

Sample Transfer Agreement

TRANSFER AGREEMENT

This Transfer Agreement (“**Agreement**”) is entered into as of _____, 20__ (“**Effective Date**”), between _____ (“___”), a _____ [insert type of entity] (“___”) and _____ Hospital, a _____ [insert type of entity] (“___”).

RECITALS

- A. Each Party operates a licensed general acute care hospital that at times has patients, including emergency patients and inpatients, who may need a transfer to another hospital for specialized care that the Party does not have the capacity or capability, including resources that are temporarily unavailable, or for alignment with the patient’s managed care plan or other responsible payor for services or for other reasons.
- B. The Parties hereto desire to enter into an agreement for the transfer of patients in order to facilitate continuity of care and the timely transfer of patients and records to each other, and to specify the rights and obligations of Parties to this Agreement.

DEFINITIONS

1. “**Transferring Hospital**” is the hospital from which the patient is being transferred.
2. “**Receiving Hospital**” is the hospital to which the patient is being transferred.
3. “**Transferring Physician**” is the physician initiating and responsible for the patient’s transfer at Transferring Hospital.
4. “**Receiving Physician**” is the physician who accepts responsibility for the care of the patient at Receiving Hospital.
5. “**Stabilize**” and “**Emergency Medical Condition**” have the same meanings as these terms are defined in the EMTALA regulations (42 C.F.R. §489.24) setting forth the responsibilities of hospitals in emergency cases.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. **Duties of Transferring Hospital.** The Transferring Hospital or Transferring Physician, as indicated, shall have the following duties and obligations in connection with a patient’s transfer under this Agreement:
 - (a) **Authorization to Transfer.** The Transferring Physician shall authorize the transfer of the patient to the Receiving Hospital, including documenting in the patient medical record the medical necessity or other reason for the transfer of the patient to the Receiving Hospital and the medical condition of the patient at the time of transfer. The Transferring Hospital and Transferring Physician shall determine that the patient is appropriate for transfer in accordance with all applicable federal or state laws and regulations regarding patient transfers as well as with applicable requirements of the Transferring Hospital’s transfer policies and EMS transfer guidelines.
 - (b) **Obtaining Consent for the Transfer.** The Transferring Hospital or Transferring Physician shall obtain the consent of the Receiving Hospital and a Receiving Physician for the transfer.
 - (1) The consent of the Receiving Hospital shall be obtained by telephone, facsimile or other electronic means, by contacting the Receiving Hospital in accordance with procedures set forth in **Exhibit A**, or if none, by contacting the [insert designated person or department] at the Receiving Hospital.
 - (2) The Transferring Hospital/Physician will use best efforts to provide clear, accurate communication of patient data and clinical status, including assigning clinical personnel, as appropriate and feasible, to provide (or be immediately available to provide) information regarding a patient who has a complex or unstabilized condition or requires a higher level of care.

(3) At the time of initial contact, the Transferring Hospital will provide the following information to the Receiving Hospital --

- The patient's name and date of birth (gender as applicable);
- Whether patient is an emergency patient or an inpatient;
- The patient's diagnosis and description of the patient's clinical condition;
- The patient's clinical status, including whether the patient has an Emergency Medical Condition, and if so, whether the condition is Stabilized;
- The reason for the transfer (i.e., higher level of care, lack of required specialty services, lack of beds, inadequate staffing, patient request, etc.); and
- The estimated time of arrival of the patient.

(4) As necessary for the Receiving Hospital and Receiving Physician to evaluate the clinical needs of the patient and their respective capability and capacity to meet those needs, the Transferring Hospital or Transferring Physician will provide (orally or electronically) pertinent clinical information to the Receiving Hospital and Receiving Physician, so long as the Transferring Physician determines that any delay in providing the information will not result in a material deterioration in the patient's medical condition.

(5) If the Receiving Hospital confirms that it has capacity and capability to accept the patient, the Transferring Hospital or Transferring Physician will obtain the consent of the Receiving Physician. The Receiving Hospital will assist the Transferring Hospital or Transferring Physician in contacting a qualified Receiving Physician who may be available to accept the patient.

