THE HSC HEALTH CARE SYSTEM
Health Services for Children
with Special Needs, Inc.

NOTIFICATION OF RESOLUTION OF GRIEVANCE

October 17, 2019

Grievance Reference Number: N/A

Zenia Sanchez Fuentes
1816 12th Street NW
Washington, DC 20009

Provider: Cumberland Hospital for Children and Adolescents

Member ID Number: 70460157
Medicaid ID Number: 70460157

Dear Ms. Zenia Sanchez Fuentes:

On 7/19/2019, you filed a written grievance with Health Services for Children with Special Needs about: Cumberland Hospital's inadequate facilities for the enrollee, conditions being unsanitary, failure to follow proper procedures concerning restraining or secluding, sustained injuries from excessive physical restraints and bullying, and staff at Cumberland being unprofessional.

We have investigated your grievance.

The Health Services for Children with Special Healthcare Needs (HSCSN) Chief Psychiatric Medical Officer (CPMO) conducted an extensive review in response to the Grievance Level II complaint. For ease of review, the HSCSN responses are in boldface and embedded within the original Grievance Level II document by section and topic. In addition, HSCSN conducted a Grievance Committee review of the findings on October 10, 2019. A summary of the final findings and recommendations from the Grievance Committee meeting are

included in the last section of this response.

Documents Reviewed by HSCSN:

1) **Cumberland treatment record for N.B.**
2) **Cumberland Unit Rules, Patient Rights**
3) **Cumberland Restrictive Procedures Policy**
4) **Summary NB from Cumberland Risk Management**
5) **Cumberland Therapeutic Boundaries Instructor document**
6) **Cumberland Hospital Guidelines – Therapeutic Boundaries**
7) **Cumberland Hospital Policy on Staff/Patient Relationships**
8) **Cumberland Hospital Policy on Nursing Services**
9) **Terris, Pravlik and Millian, LLP - Level 2 Grievance letter dated 7/19/19**
10) **Terris, Pravlik and Millian, LLP – Letter dated 9/7/18 to HSCSN (Grievance)**
11) **Terris, Pravlik and Millian, LLP – Letter dated 8/6/19 to HSCSN**
12) **HSCSN Notification of Resolution of Grievance 11/5/18**
13) **All documents submitted by Terris, Pravlik and Millian, LLP with Level 1 Grievance**
14) **All HSCSN documents associated with Level 1 Grievance review**
15) **Terris, Pravlik and Millian, LLP Enclosures submitted 7/19/19 with Grievance Level 2**

Re: HSCSN Enrollee N.B., a minor (DOB: 8/13/2002)

Additionally, we inform DHCF and HSCSN that New Kent County Social Services Department has found Ms. Bowden's claims to be concerning and are investigating Cumberland. On April 25, 2019, Ms. Bowden took N.B. to the office of New Kent Social Services so that they could interview him regarding the incidents at Cumberland. Other parents of Cumberland patients have complained to New Kent County Social Services Department about conditions at the hospital as well, and DHCF and HSCSN may contact the Department at (804) 966-1853 for further information concerning its investigation into Cumberland. Additionally, Disability Law Center of Virginia and a detective from another Virginia agency are investigating Cumberland due to allegations from various parents, including Ms. Bowden. We urge DHCF and HSCSN to address these allegations with the same urgency and seriousness.

HSCSN Findings: HSCSN conducted outreach to New Kent County Social Services Department on the following dates, 10/9/2019, in an attempt to obtain information about the results of their investigation. No information has been provided to HSCSN as of the date of this response. In addition, HSCSN made inquiry as to whether they had any additional substantiated claims against Cumberland Hospital. In an effort to obtain any additional information about complaints against Cumberland Hospital, HSCSN also conducted outreach to the District of Columbia Department of Behavioral Health (DBH) and received confirmation from District of Columbia Department of Health Care Finance (DHCF). Reports from both DBH and DHCF reflect they have not received complaints nor substantiated any claims against Cumberland.

Lastly, we attach to this grievance a letter written by Ms. Bowden which describes from her point of view the serious harm caused to N.B. by the poor quality of care that he received at Cumberland, the stress and anxiety that his poor treatment caused her, and how these harms continue to affect him and his family even now, many months after his release from Cumberland in October 2018. *See* Attachment 46, July 19, 2019 Letter from Nikia Bowden.

I. Inadequate Facilities for N.B., Given his Known Condition of Prader-Willi Syndrome

A. HSCSN's Response was Inadequate

HSCSN found that "[w]hile food seeking behavior did continue by the enrollee, the nutritionist noted this did not prevent weight loss." *See* HSCSN Response, Attachment 3, p. 2. However, HSCSN did not address the fact that Cumberland staff often gave N.B. extra snacks and did not supervise him properly during meal time. *See* August 2018 Grievance, Attachment 1, pp. 2-4; September 2018 Supplement, Attachment 2, p. 2. While N.B. had some weight loss, he could have achieved more success if his program had been followed properly by Cumberland staff.

HSCSN Finding: Cumberland Hospital evidenced the general skill set and treatment plan interventions required to admit a youth who required basic behavioral management and weight reduction programming. The nutritional planning and weight loss goals were clearly identified and resulted in measurable weight reduction. Specifically, N.B.'s BMI and weight met targets established by the Nutritionist at the time of the original assessment and treatment planning. This is evidenced by Nutritionist Discharge Goal #4 noted on 5/28/19 "... will have complied with his diet without aggression or manipulation 90% of the time and have achieved a gradual weight loss toward a body mass index (BMI) at least down to 38". Integrated Progress Note dated 8/14/18 reflects, "His weight is down 44 pounds since admission, to bring his body mass index (BMI) down from 39.2 to 30.2".

In addition, the nutritionist made adjustments in the nutritional planning evidenced throughout the treatment record. This writer will note that the facility had a multidisciplinary team of healthcare professionals who would be expected to be able to treat the conditions for which N.B. was admitted.

This writer must stress the following findings:

1. **Cumberland Hospital, acknowledged in their response to the original HSCSN inquiry that "Cumberland Hospital is a 94 bed pediatric rehabilitation hospital for ages 2-22 and includes a 16 bed residential program. Their patient mix frequently includes patients diagnosed with Prader-Willi Syndrome and their medical staff is knowledgeable about ordering appropriate clinical and behavioral interventions, which treat and manage the condition". This Reviewer notes that Cumberland hospital is not promoted as a specialty facility for the sole purpose of treating individuals with Prader-**

Willi. This Reviewer further determines that although not being a facility designed for the sole treatment of individuals with Prader-Willi, at baseline, Cumberland could meet N.B.'s treatment needs related to weight reduction. Review of all treatment plans, goals and documented progress toward goals was consistent with this expectation. Treatment plan goals were individualized to target the symptoms associated with a diagnosis of Prader-Willi Syndrome. Furthermore, the goals were specific to weight loss, food seeking behaviors, management of behavioral challenges and the history of bedwetting.

2. **In the face of the successful targeted BMI, this Reviewer notes that there appear to have been opportunities for improvement in the manner in which N.B.'s Behavioral Support Plan (BSP) and Morning Routine were implemented. The opportunities for improvement relate to the general practice of ongoing updating and goal revision. Upon review clear patterns were evidenced in the record which would generally lead to further individualization of the BSP:**

    a. **N.B. exhibited measurable and more consistent poor levels of cooperation and lower levels of positive behaviors in the evenings throughout his stay. There was no evidence in the available record indicating individualization of the BSP to address these challenges. Additional targeted modifications of the behavioral plan may have improved the areas of challenge for N.B.. Given this reviewer was not providing direct care of N.B. it is difficult to determine the degree of improvement, which he may have achieved.**

    b. **N.B. repeatedly struggled with following the plan set forth to manage his bedwetting. He was not cooperative with staff efforts to get him to change his clothes, his linens and shower and episodically this resulted in escalation of negative behaviors with tantruming, yelling, and increased opposition and at times aggression, which resulted in time out, seclusion or physical intervention. The record does not evidence the use of a token economy or other more measurable and immediate behavioral reinforcement system that may have mitigated some of the resistance exhibited by N.B.. In addition, it is not evident that Cumberland implemented a visual aid such that N.B. was more actively in the immediate reinforcement of the behavioral shaping process. A daily or weekly behavioral goals sheet in his room or in his possession mirroring targeted elements of the behavioral plan (tailored to his age and developmental and intellectual level) could also have mitigated his opposition, defiance and resistance and promoted more prosocial and positive responses in order to shape his behavior over time.**

    c. **The goals on the BSP include using praise and positive feedback. Staff training and scripting is not evident in the record in terms of language to use with N.B.**

on a consistent basis. Although not a requirement, this is an important component of behavioral interventions, particularly when in a facility setting with multiple shifts and multiple staff. Praise is infrequently referenced in BT and Nursing (RN and LPN) notes however, it is difficult to determine the degree to which this occurred or did not occur in the absence of documentation in the record, a script of recording of staff training and re-training.

d. **Upon review it appears the treatment program had an opportunity to further individualize the BSP and morning routine however, there is no evidence that this was done in order to address the persistent opposition. N.B. did exhibit positive days with measurable success as it relates to the BSP goals however, he did not exhibit generalization nor sustained internalization of these positive levels of behavior on the milieu.**

e. **Review of the record specific to food seeking behaviors evidences persistent food seeking behaviors throughout his placement. This reviewer notes that the goal was not to eliminate food-seeking behaviors. The Nutritionist documented references to food seeking behaviors on the Integrated Treatment Plan updates. The objectives focused on the following by example and are reflected throughout the record per Discharge Plan Goals on 5/22/18:**

#1) ..."documented improved control over his anger, will have identified his emotional triggers, and be able to utilize coping skills effectively".

#2) "N.B. will have developed at least one coping technique to manage frustration and /o anxiety, as evidenced by a decrease in the frequency and intensity of acting out, boundary violations, and self-injurious behaviors".

#4) "N.B. will have complied with his diet without aggression or manipulation 90% of the time and have achieved a gradual weight loss toward a body mass index (BMI) at least down to 38".

The Integrated Progress Summaries consistently reflect that N.B. "bargained for food...fusses when his tray is called last... continues to attempt to take food from his peers" (per Nursing entries for July 2018 by example).
Nutritionist notes reflect on the Integrated Progress Note "food seeking and stealing behaviors continues, although this has not been preventing weight loss"
Notes also reflect N.B. was allowed to choose preferred foods in smaller portions.
There is no goal or objective identified to eliminate food-seeking behaviors upon the review of the record. The focus appeared to be on weight reduction over time reflected in reduction in N.B.'s BMI to a specific target as noted above.

