

**RESOLUTION
R2022-08**

**A RESOLUTION APPROVING EMERGENCY
PATIENT TRANSFER AGREEMENTS
FOR THE DEKALB COUNTY REHAB & NURSING CENTER**

WHEREAS, on December 8, 2021, the DeKalb County Board approved Ordinance O2021-19, An Ordinance Dissolving the DeKalb County Rehab & Nursing Home Operating Board and Reintegrating its Functions into the DeKalb County Board as of December 31, 2021, and

WHEREAS, said Ordinance stated that the DeKalb County Board shall act in all respects as the operating authority for the DeKalb County Rehab & Nursing Center, and any and all contracting powers are reserved solely to the DeKalb County Board along with those powers and responsibilities provided for in 55ILCS 5/5-21001, *et seq*, and

WHEREAS, the DeKalb County Rehab & Nursing Center desires to enter into two Agreements with local facilities in the event that patients need to be transferred during an Emergency, and

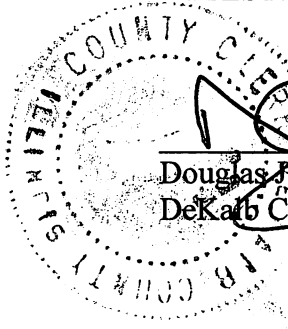
WHEREAS, an Emergency is defined as any event, natural, manmade, or technological, that leads the Transferring Facility to determine that a partial or full evacuation is necessary.

WHEREAS, the County Board's Health & Human Services Committee found it desirable to enter into two separate agreements with different facilities in the instance that a backup facility is necessary.

NOW, THEREFORE, BE IT RESOLVED that the DeKalb County Board hereby approves to enter into Emergency Patient Transfer Agreements with Oak Crest – DeKalb Area Retirement Center and Aperion Care DeKalb for the transfer of patients from the DeKalb County Rehab & Nursing Center in the event of a disaster, whether natural or manmade.

PASSED THIS 16TH DAY OF FEBRUARY, 2022 AT SYCAMORE, ILLINOIS

ATTEST:

A circular seal for DeKalb County, Illinois, with the text "DEKALB COUNTY, ILLINOIS" around the perimeter. In the center, there is a signature of Douglas J. Johnson over a horizontal line. Below the signature, the text "Douglas J. Johnson" and "DeKalb County Clerk" is printed.

Douglas J. Johnson
DeKalb County Clerk

SIGNED:

A handwritten signature in cursive that reads "John Frieders". Below the signature is a horizontal line, and under that line, the text "John Frieders, Chairman" and "DeKalb County Board" is printed.

John Frieders, Chairman
DeKalb County Board

EMERGENCY PATIENT TRANSFER AGREEMENT

THIS **EMERGENCY PATIENT TRANSFER AGREEMENT** (the "Agreement") is made as of October, 1, 2021 (the "Effective Date") by and between Aperion Care DeKalb (referred to herein as "Transferring Facility") and DeKalb County Rehab & Nursing Center, (referred to herein as "Receiving Facility"), pursuant to the terms and provisions of the Agreement, and collectively as "facilities."

WITNESSETH:

WHEREAS, the parties hereto desire to enter into the Agreement governing the transfer of patients between the two facilities; and,

WHEREAS, the parties hereto desire to enter into the Agreement in order to specify the rights and duties of each of the parties and to specify the procedure for ensuring the timely transfer of patients between the facilities during an Emergency (for the purposes of this Agreement, an Emergency is defined as any event, natural, manmade, or technological, that leads the Transferring Facility to determine that a partial or full evacuation is necessary

NOW, THEREFORE, to facilitate the continuity of care and the timely transfer of patients and records between the facilities, the parties agree as follows:

1. **TRANSFER OF PATIENTS.** In the event an Emergency renders Transferring Facility as requiring the services of Receiving Facility, a member of the nursing staff of Transferring Facility will contact the admitting office or Emergency Department, whichever is applicable, of Receiving Facility to arrange for appropriate treatment as contemplated herein for all patients of Transferring Facility that require transfer during an Emergency. All transfers between the facilities shall be made in accordance with applicable federal and state laws and regulations, the standards of The Joint Commission and any other applicable accrediting bodies, and reasonable policies and procedures of the facilities. 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 by either facility. Receiving Facility's responsibility for the patient's care shall begin when the patient is admitted to Receiving Facility.