(6) The Transferring Hospital and Transferring Physician will document in the patient record the consent of the Receiving Hospital and Receiving Physician, including the time and date and the names of the Receiving Physician and Receiving Hospital representative who have respectively consented to the transfer.

(c) **Insurance Information.**

(1) If the transfer involves a patient with an Emergency Medical Condition that is **not** Stabilized, the Transferring Hospital will not provide the Receiving Hospital or Receiving Physician any insurance or financial information until the Receiving Hospital and Receiving Physician have accepted the patient.

(2) If the Transferring Hospital/Physician advises the Receiving Hospital that the patient is an inpatient or the patient's condition is Stabilized, the Transferring Hospital will provide the Receiving Hospital the patient's insurance information (including the name and telephone number of the patient's health plan, patient ID # or member #).

(d) **Patient Transportation.** The Transferring Hospital and Transferring Physician are responsible to arrange appropriate and safe transportation that is appropriate for the patient's medical condition, including designation of (i) appropriate equipment for the transfer, (ii) treatment orders during transport, and (iii) the level of professional personnel (including physicians and hospital personnel, when appropriate) who should accompany the patient during transfer.

(1) If there is a delay in the transfer process that will result in the patient's arrival at the Receiving Hospital by more than one (1) hour beyond the estimated time of arrival, or the ambulance or other patient transport is re-directed enroute to another hospital, the Transferring Hospital (if aware of the delay or diversion) will immediately notify the Receiving Hospital.

(2) Except as otherwise agreed by the Parties with respect to a specific transfer, the Transferring Facility shall remain responsible for the patient until he/she arrives at the Receiving Facility, at which time the responsibility for the patient's care will shift to the Receiving Facility.

(e) **Transfer of Patient Records.** The Transferring Hospital will forward (with the patient or by electronic means) copies of those portions of the patient's medical record that are relevant to the transfer and continued care of the patient, including copies of records related to the patient's condition, observations of signs or symptoms, preliminary diagnosis, treatment provided and results of tests and procedures.

(1) If a patient has an Emergency Medical Condition that has **not** been Stabilized, the records will include (i) a copy of the patient's informed consent to the transfer or the physician's certification that the medical benefits of the transfer outweigh the risks of transfer; and (ii) if an on-call physician at the Transferring Hospital failed or refused to examine or treat the patient within a reasonable time, the name and address of the on-call physician.

(2) If all necessary and relevant medical records are not available at the time the patient is transferred, the records will be forwarded by the Transferring Hospital within four (4) hours of the transfer.

(f) **Patient Notice and Consent.** The Transferring Facility will comply with patient notice and consent requirements applicable to the transfer. The Transferring Hospital will recognize the right of the patient to make an informed refusal of consent to treatment or transfer in accordance with applicable law.

(g) **Transfers for Tests/Procedures.** If a transfer is for the purposes of a specific procedure or test and the patient will return to the Transferring Hospital, the Transferring Hospital will comply with the procedures set forth in the Addendum to this Agreement.

(h) **Personal Property.** Unless the patient is being transferred for a specific procedure or test and will return to the Transferring Hospital, the Transferring Facility will transfer the patient's personal property (such as money and valuables) and information related to these items, or make other appropriate disposition of personal property, in accordance with its policy and procedure for the inventory and safekeeping of patient valuables.

(i) **Patient Rights/Preference.** If the patient is an emergency patient whose condition is Stabilized or is an inpatient, the Transferring Hospital will (i) comply with applicable contractual, statutory and regulatory obligations that might exist between the patient and his/her health plan or designated provider; and (ii) recognize the right of the patient to transfer to the hospital and/or physician of his/her choice.

2. **Responsibilities of the Receiving Hospital.** The Receiving Hospital shall have the following duties and obligations in connection with a patient transfer under this Agreement:

(a) **Conditions for Patient Acceptance.** The Receiving Hospital will accept a patient transferred in accordance with this Agreement and provide or arrange for the provision of medical services to the patient, provided –

(1) The Receiving Hospital has appropriate beds, equipment, staff and service capacity to meet the expected needs of the patient;

(2) A Receiving Physician on the Receiving Hospital's medical staff has accepted the patient; and

(3) The patient meets the Receiving Hospital's admission criteria applicable to the patient.