Overall there was a consistent Patient specific "Need" reflected throughout the record that Patient "Manage frustrations" and "Understand and improve eating behaviors". Writer further notes that upon admission, the original Nursing Care Plan Discharge Goals included the following "Patient will be compliant with his diet and exercise regimen 100% of the time" on 3/26/18.

<u>Recommendation:</u> Given it is difficult to achieve a target of 100% skill acquisition this writer questions if Cumberland should review the nursing goal setting in consultation with the behavioral specialist in order to establish more realistic discharge goals. Although this goal may be considered a minor area of concern, this writer notes that this drives expectations for the patient, staff and caregiver throughout the hospitalization. Reviewer notes it is common practice to adjust goals during the course of treatment based on progress.

Food seeking behaviors is a well-established element of the manifestation of Prader-Willi. As such, families are educated to secure food in the home and to redirect the food seeking behaviors. The Cumberland Treatment Plan goals addressed this expectation. The degree to which the goals were met is unclear. Instances where it is reported that the staff behaved in a manner, which triggered member, are beyond the ability of this writer to determine based on the available record review. This writer notes that inconsistent application of behavioral expectations or adherence to unit norms established for the staff can contribute to negative behaviors given inconsistent reinforcement is a predictor for contributing to poor progress towards goals. As such, the specific incident when staff are alleged to have eaten in front of member could contribute to challenging behaviors being exhibited by N.B.. This writer cannot determine the level of frequency to which this occurred. It is beyond the scope and capability of this reviewer to make a determination as to the impact on N.B. at the time or in the future.

B. Instances of Inadequate Facilities for N.B. that Took Place after the Level 1 Grievance was Submitted

On September 23, 2018, Ms. Bowden saw multiple cups of pudding in N.B.'s room. Pudding is only given to the patients when they take medicine; the medicine is crushed up and mixed in with the pudding. Ms. Bowden is concerned about there being multiple cups of pudding in N.B.'s room, which could mean that N.B. was not being given his medicine properly by the staff, or that he was given another patient's medication in addition to his own.

<u>HSCSN Finding:</u> Unable to make a determination based on available record. This reviewer is unable to make a determination as to whether the medication was being administered properly. There is no information in the record, which addresses the use of the pudding cups for administration of medication, and this Reviewer is unable to make a determination as to whether there was any quality of care impact or opportunity for improvement.

Additionally, Cumberland required N.B. to receive antibiotics during his entire stay at Cumberland for seven months. While HSCSN reports (Response, p. 4) that Cumberland claimed the antibiotics were necessary due to a dental issue, after N.B. was discharged, both his primary care doctor, Dr. Kathy Woodward, and the staff at the next hospital he went to, Nexus, agreed that antibiotics were not needed and that he had no infection, and stated that he would be prescribed additional medication besides antibiotics if he had an infection. This taking of unnecessary antibiotics greatly concerns Ms. Bowden because N.B. should not be taking medicine he does not need, and because N.B.'s continued use of antibiotics for seven months may make antibiotics less effective in the future when he actually needs them.

HSCSN Finding: The response from Cumberland, noted in the original HSCSN grievance Response, reflects that the Amoxicillin prophylaxis continued throughout his hospitalization. Additionally, the documentation of the prescribing of the antibiotic was well documented in the progress notes and in "every bi-weekly treatment team reports, copies of which Ms. Bowden received. The reports included copies of N.B.'s current list of medications which included Amoxicillin". This writer confirms upon review of the record that the use of Amoxicillin is clearly documented from the initiation of the treatment until discharge and is reflected on the discharge instructions. Well into N.B.'s stay, the record reflects continued use of the Amoxicillin. Furthermore, this appears in summations of the care associated with treatment team meetings. It is beyond the ability of this reviewer to determine if the continuation of the Amoxicillin discussed during the meetings. The notes documented its use. The appropriateness of long-term amoxicillin use for prophylaxis of dental infections is beyond the scope of practice of this writer. Review of the community practice standards reflects that there were no community practice standards identified by this reviewer specific to long term prophylaxis for dental infection. It is noted however, that upon review and discussion with HSCSN dental vendor Medical Director, that the duration of prophylaxis appears excessive and outside of the usual practice standard. The basic standard dictates N.B. needed to have the follow up as recommended by the Dentist at the time of the original April 2018 consultation to determine the next steps. In addition, the treatment plan and record does not speak to a rationale for the lack of follow up and it appears the need for dental follow up was not included in the ongoing treatment plan updates or discussions.

Recommendation: Reviewer finds Cumberland failed to refer N.B. for further dental evaluation and consultation to determine how best to treat his dental infection in light of the Dentist recommendation that he would need extractions under sedation. This Reviewer is unable to make a determination about the impact on N.B. given this is outside the scope and expertise of the Reviewer. HSCSN recommends that Cumberland Hospital review their process for consultations for services to ensure ongoing monitoring and follow up. This would include consideration of adding all consultation findings to the treatment plan if follow up is recommended until the issue is resolved or a clear plan is documented and in place.

In N.B.'s September 25, 2018 treatment meeting, staff continued to discuss N.B.'s food seeking behaviors, stating that he hovered around peers when they were eating and tried to eat food

from the trash. As stated in the first grievance letter, staff documented that N.B.'s diet is compromised at every meal time, and yet, they continued to fail to address the situation adequately. *See* Attachment 1, p. 3. It is clear that Cumberland was unable to accommodate N.B.'s diet and did not improve in its procedures to meet N.B.'s diet requirements from the time he was first admitted in March until his discharge in October. Every day, N.B. was allowed in the cafeteria while staff was preparing food, allowing N.B. to roam freely where food was out. N.B. should not have been allowed to be there. Cumberland staff knew that food left out in the open is a trigger for N.B. and compromises his food safety protocol. Furthermore, after being discharged from Cumberland, when N.B. was a patient at Nexus, staff there noted that, "within the context of [Nexus'] food secure program we have not seen any food seeking behaviors such as asking for additional or prohibited foods, stealing food, or eating food from inappropriate places (ex: trash cans)." *See* Nexus Children's Hospital Letter of January 10, 2019, Attachment 45. N.B. was transferred to Nexus only two days after being discharged from Cumberland, and his dramatic reduction in food-seeking behaviors there shows that Cumberland staff did not follow protocol properly to minimize these behaviors. Although the letter is undated, Nexus sent it via electronic mail the day before N.B.'s discharge from that hospital which was on January 11, 2019.

HSCSN Finding: This Reviewer is unable to make any determination, assumption, inference or speculation in terms of the specifics of Cumberland quality of treatment in comparison to the Nexus program. This writer is unable to determine the causes for the report from Nexus beyond what this Reviewer has already referenced related to the behavioral support plan.

Early in his stay, on May 2, 2018, Ms. Bowden, her former attorney and an investigator working for this attorney, went to Cumberland to meet with staff about the quality of care N.B. was receiving at the facility and to investigate an injury N.B. received to his hand. In this meeting, Cumberland staff agreed that they would create sheets for staff to sign after they had given N.B. food, so that Cumberland could keep track of how much food N.B. had been given each day. This was in response to N.B. receiving extra snacks and staff not keeping track of the food he had eaten. However, Cumberland does not appear to have actually followed this protocol. In the records that Cumberland sent to Ms. Bowden, there were no daily food sheets, nor were there calorie count sheets which Cumberland was also supposed to have been keeping from the beginning of N.B.'s stay. Without calorie count sheets, there is no way of knowing whether N.B. was sticking to the 800 calorie per day diet that he was prescribed.

HSCSN Finding: There were no calorie count sheets in the record. There are references to the daily calorie count limit entered by the Nutritionist but no flow sheets or charts were included in the documents submitted which could be reviewed. There is no reference to supplemental caloric intake data being discussed during treatment team meetings nor is this reflected in the Integrated Progress Notes, which were submitted for review.

Recommendation: Request that Cumberland consider as an "Opportunity for Improvement" the inclusion of an overview of any supplemental data on caloric intake in the regular Integrated Progress Note and also would strongly encourage that such information be included as part of the Nutritionist updates on the treatment plan during regular reviews.

On September 30, 2018, Ms. Bowden witnessed a staff member named Jay eating a Burger King sandwich and that a second Burger King sandwich was left in sight at the nurses' station. Cumberland staff had been informed that food left out is a trigger for N.B. In addition, as we noted in a previous grievance, it is Cumberland policy that no outside food may be brought into the facility. Inevitably, N.B. had an outburst in response to seeing the Burger King food that he was not allowed to have. Jay sent N.B. to seclusion in the back room, even though the outburst was caused by Jay's actions in bringing the Burger King food onto the unit and eating in front of N.B. In the Patient De-Briefing Form after this incident occurred, N.B.'s answer to the question "What might have been done to prevent this restrictive procedure?" was "Jay not finishing his." See Attachment 30, Patient De-Briefing Form, September 30, 2018. The sentence is not finished, but N.B. is referring to the Burger King food that he witnessed Jay eating.

HSCSN Finding: Writer reviewed the concerns that reported that staff ate food in front of member on 9/30/18, which reportedly triggered negative behaviors, which resulted in a seclusion and restraint. Upon review of the available record, there are no nursing notes indicating that N.B. witnessing staff eating precipitated a tantrum or aggression. Despite HSCSN reviewer being unable to find evidence in the record for the antecedent behaviors/trigger, writer also reviewed the Cumberland policy on "Therapeutic Boundaries" which is silent in terms of conduct by staff on the unit related to meals.

Given the population of youth who are treated at the facility who are diagnosed with diabetes, morbid obesity and other metabolic disorders it is recommended that the Cumberland team reinforce adherence to general training for direct care staff as it relates to conduct with patients and unit rules specific to staff.

Recommendation: HSCSN therefore requests a copy of the New Hire Training Policy or any other policy, which outlines staff conduct on the unit. In addition, request a copy of the training schedule and if training has not occurred in the last 6 months would recommend Cumberland re-train direct care staff on the relevant policy and submit documentation of its completion to the targeted staff to HSCSN.

On September 30, 2018, when Ms. Bowden was visiting N.B., she was told by Nurse Sheila that staff members will be mean to the patients but will then buy them a gift. Buying the patients gifts is also in violation of Cumberland's policy. On the same day, Ms. Bowden found out that a staff member had bought N.B. pants and two pairs of shorts. This greatly concerned Ms. Bowden, as she does not want any staff members bribing N.B. with gifts or keeping such gifts hidden from her.

