FRESENIUS
MEDICAL CARE

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JUN 07 2016

HEALTH FACILITIES &
SERVICES REVIEW BOARD

June 6, 2016

Mike Constantino
Illinois Health Facilities & Services Review Board
525 West Jefferson, 2nd Floor
Springfield, IL 62761

Re: #16-024, Fresenius Medical Care East Aurora

Dear Mike:

Attached is an updated transfer agreement between Fresenius Medical Care East Aurora, LLC d/b/a Fresenius Kidney Care East Aurora and Presence Central and Suburban Hospitals Network, d/b/a Presence Mercy Medical Center (formerly Provena Mercy Medical Center). This will replace Attachment 26h in the application submitted.

Thank you and please feel free to contact me should you have any questions.

Sincerely,

Lori Wright

Lori Wright
Senior CON Specialist

North Division
3500 Lacey Rd., Suite 900, Downers Grove, Illinois 60515
Main: 630-960-6700

Presence Health

HOSPITAL TRANSFER AGREEMENT
(PRESENCE RECEIVING)

THIS HOSPITAL TRANSFER AGREEMENT ("**Agreement**") is entered into and effective April 15, 2016 (the "**Effective Date**") by and between **Fresenius Medical Care East Aurora, LLC d/b/a Fresenius Kidney Care East Aurora** ("**Transferring Facility**"), and **Presence Central and Suburban Hospitals Network,** an Illinois not-for-profit corporation **d/b/a Presence Mercy Medical Center** ("**Presence Receiving Hospital**"). (Transferring Facility and Presence Receiving Hospital may each be referred to herein as a "**Party**" and collectively as the "**Parties**").

PURPOSE OF AGREEMENT

1. Transferring Facility provides health care services to the community.

2. Patients/Residents of Transferring Facility ("**Patients**") may require transfer to a hospital for acute-inpatient or other emergency health care services.

3. Presence Receiving Hospital owns and operates a licensed and Medicare certified acute care hospital in reasonable proximity to Transferring Facility, which has a twenty-four (24) hour emergency room and provides emergency health care services.

4. The Parties desire to establish a transfer arrangement to ensure continuity of care for Patients and to specify the procedure for ensuring the timely transfer of Patients to Presence Receiving Hospital.

NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set forth herein, the Parties agree as follows:

ARTICLE 1
TRANSFER OF PATIENTS

1.1 **Recommendation of Transfer**. Upon recommendation of an attending physician and pursuant to the provisions of this Agreement, if a Patient needs acute inpatient or emergency care and has either requested to be taken to Presence Receiving Hospital, or is unable to communicate a preference for hospital services at a different Hospital, and a timely transfer to Presence Receiving Hospital would best serve the immediate medical needs of Patient, a designated staff member of Transferring Facility will contact the admitting office or emergency department of Presence Receiving Hospital (the "**Emergency Department**") to facilitate admission.

1.2 **Patient Admitting**. Provided Presence Receiving Hospital has the capacity to treat the Patient, Presence Receiving Hospital will accept and, as appropriate, admit a Patient as promptly as possible in accordance with applicable federal, state and local laws, the rules and standards of all applicable accreditation organizations such as The Joint Commission (each, an "**Accrediting Organization**"), and reasonable policies and procedures of Presence Receiving Hospital.

1.3 Confirmation of Transfer. After receiving a transfer request, Presence Receiving Hospital will give prompt confirmation of whether it can provide health care appropriate to the Patient's medical needs. Presence Receiving Hospital's responsibility for patient care will begin when Patient is admitted to Presence Receiving Hospital. Communication and Quality Improvement measures between Transferring Facility and Presence Receiving Hospital will be noted, as related to patient stabilization, treatment prior to and subsequent to transfer and patient outcome.

ARTICLE 2
RESPONSIBILITIES OF TRANSFERRING FACILITY

2.1 Ambulance Service. Transferring Facility will arrange for ambulance service to Presence Receiving Hospital.

2.2 Transfer Coordinator. Transferring Facility will designate a person who has authority to represent Transferring Facility and coordinate the transfer of Patient to Presence Receiving Hospital.

2.3 Notice of Transfer. Transferring Facility will notify Presence Receiving Hospital's designated representative prior to transfer to alert him or her of the impending arrival of Patient and provide information on Patient to the extent allowed pursuant to Article 4. Such notice will be as far in advance as possible and in any event prior to the Patient leaving the Transferring Facility for transport, to allow the Presence Receiving Hospital to determine whether it can provide the necessary Patient care.