(b) **Response Time.** If the transfer involves a patient with an Emergency Medical Condition that is **not** Stabilized, the Receiving Hospital will exercise reasonable efforts to respond to the Transferring Hospital within thirty (30) minutes after receiving the request to transfer the patient.

(c) **Admissions Process.** The Receiving Hospital will be responsible for the admissions and/or registration process for each patient accepted by the Receiving Physician, as follows:

(1) The admission requirements of the Receiving Hospital will be completed prior to the transfer except if the patient has an Emergency Medical Condition that is not Stabilized at the time of the transfer.

(2) Except for the transfer of a patient who has an Emergency Medical Condition that is not Stabilized at the time of the transfer –

- The admission process will include provision by the Transferring Hospital of patient insurance information relating to coverage of medical services (such as Medicare, Medicaid, HMO, etc.) and pertinent medical and demographic information regarding the patient; and
- The Transferring Hospital will obtain prior authorization from the patient's payor or other person for the transfer and the admission or other medical services to be provided by the Receiving Hospital if (i) obtaining prior authorization is required by the payor prior to the transfer and/or admission; and (ii) requesting such authorization is otherwise permitted by law.

(d) **Transfers for Tests/Procedures.** If the transfer is for the purpose of a specific procedure or test, Receiving Hospital will comply with procedures set forth in the Addendum of this Agreement.

(e) **Transportation.** When appropriate and within its capabilities, or upon request by the Transferring Hospital, the Receiving Hospital or Receiving Physician will consult with the Transferring Hospital or Transferring Physician as to the transport of the patient.

(f) **Patient Valuables.** The Receiving Hospital will maintain policies for the acknowledgment and inventory of any patient valuables transported with the patient.

3. **Return Transfers.**

(a) When a patient transferred under this Agreement no longer requires the specialized services of the Receiving Facility and is stable for transfer back to the Transferring Facility, consistent with all applicable requirements under federal and state law (including patient notice and consent requirements), the Transferring Facility shall accept the transfer back of the patient if it has the capability to provide continuing care to the patient, and shall make best efforts to accomplish the transfer within a maximum of forty-eight (48) hours, including, without limitation --

(1) Reserving a bed and giving the patient priority over non-emergency admissions in order to ensure prompt placement of the patient;

(2) Identifying a physician at the Transferring Facility who will be responsible for the patient; and

(3) Providing appropriate personnel, equipment and services to assist the Receiving Facility with the return transfer of the patient.

(b) In the event the Transferring Facility is unable to accept the transfer back of the patient within forty-eight (48) hours of the request by Receiving Facility, the Chief Executive Officer (or designee) of the Transferring Facility will promptly confer with the Chief Executive Officer (or designee) of the Receiving Facility about the reasons for such inability, and they shall develop a plan to expedite the transfer back of the patient as promptly as possible.

(c) In order to facilitate return transfers, each Party shall establish policies and procedures to (i) identify bed availability for returning patients; and (ii) communicate with the Transferring Hospital in a timely manner in order to provide information necessary for assuring bed availability for a returning patient

4. **Disputes.**

(a) If a dispute arises between the Parties during the course of a pending transfer relating to the clinical status and needs of the patient or the method of transportation, the judgment of the Transferring Physician shall take precedence solely for purposes of facilitating a timely decision on the transfer. If a dispute between the Parties arises or continues after a final decision has been made by the Receiving Hospital and Receiving Physician on the acceptance of a transfer, the judgment of the Transferring Physician shall not be dispositive in the resolution of the dispute.

(b) To the extent permitted by law, the Parties will cooperate in the mutual review of a transfer that the Receiving Hospital identifies as implemented in a manner that is a possible violation of state or federal law, or this Agreement.

(c) All patient transfers will be done on an equitable basis, without regard to financial or diagnostic desirability.

5. **Disaster/Emergency Situation.** In the event of an area-wide disaster or national, state or local emergency situation that requires the evacuation of patients, each Party agrees to admit evacuated patients from the other Party, to the extent there is physical capacity to do so, and when consistent with local disaster evacuation orders and protocols.

