



State of New Jersey
DEPARTMENT OF HEALTH
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JUDITH M. PERSICHILLI, RN, BSN, MA
Commissioner

August 10, 2021

TO: Administrators and CEOs of General Acute Care Hospitals

FROM: Fred Jacobs, Assistant Commissioner
Division of Certificate of Need and Licensing 

RE: Compliance with N.J.S.A. 26:2K-70 - Maintenance of trauma patient transfer criteria and transfer agreements by general acute care hospital

On February 22, 2021, Governor Murphy signed P.L. 2021 c. 23 (codified at N.J.S.A. 26:2K-70 and referred to hereafter as "the Statute"). The Statute, which takes effect on September 1, 2021, requires general acute care hospitals (Hospitals) licensed in the State to maintain trauma patient transfer criteria and transfer agreements. The Statute further requires the Department of Health (Department) to collect each hospital's transfer criteria and transfer agreements and post them on the Department's website.

The Department's rules, specifically N.J.A.C. 43G:12.2 and 12.15(c), already require hospitals to develop and maintain inter-hospital transfer agreements and protocols for trauma patients. As stated above, the Department is now tasked by the Statute with collecting the transfer criteria and agreements and publishing them on the Department's website. Consistent with the statutory mandate, all general acute care hospitals are required to submit their trauma patient transfer criteria and agreements to the Department by September 1, 2021. The Department requests the transfer agreements and criteria be sent in PDF format via email to acutecare@doh.nj.gov. Please refer to "Trauma patient transfer agreements" in the subject line.

PATIENT TRANSFER AGREEMENT FOR TRAUMA SERVICES

The Patient Transfer Agreement for Trauma Services ("Trauma Transfer Agreement") is made as of the ___ day of August, 2021, by and between:

Jersey Shore Medical Center, A Division of HMH Hospitals Corporation, a not-for-profit Corporation located at 1945 Route 33, Neptune City, NJ 07753 (the "Hospital")

And

Southern Ocean Medical Center, A Division of HMH Hospitals Corporation, a not-for-profit corporation located at 1140 Route 72W, Manahawkin, NJ 08050 (the "Facility")
(hereinafter Hospital and Facility may be referred to as "Institution" or "Institutions" or "Party" or "Parties")

WITNESSETH

WHEREAS, the Hospital is a non-profit corporation dedicated to the provision of patient care, including trauma services for the residents of its service area;

WHEREAS, the Hospital is licensed by the New Jersey Department of Health as a Level 2 Trauma Center in accordance with N.J.A.C. 8:43G-12.12 *et seq.*;

WHEREAS, the Facility is an acute care hospital dedicated to the provision of patient care for the residents of its service area; and

WHEREAS, the Hospital and the Facility have determined that it would be in the best interest of patient care and would satisfy applicable regulatory requirements, including, N.J.S.A. 26:2K-70, that the Institutions have a written agreement between the parties concerning the transfer of trauma patients, if medically necessary and appropriate, from the Facility to the Hospital in order to receive trauma services.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other valuable consideration, in receipt and sufficiency of which is hereby acknowledged. The Hospital and the Facility agree as follows:

1. PURPOSE OF TRAUMA TRANSFER AGREEMENT.

The purpose of this agreement is to memorialize the Parties agreement that the Hospital will accept transfer of patients from the Facility for trauma services under medically necessary and appropriate circumstances as determined by the physicians at the Facility.

2. PATIENT TRANSFER.

The need for transfer of a patient from Facility to the Hospital shall be determined by the patient's treating physician. When such a determination has been made, the Facility shall immediately notify the Hospital of the impending transfer. The Hospital agrees to admit the patient as promptly as possible, provided that all conditions of eligibility for admission are met and bed space is available to accommodate the patient, or, in the event that admission is not warranted, to treat the patient in the Hospital's emergency room ("ER") and to release the patient.

The Hospital shall be available to provide physicians, facilities, equipment, radiology, social services, psychiatry, laboratory, blood bank, pathology, nutritional counseling and personnel necessary to care to patients transferred hereunder in accordance with all applicable laws, rules and regulations of the state and federal agencies.

3. PROVISION OF INFORMATION TO EACH INSTITUTION.

Each Institution shall provide the other with the names or classifications of persons authorized to initiate, confirm, and accept the transfer of patients, as applicable. The Hospital shall indicate specifically where transferring patients are to be delivered to its premises.

