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Colorado Hospital Association

CHA Advocacy Successes in BHA Provider Rule Packet
Fall 2023

On behalf of its member hospitals and health systems, CHA worked closely with the BHA to secure 18 substantive changes to the provider rule packet that the BHA initially proposed in June 2023:

- **Enforcement delay**: CHA secured delayed enforcement of these rules until July 1, 2024. The rules are still effective Jan. 1, 2024; however, noncompliance and violations that do not impact health, safety, and welfare (e.g., data reporting, forms, etc.) will bring "attempt to cure" citations and notifications and will not be subject to adverse actions until July 1, 2024.
- **Timing for follow-up call**: Statute requires facilities to conduct a follow-up call to discharged patients within 48 hours; however, BHA proposed shortening this time frame to 24 hours to operate in conformity with the crisis rules. CHA secured language specifying that a follow-up call occurs within 24 hours but not to exceed 48 hours after discharge. CHA also secured language to clarify that if a patient does not consent to follow up than that must be documented in the patient's record.
- **Who can deny rights**: Because of CHA advocacy, the BHA modified the language to allow all licensed providers involved in the individual's care rather than solely professional persons to deny an individual their rights if it causes the individual to destabilize or creates a danger to the individual's self or others.
- **Discharge materials**: The originally drafted language required the psychiatric advance directive to be included with the safety plan at discharge. CHA advocated that this was clinically inappropriate, and the psychiatric advance directive should be separate from the safety plan. The BHA changed the language to say the psychiatric advance directive should be provided as part of discharge materials.
- **Seclusion and restraint requirements**: CHA requested that the BHA reference CDPHE requirements regarding seclusion and restraint, as there could be misalignment if the CDPHE regulations change at some point in the future. BHA added in language requiring an annual review process to ensure the regulations are in alignment with state and federal requirements.
- **Data reporting elements**: CHA requested that hospitals not be required to report on data involving transportation holds as the transportation hold becomes void when a patient crosses the receiving facility threshold. BHA deleted two requirements regarding involuntary transportation holds.
- **Clarification on age of consent for medication**: The BHA added clarifying language to say that patients aged 15-17 can consent to psychotropic medication without a parent's or guardian's consent, consistent with regulation around consenting to behavioral health treatment.
- **Individual rights**: CHA asked that individual rights provided to patients should not go above and beyond those listed out in statute. In response, the BHA moved one right that is not listed in statute (i.e., access to letter-writing materials and postage) to the list of individual rights for short-term and long-term care treatment.

- **Involuntary emergency services designation**: BHA agreed to remove the optional Emergency Involuntary Services Designation (11.16) with agreement to continue discussions for future rulemaking. CHA's feedback has been that this voluntary designation would add confusion and administrative burden without clear value add, while the BHA's perspective is that this would significantly reduce administrative burden.
- **Data reporting timeline**: The BHA clarified that hospitals don't need to start collecting new disaggregated data until July 1, 2024, with such data now being due to the BHA on July 1, 2025. Therefore, hospitals will have over six months to build the new data elements into EHRs and troubleshoot with the BHA.
- **Professional person definition**: After a review from the Attorney General (AG), the BHA will **not** add APRNs to the definition of professional persons. Additionally, the AG will be interpreting PAs as under the definition of professional persons because they are licensed to practice medicine within Colorado.
- **Subsequent holds**: Consistent with CHA's interpretation, the AG's initial review of the statutory language is that multiple subsequent holds are allowed. The BHA had said previously that only one additional hold was allowed.
- **Completing an evaluation**: Per CHA's request, the BHA added language to the rule packet allowing sign off on an evaluation by a professional with more than two years' experience if the evaluation is completed by a professional person without two years of experience. In response to questions about whether experience prior to obtaining a license will go towards the two-year requirement, BHA noted that hospitals can allow for this in their individual facility policies.
- **Clarification on which patients receive safety plans**: The original language was written as if to require that all individuals being discharged or transferred receive a safety plan. BHA clarified the language to note only patients who were detained for a mental health hold should receive a safety plan prior to discharge.
- **Differentiate the role of EDs**: CHA secured language stating that an involuntary transportation hold expires when a facility receives the person for screening by an intervening professional.
- **Streamline use of evaluation forms in EHRs**: CHA secured language clarifying that the crisis form assessment can be integrated into a facility's EHR.
- **M-1 hold timing**: Removed language that allows a facility to exclude Saturdays, Sundays, and holidays from the 72-hour limitation on detaining persons for evaluation and treatment. A plain reading of the updated statute clarifies that a facility can place subsequent M-1 holds if they cannot complete an evaluation before the hold expires.