2. **RESPONSIBILITIES OF TRANSFERRING FACILITY.** Transferring Facility shall be responsible for performing or ensuring performance of the following for all patients transferred during an Emergency:

(A) Provide, within its capabilities, stabilizing treatment of the patient prior to transfer;

(B) Arrange for appropriate and safe transportation and care of the patient during transfer, in accordance with applicable federal and state laws and regulations;

(C) Designate a person who has authority to represent Transferring Facility and coordinate the transfer of the patient from the facility;

(D) Notify Receiving Facility's designated representative prior to transfer to receive confirmation as to availability of appropriate facilities, services, and staff necessary to provide care to the patient;

(E) Prior to patient transfer, if for direct admission, the transferring physician shall contact and secure a receiving physician at Receiving Facility who shall attend to the medical needs of the patient and who will accept responsibility for the patient's medical treatment and hospital care;

(F) Provide, within its capabilities, appropriate personnel, equipment, and services to assist the transferring physician with the coordination and transfer of the patient;

(G) Provide, within its capabilities, personnel, equipment, and life support measures determined appropriate for the transfer of the patient by the transferring physician;

(H) Forward to the receiving physician and Receiving Facility 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 a copy of the patient's executed Advance Directives. If all necessary and relevant medical records are not available at the time the patient is transferred, then the records will be forwarded by Transferring Facility as soon as possible;

(I) Transfer the patient's personal effects, including, but not limited to, money and valuables, and information related to those items;

(J) Notify Receiving Facility of the estimated time of arrival of the patient;

(K) Provide Receiving Facility any information available about the patient's coverage under a third party coverage plan, Medicare or Medicaid, or a healthcare assistance program established by a county, public hospital, or hospital district;

(L) Acknowledge any contractual obligations and comply with any statutory or regulatory obligations that might exist between a patient and a designated provider;

(M) Recognize the right of a patient to request to transfer into the care of a physician and facility of the patient's choosing;

(N) Recognize the right of a patient to refuse to consent to treatment or transfer;

(O) 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 Receiving Facility; and,

(P) Recognize and comply with the requirements of any state law and regulations or local ordinances that apply to the care and transfer of patients.

3. **RESPONSIBILITIES OF RECEIVING FACILITY.** Receiving Facility shall be responsible for performing or ensuring performance of the following for all patients transferred during an emergency:

(A) Provide, as promptly as possible, confirmation to Transferring Facility regarding the availability of bed(s), appropriate facilities, services, and staff necessary to treat the patient and confirmation that Receiving Facility has agreed to accept transfer of the patient. Receiving Facility shall respond to Transferring Facility promptly after receipt of the request to transfer a patient with an emergency medical condition or in active labor;

(B) Provide, within its capabilities, appropriate personnel, equipment, and services to assist the receiving physician with the receipt and treatment of the patient transferred, maintain a call roster of physicians at Receiving Facility and provide, on request, the names of on-call physicians to Transferring Facility;

(C) Reserve beds, facilities, and services as appropriate for patients being transferred from Transferring Facility who have been accepted by Receiving Facility and a receiving physician, if deemed necessary by a transferring physician unless such are needed by Receiving Facility for an emergency;

(D) Designate a person who has authority to represent and coordinate the transfer and receipt of patients into the facility;

(E) When appropriate and within its capabilities, assist with the transportation of the patient as determined appropriate by the transferring or receiving physician;

(F) Upon discharge of the patient back to Transferring Facility, provide Transferring Facility with a copy of the patient's clinical or medical records, including any record generated in the emergency department;

(G) Maintain the confidentiality of the patient's clinical or medical records in accordance with applicable state and federal law;