Finding: HSCSN is unable to make a determination about reported discussions between Cumberland staff and Ms. Bowden as it relates to non-therapeutic interactions by staff such as buying patients gifts.

Recommendation: This Reviewer would recommend that Cumberland continue to review

and train staff on the Policy and Procedures for direct care staff conduct as noted in the New Hire Training related to giving patients gifts or other special treatment. Although not specific, attention to any special treatment of a patient by staff is referenced in the "Cumberland Hospital Therapeutic Boundaries" document, which staff are trained on and sign. If the Cumberland Hospital staff do not receive annual training on therapeutic boundaries HSCSN would recommend the facility consider adding this to the standard annual review.

On multiple occasions, staff told Ms. Bowden that N.B. was in a therapeutic group when she came to visit and Ms. Bowden would wait for N.B., assuming what she had been told was true. However, on multiple occasions, she would then witness N.B. in the cafeteria watching a movie. Staff members were either not telling Ms. Bowden the truth, or the therapeutic groups at Cumberland consisted of having the patients watch movies. On one occasion, Ms. Bowden was waiting for N.B. to return from a therapeutic group, when a staff member saw her waiting and showed her where he was: in the cafeteria. When Ms. Bowden went in, she saw that N.B. and the other patients were watching an extremely violent, inappropriate movie, which N.B. was not allowed to watch. Ms. Bowden was concerned that this movie had no therapeutic value whatsoever for N.B.

HSCSN Finding: This Reviewer is unable to determine the specifics of the event in question. The Cumberland Patient Handbook clearly advises patients (and staff) about rating limits for viewing content.

Recommendation: This writer recommends that the Cumberland clinical leadership review reinforce adherence to the rating restrictions for video and TV channel viewing with the staff; document this as updated training and last but not least, consider implementing a standard sign off of selected videos on their own set schedule. The sign off should be performed by either senior RT staff/leadership; clinical director or charge nurse for the unit depending on which functional team is responsible for showing the movies.

II. Cumberland Hospital Conditions are Unsanitary

A. HSCSN's Findings were Inadequate

HSCSN stated that it asked Cumberland to conduct an internal investigation into the matters raised in this grievance. HSCSN Response, pp. 1-2. Cumberland's investigation consisted of reviewing its own medical records of N.B.'s case under the direction of Leslie Bowery. *Id.*, p.2. However, a review of medical records does not adequately address the grievance related to whether or not hospital conditions for N.B. were unsanitary.

HSCSN concluded that N.B. refused to follow proper toileting procedure and refused to let the Cumberland staff clean his soiled sheets. HSCSN Response, pp. 2-3. However, Cumberland's response on this matter was inadequate and HSCSN should not have accepted it. The following example shows the inadequacy of Cumberland's response (Response, p. 3):

Lastly, on May 21, 2018, the enrollee's grandfather reported a soiled bed, but according to Ms. Bowery, there is no documentation of incontinence in the enrollee's medical record, nor is there documentation that the enrollee notified staff of incontinence.

The fact that Cumberland staff failed to note N.B.'s incontinence in his medical record does not show that his bedding was clean. Moreover, the fact that N.B. did not report his own incontinence is irrelevant; his grandfather complained on his behalf that his bedding was soiled and Ms. Bowden reported this almost every time she visited N.B. In these circumstances, Cumberland has presented no defense to the detailed evidence submitted by Ms. Bowden.

Every single time Ms. Bowden visited N.B. at Cumberland, his sheets were soiled. Cumberland staff did not regularly check patients' rooms for soiled sheets and clean them, as they should do according to their policies. The previous two grievances had attached photographic evidence which was not addressed by HSCSN. In addition, Ms. Bowden now submits the attached videos of Ms. Bowden's conversations regarding the soiling of sheets, referenced in the section below.

See below under 'HSCSN Finding'

B. Instances of Unsanitary Hospital Conditions After the Level 1 Grievance was Submitted

Every time Ms. Bowden visited N.B., his sheets were soiled, his room was dirty, there was usually food on the floor, and sometimes feces on the wall and occasionally blood on the floor and wall. The staff let the mess sit there for days without cleaning it up.

On October 2, 2018, Ms. Bowden visited N.B. at Cumberland and found his room to be a mess, with his bed soiled and deodorant and toothpaste in his room. Deodorant and toothpaste should not have been present because Cumberland placed N.B. on a protocol for pica syndrome, *i.e.*, a condition involving the eating of non-food items In addition, Cumberland's policy, which we have discussed in previous grievances, is that no toiletries should be in the patients' rooms. When Ms. Bowden brought up that his bed was soiled again, staff told her that N.B. was supposed to change his sheets himself. This was not the case, as Ms. Bowden had been told that staff would change N.B.'s sheets for him. During a conversation with nurse Mandy in which Ms. Bowden asked Mandy why N.B.'s sheets were still soiled, she does not directly respond, but instead stated, "What they're supposed to do Monday through Friday when they're all off the unit, one staff comes back and we go through all the rooms." *See* Attachment 4, Convo with Mandy re Cleaning Rooms. However, at the time of the conversation, the patients were all off the unit, and the sheets were still soiled.

At times, when N.B. did ask for his sheets to be changed, staff members did not give him fresh sheets and punished him by telling him that he could not go and watch a movie. As documented in the two previous grievance letters, N.B.'s sheets were left soiled regularly and his activities of daily living (ADL) bucket and toiletries were left in his room when they were not

supposed to be. *See* Attachment 2, p. 7. Toiletries were not supposed to be left in N.B.'s room as he was on a pica protocol beginning in August. Ms. Bowden brought this up with nurse Mandy, who agreed that the toiletries should not be in his room and that they would take them out of his room. Mandy specifically acknowledged that N.B. was on a pica protocol, but that there was lotion and deodorant in his room. She agreed with Ms. Bowden that the lotion and medicine cups should not be in his room stating, "You're right it shouldn't.... We'll put the lotion in the little medicine cups when he needs it." *See* Attachment 5, Convo with Mandy re Pica Protocol. On September 11, 2018, when Ms. Bowden visited, she again discovered lotion, a cup of medicine, and his ADL bucket in N.B.'s room. *See* Attachment 6, Pica Violations. From the day N.B. was put on a pica protocol to the day he was discharged, Cumberland continued to violate this protocol.

Additionally, there were many more instances of N.B.'s room being unacceptably dirty and unsanitary. Attachment 7, Discharge Day Blood on Floor, documents that N.B.'s blood (from an incident documented below) was still on his floor after two days. Additionally, the tank top that Cumberland gave N.B. to wear on the day of his discharge had his dried blood on it from the same incident. *See* Attachment 8, Pictures of N.B. Bloody Tank Top. Attachment 9, Video of Flies on Shoe, shows flies swarming on N.B.'s shoes, inside his room on September 11, 2018. Attachment 10, General Mess in Room, shows the general disarray and mess that N.B.'s room was in almost every day he was at Cumberland. Attachment 11, Video of Cleaning Bed, shows N.B. wiping down his bed and Ms. Bowden telling N.B., "You got to make sure you ask and say I know that's not clean cause then you're sleeping in pee still." Ms. Bowden also states, "Ms. Priscilla, his pillow is on the ground can he get a new pillowcase?" In another incident that occurred in late June, other patients on the unit wrote an inappropriate phrase regarding N.B. all over his room along with pictures of what they were referencing. It was on the walls of his room for months and staff never cleaned it. On July 5, 2018, when Ms. Bowden visited N.B., the drawing was still up on the wall. *See* Attachment 31, Drawing on N.B.'s Wall, July 5, 2018. Ms. Bowden asked if she could have supplies so she could clean his room herself, but the staff told her that they would take care of it and denied her the cleaning supplies. Despite stating that the wall would be cleaned, staff left the drawing on the wall and it stayed up until late August 2018.

N.B.'s godmother, Jocelyn Benjamin, would visit N.B. at Cumberland often. She described the poor condition of N.B.'s room as follows (Attachment 34, Letter from Jocelyn Benjamin, May 6, 2019):

> I couldn't figure out how such a strong, colorful odor could spread throughout [N.B.'s] room and in the common area when so many nurses were on the unit at Cumberland Hospital. During the late afternoon of August 12th [2018], [N.B.]'s room reeked of urine. His bed was infused in it and his room had trash everywhere. As [N.B.]'s godmother and out of concern for his roommate, I found myself removing extra clothing and shoes scattered on the floor, sweeping, cleaning off his bed and requesting new sheets- you know, the job the unit staff are getting paid to do.

HSCSN Finding: **Upon review of the record writer found multiple instances of documentation, that member experienced incontinence. In addition, there are multiple instances in the record, which document team discussion, nursing engagement and his 'Morning Routine', as well as direct care staff notes which reference the ongoing issue with incontinence and the challenges encountered when efforts were made to change N.B.'s bedding and clothing. The Cumberland record contains "Cumberland Hospital Patient Care Flow Sheet" documentation, which also tracked episodes of incontinence and bowel and bladder by shift by day during his stay. This Reviewer notes that completion of the flow sheet as it relates to voiding was not consistent for Evening and Night shifts. The record consistently reflects that N.B. would refuse to allow staff to clear soiled linens and clothing resulting in tantrums, threats and at times a restrictive intervention. The record also reflects N.B. would take clothing from peers and wear them over his soiled clothing. N.B. was reactive to efforts to clean his room and change linens that he reportedly alleged his belongings were being stolen when his linens were changed. This presented an additional challenge in terms of behavioral management.**

Upon review of the photographs and documented concern about the cleanliness of member's room, this writer determined that per Cumberland, there is no room-cleaning log maintained for patient rooms. The facility does log the cleaning of the time out rooms. The available records did not document the status housekeeping episodes. As such, writer is unable to make a determination about the level of success or opportunity for improvement as it relates to cleanliness. Writer notes that there is an expectation for maintaining a clean space clearly documented in the Patient Handbook. Writer reviewed the photographs of N.B.'s room. This Reviewer is unable to make a determination about the timeline in the absence of date and time stamp on the photos.

Recommendations: HSCSN plans more frequent site visits to the facility. HSCSN will increase the frequency of site visits to Cumberland to include unannounced visits. This will allow HSCSN to make regular assessments about overall conditions under which enrollees reside during their treatment. In addition, HSCSN recommends Cumberland consider documenting when patient rooms are cleaned and reflect this in the chart or on a flow sheet. Per Cumberland, rooms are cleaned when patients are out of the space.