6. **Independent Contractor.**

(a) The Parties are at all times independent contractors with respect to their relationship with one another, the purpose of which is to promote continuity of patient care consistent with applicable laws and regulations. Nothing in this Agreement shall create nor be construed as creating any agency, partnership, joint venture or other corporate relationship between Parties.

(b) The governing body of each Party shall have the exclusive control over its policies, management, assets and affairs. Neither Party shall assume any liability by virtue of this Agreement for any debts or obligations of either a financial or a legal nature incurred by the other Party to the Agreement. Nothing in this Agreement shall affect or interfere with the (i) bylaws, rules and regulations of a Party as they relate to medical staff membership and the clinical privileges of the members of each Party's medical staff; or (ii) the services and admission policies of each Party.

7. **Charges for Services.**

(a) Charges for services performed by either Party shall be billed and collected by the Party rendering the services directly from the patient, third party payer or other source legally responsible for payment (including, if applicable, pursuant to Paragraph 7(b) below). Except as set forth in paragraph 7(b) below, neither Party shall have any liability to the other for such charges unless mutually agreed to in writing in advance.

(b) If a Party has a legal obligation (whether imposed by statute or by contract) to provide or pay for care for a patient who is transferred under this Agreement, the Party having the responsibility shall be liable for the reasonable charges of the other Party for providing medically necessary services and care.

8. **Non-Exclusive.** This Agreement shall be non-exclusive between the Parties. Nothing in this Agreement shall be construed as limiting the rights of either Party to contract with any other health facility on a limited or general basis.

9. **Compliance with Law.** The Parties shall comply with all applicable federal, state and local laws, regulations and ordinances, including applicable standards of the Joint Commission and any other applicable accrediting bodies, and reasonable policies and procedures of the parties.

(a) To the extent that any provision of this Agreement conflicts with EMTALA or state licensing laws for the provision of emergency services and care, as such laws may be amended, the provisions of EMTALA or the state licensing laws, as applicable, shall take precedence over and/or automatically supersede any inconsistent provisions of this Agreement.

(b) Each Party shall at all times be licensed by the State Department of Public Health, and certified by the Medicare and Medicaid programs.

10. **Term.** This Agreement shall be effective on the Effective Date and shall continue unless and until terminated as follows:

(a) By either Party without cause, upon sixty (60) days prior written notice to the other Party; or

(b) Upon material breach of this Agreement, the non-breaching Party may terminate this Agreement on twenty (20) days written notice of the termination to the breaching Party. The notice shall state the acts or omissions that constitute the material breach. Material breach of this Agreement shall include, without limitation, violation of any federal, state or local statutes or regulations related

to patient transfers. Remedy of the alleged material breach to the satisfaction of the Party giving notice within fifteen (15) days of the notice shall reinstate the Agreement.

11. **Amendments.** This Agreement may be amended at any time by a written agreement signed by the Parties hereto. Nothing in this Agreement shall prevent the Parties from entering a separate agreement, or otherwise modifying the terms of this Agreement, for a specific patient transfer between the Parties.

12. **Miscellaneous.**

(a) **Notice.** Any notice required or permitted by this Agreement shall be effective and shall be deemed delivered upon placing in the mail, by certified or registered mail, postage prepaid, or upon personal delivery as follows:

To _____

Attn: Chief Executive Officer

To _____

Attn: Chief Executive Officer

(b) **Invalid Provision.** In the event that any portion of this Agreement shall be determined to be invalid or unenforceable, the remainder of this Agreement shall be deemed to continue to be binding upon the Parties hereto in the same manner as if the invalid or unenforceable provision were not part of this Agreement.

(c) **Maintenance of Records.** Each Party shall maintain all documentation relating to transfers under this Agreement, including transfer requests, acceptances and denials, for a minimum period of five (5) years from the date of the request for a transfer.

(d) **Name Use.** Neither Party shall use the name of the other Party in any promotional or advertising material without the express written consent of the other Party. This Agreement shall not constitute an endorsement by either Party of the other Party, and it shall not be so used.