(H) 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 its facility, and (iii) for the acknowledgment and inventory of any patient valuables transported with the patient;

(J) Provide Transferring Facility any information available about the patient's coverage or eligibility under a third party coverage plan, Medicare or Medicaid, or a healthcare assistance program established by a county, public hospital, or hospital district;

(K) Upon request, provide current information concerning its eligibility standards and payment practices to Transferring Facility and patient;

(L) Acknowledge any contractual obligations and comply with any statutory or regulatory obligations that might exist between a patient and a designated provider when (i) requested by the patient or Transferring Facility, (ii) ordered by the patient's attending/transferring physician, or (iii) if Transferring Facility has a statutory or regulatory obligation;

(M) Recognize and comply with the requirements of any state law and regulations or local ordinances that apply to the care and transfer of patients.

4. **BILLING.** All claims or charges incurred with respect to any services performed by either facility for patients received from the other facility pursuant to the Agreement shall be billed and collected by the facility providing such services directly from the patient, third party payer, Medicare or Medicaid, or other sources appropriately billed by that facility, unless applicable law and regulations require that one facility bill the other facility for such services. In addition, it is understood that professional fees will be billed by those physicians or other professional providers who actually participate in the care and treatment of the patient and who are entitled to bill for their professional services at usual and customary rates. Each facility agrees to provide information in its possession to the other facility and such physicians or professional providers sufficient to enable them to bill the patient, responsible party, or appropriate third party payer.

5. **TRANSFER BACK; DISCHARGE; POLICIES.** At such time as the emergency which precipitated any transfer of patients under this Agreement has subsided, and Transferring Facility is ready to receive any patients transferred due to the emergency, in accordance with the direction from the responsible physician in Transferring Facility and with the proper notification of the patient's family or guardian, the patient will be transferred back to Transferring Facility. Receiving Facility will be responsible for the care of the patient up until the time the patient is re-admitted to Transferring Facility.

6. **COMPLIANCE WITH LAW.** Protection of Health Information. Each party represents and warrants that such party possesses the capacity to comply, and will continuously comply, and will cause their employees, subcontractors and agents to comply with, applicable state and federal laws and regulations relating to the security,

protection and privacy of individually identifiable health care information, including without limitation the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Health Information Technology and Clinical Health Act (HI-TECH), and regulations promulgated thereunder, as they may be amended from time to time, as well as the applicable confidentiality and breach provisions of Indiana law. Each party shall not disclose or use any health information which is not permitted under HIPAA and shall notify the other party promptly when such party becomes aware of such improper use or disclosure. The parties hereby acknowledge and agree that each party is a "Covered Entity," under HIPAA and agrees to carry out its respective responsibilities under this Agreement in accordance with such status. The parties further acknowledge that the services identified in this Agreement involve the exchange of Protected Health Information ("PHI") between covered entities under HIPAA in which no Business Associate Agreement is needed.

7. **INDEMNIFICATION.** The facilities shall each be responsible for their own acts and omissions in the performance of their duties hereunder, and the acts and omissions of their own employees and agents, and shall indemnify and hold harmless the other party from and against any and all claims, liabilities, causes of action, losses, costs, damages and expenses (including reasonable attorney's fees) incurred by the other party as a result of such acts and omissions.

8. **TERM; TERMINATION.** The term of the Agreement shall be for a term of one (1) year commencing on the Effective Date and shall automatically renew for additional one (1) year periods unless sooner terminated as provided herein. Either party may terminate the Agreement without cause upon thirty (30) days advance written notice to the other party. Either party may terminate the Agreement upon breach by the other party of any material provision of the Agreement, provided such breach continues for five (5) days after receipt by the breaching party of written notice of such breach from the non-breaching party. The Agreement may be terminated immediately upon the occurrence of any of the following events:

(A) Either facility closes or discontinues operation to such an extent that patient care cannot be carried out adequately;

(B) Either facility loses its license, or Medicare certification;

(C) Upon the appointment of a receiver or custodian to take possession of all or any material part of the assets of a facility, or a general assignment by a facility for the benefit of its creditors, or the filing of a case by or against a facility under the Bankruptcy Code which is not stayed or terminated within thirty (30) days; or

(D) Either facility fails to comply with any of its obligations, liabilities or undertakings assumed by the facility under this Agreement, and such failure, continues for a period of five (5) days following delivery of written notice describing such breach by the non-defaulting facility.