There was additional photographic evidence of leaks in the roof, which were submitted for HSCSN review in 2018. Writer notes the photographs clearly show water leaking from the ceiling with collection efforts in the apparent treatment space. HSCSN had confirmed that as of September 13, 2018 the facility "closed the ticket on the open work order and signed off on the completion of the roof work on September 13, 2018." No further issues with leaks have been noted in Building 5 since the completion of the repairs. As such, physical plant issues related to the roof leak were resolved/repaired. HSCSN addressed this as part of the Grievance Level 1 Response.

Summary of response in the original grievance from Cumberland indicates ..."well documented and frequent, daily issues with enuresis, encopresis and incontinence. He is also

known to staff to steal and wear clothing of other Cumberland patients from the dirty clothes bins in patient bathrooms and from the laundry room"....

Staff determined early on in N.B.'s stay at the hospital that changing soiled linen and clothing resulting from the patient's incontinence often became a "power struggle between staff and the patient", which frequently "resulted in episodes of aggressive behaviors" and "escalation for the patient". It is well documented in the medical record that the patient refused to change out of soiled clothing when prompted, accused staff of trying to "steal" his clothing and linen items when they were removed from his room for washing and he made attempts to hide his incontinence and to keep staff from "taking" clothing from him by layering clean clothing over soiled clothes". The Cumberland response goes on to indicate "a modification to the incontinence treatment strategy was initiated specifically for N.B. with the goal of avoiding N.B.'s power struggles with staff over "his" items". The modifications included "N.B. take his own soiled linens and clothing to the bathroom laundry bins or to the laundry room himself ...so he did not think staff was "stealing" his items; prompting N.B. to notify staff and to change soiled clothing immediately following episodes of incontinence and "restricting him from moving on to other activities until he had done so" and " staff not cleaning N.B.'s room or attempting to remove clothing, linens or any other items...until N.B. was off the unit and out of sight of the items if he refused to remove the items to the appropriate locations himself".

This writer found evidence of all of the aforementioned treatment approaches in the record review. What is not evident in the record is a more systematic method of promoting positive reinforcement, specifically visual aids for N.B. that provides immediate status updates in terms of his progress towards daily goals and provides control and engagement for the patient. It is not clear why this additional element of behavioral shaping was not employed. Review of "Cumberland Hospital Patient Care Flow Sheet" reflects a section, which tracks behaviors under "Behavior Management Intervention". This section was intermittently completed, most critically lacking entries for the types of interventions used during Day and Evening shifts on a consistent basis. Staff were more consistent in tracking "Other Behaviors Observed" on days and evening shifts. It is writer's finding that the program appeared to not fully maximize behavioral interventions and shaping which may have influenced the most challenging behaviors, disrupt power struggles, and promote prosocial coping and generalization of skills. In such situations, programs often obtain outside consultation or second opinion on behavioral management and it appears that would have been an appropriate next step for the team.

<u>Recommendation:</u> Based on this finding writer would recommend Cumberland re-evaluate how they approach the behavioral management of their patients. For individuals with significant challenging behaviors who show poor progress towards goals it is strongly recommended that the facility engage an outside consultant or second opinion on behavioral interventions.

III. Failure to Follow Proper Procedures Concerning Restraining or Secluding N.B.

A. HSCSN's Findings were Inadequate

HSCSN's findings do not take into account Ms. Bowden's statements concerning the lack of notice to her when N.B. was placed in restraint or seclusion. Instead, HSCSN simply accepted Cumberland's claims to the contrary. While Cumberland claims that staff contacted Ms. Bowden regarding multiple instances in July, Ms. Bowden was not contacted on many of those dates. There were many instances that Ms. Bowden would visit N.B., only to learn from N.B. about an incident or that a restraint and seclusion that had occurred.

B. Instances of Failing to Follow Proper Procedures After the Level 1 Grievance was Submitted

On October 13, 2018, Dr. Davidow told N.B. that his mother was getting him discharged and finding him another place. Ms. Bowden found this out when N.B. called Ms. Bowden and said that he was told he was going to another hospital, but he wanted to come home. Prior to Dr. Davidow's statements to N.B., Ms. Bowden and Dr. Davidow had agreed in N.B.'s treatment meetings that no staff would tell N.B. that he was being sent to another hospital as it would be a trigger for him and cause him great stress. Instead, they agreed to tell him of the plans only on the day that he was being transferred. Dr. Davidow explicitly said that he believed this was the best plan for N.B. Nonetheless, Dr. Davidow told N.B. he was being discharged without any emotional support in place, a situation that Ms. Bowden was trying to avoid. Ms. Bowden emailed Dr. Davidow to ask why he had made these statements to N.B. Dr. Davidow denied telling N.B. However, Ms. Bowden recorded the conversations with N.B. in which he told her that it was Dr. Davidow who was telling him he was going home. *See* Attachment 12, Recording of N.B., (N.B. saying that he asked if he was going to another hospital and the doctor [Dr. Davidow] said yes); *See* Attachment 13, Second Recording of N.B., (Ms. Bowden telling N.B., "I know I didn't tell him that [you were leaving], but I'm going to call and find out.").

Upon N.B.'s discharge on October 16, 2018, Ms. Bowden discovered that Cumberland had lost most of N.B.'s clothes. He had only three pairs of socks and a single sock out of 24 pairs that he had arrived with and only two pairs of his underwear were left. Cumberland had mixed up the patients' clothes so much that other patients were wearing N.B.'s clothes and he was wearing the clothes of other patients. Ms. Bowden could not bring to N.B.'s attention the fact that other patients were wearing his clothes, because many times previously when N.B. saw other patients wearing his clothes or taking his personal possessions, he became triggered and behaved in ways which led him to be restrained and secluded. Mixing up the patients' clothes also presented sanitary problems as some patients suffered from skin conditions. Additionally, Cumberland lost one of N.B.'s ninja turtle blankets, all 12 of his books, his mattress cover, and gifts from N.B.'s father: a chain necklace and a microphone. N.B. was very upset about the lost gifts from his father.

On the date that N.B. was admitted to Cumberland in March 2018, he had an injured finger

on his right hand. Ms. Bowden asked Dr. Davidow to examine and x-ray the finger, which appeared to her to be broken. Dr. Davidow reported that it was just jammed. N.B.'s finger continued to be stiff and bent throughout his duration at Cumberland. When N.B. was being discharged, Ms. Bowden again asked Dr. Davidow to look at the finger. This time, he said that it looked like N.B. had a displaced tendon and it would require surgery to fix. However, Dr. Davidow responded, "I don't think there's too much to do about it... Now if you were a concert pianist and got into a car accident, you might fix it." *See* Attachment 14, Video of Discharge Day Convo with Dr. Davidow re Finger and Eye Post Eval. On the day after N.B. was discharged from Cumberland, Ms. Bowden took him to have his finger examined by Dr. Woodward. Dr. Woodward recommended N.B. see an orthopedic surgeon because the finger had been broken but had healed in the wrong position. In order for the finger to heal correctly, it would have to be rebroken and set again. Due to the negligence of Dr. Davidow and Cumberland in failing to address N.B.'s broken finger when the injury was new, N.B. requires four months of physical therapy and potentially surgery. As of June 2019, N.B. is still going to medical appointments for treatment of his finger where he has received injections to alleviate pain and performs treatment exercises.

During N.B.'s treatment at Cumberland he was monitored for suicidal behavior. Despite having been under suicide observation at times, he was allowed by staff to have items including shoelaces and clothing with strings, which are dangerous for patients in this state. A Medical Progress Note from August 12, 2018, from an incident when N.B. was secluded for physical aggression, states that he "tied laces and his jacket string and clothes around his neck while in the timeout room. He was initially on a suicide contract, but unfortunately, he will need to be placed back on suicide observation status immediately." *See* Attachment 37.

N.B. attempted suicide twice while at Cumberland. The second of those times was on August 12, 2018, but Ms. Bowden was only notified about either of the attempts when she was at Cumberland to attend N.B.'s treatment meeting on August 14, 2018. In a recorded conversation with N.B.'s therapist, Dr. Jenkins, after this meeting, at about nine minutes into the conversation, Ms. Bowden noticed that N.B. was wearing shoes with laces despite being on suicide observation, and also had loose shoelaces he had found. *See* Convo with Dr. Jenkins, August 14, 2018, Attachment 38. At about the 13-minute mark, Dr. Jenkins acknowledged this and stated that there was "no excuse" for staff letting N.B. have these shoelaces while being under observation. *See* Attachment 38. Cumberland staff previously had taken the shoelaces out of one pair of N.B.'s shoes; however, when asked, at about the 10-minute mark, where he got these loose shoelaces, N.B. responded that he had gotten them from "behind the nurse's station". *See* Attachment 38. In addition, pictures from Ms. Bowden's August 14, 2018 visit show N.B. wearing clothing with shoelaces and a drawstring, as well as being outside, which are direct violations of how he was supposed to be monitored while under suicide observation. *See* Pictures from August 14, 2018 Visit, Attachment 39.

IV. N.B. Sustained Injuries from Excessive Physical Restraints and Bullying

A. HSCSN's Findings were Inadequate

HSCSN found that "all claims of injuries during patient restrictive procedures were unsubstantiated," despite the numerous pictures that we sent of various bruises, scrapes, and cuts that N.B. sustained during his time at Cumberland. *See* HSCSN Response, Attachment 3, p. 3. HSCSN states, "On May 1, 2018, the enrollee reported a pinched middle finger on his left hand, which allegedly occurred in the door of the timeout room.... Per the clinical progress note, the injury was likely sustained due to the enrollee punching objects." *See* HSCSN Response, Attachment 3, p. 4. A staff member claimed that N.B. was punching the window, but this explanation does not account for the bruises N.B. had on his arms, legs, back and ear on that day. These bruises and the injury to N.B.'s hand were referenced in our grievance submitted on August 6, 2018. In a conversation between N.B., Ms. Bowden, and staff member Leah, N.B. himself stated that Mr. Matt slammed his hand in the door. *See* Attachment 32, N.B. Convo re Hand, April 30, 2018. In addition, the Daily RN Assessment from 2:35 PM on April 30, 2018 states that N.B. "complain[ed] of swelling and decreased movement in base of middle finger, left hand." However, no injury of any kind is noted on the accompanying Skin Assessment from 10:00 PM that day. *See* Daily RN and Skin Assessments, April 27, through 30, 2018, Attachment 36, pp. 2-4. Despite there being no mention of injuries, Ms. Bowden submits pictures of scratches on N.B.'s back taken on April 30, 2018 with this grievance. *See* Pictures of April 30, 2018, Attachment 41. In fact, even on dates when Cumberland Progress Notes mention N.B. suffering skin injuries (*e.g.*, April 27, 2018 and October 15, 2018), each of the several Skin Assessments mentioned in this grievance report no skin injuries at all which means that the Skin Assessments are not accurate since they are contradicted by Cumberland's own other medical records, namely, the Progress Notes reporting injuries to N.B.'s skin.

