



**FRESENIUS
KIDNEY CARE**

Fresenius Kidney Care

3500 Lacey Road, Downers Grove, IL 60515

T 630-960-6807 F 630-960-6812

Email: lori.wright@fmc-na.com

November 1, 2017

RECEIVED

NOV 02 2017

**HEALTH FACILITIES &
SERVICES REVIEW BOARD**

Mike Constantino
Illinois Health Facilities and Services Review Board
525 W. Jefferson Street, 2nd Floor
Springfield, IL 62761

Re: #17-060, Fresenius Kidney Care Waukegan Park

Dear Mike,

Attached please find the fully executed transfer agreement for the above-mentioned project.

Sincerely,

Lori Wright
Senior CON Specialist

Enclosure

**TRANSFER AGREEMENT
BETWEEN
ADVOCATE CONDELL MEDICAL CENTER
AND
FRESENIUS MEDICAL CARE LAKE COUNTY, LLC
D/B/A FRESENIUS KIDNEY CARE WAUKEGAN PARK**

This Transfer Agreement (the "*Agreement*") is entered into on the 1st day of November, 2017 ("*Effective Date*"), by and between Advocate Condell Medical Center ("*Hospital*"), an Illinois not-for-profit corporation, and Fresenius Medical Care Lake County, LLC d/b/a Fresenius Kidney Care Waukegan Park ("*Fresenius*"), a Delaware limited liability company.

WHEREAS, Hospital is licensed under Illinois law as an acute care hospital;

WHEREAS, Fresenius intends to establish a Medicare-certified End Stage Renal Dialysis facility;

WHEREAS, Hospital and Fresenius desire to cooperate in the transfer of patients between Fresenius and Hospital, when and if such transfer may, from time to time be deemed necessary and requested by the respective patient's physician, to facilitate appropriate patient care;

WHEREAS, the parties mutually desire to enter into a transfer agreement to provide for the medically appropriate transfer or referral of patients from Fresenius to Hospital, for the benefit of the community and in compliance with HHS regulations; and

WHEREAS, the parties desire to provide a full statement of their agreement in connection with the services to be provided hereunder.

NOW, THEREFORE, BE IT RESOLVED, that in consideration of the mutual covenants, obligations and agreements set forth herein, the parties agree as follows:

I. TERM

1.1 The term of this Agreement shall be for one (1) year(s) from the Effective Date. This Agreement shall automatically renew for one (1) year term(s) unless terminated by either party as set forth herein.

II. TERMINATION

2.1 Either party may terminate this Agreement at any time, with or without cause, upon ninety (90) days prior written notice to the other party. Additionally, this Agreement shall automatically terminate should either party fail to maintain the licensure or certification necessary to carry out the provisions of this Agreement.

III. OBLIGATIONS OF THE PARTIES

3.1 Fresenius agrees:

a. That Fresenius shall refer and transfer patients to Hospital for medical treatment only when such transfer and referral has been determined to be medically appropriate by

the patient's attending physician or, in the case of an emergency, the Medical Director for Fresenius, hereinafter referred to as the "Transferring Physician";

b. That the Transferring Physician shall contact Hospital's Emergency Department Nursing Coordinator, prior to transport, to verify the transport and acceptance of the emergency patient by Hospital. The decision to accept the transfer of the emergency patient shall be made by Hospital's Emergency Department physician, hereinafter referred to as the "Emergency Physician", based on consultation with the member of Hospital's Medical Staff who will serve as the accepting attending physician, hereinafter referred to as the "Accepting Physician". In the case of the non-emergency patient, the Medical Staff attending physician will act as the Accepting Physician and must indicate acceptance of the patient. Fresenius agrees that Hospital shall have the sole discretion to accept the transfer of patients pursuant to this Agreement subject to the availability of equipment and personnel at Hospital. The Transferring Physician shall report all patient medical information which is necessary and pertinent for transport and acceptance of the patient by Hospital to the Emergency Physician and Accepting Physician;

c. That Fresenius shall be responsible for affecting the transfer of all patients referred to Hospital under the terms of this Agreement, including arranging for appropriate transportation, and care for the patient during the transfer. The parties agree and acknowledge that the patient, or the patient's third party payor, if applicable, shall retain financial responsibility for the transfer. The Transferring Physician shall determine the appropriate level of patient care during transport in consultation with the Emergency Physician and the Accepting Physician;

d. That pre-transfer treatment guidelines, if any, will be augmented by orders obtained from the Emergency Physician and/or Accepting Physician;

e. That, prior to patient transfer, the Transferring Physician is responsible for insuring that written, informed consent to transfer is obtained from the patient, the parent or legal guardian of a minor patient, or from the legal guardian or next-of-kin of a patient who is determined by the Transferring Physician to be unable to give informed consent to transfer; and

f. To maintain and provide proof to Hospital of professional and public liability insurance coverage in the amount of One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate with respect to the actions of its employees and agents connected with or arising out of services provided under this Agreement.

3.2 Hospital agrees:

a. To accept and admit in a timely manner, subject to bed availability, Fresenius patients referred for medical treatment, as more fully described in Section 3.1, Subparagraphs a through e;

b. To accept patients from Fresenius in need of inpatient hospital care, when such transfer and referral has been determined to be medically appropriate by the patient's attending physician and/or emergency physician at Fresenius;

c. That Hospital will seek to facilitate referral of transfer patients to specific Accepting Physicians when this is requested by Transferring Physicians and/or transfer patients;

d. That Hospital shall provide Fresenius patients with medically appropriate and available treatment provided that Accepting Physician and/or Emergency Physician writes appropriate orders for such services; and

e. To maintain and provide, upon request, proof to Fresenius of professional and public liability insurance coverage in the amount of One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate with respect to the actions of its employees and agents connected with or arising out of services provided under this Agreement.