9. **ENTIRE AGREEMENT; MODIFICATION.** The 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. The Agreement may not be amended or modified except by mutual written agreement.

10. **NO REQUIREMENT TO REFER.** This Agreement is not intended to influence the judgment of any physician or provider in choosing medical specialists or medical facilities appropriate for the proper care and treatment of residents. Neither party shall receive any compensation or remuneration for referrals.

11. **GOVERNING LAW.** The Agreement shall be construed in accordance with the laws of the State of Illinois.

12. **PARTIAL INVALIDITY.** If any provision of the Agreement is prohibited by law or court decree of any jurisdiction, said prohibition shall not invalidate or affect the remaining provisions of the Agreement.

13. **NOTICES.** All notices hereunder by either party to the other shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight courier, and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, postage prepaid, addressed as follows:

If to Aperion Care DeKalb
1212 S. 2nd Street
DeKalb, IL 60115
Attention: Administrator

With copy to: Aperion Care, Inc.
4655 W. Chase Ave.
Lincolnwood, IL 60712
Attention: General Counsel

If to Receiving Facility
DeKalb County Nursing & Rehab Center
2600 N. Annie Glidden Rd, DeKalb IL
Attention: _____

With copy to: _____

Attention: _____

or to such other persons or places as either party may from time to time designate by written notice to the other.

14. **WAIVER.** A waiver by either party of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure.

15. **ASSIGNMENT; BINDING EFFECT.** Facilities shall not assign or transfer, in whole or in part, the Agreement or any of Facilities' rights, duties or obligations under the Agreement without the prior written consent of the other Facility, and any assignment or transfer by either Facility without such consent shall be null and void. The Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, representatives, successors and permitted assigns.

16. **CHANGE IN LAW.** Notwithstanding any other provision of the Agreement, if the governmental agencies (or their representatives) which administer Medicare, any other payer, or any other federal, state or local government or agency passes, issues or promulgates any law, rule, regulation, standard or interpretation, or if any court of competent jurisdiction renders any decision or issues any order, at any time while the Agreement is in effect, which prohibits, restricts, limits or in any way substantially changes the method or amount of reimbursement or payment for services rendered under the Agreement, or which otherwise significantly affects either party's rights or obligations hereunder, either party may give the other notice of intent to amend the Agreement to the satisfaction of both parties, to compensate for such prohibition, restriction, limitation or change. If the Agreement is not so amended in writing within three (3) days after said notice was given, the Agreement shall terminate as of midnight local time on the third (3rd) day after said notice was given.

17. **ARBITRATION.** Facilities agree that all disputes arising from this Agreement shall be decided by arbitration. The arbitration proceedings shall proceed in accordance with the rules and procedures as outlined in the American Arbitration Association Code of Procedure for Healthcare Payor Providers or the American Health Lawyer's Association's Arbitration rules of procedure. The arbitration shall take place in the county in which the Transferring Facility is located, unless the Facilities agree otherwise. The arbitrator's decision shall be final and binding without the right to appeal. The arbitrator's fees and costs associated with the arbitration shall be divided equally among the parties. The parties shall bear their own attorneys' fees and costs and hereby expressly waive any right to recover attorney fees or costs, actual or statutory.

17. **EXECUTION OF AGREEMENT.** The Agreement shall not become effective or in force until all of the below named parties have fully executed the Agreement.

****This section left intentionally blank. Signature page to follow.****

IN WITNESS WHEREOF, the parties hereto have executed the Agreement as of the day and year written above.

By: Steve Jeremias
Printed Name: Steve Jeremias
Title: Administrator
Date: 12/12/2021

By: John Frieders
Printed Name: John Frieders
Title: County Board Chairman
Date: 2/16/2022