HSCSN Finding: Reviewer assessed all photographs, which Ms. Bowden provided which evidenced physical injury capturing bruises, cuts and abrasions. This reviewer notes there were no date or time stamps on the photos however, it is evident that N.B. had visible bruising which appear to be consistent with those seen associated with a physical hold. Some photos appear to be consistent with finger marks or areas larger areas on the forearm consistent with a grip. It is possible for individuals to experience bruising as a result of being placed in a hold. This reviewer notes concern about the bruising, which would not have been immediately visible at the time of a seclusion or restraint. It is beyond the capacity of this reviewer to make a determination about the cause of injuries, N.B.'s tendency to bruise and the potential impact of the injuries in the intermediate and long term.

The HSCSN Grievance Level 1 Response reflects "The review of the enrollee's history and physical report and progress notes illustrate that the enrollee had a noted injury to the right fourth finger (DIP Joint) at the time of admission. On May 1, 2018, the enrollee reported a pinched middle finger on his left hand, which allegedly occurred in the door of the timeout room, however, a camera review showed this was not accurate. Per the clinical progress note, the injury was likely sustained due to the enrollee punching objects. A complaint on September 3, 2018, about swelling in the enrollee's right hand due to alleged abuse during a restraint was noted as the injury previously identified on admission". Despite these finding, the distribution and level of bruising visible on the photographs necessitate this Reviewer to provide recommendations despite the fact that N.B. has been discharged.

Recommendation: This Reviewer recommends that HSCSN request Cumberland Hospital review the concerns about visible bruising which occurred while N.B. was hospitalized at the facility in 2018. Specifically, HSCSN requests that Cumberland identify what modifications nursing and medical team members should consider making to their post Seclusion and Restraint Assessment process. HSCSN will not prescribe a course of action however, given the finding there are opportunities to improve assessment and documentation as well as how this is reflected in the individual treatment plan. HSCSN has the expectation that when staff are notified that bruising or other injuries are reported after an episode of a restrictive intervention, that at minimum the patient is assessed (even if this falls outside of the usual post restrictive intervention assessment period), the results documented in the record and a plan devised in order to minimize the risk for future injuries. The recommendation to Cumberland includes an assessment by Cumberland Hospital in terms of how to review and update the plan specific to individuals who have high rates of restrictive interventions. One option for consideration referenced by this Reviewer is related to updates to the Behavior Support Plan. Consultation via a second opinion to conduct an overall review of all aspects of behavior management on the unit may have resulted in reduced numbers of negative interactions, tantrums, assaults and restrictive interventions for N.B..

HSCSN Finding: Reviewer also notes, for example, that N.B. required seven Treatment Plan Modifications due to restrictive procedures being implement from July 9, 2018 through July 17, 2018. Such modifications are evident throughout the record. Incidents varied from responses to elopement attempt, physical aggression by member, reaction to aggression and disruption by peer, following directions to come inside or not being able to go outside due to elopement precautions. Interventions generally refer to the plan to continue to follow the BSP. This pattern is apparent upon review of all such events and documentation. Writer notes that it appears the BSP modifications were not sufficient to address the behaviors during N.B.'s stay. Nursing staff interventions to provide "early prompts for clothing compliance" in response to member escalating following direction about clothing although appropriate in the context of the singular event did not appear to impact the global need to revisit the content of the BSP. N.B. experienced regular episodes of not only dyscontrol which resulted in seclusion and restraint to the degree that modifications to his individualized treatment plan related to the use of restrictive interventions appeared warranted. This further supports the previous HSCSN Reviewer recommendation that N.B. could have benefited from a second opinion about behavioral management.

Recommendation: HSCSN, as part of a Cumberland Hospital corrective action plan and review of opportunities for improvement, requests clarification by the facility in terms of their threshold for seeking consultation on behavior management for patients who experience high rates of seclusion and/or restraint.

On April 27, 2018, before the finger injury on April 30, a Cumberland Progress Note also states that N.B. asked for "a bandaid for [a] fingernail scratch on [his] hand"; however, Ms. Bowden was visiting N.B. at the facility on that day, and does not recall ever seeing N.B. with a

bandage, and no information about this injury is noted in the accompanying Skin Assessment from this date. *See* Attachment 36. Ms. Bowden took pictures of N.B. at Cumberland that day, which show no bandages on N.B.'s hands. *See* Pictures of April 27, 2018 Visit, Attachment 42. As Ms. Bowden was never notified of this earlier injury, and did not see any bandage on N.B.'s hand in her visit that same day, this lack of notice to her of an injury and the discrepancy in the written accounts by Cumberland staff are very concerning and further deepens Ms. Bowden's distrust of Cumberland staff.

Furthermore, HSCSN states, that "[a] complaint on September 3, 2018, about swelling in the enrollee's right hand due to alleged abuse during a restraint was noted as the injury previously identified on admission." *See* HSCSN Response, Attachment 3, p. 4. This is incorrect. On September 2, 2018, Ms. Bowden's mother went to visit N.B. at Cumberland. On that day Ms. Bowden received a call from her mother, crying, because N.B. had a bruise on his face, bruises on his arm and on the back of his left hand and his hand was swollen. When she had asked the staff what had happened to him, they did not know for sure. *See* Attachment 35, Letter from Gloria E. Brown, May 7, 2019. The bruising on the back of his hand was not the same injury that N.B. had on the day of his admission, March 26, 2018. The hand that was injured upon admission was his right hand, and the bruised hand from September 2 was his left hand. Despite these obvious injuries, the daily nursing and skin assessments of N.B. from September 3 and 4, 2018 report no bruising or pain from this incident. *See* Attachment 40, RN and Skin Assessments, September 3 and 4, 2019. Nursing notes from September 2, 2018, were not included in the records Cumberland provided to us in November 2018, which covered all of N.B.'s treatment at Cumberland dating back to March 2018.

In our supplemental grievance, we documented that on August 2, 2018, N.B. was dragged to the back and "had cuts on his body, a scratch on his leg, his knee was swollen, that it hurt when he walked, and that he was limping." *See* September 2018 Supplement, Attachment 2, p. 4. We provided pictures of his swollen knee. HSCSN failed to address this incident in its Response. We now provide a recording of a conversation between Ms. Bowden and N.B. the day after the incident occurred, in which Ms. Bowden asks "So who gave you ice?... how was it burning... did they say the doctor will come and look at it?" *See* Attachment 15, Convo with N.B. re Knee Incident. In a conversation the next day, Ms. Bowden asked N.B. "did they look at your leg?" He responds "no." *See* Attachment 16, Convo with N.B. re Knee Pt. 2. In a conversation, staff member Tina stated to Ms. Bowden that she had given N.B. a band aid for his knee, but claimed that he was not hurt. Again, Tina's statement is contrary to the pictures that documented the injury underlying this grievance. Additionally, we note that Cumberland did not document N.B.'s injury as his "Daily Skin Assessment" from August 2, 2018 reports "none noted." *See* Attachment 17, Daily Skin Assessment, August 2, 2018. The pictures of his swollen knee that we provided to HSCSN prove that he had an injury that Cumberland either ignored deliberately or negligently failed to notice.

B. N.B. Sustained Additional Physical Injuries from Excessive Restraints after the Level 1 Grievance was Submitted

There has been a long pattern of staff and other patients at Cumberland physically harming

N.B. on the unit and staff not telling Ms. Bowden nor adequately addressing the situation.

On September 20, 2018, N.B. told Ms. Bowden during a telephone call that he had almost died the night before (September 19). Staff member Don had restrained N.B. by wrapping N.B.'s own arm around his neck tightly so that he could not breathe or talk. N.B. was shaking so hard that a nurse came in to see if he was having a seizure. When N.B. told nurse Mandy the next day that his throat hurt, she responded that he probably just had a sore throat. *See* Attachment 5, Convo with Mandy re Pica Protocol. Cumberland did not report this instance to Ms. Bowden nor did they properly document the incident. In N.B.'s treatment meeting on September 25, 2018, there were no reported seizures and no mention of this incident.

On September 23, 2018, Ms. Bowden visited N.B., hoping to talk to the staff member who had been involved in the incident on September 20. When she arrived on the unit, Don was there and asked to speak to Ms. Bowden in a separate room. When Ms. Bowden asked Don about the incident that N.B. had relayed to her, Don conceded all the details and then demonstrated, on Ms. Bowden, how he had choked N.B. with his own arm. When Ms. Bowden asked how long N.B. had been shaking, he first said 4 minutes and then said 15 seconds. And, when Ms. Bowden asked why she had not been notified, Don responded that it was the nurse's responsibility to notify her. Nurse Tina and staff member Ms. Santiago were there when this incident happened, but they did not notify Ms. Bowden.

HSCSN Finding: This Reviewer notes that the concerns specific to the incident on 9/16/19 and the HSCSN response were not part of the original Level I Grievance. HSCSN did conduct a review and investigation of the Incident and a response submitted to Ms. Bowden on 8/14/18 and the supplemental grievance documents sent on 9/7/18. The original HSCSN review documented the events and included N.B.'s report that he had a sore throat (reported to nursing staff) however; no examination occurred after the incident. In addition, HSCSN Risk Management Staff made a CPS report, on 10/16/18.

This writer has reviewed the associated documents and has included a review of the concerns expressed in the current Level 2 Grievance Response. In addition to the record, this writer reviewed the Cumberland "Hospital Policy on Restrictive Procedures". Specific areas under review included sections on RN Restrictive Procedure Assessment; One Hour Face to Face Assessment. Writer also reviewed communication from Cumberland Hospital Director of Risk Management, Matthew Wiggins RN, specific to the incident, which occurred on 9/19/19 whereby N.B. was physically restrained by a staff person and escorted to his room. The documentation of the video review of the event corroborates Ms. Bowden's account that N.B. was placed in a physical hold and escorted in a manner that the position of his arm was across his neck and restricted his airway. The communication provided by Cumberland further documents that N.B. was placed in three separate restrictive holds during the course of the events. In addition, the communication documents once placed in his room on his bed for the final time N.B. could be observed sitting on his bed (no camera in his room). Less than on minute after observed sitting on his bed "staff enter the room" and after "two minutes" staff opened the door and summoned assistance. The video was able to document N.B. was on the

floor and his lower extremities were visible and were "shaking in a convulsive manner, indicative of a seizure".