4. PATIENT RECORDS AND PERSONAL EFFECTS.

The Facility shall forward the following information, if applicable and available, to accompany the patient when being transferred from the Facility to the Hospital:

- A. Patient's name, address, hospital number, age and home, address, and telephone of the next of kin;
- B. Patient's third party billing data;
- C. History of the injury or illness;
- D. Condition on admission;
- E. Vital signs, prior to and at time of transfer.
- F. Treatment provided to patient, including medications given and route of administration;
- G. Laboratory and X-ray findings, including films;
- H. Fluids given, by type and volume;
- I. Name, address and phone number of physician referring patient;

- J. Name of physician at the Hospital to whom patient is to be transferred;
and
- K. Name of physician at the Hospital who has been contacted about
patient.
- L. Patient's Advance Directive if one exists and is available.

The Facility shall supplement the above information as necessary for the maintenance of the patient during transport and treatment upon arrival at the Hospital. In addition, the Hospital shall inventory the patient's personal effects and valuables which accompanied the patient during transfer. The records described above shall be placed in the custody of the person in charge of the transporting medium who shall sign a receipt for the medical records and the patient's valuables and personal effects and in turn shall obtain a receipt from the Hospital when it receives the records and the patient's valuables and personal effects.

5. TRANSFER CONSENT.

The Facility shall have responsibility for obtaining the patient's consent to the transfer to the Hospital prior to the transfer, if the patient is competent and alert. If the patient is not competent and/or alert, the Facility shall obtain the next-of-kin's consent; if such consent is not possible and emergency circumstances exist, direction from the patient's physician shall be obtained by the Facility and the transfer shall be accomplished based upon the implied consent of the Patient under emergency circumstances.

6. PAYMENT FOR SERVICES.

The patient is responsible for payment for care received at either Institution. Each Institution shall be responsible only for collecting its own payment for services rendered to the patient. Nothing in this Trauma Transfer Agreement shall be interpreted to authorize either Institution to look to the other Institution to pay for services rendered to a patient transferred by virtue of this Agreement, except to the extent that such liability would exist separate and apart from this Trauma Transfer Agreement.

7. TRANSPORTATION OF PATIENT.

The Facility shall have the responsibility for arranging transportation of the patient to the Hospital, including selection of the mode of transportation and providing appropriate health care practitioner(s) to accompany the patient, as necessary. The Hospital's responsibility for the patient's care shall begin in accordance with the obligations set forth in Emergency Treatment and Active Labor Act ("EMTALA") 42 U.S.C.A. 1395dd(a) and the regulations promulgated thereto in carrying out the terms of this Trauma Transfer Agreement.

8. TERM.

The term of this Trauma Transfer Agreement shall be for a period of three (3) years beginning on August __, 2021, unless sooner terminated as provided herein. The term shall automatically renew for successive one (1) year terms, unless either Party gives notice to the other of intent not to renew at least sixty (60) days prior to the expiration of the then current term.

9. CONFIDENTIALITY.

- A. Both Parties agree to comply with all federal laws and regulations applicable to the Health Insurance Portability and Accountability Act (HIPAA).
- B. As a condition of maintaining a working relationship, both Institutions agree that all Patient Health Information (PHI) shall remain confidential and shall be protected by appropriate safeguards to prevent the use or disclosure of the PHI, other than as provided for by this Trauma Transfer Agreement or by State and Federal law. Under the conditions of this Agreement, no PHI received or provided by either Institution may be used by or disclosed to a third-party except for as consented to by the patient for purposes of treatment, payment, or health care operations and as otherwise required by State and Federal law.
- C. Upon becoming aware of any use or disclosure of PHI in a manner not provided for in this Trauma Transfer Agreement or by satisfied law, the Institution shall report the disclosure to the other Party. The Institution will strive to mitigate, to the extent practicable, any harmful effect that is known to the Institution of a use or disclosure of PHI in violation of its policies and procedures or the requirements of this Agreement.
- D. Both Institutions recognize the right of patients to amend their consent to disclosure and therefore will make available the PHI to the other Institution in accordance with an amended consent.

10. ADVERTISING AND PUBLIC RELATIONS.

Neither Institution shall use the name of the other Institution in any promotional or advertising material unless prior review and approval of the intended advertisement first shall be obtained from the Party whose name is to be used. Both Institutions shall deal with each other publicly and privately in an atmosphere of mutual respect and support, and each Institution shall maintain good public and patient relations and efficiently handle complaints and inquiries with respect to transferred or transferring patients.

11. INDEPENDENT CONTRACTOR STATUS.

Both Institutions are independent contractors. Neither Institution is authorized or permitted to act as an agent or employee of the other. Nothing in this Trauma Transfer Agreement

shall in any way alter the freedom enjoyed by either Institution, nor shall it in any way alter the control of the management, assets and affairs of the respective Institutions. Neither Party, by virtue of this Agreement, assumes any liability for any debts or obligations of either a financial or a legal nature incurred by the other Party to the Agreement. No Party shall have the right to exercise any control or direction over the business of any other Party to this Trauma Transfer Agreement.