2.4 Notice of Arrival Time. Transferring Facility will notify Presence Receiving Hospital of the estimated time of arrival of the Patient.

2.5 Physician's Order to Transfer. The Patient's medical record will contain a physician's order to transfer the Patient. The attending physician recommending the transfer will communicate directly with Presence Receiving Hospital's patient admissions, or, in the case of an emergency services patient who has been screened and stabilized for transfer, with the Presence Receiving Hospital's Emergency Department.

2.6 Patient Information. In addition to a Patient's medical records and the physician's order to transfer, Transferring Facility will provide Presence Receiving Hospital with all information regarding a Patient's medications, and clear direction as to who may make medical decisions on behalf of the Patient, with copies of any power of attorney for medical decision making or, in the absence of such document, a list of next of kin, if feasible, to assist the Presence Receiving Hospital in determining appropriate medical decision makers in the event a Patient is or becomes unable to do so on his or her own behalf.

2.7 Personal Effects of Patient. Personal effects of any transferred Patient will be delivered to the transfer team or admissions department of the Presence Receiving Hospital. Personal effects include, but are not limited to money, jewelry, personal papers and articles for personal hygiene.

ARTICLE 3
RESPONSIBILITIES OF PRESENCE RECEIVING HOSPITAL

3.1 **Receiving Coordinator**. Presence Receiving Hospital will designate a person who has authority to represent and coordinate the transfer and receipt of Patients into the Emergency Department.

3.2 **Patient Admitting**. Presence Receiving Hospital will timely admit Patient to Presence Receiving Hospital when transfer of Patient is medically appropriate as determined by Presence Receiving Hospital attending physician subject to hospital capacity and patient census issues, provided that all usual conditions of admission to Presence Receiving Hospital are met.

3.3 **Billing and Collection**. Presence Receiving Hospital will be responsible for the billing and collection of charges for all services provided by Presence Receiving Hospital. Transferring Facility will in no way share in the revenue generated by services delivered to Patients at Presence Receiving Hospital.

ARTICLE 4
PROVISION AND PROTECTION OF PATIENT INFORMATION

4.1 **Patient Information**. To meet the needs of Patients with respect to timely access to emergency care, Transferring Facility will provide information on Patients to Presence Receiving Hospital, to the extent approved in advance or authorized by law and to the extent Transferring Facility has such information available. Such information may include: Patient Name, Social Security Number, Date of Birth, insurance coverage and/or Medicare beneficiary information (if applicable), known allergies or medical conditions, treating physician, contact person in case of emergency and any other relevant information Patient has provided Transferring Facility in advance, to be given in connection with seeking emergency care.

4.2 **Provision of Records**. The Transferring Facility will send a copy of all Patient medical records and information set forth in Section 2.6 that are available at the time of transfer to the Presence Receiving Hospital. Other records will be sent as soon as practicable after the transfer. The Patient's medical record will contain evidence that the Patient was transferred promptly, safely and in accordance with all applicable laws and regulations.

4.3 **HIPAA Compliance**. Each Party will and will cause its employees and agents to protect the confidentiality of all patient information (including, but not limited to, medical records, electronic data, radiology films, laboratory blocks, slides and billing information) in accordance with all applicable state and federal laws, rules and regulations protecting the confidentiality, privacy and/or security of such information, including the Health Insurance Portability and Accountability Act of 1996, and regulations promulgated pursuant thereto ("**HIPAA**"), each as may be amended.

ARTICLE 5
COMPLIANCE

5.1 Regulatory and Accreditation Standards. Each Party will perform its duties under this Agreement in compliance with all applicable federal, state and local laws and the rules and standards of any Accrediting Organization.

5.2 Government Program Participation. Each Party certifies that it has not been excluded from participation in or sanctioned by Medicare, Medicaid or any other federal or state funded health care program. Each Party will promptly deliver to the other Party written notice if it becomes excluded from participation in or sanctioned by Medicare, Medicaid or any other federal or state funded health care program.

5.3 No Referrals Requirement. The Parties agree that nothing contained in this Agreement will require any Party to refer or admit patients to, or order or make arrangements for the ordering of, any goods or services from another Party to this Agreement. Notwithstanding any unanticipated effect of any provision of this Agreement, no Party will knowingly or intentionally conduct its behavior in such a manner as to violate the prohibitions against fraud and abuse in connection with the Medicare and Medicaid programs.

5.4 Non-Exclusivity. This Agreement in no way gives Presence Receiving Hospital an exclusive right of transfer of Patients of Transferring Facility. Transferring Facility may enter into similar agreements with other acute care hospitals, and Patients will continue to have complete autonomy with respect to choice of hospital service providers, as further described in Section 5.5.

