



COMMONWEALTH of VIRGINIA

ALISON G. LAND, FACHE
COMMISSIONER

*DEPARTMENT OF
BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES*

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February 25, 2020

Ms. Patrice Gay Brooks
Cumberland Hospital
9407 Cumberland Rd
New Kent, VA 23124

Dear Ms. Brooks:

On Thursday, February 13, 2020, staff of the Department of Behavioral Health and Developmental Services' ("DBHDS") Offices of Licensing and Human Rights conducted a review of the Cumberland Hospital units currently licensed by the Virginia Department of Health ("VDH"). During this review, staff examined Cumberland Hospital's policies, procedures, staffing plans, and staffing qualifications. In addition, staff reviewed clinical documentation and records of individuals served on units 2A, 6A, 6B, 7A, 7B, and 8A, including diagnoses, assessments, services plans, progress notes, medication administration records, and discharge criteria.

Based on its review, DBHDS has determined that Cumberland Hospital is currently operating "services" as defined in Virginia Code § 37.2-403 within some of the VDH licensed units without the required licensure from the Commissioner of DBHDS. If Cumberland Hospital chooses to continue operating these services, it must apply for the requisite DBHDS licenses. If Cumberland Hospital chooses not to seek licensure from the DBHDS Commissioner, then Cumberland Hospital must cease the provision of "services" as defined in Virginia Code § 37.2-403 in the units licensed by VDH. Both VDH and DBHDS are committed to working with you in order to ensure proper licensure and the adequate provision of services to all individuals served by Cumberland Hospital.

Background:

Pursuant to Virginia Code § 37.2-405, no provider shall establish, conduct, maintain, or operate or continue to operate in the Commonwealth any service, without being licensed by the Commissioner of DBHDS, except where the provider is exempt from licensing. Virginia Code § 37.2-403 defines "provider" as

“[A]ny person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to individuals with mental illness, developmental disabilities, or substance abuse or (ii) residential services for persons with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to § 54.1-3501, 54.1-3601, or 54.1-3701.”

“Service or services” is defined in Virginia Code § 37.2-403 to mean:

“Planned individualized interventions intended to reduce or ameliorate mental illness, developmental disabilities, or substance abuse through care, treatment, training, habilitation, or other supports that are delivered by a provider to persons with mental illness, developmental disabilities, or substance abuse. Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment, and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, in-home services, crisis stabilization, and other residential services; and 2. Planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided in residential services for persons with brain injury.”

Services Requiring Licensure by DBHDS

DBHDS identified “services” being provided to residents of the VDH-licensed units of Cumberland Hospital that constitute children’s residential services and inpatient psychiatric services, both of which require licensure by the DBHDS Commissioner.

1. Children’s Residential Service

Several of Cumberland Hospital’s VDH licensed units, including the “Autism Unit” and “Chronic Illness Units,” are operating services that fall within the definition of “residential treatment program” of the *Regulations for Children’s Residential Facilities* (“Children’s Residential Regulations”), 12 VAC 35-46. Section 12 VAC 35-46-10 of the Children’s Residential Regulations defines “residential treatment program” as:

“24-hour, supervised, medically necessary, out-of-home programs designed to provide necessary support and address mental health, behavioral, substance abuse, cognitive, or training needs of a child or adolescent in order to prevent or minimize the need for more intensive inpatient treatment. Services include, but

shall not be limited to, assessment and evaluation, medical treatment (including medication), individual and group counseling, neurobehavioral services, and family therapy necessary to treat the child. The service provides active treatment or training beginning at admission related to the resident's principle diagnosis and admitting symptoms. These services do not include interventions and activities designed only to meet the supportive non mental health special needs including, but not limited to, personal care, habilitation, or academic educational needs of the resident."

A review of the clinical records for individuals admitted to Cumberland Hospital's VDH licensed units reveals that the hospital is providing services to many individuals who have a primary diagnosis of mental illness and/or developmental disability. The clinical records show that while some of these individuals also have chronic health conditions, the primary reason for admission to Cumberland Hospital is directly related to the individuals' mental illnesses and/or developmental disabilities, rather than the individuals' chronic health conditions.

Documentation further shows that while medical services are provided to some individuals diagnosed with mental illness, the majority of services provided to individuals with primary diagnoses of mental illness consist of individual and group therapies, behavior interventions, and other interventions intended to reduce or ameliorate mental illness. In addition, the clinical records for individuals with developmental disabilities (autism) show that while medical services are provided, the services specified in the services plans for many of these individuals consist principally of interventions intended to reduce or ameliorate symptoms associated with their developmental disabilities and behavioral challenges, such as behavior support interventions, therapies (including occupational therapy), and skills acquisition, rather than medical treatment. Lastly, discharge criteria for some individuals with a primary diagnosis of mental illness include only criteria related to treatment for mental illness and do not include any criteria related to medical treatment.

In order to continue to operate these services, Cumberland Hospital must submit a service modification form to DBHDS to add additional beds to the existing behavioral health children's residential service license, as well as to add a service license for a children's residential service for children with developmental disabilities. Individuals should be served only on units appropriate for their age and primary diagnosis.

2. Inpatient Psychiatric Service

DBHDS also found that some individuals residing in the VDH-licensed units are receiving acute psychiatric services that constitute "inpatient psychiatric services," as defined by the *Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services* ("Licensing Regulations"). Section 12 VAC 35-105-20 defines "inpatient psychiatric service" as "intensive 24-hour medical, nursing, and treatment services provided to individuals with mental illness or substance abuse (substance use disorders) in a hospital as defined in § 32.1-123 of the Code of Virginia or in a special unit of such a hospital."

