Minnesota Hospital Association (MHA) Updates

Health Regulation Division

May 15, 2024 | 11:00 AM – 12:00 PM

Meet MDH – HRD Leadership

- Shellae Dietrich, Federal Operations Manager
- Brenda Fischer, Regional Operations Manager, Federal
- Teresa Ament, Regional Operations Supervisor, Federal

Agenda

- Public Hearings
- Violence Against Health Care Workers – Action Plan
- Hospital Complaints
- Law Enforcement Tools/Weapons

Hospital Public Hearings

- Minnesota Statutes 144.555
- Under Subd. 1a, the hospital must notify the commissioner of health 120 days before the hospital voluntarily plans to implement one of the following scheduled actions:
  1) Cease operations;
  2) Curtail operations to the extent that patients must be relocated;
  3) Relocate the provision of health services to another hospital or another hospital campus; or
  4) Cease offering maternity care and newborn care services, intensive care unit services, inpatient mental health services, or inpatient substance use disorder treatment services

Hospital Public Hearings (cont.)

- After receiving the notice, Minnesota Department of Health (MDH) conducts the public hearing within 45 days.
- A public notice is issued two weeks prior to the public hearing.
- Public Hearings provide a platform for the public to comment.
- There have been 17 public hearings.

Violence Against Health Care Workers

- Minnesota Statutes 144.566
- Beginning January 1, 2025 – a hospital must annually submit to MDH its most recent action plan and the results of the most recent annual review conducted.
- Complete the Guidelines for Implementing Preparedness and Incident Response Action Plan (PDF) or a document that includes all of the action plan components.
- The Action Plan is to be submitted during the hospital license renewal period starting October 2024.
- MDH will provide further instructions on submission of the Action Plan via an electronic process.

Contact Information

- Federal Licensing, Certification and Registration (LCR) section
  - Email: Health.HRD-FEDLCR@state.mn.us
  - Kia M. Moua, Federal LCR Supervisor

Hospital Complaint Information

- Complaints
  - Tier 2 Workload, non IJ highs
  - Deemed status VS non deemed
  - Independent Contractor
  - Complaint investigation, what to expect

Complaint Investigations Tier 2 Workload

- **Mission Priority Document (MPD):**
  - Annual document directs and outlines work of the Quality, Safety & Oversight Group, CMS Regional Offices and the State Survey Agencies based on regulatory changes, adjustments in budget allocations and new initiatives.
  - New requirements based on statutes
  - Divided into Tier workload 1-4, all workload to be completed
  - MDH completing Tier 2 workload
    - Non IJ high complaints, all providers
    - Hospital recert survey, non deemed
    - And other provider types ESRD, RHC, ACS….

Tier 2 Workload Hospitals

- Tier 2 Workload Hospitals:
  - Non IJ Highs
  - Must be completed while on site
  - Deemed: Completed 45 business days after approved by CMS
  - Non-Deemed: Complete 45 business days after submission
  - Surveys will start as of today May 15, 2024

Independent Contractor

- MDH hired independent contractor, CertiServ assist with Hospital complaints and recertification surveys.
- Letter to provider, that explains role and CertiServ is authorized to complete duties and responsibilities to perform surveys for Medicare Certified Providers and Suppliers.
- MDH contact information to address any questions
- CertiServ will contact MDH for discussion of Immediate Jeopardy or Condition of Participation
  - Deemed= CMS
  - Non-Deemed= MDH

Complaint investigations

Complaint Investigations, what to expect

- **Surveyor or team, enter inform they are here for complaint investigation**
  - Inform them which Condition of Participation (COP) will be investigated
  - Keep the complainant identity private, will not disclose specifics
  - Approximate length of survey
  - Surveyor card with supervisor contact information
- **Provide a list of information needed for specific COP**
  - Hospital contact person, for communication and assistance
  - Hospital staff list on unit, contact staff who were not available during survey
  - List of patients past 3-6 months, depending on hospital size and time frame of complaint
  - Review minimum of 10 medical records including complainant
  - Policy and procedures and other specifics depending on COP

