

PATIENT TRANSFER AGREEMENT

This Patient Transfer Agreement ("Agreement") entered into this ____ day of _____, 20____ is by and between _____, a Washington corporation with an office and place of business at _____, Washington (the "Medical Center") and _____, a not-for-profit corporation with an office and place of business at _____ ("Transferring Facility").

WHEREAS, Medical Center operates a hospital located at _____;

WHEREAS, the Transferring Facility operates a hospital and desires to enter into a written agreement with a medical center in close proximity for the appropriate transfer and care of patients who seek care at the Medical Center when the medically appropriate level of care or specialty services are not available at the Transferring Facility; and

WHEREAS, the parties desire to provide for continuity of care and treatment appropriate to the needs of patients and to formally outline the duties and responsibilities of the parties for the prompt and appropriate transfer of patients.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby acknowledged, and intending to be held legally bound, the parties hereto agree as follows:

1. **Transfer of Patients.** In the event that a patient of the Transferring Facility is deemed by the Transferring Facility to require the services of the Medical Center and the transfer is deemed medically appropriate, the Transferring Facility will contact the Medical Center's Transfer Center at _____ (_____) to facilitate appropriate transfer as contemplated herein. All transfers shall be made in accordance with applicable federal and state laws and regulations, to the extent applicable, including without limitation, the Emergency Medical Treatment and Active Labor Act of 1985, as amended from time to time, ("EMTALA"), the standards of the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO") or other applicable accrediting and licensing bodies, and any other applicable federal, state and local rules and regulations and reasonable policies and procedures of the parties. Neither the decision to transfer a patient nor the decision to not accept a request to transfer a patient shall be predicated upon arbitrary, capricious, or unreasonable discrimination or based upon the patient's inability to pay for services rendered.

2. **Covenants of the Transferring Facility.** The Transferring Facility covenants and agrees to the following:

- (A) Transferring Facility currently requires and during the term of this Agreement shall continue to require that the members of its medical staff shall provide

appropriate call coverage for the communities served by the Transferring Hospital;

- (B) If the Transferring Facility does not have sufficient specialists on staff to provide 24 hour a day, 7 day a week coverage for 365 days a year, then Transferring Facility shall require that its medical staff provide a reasonable, fair and proportionate amount of call for their community, which shall include coverage for a reasonable and proportionate percentage of nights, weekends and holidays, taking into consideration the number of physicians on the Transferring Facility's medical staff and its facilities and services.

3. **Responsibilities of the Transferring Facility.** The Transferring Facility shall be responsible for performing or ensuring performance of the following:

- (A) Designate a person or department who has authority to represent the Transferring Facility and coordinate the transfer of the patient from the Transferring Facility. Name of Person or Department: __
- (B) Notify the Medical Center's Transfer Center as far in advance as possible prior to the proposed transfer in order to receive confirmation as to availability of appropriate facilities, services, and staff necessary to provide care to the patient;
- (C) Arrange for appropriate and safe transportation and care of the patient during transfer, in accordance with applicable federal and state laws and regulations;
- (C) Forward to the Medical Center all medical information necessary in order for the Medical Center to best treat the patient, including a copy of those portions of the patient's medical record that are available and relevant to the transfer and continued care of the patient, including records related to the patient's condition, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests, and relevant insurance information. If all necessary and relevant medical records are not available at the time the patient is transferred, then the records will be forwarded by the Transferring Facility as soon as possible;
- (D) Provide copies of existing treatment authorization and medical information release, if any, signed by the patient or adult legally responsible for such patient;
- (E) Notify the Medical Center of the estimated time of arrival of the patient;
- (F) Recognize the right of a patient to request to transfer into the care of a physician and facility of the patient's choosing;
- (G) Recognize the right of a patient to refuse consent to treatment or transfer;
- (H) Establish a policy and/or protocols (i) for maintaining the confidentiality of the patient's medical records in accordance with applicable state and federal law and

(ii) for the inventory and safekeeping of any patient valuables sent with the patient to the Medical Center;

- (I) Recognize and comply with the requirements of any state law and regulations or local ordinances that apply to the care and transfer of patients;
- (J) Upon request, assist the Medical Center with discharge planning for the return of the patient to his/her home or to a different level of care in Transferring Facility's community.

4. **Responsibilities of the Medical Center.** The Medical Center shall be responsible for performing or ensuring performance of the following:

- (A) Provide, as promptly as possible, confirmation to the Transferring Facility regarding the availability of bed(s), appropriate facilities, services, and staff necessary to treat the patient and confirmation that the Medical Center has agreed to accept transfer of the patient or that the Medical Center does not have the capacity or capability to provide appropriate care to the patient;
- (B) Designate a person or department who has authority to represent and coordinate the transfer and receipt of patients into the Medical Center;
- (C) Furnish the Transferring Facility or provider responsible for the continuing care of the patient with a written discharge summary; and
- (D) Establish a policy and/or protocols (i) for maintaining the confidentiality of the patient's clinical or medical records in accordance with applicable state and federal law, (ii) for the receipt of the patient into the Medical Center, and (iii) for the acknowledgment and inventory of any patient valuables transported with the patient.