12. NO LIABILITY.

Except as specifically identified herein, each Party agrees to be solely responsible for its own acts or omissions in the performance of its duties hereunder and shall be financially and legally responsible for all liabilities, costs, damages, expenses and attorney fees resulting from, or attributable to, any and all such acts or omissions; provided, however, that a Party shall not be responsible to the extent of the other Party's negligence or willful misconduct or breach of this Trauma Transfer Agreement. Nothing herein should be considered an indemnification by one Party to the other Party.

13. INSURANCE.

Each Party shall, during the term of this Trauma Transfer Agreement, provide and maintain insurance coverage in the minimum amount of One Million Dollars (\$1,000,000) per claim and Three Million Dollars (\$3,000,000) in the aggregate, which insurance coverage shall include public liability and premises coverage, as well as comprehensive liability (including professional liability) coverage for all negligence, errors and omissions of its officers, employees and agents. Each Institution shall provide the other written notice of any cancellations or diminution of such coverage at least ten (10) days prior to such change and shall provide the other Party with certificates evidencing such insurance upon request.

14. NON-EXCLUSIVITY.

Nothing in this Trauma Transfer Agreement shall be construed as limiting the rights of either Institution to enter into similar agreements, or to otherwise contract on a limited or general basis, with any other institution, either while this Trauma Transfer Agreement is in effect or thereafter.

The parties agree that benefits to either Party hereunder do not require payment for, and are in no way contingent upon the admission or referral of any patients to either facility or any other arrangement for the provision of any item or service offered by either Party.

15. TERMINATION.

A. This Trauma Transfer Agreement may be terminated by either Party for breach of a material term of this agreement and said breach is susceptible of cure and it not cured to the reasonable satisfaction of the non-breaching Party with thirty (30) days following receipt of notice of such breach, the non-breaching Party may terminate this Trauma Transfer Agreement.

- B. In the event that either Party shall have its accreditation, operating certificate or licensure suspended, limited or revoked, it shall immediately notify the other Party of that fact in writing and this Trauma Transfer Agreement shall terminate immediately upon such event
- C. Either Party shall have the right to terminate this Trauma Transfer Agreement immediately in the event that the performance by either Party of any term, covenant condition or provision of this Trauma Transfer Agreement should jeopardize the accreditation of Hospital, violates any licensing or other requirement, or performance would violate any statute, or for any reason be deemed illegal.
- D. Either Party may terminate this Trauma Transfer Agreement giving thirty (30) days written notice of termination to the other Party. Termination of this Trauma Transfer Agreement shall not affect either parties' rights or obligations with respect to patients transferred prior to the date of any notice to terminate.

16. **OTHER PROVISIONS:**

- A. Non-Discrimination. Each Institution agrees that, in performance of this Trauma Transfer Agreement, services will be provided without discrimination toward any patient, employee or other person regardless of their race, creed, color national origin, sex, sex orientation, blindness or ethnic background. Both Parties shall comply with all requirements and provisions of the Civil Rights Act of 1964, 42 U.S.C.A. 2000, et seq. and of the New Jersey Law Against Discrimination.
- B. Notice. Whenever, under the terms of this Trauma Transfer Agreement, notice is required or permitted to be given by either Institution to the other Institution, such notice shall be deemed to have been sufficiently given if written, deposited in the United States Mail, in a properly stamped envelope, certified or registered mail, return receipt requested, addressed to the Institution to whom it is to be given at the address hereinafter set forth. Either Institution may change its respective address by written notice in accordance with this Paragraph.

To: Jersey Shore University Medical Center
1945 Route 33
Neptune City, NJ 07753
Attention: President

To: Southern Ocean Medical Center
1140 Route 72W
Manahawkin, NJ 08050
Attention: President