5.5 Patient Freedom of Choice. In entering into this Agreement, Transferring Facility is not acting to endorse or promote the services of Presence Receiving Hospital. Rather, Transferring Facility intends to coordinate the timely transfer of Patients for emergency care. Patients are in no way restricted in their choice of emergency care providers.

5.6 Books and Records. Upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, each Party will make available to the Secretary or to the Comptroller General those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing its services under this Agreement. Such inspection will be available for up to four (4) years after the rendering of such service. The Parties agree that any attorney-client, accountant-client or other legal privileges will not be deemed waived by virtue of this Agreement.

5.7 Communication and Quality Improvement. Transferring Facility and Presence Receiving Hospital will each designate a representative who shall meet as often as necessary to discuss quality improvement measures related to patient stabilization and/or treatment prior to and subsequent to transfer and patient outcome. The parties agree to reasonably cooperate with each other to oversee performance improvement and patient safety applicable to the activities under this Agreement to the extent permissible under applicable laws. All information obtained and any materials prepared pursuant to this section and used in the course of internal quality control or for the purpose of reducing morbidity and mortality, or for improving patient care, will be privileged

and strictly confidential for use in evaluation and improvement of patient care according to 735 ILCS 5/8-2101 et seq., as may be amended from time to time.

ARTICLE 6
INSURANCE AND INDEMNIFICATION

6.1 **Insurance**. Both Parties will maintain, at no cost to the other Party, professional liability insurance with limits of at least One Million Dollars ($1,000,000) per occurrence and Three Million Dollars ($3,000,000) aggregate. Each Party will provide evidence of the coverage required herein to the other Party prior to the commencement of this Agreement and as requested thereafter. A Party will notify the other at least thirty (30) days prior to cancellation, notice of cancellation, reduction, or material change in coverage. In the event of insufficient coverage as required by this Section 6.1, or lapse of coverage, each Party reserves the right to terminate this Agreement immediately.

6.2 **Indemnification.** Each Party will indemnify, defend and hold harmless the other Party from and against any and all liability, loss, claim, lawsuit, injury, cost, damage or expense whatsoever (including reasonable attorneys' fees and court costs), to the extent arising out of, incident to or in connection with any act or omission of the indemnifying Party in the performance of this Agreement. This Section will survive the expiration or other termination of this Agreement.

ARTICLE 7
TERM AND TERMINATION

7.1 **Term**. The term of this Agreement will commence on the Effective Date and will continue in effect for one (1) year (the "**Initial Term**"). **Thereafter, this Agreement will automatically renew for successive one (1) year terms unless terminated pursuant to this Section.** The Initial Term and all renewal terms will collectively be the "**Term**" of this Agreement.

7.2 **Termination Without Cause**. Either Party may terminate this Agreement at any time, without cause or penalty, by providing sixty (60) days' prior written notice of termination to the other Party.

7.3 **Immediate Termination**. Notwithstanding anything to the contrary herein, this Agreement will be terminated immediately upon the following events:

(a) the suspension or revocation of a Party's license, certificate or other legal credential necessary to render patient care services and meet the terms and conditions of this Agreement;

(b) termination of a Party's participation in or exclusion from any federal or state health care program for any reason;

(c) the cancellation or termination of a Party's insurance required under Article 6 of this Agreement without replacement coverage having been obtained; and/or

(d) a Party determines that the continuation of this Agreement would endanger Patient care.

7.4 **Termination Due to Change in or Violation of Law**. Either Party will have the unilateral right to terminate or amend this Agreement, without liability, to the extent necessary to comply with any legal order issued to such Party by a federal or state department, agency or commission, or Accrediting Organization, or if it is reasonably determined that continued participation in this Agreement would jeopardize such Party's status as a Medicare or Medicaid participant or would be inconsistent with its status as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. Prior to termination of this Agreement pursuant to this Section, the Parties will first reasonably attempt to amend this Agreement in a manner that will achieve the business purposes hereof. If either Party proposes an amendment to this Agreement in order to comply with applicable law or accreditation standards, and such amendment is unacceptable to the other Party, either Party may choose to terminate this Agreement immediately upon written notice at any time thereafter.

ARTICLE 8
RELATIONSHIP OF PARTIES

This Agreement evidences an independent contractor relationship, and nothing in this Agreement is intended nor will be construed to: a) create a partnership or joint venture relationship between Presence Receiving Hospital and Transferring Facility; or b) allow either Party to exercise control or direction over the manner or method by which the other Party and its representatives perform this Agreement. Transferring Facility will neither have nor exercise any direction or control over the methods, techniques or procedures by which Presence Receiving Hospital or its employees, agents or representatives perform their professional responsibilities and functions. The sole interest of Transferring Facility is to coordinate the timely transfer of Patients to Presence Receiving Hospital for emergency care.