As stated above, a review of the clinical records for individuals served at Cumberland Hospital's VDH licensed units reveals that Cumberland Hospital is currently providing services to several individuals who have a primary diagnosis of mental illness, and/or developmental disability. While some of these individuals also have chronic health conditions, the primary reason for admission to Cumberland Hospital is directly related to their acute symptoms of mental illness, including active homicidal and suicidal ideation. Documentation shows that while medical services are provided to some of these individuals, the majority of services provided to these individuals consist of individual and group therapies, behavior interventions, and other interventions intended to reduce or ameliorate mental illness and are services that constitute an "inpatient psychiatric service."

3. VDH License Still Required

If Cumberland Hospital chooses to continue to serve individuals with a primary diagnosis of acute medical conditions, the hospital will need to maintain a license from VDH to operate this service.

Next Steps:

1. Certificate of Public Need ("COPN")

The conversion of any of the VDH-licensed acute care beds at Cumberland Hospital to inpatient psychiatric beds or to an inpatient psychiatric hospital will require COPN authorization. Virginia Code § 32.1-102.3 states no person shall commence any project without first obtaining a certificate issued by the Commissioner. The term "project" includes "establishment of a medical care facility," including a psychiatric hospital, and "conversion of beds in an existing medical care facility to medical rehabilitation beds or psychiatric beds." No certificate may be issued unless the Commissioner has determined that a public need for the project has been demonstrated.

The *Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations*, 12VAC5-220, establish review cycles for the review of COPN requests, grouping projects so that similar projects are reviewed at the same time. Projects related to psychiatric facilities/beds are reviewed in Batch Group "C". There are two Batch Group "C" cycles per year, with the cycles starting on April 10th and October 10th. The first step in the COPN application process is the submission of a letter of intent 70 days prior to the start of the cycle. The State Health Commissioner can waive the batch review schedule, upon request, in cases of documented emergencies.

COPN applicants seeking waiver of the batch review schedule need to petition the Commissioner by letter, asking for a specific date for the start of the process (letter of intent) and demonstrate what the emergency is that warrants waiving the cycle start date. It is incumbent on the applicant to make their case and provide whatever supporting documentation necessary to demonstrate the existence of an emergency. If the waiver is approved, an application will be due 40 days after the letter of intent is received.

Following a review and response for application completeness, the 190-day review cycle will start 70 days following receipt of the letter of intent. The review process may be accelerated if the application is recommended for approval by VDH review staff and the project is not challenged by third parties such that an informal fact-finding conference (IFFC) is required. A recommendation for denial, or a challenge for good cause, will result in an IFFC being held and the review cycle going the entire 190 days.

2. Submission of a Service Modification to DBHDS:

In order to provide “services” as defined in Virginia Code § 37.2-403, Cumberland Hospital must submit a service modification form to DBHDS to add the inpatient psychiatric service and additional children’s residential treatment units to their existing license. In addition to the service modification form, Cumberland Hospital must also submit the following:

- a) A working budget showing projected revenue and expenses for the next year of operation;
- b) Documentation of working capital to include funds or a line of credit sufficient to cover at least 90 days of operating expenses;
- c) Documentation of authority to conduct business in the Commonwealth of Virginia;
- d) Current service descriptions for each additional service that is subject to licensure; a staffing plan detailing adequate staffing for the volume and clinical needs of the population served;
- e) Employee credentials and job descriptions;
- f) A copy of Human Rights as displayed in common area(s),
- g) A sample Notification of Rights form, and a copy of protection and advocacy rights information as displayed;
- h) All policies required by the *Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services*, 12 VAC 35-115;
- i) All policies required by *Rules and Regulations for Licensing Providers by the Department of Behavioral Health or Developmental Services*, 12 VAC 35-105, for the inpatient psychiatric unit; and
- j) All policies and procedures required by the *Regulations for Children’s Residential Facilities*, 12 VAC 35-46, for the additional children’s residential treatment units.

As part of the service modification process, Cumberland Hospital must submit different service descriptions for each different unit providing services that constitute a children’s residential treatment program. Each service description should be appropriate for the age and unique needs of the populations served, particularly as it relates to children with mental illness versus developmental disabilities. Once DBHDS has reviewed and preliminarily approved all submitted documentation, licensing staff will then conduct an on-site review of the units to ensure compliance with applicable physical plant requirements of the Children’s Residential Regulations and the Licensing Regulations.

3. Delicensing of VDH Beds

After obtaining a COPN and licensure by DBHDS, Cumberland Hospital must notify VDH and submit an application and fee to decrease the number of beds licensed by VDH.

Conclusion

DBHDS and VDH are willing to work with Cumberland Hospital to assist with the process of obtaining proper licensure. If Cumberland Hospital would like to continue to operate “services” as defined in Virginia Code § 37.2-403, please contact Jae Benz, Director, DBHDS Office of Licensing at jae.benz@dbhds.virginia.gov within five business days from the date of this letter to schedule a meeting at the DBHDS Central Office to further discuss next steps and the licensure process. If Cumberland chooses not to seek licensure from the Commissioner of DBHDS, it should cease the provision of “services” as defined in Virginia Code § 37.2-403 and work to safely discharge individuals who need such services.

Sincerely,



Alison G. Land, FACHE
Commissioner