- C. Amendments. This Trauma Transfer Agreement may not be amended or modified in any manner except by an instrument in writing signed by both Institutions.
- D. Binding Effect: Assignment. This Agreement shall be binding upon and inure to the benefit of the Hospital and the Facility, their respective agents, affiliates and successors. Neither Institution shall have the right to assign this Trauma Transfer Agreement or any of its rights or obligations hereunder without the prior written consent of the other Institution and any attempted or purported assignment shall be null and void and of no effect. Notwithstanding the foregoing provisions, the Hospital may assign its rights and obligations under this Trauma Transfer Agreement to any subsidiary or affiliate of the Hospital, or to any entity succeeding to the Hospital's rights, interests and obligations, as a result of a plan of corporate reorganization, a merger, a consolidation, an affiliation, a sale or other disposition of assets, or other similar action not in the regular course of the Hospital's activities.
- E. Section Headings. Section headings as used herein are for convenience only and shall not affect the construction of this Trauma Transfer Agreement.
- F. Governing Law. This Trauma Transfer Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without regard to its conflicts of law principles. All disputes arising out of this agreement shall be resolved by a court of competent jurisdiction in the State of New Jersey, and both Institutions hereby consent to the jurisdiction of the State and Federal Courts of the State of New Jersey.
- G. Severability. The provisions of this Trauma Transfer Agreement are severable and the invalidity of any provision shall not affect the validity of any other provision.
- H. Further Assurances. Each of the Institutions covenants that it shall, from time to time, upon the request of the other, execute such further instruments and take such further actions as may be reasonably required to carry out the intent and purposes of this Trauma Transfer Agreement.
- I. Waiver. The waiver by either Institution of a breach of any provisions contained herein shall be in writing and shall in no way be construed as a waiver of any succeeding breach of such provision or the waiver of the provisions itself.
- J. Survival. Any covenant or provision herein which requires or might require performance after the termination or expiration of this Trauma Transfer Agreement, including, but not limited to indemnities, confidentiality, records retention and access, and restrictive covenants, if applicable, shall survive any termination or expiration of the Agreement.
- K. Entire Agreement. This Trauma Transfer Agreement contains the sole and entire agreement between the Institutions and supersedes all negotiations and prior agreements or understandings between the Institutions, whether oral or written. The

Institutions acknowledge and agree that they have not made any representations inducing the execution and delivery hereof, except such representations as are specifically set forth herein.

- L. **Compliance.** The Institutions shall comply with all laws and regulations of the State of New Jersey, and the Federal Government and all policies, procedures, rules and regulations of the Hospital, including but not limited to, the Code of Ethics and the Corporate Compliance Plan. The Facility acknowledges that HMH must abide by Section 6032 of the Deficit Reduction Act of 2005, including any Corporate Compliance Program now or hereafter instituted by Hospital. The Facility acknowledges that these are available at HMH's website: <https://www.hackensackmeridianhealth.org/about/corporate-compliance-program>.
- M. **Jeopardy.** In the event that either Institution reasonably determines that the performance by the Institutions of any term, covenant, condition or provision of this Trauma Transfer Agreement should jeopardize HMH classification as a tax-exempt organization under §501(c)(3) of the Internal Revenue Code of 1986 (the "Code"), as the same may be amended from time to time, give rise to the imposition of intermediate sanctions under §4958 of the Code, or jeopardize the exemption from taxation of any bonds issued on behalf of HMH or the Facility, or if for any other reason said performance should be in violation of any statute, regulation, ordinance, a judicial or administrative decision or interpretation or otherwise be deemed illegal, or be deemed unethical by any recognized agency, authority or association in the medical or hospital fields, which may jeopardize license, participation in payment programs or accreditation this Trauma Transfer Agreement shall be promptly renegotiated and revised so as to eliminate the violation or non-complying aspects hereof. In the event the parties are unable to renegotiate and revise the Trauma Transfer Agreement as it relates only to this paragraph, either Party may terminate the Trauma Transfer Agreement upon thirty (30) days prior written notice to the other Party. Additionally, in the event this transaction with HMH is determined to contain an excess benefit (as such term is defined under §4958 of the Code and regulations promulgated thereunder), the disqualified person receiving such excess benefit shall correct the excess benefit in the manner and to the extent required under the Code and applicable regulations.
- N. **Exclusion.** Each Institution represents and warrants that it is not a Sanctioned Person or Entity. For purposes of this Trauma Transfer Agreement, the term "Sanctioned Person or Entity" means an entity that (a) has been excluded by the Office of the Inspector General of the Department of Health and Human Services from participation in Medicare, Medicaid or any state health care program (defined at 42 C.F.R. § 1001.2) pursuant to 42 C.F.R. Part 1001 or (b) has been excluded by the State of New Jersey Department of Human Services from participation in New Jersey's Medicaid program pursuant to 42 C.F.R. Part 1002. Each Institution shall notify the other Institution within three (3) days after it receives notice that it is a Sanctioned Person or Entity. Both Institutions shall have the right to terminate this Trauma Transfer Agreement

without penalty at any time after learning that the other is a Sanctioned Person or Entity.

IN WITNESS WHEREOF, the Institutions hereto have executed this Trauma Transfer Agreement as of the day and year first above noted.

**JERSEY SHORE UNIVERSITY
CENTER, A Division of HMM
Hospitals Corporation**

By: _____

Vito Buccellato, President

**SOUTHERN OCEAN MEDICAL
CENTER, a Division of HMM Hospitals
Corporation**

By: _____

Michelle Morrison, President