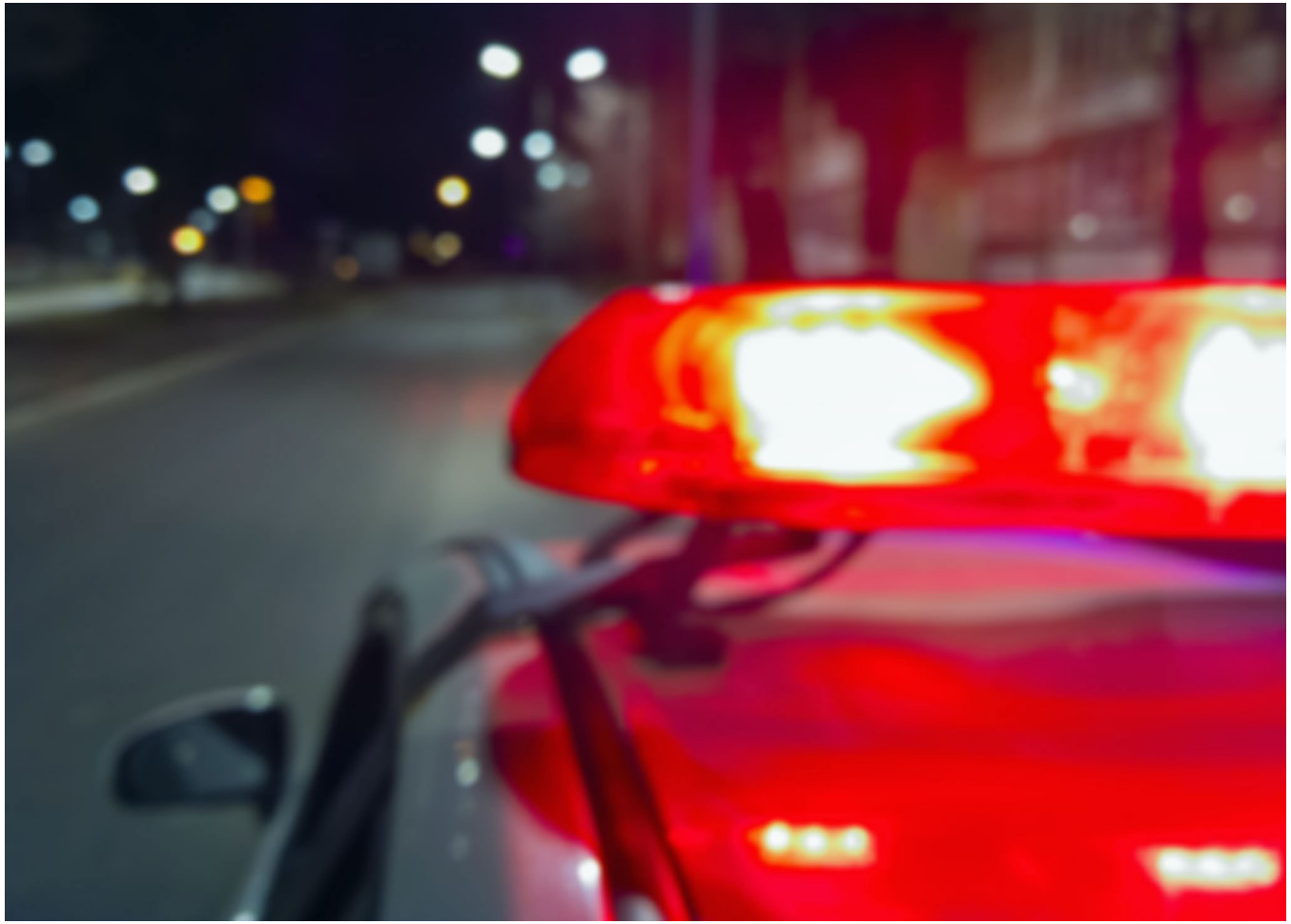
What occurs

- **Assistance needed**
  - Tour specific units or locations of the hospital
  - Assistance navigating patients' medical records
- **Investigation**
  - Interview current patients, and complainant
  - Interview staff
  - Interview Medical Director for the specific unit
  - Review and may ask copy of internal investigation