5. **Billing.** All claims or charges incurred with respect to any services performed pursuant to this Agreement shall be billed and collected by the party providing such services directly from the patient, third party payer, Medicare or Medicaid, or other sources appropriately billed by that party, unless applicable laws or regulations require that one party bill the other party for such services. Nothing in this Agreement shall be construed as an offer or payment by one party to the other party (or any affiliate of the other party) of any remuneration for patient referrals, or for recommending or arranging for the purchase, lease or order of any item or service for which payment may be made in whole or in part by Medicare or Medicaid. Any payments made between the parties are intended to represent the fair market value of the supplies and/or services to be rendered by the respective party hereunder and are not in any way related to or dependent upon referrals by and between the parties. Furthermore, it is the stated intent of both parties that nothing contained in this Agreement is or shall be construed as an endorsement for any act of either party.

6. Records.

6.1 Maintenance of Records. The parties agree to keep and maintain records in such form and for such duration as may be required by all applicable federal and state statutes and regulations.

6.2 Access to Books and Records. Until the expiration of four (4) years after the furnishing of services pursuant to this Agreement, the parties shall, upon written request, make available to the Secretary of the Department of Health and Human Services (HHS), the Comptroller General, or any of their duly authorized representatives, this Agreement, and any books, documents and records that are necessary to certify the nature and extent of the costs incurred under this Agreement. If a party delegates to or performs any of its duties pursuant to this Agreement through a subcontractor, with a value or cost of \$10,000 or more over a twelve (12) month period, then such party represents, warrants and agrees that it will include a provision in the agreement with the subcontractor substantially similar to the above provision. A disclosure under this provision will not be construed as a waiver of any legal rights to which the parties may be entitled under statute or regulation.

6.3 HIPAA. Each of the parties hereby represents and warrants and covenants that it is presently taking and will continue to take all actions necessary to assure that it shall, on or before each applicable compliance date and continuously thereafter, comply with Public Law 104-191 of August 21, 1996, known as the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulations, including without limitation, the Standards for Electronic Transactions and Code Sets (45 CFR Parts 160 and 162), the Standards for Privacy of Individually Identifiable Health Information (45 CFR Parts 160 and 164), the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Parts 160 and 164) and such other regulations that may, from time to time, be promulgated thereunder.

7. Transportation of Patients. The Transferring Facility shall have responsibility for arranging transportation of the patient to and from the Medical Center, including selection of the mode of transportation and providing appropriate health care personnel to accompany the patient. the Medical Center's responsibility for the patient's care shall begin when the patient arrives at and is accepted by the Medical Center and shall end when the patient is discharged from the Medical Center.

8. Term and Termination.

8.1 This Agreement shall commence on _____, and shall continue for a period of one (1) year (the "Initial Term"). This Agreement shall automatically renew for additional one (1) year periods under the same terms and conditions herein (the "Renewal Term(s)"). Either party may terminate this Agreement without cause by providing the other party with thirty (30) days prior written notice. Termination of this Agreement shall not be deemed to terminate the care of any patient hereunder when the continuation of such care is deemed medically necessary.

8.2 Upon the occurrence of any of the following events, this Agreement shall automatically be terminated:

- (A) Revocation, suspension or non-renewal of any and all licenses and registrations issued to a party by any applicable agency or governmental authority of the State of Washington;
- (B) Revocation or suspension of accreditation by JCAHO or any other applicable accrediting agency; and/or
- (C) Termination of a party's provider agreement for Medicare or either party being deemed an "excluded party" for purposes of any state or federal healthcare program.

9. **Non-discrimination.** The parties agree that the primary consideration is the care and treatment of the patient's medical needs. The parties further agree to admit or transfer any patient without regard to a patient's race, color, age, sex, sexual orientation, disability, handicap, religion, national origin or any other class protected under federal, state or local law or regulation.

10. **Insurance.** Each party covenants and agrees to maintain at its sole cost and expense at all times during the term of this Agreement: (a) professional liability insurance covering such party's, employees, and representatives for acts committed during the term of this Agreement and in amounts as required by applicable federal, state or local law or regulation; (b) workers' compensation coverage for all of such party's employees as required by applicable federal, state or local law or regulation; and (c) general liability insurance in commercially reasonable amounts. Upon request, a party will provide the other party with a certificate of such insurance. Each party will also provide the other party with thirty (30) days written notice of the cancellation, expiration or termination of such insurance.