ARTICLE 9
GENERAL PROVISIONS

9.1 **Amendment.** This Agreement may be amended only by a writing signed by both Parties.

9.2 **Successors and Assigns**. The terms of this Agreement will be binding on and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the Parties.

9.3 **Assignment**. No Party may assign this Agreement or any right or duty hereunder without the prior written consent of the other Party. Any attempt at assignment without such written consent is void. Notwithstanding the foregoing, each Party has the right to assign any duties, rights and benefits under this Agreement to its successors or affiliates without the written consent of the other Party.

9.4 **Third Party Beneficiary**. None of the provisions in this Agreement are intended by the Parties, nor will be deemed, to confer any benefit on any person not a party to this Agreement.

9.5 **Governing Law and Exclusive Jurisdiction**. This Agreement will be governed and interpreted by Illinois law. Any legal action pertaining to this Agreement must be brought in the state or federal courts located in (or closest to) the Illinois county in which the Presence Receiving Hospital is located.

9.6 **Severability**. The invalidity or unenforceability of any particular provision of this Agreement, or the application of the provision to any party or circumstance, will not affect the other provisions hereof or the applicability of such provision to other persons or circumstances other than those as to whom or which it is held to be invalid or unenforceable, and this Agreement will be construed in all respects as if such invalid or unenforceable provision were omitted.

9.7 **Waiver**. No term, covenant or condition of this Agreement can be waived, except to the extent set forth in writing by the waiving Party. The subsequent acceptance of performance by a Party will not be deemed to be a waiver of any preceding breach by any other Party of any term, covenant or condition of this Agreement and the waiver of any term, covenant or condition will not be construed as a waiver of any other term, covenant or condition of this Agreement.

9.8 **Notices**. All notices that may be given under this Agreement will be in writing, addressed to the receiving Party's address set forth below or to such other address as the receiving Party may designate by notice hereunder. Notices will be given: (i) by traceable courier delivery (such as Federal Express); (ii) by certified or registered U.S. mail, return receipt requested; or (iii) by electronic mail in accordance with the terms set forth in this Section.

Transferring Facility: **Fresenius Medical Care East Aurora, LLC** **d/b/a Fresenius Kidney Care East Aurora**
Aurora, IL 60505
Attn: **President/CEO**

With a copy to: Fresenius Medical Care East Aurora, LLC
c/o Fresenius Medical Care North America
920 Winter Street, Waltham, MA 02451
Attn: Law Dept.

Presence Receiving Hospital: Presence Central and Suburban Hospitals Network
Presence Mercy Medical Center
1325 N. Highland Avenue, Aurora, IL 60506
Attn: **President/CEO**

Notices will be deemed to have been given as follows: (i) if by hand or traceable courier delivery, at the time of the delivery; (ii) if sent by certified or registered mail, on the second business day after such mailing; or (iii) if sent by electronic mail, upon confirmation of receipt by personal confirmation (i.e. electronic mail or verbal confirmation from recipient).

9.9 **Headings**. The section titles and other headings contained in this Agreement are for reference only and will not in any way affect the meaning or interpretation of this Agreement.

9.10 **Gender, Number**. Whenever the context of the Agreement so requires, the masculine gender will include the feminine or neuter, the singular number will include the plural and reference to one or more Parties will include all successors or assignees of the Party.

9.11 **Entire Agreement**. This Agreement, together with all addenda, attachments, schedules and exhibits hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, regarding such subject matter.

9.12 **Survival**. Those terms of the Agreement that by their terms are intended to survive termination will survive termination.

9.13 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all such counterparts together will constitute one and the same instrument. Facsimile copies and copies delivered by electronic email in a ".pdf" format data file will be deemed to be originals.

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers hereto to be effective as of the Effective Date.

PRESENCE RECEIVING HOSPITAL

Presence Central and Suburban Hospitals Network, an Illinois not-for-profit corporation
d/b/a Presence Mercy Medical Center

By: _____

Printed Name: Ann Erricchetti, MD

Title: Chief Operations & Academic Officer

TRANSFERRING FACILITY

Fresenius Medical Care East Aurora, LLC d/b/a Fresenius Kidney Care East Aurora

By: _____

Printed Name: Coleen Muldoon

Title: Regional Vice President