Additional review notes that the staff are trained in CPI's Nonviolent Crisis Intervention Program for application of restrictive interventions; however, the positioning during the hold of N.B. was non-therapeutic and posed a risk for injury. The documentation from Cumberland reflects an awareness that N.B.'s arm during the hold "appeared to restrict the airway". HSCSN received confirmation that Cumberland conducted a Root Cause Analysis (RCA) of the incident. The record also confirms that the staff member who implemented the restrictive intervention was terminated from employment.

Recommendation: HSCSN responded to the concerns expressed about the incident and completed an investigation, which was provided to Ms. Bowden. Upon further review, HSCSN determines that despite termination of the employee who implemented the restrictive intervention and all staff are trained in CPI's Nonviolent Crisis Intervention Program it is not clear if Cumberland has sufficiently assessed the application of CPI in their program. Specifically, HSCSN recommends that Cumberland Risk Management team review the training of staff on the implementation of CPI. It is not clear to this reviewer that Cumberland took steps following this incident to retrain staff. Specifically, it is unclear as to the instructions given to staff who may observe the application of a non-therapeutic hold. The documentation infers other staff were present during the incident involving N.B. and as such, it is unclear why staff were not called to assist or redirected the positioning. This is of particular significance given HSCSN has documentation of one other an Unusual Incident involving another HSCSN member in 2018 which resulted in termination of one staff person.

There are several extremely concerning parts of this incident: that N.B. was restrained so extremely that he was choked, that N.B. was not evaluated for a seizure after he was shaking, that no one knew exactly how long N.B. was shaking for, that no one called Ms. Bowden, and that nurse Mandy told N.B. that his throat hurt because he had a sore throat. It is also concerning that, to our knowledge, HSCSN took no action in response to this serious incident of violence against their enrollee N.B., even though they were informed of it in writing. We submitted a separate grievance to Cumberland, copying HSCSN, documenting this incident on October 16, 2018, and Ms. Bowden received no response from HSCSN. Copies were sent to Malena Banks, MD, Chief Psychiatric Officer, HSCSN; Colleen Sonosky, DHCF; Stephanie Taylor, VP Quality/Risk Management, HSCSN; and Anne Conway, VP Care Management, HSCSN. *See* Attachment 18, Cumberland Grievance Letter, October 16, 2018.

Additionally, within the documents that Cumberland provided, there is no "RN Assessment at Conclusion of Procedure" for September 19, 2018, when the incident occurred. After every restraint or seclusion, staff are supposed to fill out this form. However, in a daily assessment form from September 19, 2018, it is noted that N.B. has a 0 on a pain scale of 0-10, where 0 means none. This is false, N.B.'s throat was sore, and he complained about it to Mandy. *See* Attachment 19, September 19, 2018 Daily Note. In a form from September 20, 2018, Cumberland notes that N.B. did not have any injuries or complaints of pain at the time. This is false, as N.B.'s neck was still hurting him from being choked during this time. *See* Attachment 20, September 20, 2018 RN Assessment. Furthermore, the September 19, 2018 Daily Note lists no medications given to N.B. on an as needed or "PRN" basis in restraining him for this serious incident, and in addition, there are very few records of staff at Cumberland giving N.B. medications as needed when restraining him. *See* Attachment 19. This is extremely concerning as N.B. has been under observation related to pica syndrome, suicidal behavior, and seizures, has been secluded and restrained at various times for these conditions, and Ms. Bowden had signed a consent form authorizing the staff to administer medications as needed.

On October 26, 2018, Ms. Bowden received a letter from Richard Kim, Manager of Claims for UHS, the parent company of Cumberland Hospital, stating "[P]lease be advised that the Staff member involved here was immediately terminated. Nonetheless, we remain unhappy about N[.B.]'s experience at Cumberland and are willing to discuss compensation for him." *See* Attachment 21, Letter from UHS. Despite the parent company of Cumberland recognizing this extreme and violent conduct by a staff member towards N.B. and offering compensation, HSCSN did not respond to this incident after being copied on the written complaint about it. *See* Attachment 18, Cumberland Grievance Letter of October 16, 2018.

On October 2, 2018, Ms. Bowden was visiting N.B. and talking to a staff member when she heard yelling. She then saw staff member Shelby holding N.B. by his neck and around his shoulder. N.B. was trying to escape. Ms. Bowden learned that the incident occurred because N.B. was triggered because a staff member put N.B.'s pants in another patient's room. Cumberland is aware that clothing is a trigger for N.B., yet Cumberland continued to mix up clothing between patients on the unit. Additionally, according to Cumberland's policies, clothing is not allowed in the patients' rooms, but clothing was continuously placed in their rooms. Ms. Bowden told Shelby that she was not supposed to put her hands around N.B.'s neck as that was not a therapeutic hold, and then Ms. Bowden physically stepped in between Shelby and N.B. Ms. Bowden then asked nurse Mandy if the staff had been trained on therapeutic holds because what she had witnessed being used on her son was not a therapeutic hold. Mandy acknowledged Ms. Bowden's point and stated that she would address it. Ms. Bowden asked "The way she just grabbed him. You're not supposed to do that. Am I wrong?" Mandy responded, "No." *See* Attachment 5, Convo with Mandy re Pica Protocol. In Cumberland's Restrictive Procedure Assessment form covering October 2, 2018, there is no mention that Shelby was holding N.B. around the neck, despite Mandy acknowledging it to Ms. Bowden. See Attachment 22, October 2, 2018 Restrictive Procedure Assessment.

On October 15, 2018, Ms. Bowden received a call from staff member Shelby. Shelby asked if anyone had called Ms. Bowden the previous day, to which Ms. Bowden responded that no one had. Shelby then proceeded to explain that the previous day, on October 14, 2018, two other patients were fighting N.B. until staff eventually separated them. However, one of the patients still managed to punch N.B. in the eye. Shelby was not there, but Philip and Nurse Renee were there, so Shelby was going to find out more details. Shelby did not know if N.B. was restrained or secluded. Ms. Bowden partially recorded the conversation, during which Shelby says, "I looked at his eye this morning when I came in and it was swollen." *See* Attachment 23, Convo with Shelby re Eye Incident. A nurse's Progress Note from the morning of October 15, 2018, confirms that N.B.'s "right eye [was] noted to be swollen", that he was in pain, and that he was given ice packs as needed. *See* Attachment 27, October 14 – 18, 2018 Progress Notes and Daily Skin Assessments, p. 7.

When Ms. Bowden spoke to N.B. on the telephone, he told her immediately that he had a black eye. She asked him how he knew this, and he responded that he looked in the mirror and saw that his eye was black and that staff had told him. He recounted the incident as follows: he was in the common room watching a movie and two other patients were in his room playing with his cards and books. The other two patients took his cards out of his room, so he came out and tried to get his cards back. The other two patients started running around him, antagonizing him, and then started to hit him. They busted his lip open, so that it was bleeding. They also urinated in his room and on his stuff. Staff member Keke took N.B. to the bathroom to clean up his lip. When N.B. came out of the bathroom, one of the kids punched N.B. in the eye and busted his eye. This sequence of events is described in a nurse's progress note from October 14, 2018. *See* Attachment 27, p. 11. At some point during this, one of the patients hit N.B. with a chair, which Ms. Bowden did not find out until she came to Cumberland to discharge N.B. N.B. went up to Pricilla and asked her why she always let the kids beat him up. Pricilla told him that she would let the kids beat "his ass again" if he did not stop talking to her.

It is additionally troubling that one of the patients who antagonized and beat up N.B. was the same patient who touched N.B.'s buttocks inappropriately and was kicking him in August. *See* September 2018 Supplement, Attachment 2, p. 4. Cumberland never separated N.B. from this patient and two months after N.B. had reported the incidents during a therapy session, this same patient was still beating him up. Furthermore, Cumberland staff had a history of letting the patients on N.B.'s unit fight each other. In a conversation between Ms. Bowden and staff member Fendi, Fendi reveals that she would take the patients to the bathroom and let them fight. *See* Attachment 33, Conversation with Fendi, August 13, 2018.

N.B.'s eye was badly swollen; yet, no doctor or nurse treated him. It was not until N.B. was discharged from Cumberland on October 16, 2018, that he received any medical attention for this injury. Nurse Amanda Hayes-Wilkins wrote a Progress Note on October 16, 2018, shortly before N.B.'s discharge from Cumberland, which only states that Ms. Bowden "asked question

about the injury to [N.B.]'s eye and I told her I would have to look into it." See Attachment 27, p. 3. Ms. Bowden took N.B. to a walk-in appointment because N.B. was still complaining that his eye was hurting, and his eye was still protruding. In addition, when N.B. was discharged on October 16, 2018, N.B. showed Ms. Bowden the blood on his bedroom floor from when his mouth had been bleeding from the injured lip two days prior. No one had cleaned up the blood. *See* Attachment 7, Discharge Day Blood on Floor. When he came home, he had the same blood-stained tank top on as he had been wearing when his lip was injured. Cumberland staff had washed the tank top, but had given it back to him to wear, with the blood stains still on it. *See* Attachment 8, Pictures of Bloody Tank Top.

Additionally, in a conversation with N.B.'s therapist at Cumberland, Ms. Jenkins, on October 16, 2018, Ms. Jenkins admitted to Ms. Bowden that she "saw him yesterday. [His eye] was not as swollen as it was yesterday. His eye was protruded." *See* Attachment 24, Discharge Day Convo with Ms. Jenkins.

When Ms. Bowden met with Kim Moneyhan, N.B.'s Cumberland case manager and the supervisor of case management, Debbie Spinazzola, on the day that N.B. was discharged, October 16, 2018, they each said that they had only learned about the incident in which N.B. was beaten up by two other patients that morning in an email, not when it had happened two days prior. *See* Attachment 25, Discharge Day Convo with Kim and Debbie. Dr. Davidow had also only learned about N.B.'s eye injury that morning and so had not been able to evaluate the injury. When he looked at N.B.'s eye, he remarked that everything seemed normal, despite N.B.'s eye being black and swollen. When Ms. Bowden asked if being punched in the eye and having a chair thrown at you and hitting your eye was normal, Dr. Davidow responded "yes." He further stated, "I think that's something that happens all the time. Don't you?" *See* Attachment 26, Discharge Day Convo with Dr. Davidow re N.B. Eye; *See* Attachment 14, Discharge Day Convo with Dr. Davidow re Finger.