11. **Indemnification.** Each party shall indemnify, defend and hold harmless the other party and its agents, affiliates, assignees, directors, employees, officers and successors from any and all actions, claims, demands or liability arising from or related to any negligence or wrongful acts or omissions of the party or its agents, affiliates, assignees, directors, employees, officers and successors. The Transferring Facility shall indemnify, defend and hold harmless the Medical Center and its agents, affiliates, assignees, directors, employees, officers and successors from any and all actions, claims, demands or liability arising from or related to any failure by the Transferring Facility or its agents, affiliates, assignees, directors, employees, officers and successors, to provide the Medical Center the appropriate information in connection with a patient transfer.

12. **Independent Contractors.** This Agreement shall in no way be construed to be or to create a joint venture between the parties. None of the provisions of this Agreement are intended to create or shall be deemed or construed to create any relationship between the parties hereto other than that of independent parties contracting with each other hereunder solely for the purpose of effecting the provisions of this Agreement. Neither of the parties hereto, nor any of

their respective employees, shall be construed to be the agent, employee or representative of the other.

13. **Non-Exclusivity.** Nothing in this Agreement shall be construed as limiting the right of either party to affiliate or contract with any other party on either a limited or general basis while this Agreement is in effect.

14. **Marketing and Advertising.** Neither party shall use the name, logo, symbol or trademark of the other party in any promotional material, unless review and approval of the intended use is first obtained in writing from the party whose name is to be used.

15. **Governing Law.** This Agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of Washington, without reference to the conflicts of law provisions thereof.

16. **Notices.** Any notice, demand or communication required, permitted or desired to be given hereunder shall be deemed effectively given when personally delivered or mailed by prepaid certified mail, return receipt requested, addressed as follows:

If to Transferring Facility:

If to Medical Center:

Attn: _____

Any party may change its address by giving notice in accordance with the provisions of this Section 15.

17. **Assignment.** No assignment of this Agreement or the rights and obligations hereunder shall be valid without the express prior written consent of each of the parties hereto; provided, however, that this Agreement may be assigned without the consent of the Transferring Facility, by Medical Center to any successor entity, which as a result of a merger, acquisition of stock, acquisition of significant assets or other reorganization, operates all or a substantial portion of Medical Center. Any purported assignment of this Agreement which violates the provisions of this Section 16 shall be null, void and of no force or effect.

18. **Waiver of Breach.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be a waiver of any subsequent breach of the same or other provision hereof.

19. **Severability.** In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms.

20. **Entire Agreement.** This Agreement, together with Appendix A, constitutes the entire Agreement of the parties with respect to the subject matter hereof, and all prior and contemporaneous understandings, agreements and representations, whether oral or written, with respect to such matters are superseded.

21. **Amendments.** This Agreement may only be amended, modified, waived or discharged by the written consent of both parties.

22. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original, but all of which shall be deemed to constitute one instrument.

23. **Binding Effect.** This Agreement shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

24. **No Third Party Beneficiaries.** Nothing referred to or expressed in this Agreement is intended by the parties, nor shall this Agreement be deemed, to confer any legal or equitable right or remedy, claim or benefit on any person who is not a party to this Agreement.

25. **Excluded Party.** Each of the parties represents, warrants and covenants to the other that it is not an "excluded party" for purposes of Medicare, Medicaid or any state or federal healthcare programs and none of its employees providing health care services to patients hereunder are such an "excluded party."

26. **Arbitration.** Any dispute, controversy or claim arising out of this Agreement shall be settled by arbitration in accordance with this Section. Any arbitration under this Section shall be conducted in accordance with the American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The place of arbitration shall be Richland, Washington. The arbitrators shall decide legal issues pertaining to the dispute, controversy or claim pursuant to the laws of the State of Washington. Subject to the control of the arbitrators, or as the parties may otherwise mutually agree, the parties shall have the right to conduct reasonable discovery pursuant to the Federal Rules of Civil Procedure. The arbitrators shall not have the authority to award punitive damages.

27. **Change in Law.** The parties agree that in the event that legislation is enacted or regulations are promulgated or a decision or court is rendered or any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation is published that affects or may affect the legality of this agreement or any part thereof or materially and adversely affects the ability of either party to perform its obligations or receive the benefits intended hereunder ("adverse change in law"), then within fourteen days following written notice by either party to the other party of such adverse change in law, the parties shall meet to negotiate in good faith an amendment which will carry out the original intention of the parties to the extent possible in light of the adverse change in law. If, despite good faith attempts, the parties cannot reach agreement upon an amendment within sixty (60) days after commencing negotiations, then this agreement may be terminated by either party as of the earlier of (i) the effective date of the adverse change in law or (ii) the expiration of a period of sixty (60) days following written notice of termination provided by one party to the other.

IN WITNESS WHEREOF, a duly authorized representative of the parties has caused this Agreement to be executed in multiple originals as indicated below.

By:
Name:
Title:

By:
Name:
Title: