NEW YORK STATE OF OPPORTUNITY. Department of Health

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Executive Deputy Commissioner

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Dear Chief Executive Officer:

The purpose of this letter is to provide guidance to hospitals that may be impacted by an increase in patient volume due to the New York State Fair and to clarify the requirements of 10 NYCRR 405.19 as it relates to emergency department (ED) overcrowding.

A chronically overcrowded ED can delay the delivery of necessary patient care during periods of normal operations and compromise a hospital's emergency preparedness capabilities. Hospitals should manage ED capacity to ensure the ED can remain open and fully operational to be able serve the community during episodic events and during long term or seasonal periods of high capacity.

**Evaluation and Transfer of Care from Arriving Ambulances**

10 NYCRR 405.19(d)(4) and (e)(2) requires sufficient support personnel staffing and that every person arriving at the ED for care be promptly examined, diagnosed and appropriately treated in accordance with the triage and transfer policies and protocols approved by the hospital and adopted by the ED. Approved protocols shall include a requirement that ED medical staff promptly evaluates and accepts the transfer of patient care from arriving ambulance personnel. Section 405.6 requires hospitals to establish and maintain a coordinated quality assurance program which integrates the review activities of all hospitals to enhance the quality of patient care and identify and prevent medical, dental and podiatric malpractice. The activities of the hospital's quality assurance committee involve all patient care services including the identification of actual or potential problems concerning patient care and clinical performance. Any evaluation and transfer of care from ambulance personnel that exceeds thirty (30) minutes should be reviewed as part of the hospital's quality assurance program to identify opportunities for improvement that will facilitate patient care.

**Emergency Department Boarding of Admitted Patients**

Maintaining admitted patients within the ED is not optimal and contributes to overcrowding that can compromise the ability of staff to treat emergency cases in a safe and effective manner. Hospital administration should be proactive in identifying and utilizing inpatient beds for admissions from the ED. All hospital beds and inpatient areas should be identified and considered in determining bed assignments.

As a temporary emergency measure during peak periods of overcrowding, beds in solariums and hallways near nursing stations can be utilized consistent with the facility-wide plan to alleviate hospital overcrowding and provide additional capacity. Facilities must meet patient's privacy and medical needs as well as maintain appropriate and effective infection

prevention and control when evaluating proposed areas for temporary patient housing.

In the event that the number of patients needing evaluation or treatment in an ED is equal to or exceeds the ED's treatment space capacity, admitted patients should be promptly transported to inpatient beds or, if inpatient beds are not available, to temporary space as described above. Additional staffing must be made available to care for these patients if the capacity to treat additional patients in those areas has been exceeded (10 NYCRR 405.19).

## Discharge and Transfer of Patients

In accordance with 10 NYCRR 405.19(c)(7), hospitals must ensure adequate discharge planning. Hospitals should implement procedures to ensure that patient discharges occur early during the day to provide the required support to newly admitted surgical and ED patients. During times of significant patient surges, the hospital should implement steps to ensure discharge activities continue throughout the day including evenings, weekends, and holidays. The Department of Health strongly encourages hospitals that, as a condition of safe discharge pursuant to existing regulatory obligations under 10 NYCRR 405.9(h)(1), they test patients for COVID-19 prior to discharge to any congregate care setting, including but not limited to nursing homes and adult care facilities and sharing such results with the accepting facility. This will allow the accepting facility to implement its infection control policies and procedures as appropriate. Discharge policies and procedures should incorporate such testing requirements, and discharge planning should include sharing of test results with the accepting facility prior to discharge. All facilities should also continue to adhere to all relevant DOH and Centers for Disease Control and Prevention (CDC) guidance, including "Discontinuation of Transmission-Based Precautions and Disposition of Patients with SARS-CoV-2 Infection in Healthcare Settings," updated June 2, 2021. Under no circumstance, should a patient be discharged to a congregate setting when such setting does not have sufficient isolation and cohorting opportunities to prevent COVID spreading to the residents of the congregate setting.