Investigation Completed

- Once medical records, policy/procedures and interviews are completed. Compliance determination is identified and may have some conversation with supervisor before decision completed.
- **Exit Conference**
  - No tag numbers are identified unless COP or IJ
  - Deemed: MDH recommends that complaint is either substantiated or unsubstantiated. CMS reviews the COP and or IJ to confirm agreement with the scope and severity.
  - Non Deemed: MDH determines tag number and deficient practice
  - Allow facility to submit additional information, 2 business days to submit new information to State Agency.
  - Hospital will receive Copy 2567 in a few weeks

Law Enforcement Tools/Weapons



A-0154

- *§482.13(e) Standard: Restraint or seclusion. All patients have the right to be free from physical or mental abuse, and corporal punishment. All patients have the right to be free from restraint or seclusion, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. Restraint or seclusion may only be imposed to ensure the immediate physical safety of the patient, a staff member, or others and must be discontinued at the earliest possible time.*

A-0154 (cont.[1])

- *The intent of this standard is to identify patients' basic rights, ensure patient safety, and eliminate the inappropriate use of restraint or seclusion.*
- *Each patient has the right to receive care in a safe setting. The safety of the patient, staff, or others is the basis for initiating and discontinuing the use of restraint or seclusion.*
- *Each patient has the right to be free from all forms of abuse and corporal punishment.*
- *Each patient has the right to be free from restraint or seclusion, of any form, imposed as a **means of coercion, discipline, convenience, or retaliation by staff**. Restraint or seclusion may not be used unless the use of restraint or seclusion is necessary to ensure the immediate physical safety of the patient, a staff member, or others.*

A-0154 (cont.$_2$)

- *CMS does **not consider the use of weapons** in the application of restraint or seclusion as a safe, appropriate health care intervention*
- *"Weapon" includes (but is not limited to) pepper spray, mace, nightsticks, tazers, cattle prods, stun guns and pistols*
- *Security staff may carry weapons as allowed by hospital policy, and State and Federal law.* ***However, the use of weapons by security staff is considered a law enforcement action, not a health care intervention.***
- *CMS does not support the use of weapons by **any hospital staff** as a means of subduing a patient in order to place that patient in restraint or seclusion.*

A-0154 (cont.[3])

- *If a weapon is used by security or law enforcement personnel on a person in a hospital (patient, staff, or visitor) to protect people or hospital property from harm, we would expect the situation to be handled as a criminal activity and the perpetrator be placed in the custody of local law enforcement.*
- *The use of handcuffs, manacles, shackles, other chain-type restraint devices, or other restrictive devices applied by* ***non-hospital employed*** *or* ***contracted law enforcement officials*** *for custody, detention, and public safety reasons are not governed by this rule.*
- ***The use of such devices are considered law enforcement restraint devices and would not be considered safe, appropriate health care restraint interventions for use by hospital staff to restrain patients.***

Law Enforcement Tools/Weapons

- **Expectation**
  - Security Staff have education and training
    - Patient de-escalation techniques
    - Appropriate physical hold techniques
  - Security Staff have training in each of tools/weapons along with facility policy and procedures
  - Security staff must be consistent when these tools/weapons are used
  - Process for after-event review to identify if security staff followed facility process, including law enforcement actions

Example A

- Patient was not free from excessive use of force and law enforcement tools for 1 of 10 patients (P1) reviewed for patient rights.
- P1 was pushed to the ground and handcuffed by a security staff who restrained P1 during an aggressive episode.
- P1 sustained multiple facial fractures as a result of security staff actions.

Example B

- Patients was not free from the use of force when chemical spray and a Taser gun used by hospital security staff to restrain 1 of 5 patients (P1) for escalated behaviors.
- Chemical spray was used, and patient fell to the floor
- Patient was then tazed by the security staff

Example C

- Patients were not free from the use of weapons when chemical spray was used by hospital security staff for 3 of 10 patients (P1, P9, P10) who had verbal outbursts and/or threats when security staff were present.
- Reviewed 3-6 months of incidents when security staff present
- Used chemical spray
  - Get patient into a restraint chair
  - Patient refusals and attempt to strike staff
  - Patient verbal confrontation

QUESTIONS

Thank You!

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