 24 beds on Hilltop, continuing to focus and move forward on the goals set by the County Board and the Mental Health Redesign Task Force, implementing major components of the EMR and continuing to work toward Joint Commission accreditation. I have been actively participating in all of this since the day I began. I have worked diligently on increasing communication with staff and focusing efforts on quality of care. I have, and will continue to, hold town hall meetings where information can be shared with staff and also where staff can ask questions and communicate concerns to the leadership team. The 2014 Requested Budget that I submitted with the DHHS Director continues to move BHD to a more community based system of care and invests over \$4 million in expanded and

new community based services for clients. In addition, BHD is exploring the possibility of dedicating an interdisciplinary team of staff to work with outside consultants to conduct independent reviews of BHD clinical services, incidents and quality of care.

I, along with the BHD and DHHS leadership team, will continue to keep the County Board informed of any future surveys. I will also continue to work diligently to provide high quality services to the clients we serve.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Kathie Eilers, RN, MSN". The signature is written in black ink and is positioned above a horizontal line.

Kathie Eilers, Interim Administrator

Department of Health and Human Services – Behavioral Health Division

cc: County Board of Supervisors
County Executive Chris Abele
Héctor Colón, Director, Department of Health and Human Services
Raisa Koltun, County Executive's Office
Kelly Bablitch, County Board