Again, Cumberland did not document N.B.'s injury fully. In a progress note from October 15, 2018, the day after N.B.'s lip and eyes were punched, there is mention of N.B.'s right eye being swollen; however, in the "Daily Skin Assessment" from that day, when his eye had swelled up, there is no indication of any visible injury. *See* Attachment 27, pp. 5-7. In addition, in the "Pain Assessment" portion of the Progress Notes from October 14, 15, and 16, 2018, N.B. is not listed as having any pain, in spite of the description of N.B.'s fight and resulting black eye written by nurses on these dates.

<u>Recommendation:</u> The Reviewer has determined that Cumberland Hospital did not conduct a Root Cause Analysis of the reported attack of N.B. by other patients on the unit. Given this is post discharge the review will be retrospective however, this Reviewer determines that an evaluation of the milieu management at the time is warranted. This will allow Cumberland to critically assess their processes around patient safety and make any needed adjustments. It is acknowledged that this will not affect N.B.'s direct care at this time. HSCSN also notes there are no other documented reports of such incidents involving HSCSN enrollees.

V. Additional Instances of Cumberland Inadequacy

A. Staff at Cumberland Were Often Unprofessional

In addition to the above stated information about how staff would misinform or not inform Ms. Bowden about N.B., several instances were particularly egregious for Ms. Bowden.

N.B. met with his therapist Ms. Jenkins several times a week for individual and family therapy sessions. N.B. revealed to Ms. Jenkins all the abuse that he had been experiencing, but Ms. Jenkins never reported this or attempted to intervene. The abuse N.B. suffered included being touched inappropriately by another child, which should have led the staff to separate N.B. and this child; however, Ms. Jenkins did not report these incidents in any treatment meetings. During several zoom video sessions during family therapy with Ms. Bowden, Ms. Jenkins also pointed out N.B.'s injuries. It is not acceptable that Ms. Jenkins, as N.B.'s therapist, knew about the abuse that N.B. was experiencing but never reported it.

Dr. Davidow previously stated that N.B. needed to go to a Prader-Willi Specific hospital, which can be confirmed in notes from treatment meetings involving HSCSN representatives in May and June 2018; however, he then later claimed that he never made these statements. He refused to refer N.B. to a different hospital and refused to repeat his statement that N.B. needed more specialized care.

Leslie Bowery holds several positions at Cumberland: she is head of Medical Records, the patient advocate, and is part of the risk management team.1 This is a conflict of interest, since Ms. Bowery is charged with both protecting the patients and protecting the hospital as part of risk management. When Ms. Bowden asked Ms. Bowery why N.B. never received any patient advocacy, Ms. Bowery responded that the patients can fill out a paper if they have an issue and give it to her. *See* Attachment 28, Discharge Day Convo with Ms. Bowery. However, this is not a meaningful option. N.B. and the patients in N.B.'s unit did not have the mental capacity to be able to fill out a written form regarding an incident in which they are mistreated.

HSCSN Finding: This Reviewer is unable to make a determination about the report of unprofessional conduct by Cumberland staff. There is no documentation in the record, which indicates this was occurring or had been reported or investigated. Additionally, HSCSN Risk Management notes upon review of trended data for 2017 and 2018 and there are no pattern of reports of unprofessional conduct by Cumberland staff. Ms. Bowden identifies interactions with the Cumberland staff, which she experienced as unprofessional, and HSCSN respects her report of her experience however, there is no capacity for HSCSN to validate her concerns.

B. Ms. Bowden Could Not Obtain Requested Documents from Cumberland Reasonably Promptly

Ms. Bowden had continuous difficulty in obtaining records for N.B. from Cumberland.

The only way that she was able to receive records was when she asked for records for a specific date. Cumberland has stated that it is their policy that they must wait until 30 days after the patient is discharged before sending records because they need to allow their records team to analyze the records week by week. When Ms. Bowden questioned this policy and asked to see written documentation of the policy, she was shown three different documents that stated that Cumberland had 20 days to assemble and 30 days to officially close the records. She did not see any policy stating that she could not obtain N.B.'s records while he was still receiving treatment at Cumberland.

Additionally, the Cumberland policy documents stated that Ms. Bowden had a right to inspect N.B.'s records at any time as long as it was in front of Dr. Davidow, a nurse, or Leslie Bowery of medical records. Yet, her right to see N.B.'s records could be refused for vague reasons, at Cumberland's option, such as the records could be kept from disclosure if seeing the records was therapeutically contraindicated or if it would do more harm than good for the patient to see the records. Although Cumberland has an extensive policy regarding a patient's or guardian's right to obtain their own records, they refuse to produce their policies because Cumberland claims that their policies are proprietary information. The lack of a copy of the policies makes it very difficult for a patient's parent to advocate on the patient's behalf.

HSCSN identified Ms. Bowery as Director of Performance Improvement, Standards and Regulatory Compliance. Response, p. 2.

HSCSN Finding: HSCSN is unable to make a determination specific to the record requests based on the available record review.

Recommendations: HSCSN recommends that Cumberland adhere to the Cumberland Hospital Policy and Procedure specific to handling of record request by patients/guardians/representatives. HSCSN defers to Cumberland in terms of which records can be released per their policy vs those which are determined, by policy, to be 'proprietary'.

On July 20, 2018, our law firm sent Cumberland a document request via electronic mail, accompanied by an appropriate HIPAA authorization signed by Ms. Bowden. We did not receive a response. On September 10, 2018, we followed up on the document request via electronic mail, requesting a response. We still did not receive a response. On September 28, 2018, we sent a second document request via certified mail. On October 1, 2018, a Cumberland representative signed for the document request, yet our firm never received a response from Cumberland.

On October 16, 2018, Ms. Bowden met with Ms. Bowery and asked for records for nine specific dates. Ms. Bowery responded that the computer was not letting her print the records, so she would email them to Ms. Bowden the next day. Ms. Bowery never emailed Ms. Bowden the requested records for specific dates. Additionally, Ms. Bowery assured Ms. Bowden that because N.B. was being discharged that date that she would expedite sending all the records to Ms. Bowden

and that she would receive them within 7 to 14 days. Ms. Bowden finally received N.B.'s medical record package over a month later, on November 19, 2018.

HSCSN Findings: This Reviewer is unable to make a determination about the request for access to records as noted by Ms. Bowden. In addition, this Reviewer is unable to make a determination about the timeliness of the Cumberland response. Specific concerns about access and timeliness of submission of records post discharge are beyond the scope of HSCSN. Cumberland Hospital has internal policies which guide management of requests to review and release records. The specific policies were not available for consideration at the time of this review.

Recommendation: Given parent concerns HSCSN Risk Management will proceed with a communication to Cumberland Hospital providing the specifics of the above parent concerns. HSCSN will further request clarification from Cumberland Hospital in terms of their adherence or non-adherence to their policy related to the request. HSCSN will review the Cumberland response. If Cumberland did not adhere to their internal policy related to, record release and parental access to review records HSCSN would then make a determination about the proper course of action.

C. N.B. Was Not Provided with Adequate Educational Services While He Was at Cumberland

HSCSN Finding: Determinations about the adequacy and quality of the educational programming while at Cumberland is outside the scope of HSCSN. HSCSN defers judgment to the relevant oversight entity (DCPS) in terms of making such a determination. Monitoring and adherence to the IEP rests with the appropriate LEA, in this case DCPS. As such, HSCSN is unable to render and finding or recommendation specific to this component of N.B.'s services while at Cumberland.

Cumberland did not provide adequate quality schooling to N.B. N.B. has told Ms. Bowden that all he did at school at Cumberland was color. During a visit, N.B. was trying to show Ms. Bowden what he had done at school, but all that was on the paper he was showing Ms. Bowden was a Spiderman coloring page. Sometimes, when Ms. Bowden asked N.B. what he did in school that day, he would say that he watched a movie because the teacher was busy. He never said that he read and would only say that he colored. When Cumberland showed Ms. Bowden the work that N.B. had done at school, Ms. Bowden has found it nearly impossible to believe that N.B. could do the work that they were showing her: he is simply not capable of it. N.B. has explained that his teacher would tell him what to circle or would write the answer on the board.

When Ms. Bowden brought this up with Dr. Davidow, he responded that the patients were not doing work because it was the summer. This does not explain the fact that N.B. was not doing work in April, May, September, and October, months that are during the school year.

During a conversation between Ms. Bowden and N.B. on August 8, 2018, N.B. explains his school work that day: "I did a reading back. JT helped me. And then write the answer down.

He writes all the answer on the board." Ms. Bowden asked, "You told me that before. Does he always write the answers down or does he sometimes let you pick?" N.B. responded, "He always writes it down." *See* Attachment 29, Convo with N.B. re School.

In other schoolwork in Cumberland's school program, staff printed out lyrics to rap songs for N.B. to transcribe as a writing exercise; however, these lyrics contained very inappropriate language and subject matter, and N.B. showed these lyrics to Ms. Bowden, who took pictures of them. *See* June 19, 2018 Picture of Transcribed Lyrics, Attachment 43, and September 11, 2018 Picture of Printed Lyrics, Attachment 44. Exposing N.B. to this language is counterproductive to his education, and it was careless and inconsiderate of staff to expose N.B. to such inappropriate subject matter.

This is in contrast to what N.B. has done at school at Kennedy Krieger Institute and with other education services in which he has read and has told Ms. Bowden that the teachers will help him without telling him the answer. N.B. enjoys school and enjoys learning about math, science, art, music, and likes interacting with his teacher and aides. However, at Cumberland, he did not enjoy school because he does not do the type of learning activities and work that he has previously done at other institutions.

There have also been consistent issues of Cumberland reporting that N.B. has missed school and his teacher reporting that he has not. On May 2, 2018, Ms. Bowden met with N.B.'s teacher in person and asked how many days of school N.B. had missed. His teacher revealed that N.B. had only missed one day of school; however, in N.B.'s treatment meeting, Cumberland had claimed he had missed multiple days of school.