As part of the emergency services quality assurance activities required by 10 NYCRR 405.19(f)(7), hospitals should review the appropriateness of scheduled elective procedures to determine whether changes in scheduling would free up inpatient beds or allow for staff reassignments during periods of peak capacity or ED use. Hospitals should consider postponing elective admissions/surgeries until inpatient beds have been assigned to the ED patients waiting for beds.

The medical staff is responsible for developing and implementing written policies and procedures approved by the governing body that include a written agreement with one or more local emergency medical services (EMS) to accommodate the need for timely inter-facility transport on a 24-hours a day, 7 days a week, 365 days a year basis (10 NYCRR 405.19(b)(1)(i)).

Also, the Department reminds hospitals that in addition to the items noted above in this section, all hospitals must adhere to all other requirements under law, regulation and guidance, to effectuate a safe discharge for all patients.

## Diversion of Emergency Department or Specialty Services

While diversion may be a process that can be used to improve and offset capacity issues during times when an increasing number of patients are presenting to the hospital, it is

important to be reminded that diversion can also have a significant negative effect on other hospitals and ambulance resources and can lead to the potential of negative patient outcomes.

10 NYCRR 405.19(e)(4) permits hospitals to request diversion of patients with life threatening conditions to other hospitals when acceptance of additional patients would endanger the life of that patient or another patient. A request to divert to another facility may be honored by EMS providers. If the patient's condition is unstable including but not limited to obstetric patients with imminent delivery or in extremis patients with any uncontrollable problem such as an unmanageable airway, uncontrolled hemorrhage, unstable cardiopulmonary condition, or full arrest and the hospital requesting diversion is the closest appropriate hospital, EMS personnel may transport to the hospital to ensure that the patient receives appropriate medical care. EMS should notify the hospital of the patient's condition and when to expect the patient's arrival.

Hospitals may remain on diversion status for no more than four (4) consecutive hours per occurrence. If the hospital does not initiate a subsequent diversion request, the diversion shall automatically expire at the conclusion of this 4-hour diversion period.

The Department may perform unannounced site visits to hospitals to ensure compliance with these requirements (Public Health Law (PHL) § 2803(1)).

Pursuant to PHL § 2803(1) and 10 NYCRR 405.19, hospitals requesting diversion are required to:

1. Contact the New York State Surge and Flex Operations Center by phone at (917) 909-2676 to request that the hospital be placed on diversion status. The individual, designated by the hospital to make the request, must be prepared to provide the following information:

    - The number of staffed acute care beds available at the time that the hospital is requesting diversion.

    - Whether an internal disaster such as a power failure, fire, equipment failure or other issue occurred that has direct impact on the number of patients who can be cared for at the hospital.

    - Information related to staffing and if the hospital has made substantial efforts to identify additional staffing.

    - Whether the hospital has contacted other hospitals within the region to identify and work on opportunities for load balancing of patients and the response obtained from these hospitals.

    - Whether the hospital is working with its medical staff to discharge patients who no longer require acute care services; and

    - Whether elective surgeries have been postponed or cancelled.

2. Provide an attestation, signed by the Chief Executive Officer or designee, appointed in writing, within sixty (60) minutes of the verbal request to the New York State Surge and

Flex Operations Center.

3. Make every attempt to maximize bedspace, screen elective admissions, and use all available personnel and facility resources to minimize the length of time on diversion.

4. Accept any patients who are in-extremis regardless of the hospital's status.

5. Complete an appropriateness and quality assurance review for all diversion requests.

**Internal Disaster**

A hospital may close to all patients (both walk-in and ambulance) if the facility or a portion of the facility is in a state of internal disaster, such as a power failure, fire, equipment failure or other issue, occurred that has direct impact on the number of patients who can be cared for at the hospital. In such cases, the facility must contact the New York State Surge and Flex Operations Center immediately and report to the New York Patient Occurrence Reporting and Tracking System (NYPORTS) as required within 24 hours or one business day of when the adverse event occurred or when the hospital has reasonable cause to believe the adverse event has occurred.

**EMTALA**

Please note that no matter contained with this Dear Administrator letter should be interpreted as relieving facilities of their responsibilities under the Emergency Medical Treatment and Active Labor Act (EMTALA).

Sincerely,

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