(e) **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of _____. Venue for disputes under this Agreement shall be the County of _____.

(f) **Liability Insurance.** Each Party shall maintain general and professional liability insurance with coverage limits in amounts which are usual and customary for similar health facilities in _____ in size, complexity and scope of services. Each Party shall give the other Party at least 30 days prior written notice of any proposed reduction or cancellation of such insurance coverage, and shall provide to the other Party evidence of the above described insurance policy or policies upon request.

(g) **Indemnification.** Each Party agrees to indemnify, defend, and hold harmless the other Party, its directors, officers, employees and agents from any and all liabilities, claims, damages, losses, reasonable attorney's fees, and other reasonable costs of defense (including costs incurred prior to commencement of a lawsuit) resulting solely from or attributable solely to acts or omissions of the indemnifying Party or any of its agents in the performance of this Agreement.

(h) **Assignment and Delegation.** Neither Party hereto shall assign or transfer this Agreement, in whole or in part, or any of its rights, duties, or obligations under this Agreement, without the prior written consent of the other Party hereto.

(i) **Entire Agreement.** This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the Parties relating to such subject matter.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

By: _____

By: _____

**ADDENDUM FOR TRANSFERS FOR SPECIFIC TEST(S) OR PROCEDURE(S) WHERE
THE PATIENT WILL RETURN TO THE TRANSFERRING HOSPITAL**

1. **Responsibilities of Transferring Hospital.** In the event of a transfer for a specific test(s) or procedure(s) and the patient will return thereafter to the Transferring Hospital --

(a) The Transferring Physician shall (i) obtain the patient's consent for the transfer as well as for the test(s) and procedure(s), including documenting the consents in writing when required; and (ii) determine the mode of transport, equipment and personnel for the transfer.

(b) The Transferring Hospital shall comply with all applicable laws relating to the transfer of the patient and agree to accept the return of the patient upon completion of the test(s) and procedure(s) at the Receiving Hospital.

(c) The Transferring Hospital shall be financially responsible, including billing, for the transport of the patient to and from the Receiving Hospital. The Receiving Hospital shall not pay for the cost of transportation unless the Receiving Hospital is legally obligated to do so.

(d) Except for the transfer of a patient with an Unstabilized Emergency Medical Condition, the Transferring Hospital shall obtain prior authorization from the patient's payor or other person for the transfer and the test(s)/procedure(s) if (i) prior authorization is required by the payor prior to the transfer and/or procedure; and (ii) requesting such authorization is otherwise permitted by law.

2. **Responsibilities of the Receiving Hospital.** In the event the transfer is for a specific test(s) or procedure(s) and the patient will return thereafter to the Transferring Hospital --

(a) The Receiving Hospital shall be responsible for assuring that the requested test(s) and procedure(s) are performed promptly and that, as soon as possible, the patient is returned to Transferring Hospital.

(b) Before returning the patient, the Receiving Physician shall determine that the patient's condition is Stabilized for transfer to the Transferring Hospital. If the patient's condition is not Stabilized for the transfer, the Receiving Hospital will arrange for an appropriate physician to care for the patient until such time as the patient's condition is Stabilized for the transfer. When the patient's condition is Stabilized, the Receiving Hospital agrees to return the patient in an expeditious manner, subject to the patient's (and, if applicable, payor's) consent.

(c) The Receiving Hospital shall forward a copy of all pertinent medical records with the patient. The medical records should reflect the patient's condition while at Receiving Hospital, the procedures and services performed on the patient at Receiving Hospital, including the results. Records that are not available at the time of the return transfer shall be forwarded as soon as they become available.

(d) Except as arranged by the Transferring Hospital, the Receiving Hospital shall be responsible for coordinating for the patient's return to Transferring Hospital, including the responsibility for selecting an appropriate mode of transportation and appropriate personnel, including physicians and hospital personnel, when appropriate, to accompany the patient.

EXHIBIT A

PROCEDURE FOR OBTAINING RECEIVING HOSPITAL'S CONSENT FOR PATIENT TRANSFER

Hospital 1:

Hospital 2: