NEW YORK STATE | Department of Health

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General Hospital Patient Transfers for Load Balancing During State Disaster Emergency

Dear Chief Executive Officer:

This letter serves as a reminder to New York State hospitals of the expectation for all general hospitals to work cooperatively to implement load balancing (shifting patients among hospitals to alleviate overcrowding when possible) during the State disaster emergency declared under Executive Order No. 56. As general hospitals in the affected areas reach capacity, it may be necessary to transfer patients to other general hospitals that have available beds within the region or in other regions of the State.

Executive Order No. 56 satisfies the requirement that there be a declared State disaster emergency in order to give the Department authority under 10 NYCRR Part 360 for the Commissioner of Health to activate the Surge and Flex Health Care Coordination System. Under 10 NYCRR § 360.2(a)(4)(i):

> "Health care facilities regulated by the Department shall, if directed to do so by the Commissioner, rapidly discharge, transfer, or receive patients, while protecting the health and safety of such patients and residents, and consistent with the Emergency Medical Treatment and Active Labor Act (EMTALA). The Department shall coordinate with health care facilities to balance individual facility patient load and may promulgate further directives to specify the method and manner of transfer or discharge."

This Dear Administrator Letter does not alter established federal Emergency Medical Treatment and Labor ACT (EMTALA) law, regulations, and guidance or the requirements of New York Public Health Law §2805-b. The federal State Operations Manual for Medicare provides guidance regarding the federal regulations, including 42 CFR § 489.24(f), under which patients who present at a hospital but have not been admitted may be transferred to another hospital, which would be required to accept the patient transfer.

Consistent with the Commissioner's authority under the Surge and Flex regulations, hospitals may be required to rapidly discharge, transfer, or receive patients in the case of a patient who is admitted at a general hospital in the affected area (sending hospital) but must be transferred to another general hospital (receiving hospital), because the sending hospital is at or near capacity and must therefore place patients elsewhere. I Both the sending hospital and the receiving hospital must continue at all times to take all reasonable measures to protect the health and safety of such patients, including safe transfer and discharge practices, and must comply with EMTALA and associated federal regulations and guidance.

Regarding consent by the patient or other authorized health care decision-maker, federal rules under the Conditions of Participation for Medicare and Medicaid are comparable to the provisions of 10 NYCRR §405.9(h)(7). Each patient removal, transfer or discharge shall be carried out after a written order made by a physician that, in the physician's judgment, such removal, transfer or discharge will not create a medical hazard to the person or that such removal, transfer or discharge is considered to be in the patient's best interest despite the potential hazard of movement. Such a removal, transfer or discharge shall be made only after explaining the need for removal, transfer, or discharge to the patient or other authorized health care decision-maker and prior notification to the medical facility expected to receive the patient. The patient or other authorized health care decision-maker must be consulted prior to a transfer to another facility. If the health care decision-maker does not consent to the transfer, the patient may nevertheless be transferred so long as the

health care-decision maker is advised of the benefits of the transfer and the risks of remaining at the facility. The health care decision-maker may sign the patient out against medical advice if there is no consent to the transfer.

Any objections regarding transfer must be documented in the patient's chart and include a description of who spoke with the patient and/or legal representative, and what was discussed with the patient and/or their legal representative. The record should also reflect which physician made the determination to transfer the patient and why. The hospital must maintain a record of transfers from the hospital, including the date and time of the hospital reception or admission, name, sex, age, address, presumptive diagnosis, treatment provided, clinical condition, reason for transfer and destination (i.e., receiving hospital). A copy of this information must accompany the patient and become part of the patient's medical record.

General hospitals should do everything they can to work with patients and their authorized health care decision-maker prior to a transfer using this suspension. General hospitals should also be aware of any logistical issues that arise when a patient is transferred.

Sincerely,

[signed electronically]

Lori Schillinger, RN
Deputy Director, Division of Hospitals and
Diagnostic & Treatment Centers