IV. GENERAL COVENANTS AND CONDITIONS

4.1 **Release of Medical Information.** In all cases of patients transferred for the purpose of receiving medical treatment under the terms of this Agreement, Fresenius shall ensure that copies of the patient's medical records, including X-rays and reports of all diagnostic tests, accompany the patient to Hospital if feasible, but in any event be transferred to Hospital within one (1) working day, subject to the provisions of applicable State and Federal laws governing the confidentiality of such information. Information to be exchanged shall include any completed transfer and referral forms mutually agreed upon for the purpose of providing the medical and administrative information necessary to determine the appropriateness of treatment or placement, and to enable continuing care to be provided to the patient. The medical records in the care and custody of Hospital and Fresenius shall remain the property of each respective institution.

4.2 **Personal Effects.** Fresenius shall be responsible for the security, accountability and appropriate disposition of the personal effects of patients prior to and during transfer to Hospital. Hospital shall be responsible for the security, accountability and appropriate disposition of the personal effects of transferred patients upon arrival of the patient at Hospital.

4.3 **Indemnification.** The parties agree to indemnify and hold each other harmless from any liability, claim, demand, judgment and costs (including reasonable attorney's fees) arising out of or in connection with the intentional or negligent acts of their respective employees and/or agents.

4.4 **Independent Contractor.** Nothing contained in this Agreement shall constitute or be construed to create a partnership, joint venture, employment, or agency relationship between the parties and/or their respective successors and assigns, it being mutually understood and agreed that the parties shall provide the services and fulfill the obligations hereunder as independent contractors. Further, it is mutually understood and agreed that nothing in this Agreement shall in any way affect the independent operation of either Hospital or Fresenius. The governing body of Hospital and Fresenius shall have exclusive control of the management, assets, and affairs at their respective institutions. No party by virtue of this Agreement shall assume any liability for any debts or obligations of a financial or legal nature incurred by the other, and neither institution shall look to the other to pay for service rendered to a patient transferred by virtue of this Agreement.

4.5 **Publicity and Advertising.** Neither the name of Hospital nor Fresenius (nor their respective affiliates) shall be used for any form of publicity or advertising by the other without the express written consent of the other.

4.6 **Cooperative Efforts.** The parties agree to devote their best efforts to promoting cooperation and effective communication between the parties in the performance of services hereunder, to foster the prompt and effective evaluation, treatment and continuing care of recipients of these services. Parties shall 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, shall be privileged and strictly confidential for use in the evaluation and improvement of patient care according to 735 ILCS 5/802101 et seq., as may be amended from time to time.

4.7 **Nondiscrimination.** The parties agree to comply with Title VI of the Civil Rights Act of 1964, all requirements imposed by regulations issued pursuant to that title, section 504 of the Rehabilitation Act of 1973, and all related regulations, to insure that neither party shall discriminate against any recipient of services hereunder on the basis of race, color, sex, creed, national origin, age or handicap, under any program or activity receiving Federal financial assistance.

4.8 **Affiliation.** Each party shall retain the right to affiliate or contract under similar agreements with other institutions while this Agreement is in effect.

4.9 **Applicable Laws.** The parties agree to fully comply with applicable federal, and state laws and regulations affecting the provision of services under the terms of this Agreement.

4.10 **Governing Law.** All questions concerning the validity or construction of this Agreement shall be determined in accordance with the laws of Illinois.

4.11 **Writing Constitutes Full Agreement.** This Agreement embodies the complete and full understanding of Hospital and Fresenius with respect to the services to be provided hereunder. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. Neither this Agreement nor any rights hereunder may be assigned by either party without the written consent of the other party.

4.12 **Written Modification.** There shall be no modification of this Agreement, except in writing and exercised with the same formalities of this Agreement.

4.13 **Severability.** It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held to be illegal by the courts or in conflict with any law of the state where made, the validity of the remaining portions or provisions shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

4.14 **Notices.** All notices permitted or required to be given under the terms of this Agreement shall be deemed received (i) when delivered personally; (ii) within three (3) days after it has been post-marked in the United States Mail, certified, postage prepaid; or (iii) upon delivery when sent by nationally recognized overnight courier, and addressed as follows:

If to the Hospital:

Advocate Condell Medical Center
801 South Milwaukee Avenue
Libertyville, Illinois 60048
Attention: President

With a Copy to: Advocate Health Care
3075 Highland Parkway, Suite 600
Downers Grove, Illinois 60515
Attention: Senior Vice President & General Counsel

If to the Fresenius: Fresenius Medical Care Lake County, LLC
3500 Lacey Road
Suite 900
Downers Grove, Illinois 60515
Attention: Lori Wright

With a Copy to: Fresenius Medical Care Lake County, LLC
c/o Fresenius Medical Care North America
920 Winter Street
Waltham, Massachusetts 02451-1457
Attention: Corporate Legal Department

Any party may change the address for notice by notifying the other party, in writing, of the new address.

IN WITNESS WHEREOF, Hospital and Fresenius have executed this Agreement as of the Effective Date.

**ADVOCATE CONDELL MEDICAL
CENTER**

**FRESENIUS MEDICAL CARE LAKE COUNTY,
LLC D/B/A FRESENIUS KIDNEY CARE
WAUKEGAN PARK**

By: _____

Karen Lambert
President

By: _____

Name: Coleen Muldoon

Title: Regional Vice President