N.B. did not get an adequate education at Cumberland during the seven months that he was there. Ms. Bowden is concerned, based on the conflicting information about how many days of school N.B. missed, that she did not receive necessary information about N.B.'s schooling.

D. Cumberland Staff Provided N.B.'s Family with Conflicting Information Regarding the Treatment Services Needed by N.B.

When Ms. Bowden initially toured Cumberland, Dr. Mike Swain, head psychologist at Cumberland, informed her that N.B. would benefit from Applied Behavior Analysis (ABA) therapy services and that it could be provided at Cumberland. However, this was not done.

Ms. Jenkins, N.B.'s psychotherapist at Cumberland has stated that N.B. would benefit from ABA therapy and wrote this in his Cumberland discharge papers. Yet, in N.B.'s treatment meeting on September 25, 2018, Dr. Davidow stated that ABA therapy would not be effective for N.B. When Ms. Bowden brought up that Ms. Jenkins, N.B.'s treating psychotherapist, had herself recommended ABA therapy, Dr. Swain stated that the medical director could overrule whatever the psychotherapist says. While Dr. Davidow eventually recommended ABA therapy, the mixed information that Ms. Bowden has continuously received about what N.B. needs from Cumberland

has been unhelpful for N.B.'s progress.

Additionally, N.B. was supposed to be receiving individual speech therapy at Cumberland. During the May 2, 2018 treatment meeting, it was revealed to Ms. Bowden that N.B. had been going to a speech group, but he was not receiving the individual speech therapy that he was supposed to be receiving. He did not receive individual speech therapy for the remainder of his stay either.

HSCSN Finding: Review of the record indicates no documented information about the recommendation for individual speech therapy. Rehabilitative Therapy Groups appears as one of the elements on all Integrated Progress Summary notes. The record documents the objectives and indicates that the service goal included a strategy to "improve separation of words when sharing aloud in classroom group one time per session". The responsible staff person is documented as M.C. Bagwell, SLP. Further review of the record reflects there is no Individual Speech/Rehabilitative therapy listed as a service and related interventions are designated as "group" (Group Psychotherapy, Group Physical Therapy, Social Skills Group). There is no documentation in the record that individual speech therapy was indicated. It is beyond the scope and skill set of this reviewer to make a determination as to the indication for individual speech therapy. The Cumberland SLP, by discipline, has the skill set to make a determination as to the clinical needs and indication for group vs individual services. His progress towards speech goals was documented as "continues to be met". The record further documents multi-disciplinary team participation, inclusive of Ms. Bowden. This reviewer is unable to determine the specifics related to Ms. Bowden's report about the expectation and need for individual speech therapy given the program documents N.B. was in a group rehabilitative setting.

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HSCSN Summary Findings and Recommendations for Grievance Level 2 NB October 2019

HSCSN Grievance Committee convened on 10/10/19 and reviewed the Grievance Level 2 Findings. Based on the review and discussion HSCSN finds specific areas, which represent an opportunity for improvement as well as the need for corrective action. The HSCSN Grievance Committee finds that although Cumberland possessed the general skill set to meet the treatment needs for N.B., the level of behavioral interventions on the unit were not sufficient to meet the complex challenges, which presented. Furthermore, HSCSN notes that that Cumberland is not a specialized Prader-Willi program and more importantly, is not a primary behavioral health treatment program. It is apparent upon review of the record that the hospital was able to support N.B. in weight loss and reduction of his BMI.

While at Cumberland N.B. exhibited the longstanding challenging behaviors manifested in all community settings prior to admission. Placement in congregate settings for youth with such behaviors can at times exacerbate challenging behaviors and the HSCSN review is

unable to determine how much this also contributed to overall challenges with management. Results of the chart review indicates that management of N.B.'s highly challenging behaviors appears outside of the scope and skill level of the inpatient treatment team. It is stressed that this finding is specific to the facility's capacity to respond to N.B.'s individual needs given HSCSN has no documented reports of similar challenges with other enrollees who have been placed at Cumberland. The BSP and overall behavioral management for N.B on the unit was not updated to encompass all targets, including the seclusions, restraints and tantrums as well as bedwetting and his 'Morning Routine'. In addition, it appears Cumberland did not engage expert consultation or a second opinion on the behavioral management during N.B.'s stay. This finding relates to HSCSN concerns and findings specific to the episodes of seclusion, restraint and apparent bruising and cuts/scraps as identified in the photographs submitted for review. The disruptive behaviors, tantruming, poor frustration tolerance and at times manipulative behaviors exhibited by N.B. led to the use of restrictive interventions. Manifestation of such challenging behaviors with poor progress towards behavioral goals necessitates global review and updates of the overall behavioral plan. Given these findings, HSCSN recommends:

1) **Cumberland Hospital to be placed on a Corrective Action Plan to address the following:**

   a. **HSCSN requests Cumberland Hospital conduct a post discharge Root Cause Analysis of the incident, which occurred on October 2018. The incident in question alleges two peers on the unit attacked N.B. It is the HSCSN finding that the original review was not sufficient to address outstanding questions. Areas for review are to include but not limited to details leading up to during the incident; staff response; condition of N.B. immediately following the incident; general monitoring of patient's on the milieu; staffing at the time of the reported incident and overall patient safety, screening and interventions based on risk of aggression by patients.**

   b. **HSCSN acknowledges that Cumberland also substantiated the use of a non-therapeutic hold, which resulted in the termination of the staff person who implemented the restrictive intervention. N.B. reported throat pain because of the application of the non-therapeutic hold. It is not clear however, if Cumberland has sufficiently assessed the application of CPI in their program in response to this incident. Specifically, HSCSN recommends that Cumberland Risk Management team review the training of staff on the implementation of CPI and provide written update to HSCSN as part of the CAP. The Cumberland response should indicate whether Cumberland took steps following this incident to retrain staff. HSCSN also requests written clarification from Cumberland on how staff are trained to respond in the event they observe the application of a non-therapeutic hold.**

   c. **HSCSN request Cumberland Hospital review and provide a written summary of findings associated with the concerns about visible bruising which occurred while N.B. was at the facility in 2018. Once Cumberland has assessed the concerns HSCSN**

requests that Cumberland medical and nursing leadership include a determination as to whether modifications are indicated as part of the post Seclusion and Restraint Assessment process. HSCSN has the expectation that when staff are notified that bruising or other injuries are reported after an episode of a restrictive intervention, that at minimum the patient is assessed (even if this falls outside of the usual post restrictive intervention assessment period). This is of particular concern given post the substantiated use of a non-therapeutic hold in 2018 involving N.B.'s arm being placed across his neck, it is reported that N.B. was not examined despite reporting pain to nursing staff.

d. **Due to the challenges related to behavioral management and use of restrictive interventions HSCSN requests that the Cumberland Corrective Action Plan include an internal review and plan of action outlining their processes for reviewing and updating the treatment plan for patients who have high rates of restrictive interventions. This would include a determination as to how Cumberland determines what constitutes a threshold for high rates of restrictive interventions warranting greater oversight.**

e. **HSCSN recommends that Cumberland Hospital review their process for consultations for services to ensure ongoing monitoring and follow up. This would include consideration of adding all consultation findings to the treatment plan if follow up is recommended until the issue is resolved or a clear plan is documented and in place. HSCSN requests Cumberland submit documentation to HSCSN outlining their corrective steps.**

2) **HSCSN identifies the following items as opportunities for improvement to be addressed by Cumberland Hospital:**

   a. **HSCSN requests Cumberland review provide a written overview of their process for seeking a second opinion/consultation on behavior management for patients who experience high rates of seclusion and/or restraint or challenging behaviors unresponsive to the BSP.**

   b. **There appear to have been opportunities for improvement in the manner in which N.B.'s Behavioral Support Plan (BSP) and Morning Routine were implemented. The opportunities for improvement relate to the general practice of ongoing updating and goal revision. HSCSN recommends Cumberland review and provide written response to HSCSN in terms of how they may incorporate mechanisms such as a token economy or other more measurable and immediate behavioral reinforcement system that may positively shape behaviors at the appropriate developmental level for patients. Consideration for the use of a visual aide and application of daily or weekly behavioral goals sheet in patient's rooms or in their possession can also promote more prosocial and positive responses and shape**

behavior over time.

c. Given it is difficult to achieve a target of 100% skill acquisition this writer recommends Cumberland review the team goal setting in consultation with the behavioral specialist in order to establish more realistic measurable goals. HSCSN acknowledges that 100% goal attainment may be clinically indicated in specific situations. HSCSN requests Cumberland provide follow up in terms acknowledging such a review has occurred and the outcome.

d. Request that Cumberland consider the inclusion of an overview of any supplemental data on caloric intake in the regular Integrated Progress Note and strongly encourage that such information be included as part of the Nutritionist updates on the treatment plan during regular reviews.

e. In response to concerns about staff conduct on the unit HSCSN requests a copy of the Cumberland New Hire Training Policy or any other policy, which outlines staff conduct on the unit. In addition, request a copy of the training schedule and if training has not occurred in the last 6 months would recommend Cumberland re-train direct care staff on the relevant policy and submit documentation of its completion to the targeted staff to HSCSN.

f. HSCSN recommends that Cumberland continue to review and train staff on the Policy and Procedures for direct care staff conduct as noted in the New Hire Training related to giving patients gifts or other special treatment. Although not specific, attention to any special treatment of a patient by staff is referenced in the "Cumberland Hospital Therapeutic Boundaries" document, which staff are trained on and sign. If the Cumberland Hospital staff do not receive annual training on therapeutic boundaries HSCSN would recommend the facility consider adding this to the standard annual review.

g. It is recommended that the Cumberland clinical leadership review and reinforce adherence to the rating restrictions for video and TV channel viewing with the staff; document this as updated training and last but not least, consider implementing a standard sign off of selected videos on their own set schedule. The sign off should be performed by either senior RT staff/leadership; clinical director or charge nurse for the unit depending on which functional team is responsible for showing the movies.

3) Additional HSCSN actions:

a. In response to the results of the review and concerns noted about cleanliness of N.B.'s room HSCSN will increase the frequency of unannounced site visits to Cumberland Hospital in an effort to monitor overall facility cleanliness and maintenance of a therapeutic environment.

If you have questions, please feel free to call Stephanie Taylor, VP, Risk Management at (202)-721-7164.

Sincerely,

Stephanie Taylor, VP, Risk Management

cc: **PCP:** Kathy Woodard, MD
Provider: Cumberland Hospital for Children and Adolescents
File

A copy of this notice has been sent to:

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