



On December 21, 2021, the New York State Department of Health (DOH) provided guidance on patient transfers between facilities under the Surge and Flex Health Care Coordination System activated in response to the State disaster emergency declared under Executive Orders No. 4 and No. 11.

The current suspensions of regulatory requirements related to patient transfers are similar to the waivers provided by Executive Order 202.79 Rapid Transfer from December 2020. However, additional requirements have been incorporated into the most recent directives.

The regulatory suspensions from Executive Orders No. 4, No.11, and DOH guidance do not negate the requirement that facilities **must continue to comply with the Emergency Medical Treatment and Active Labor Act (EMTALA)** and any associated federal regulations, and guidance<sup>1</sup>.

Please note that both the sending facility and the receiving facility must continue to at all times take all reasonable measures to protect the health and safety of any transferring patients, including safe transfer and discharge practices.

Below are the updated steps for the transfer of patients pursuant to these orders.

**Updated Steps for Transfers Between Acute Care Facilities for Level Load Balancing During the State Disaster Emergency Declared Under Executive Orders No. 4 and No.11**

- Determine if the facility is either close to or at capacity<sup>2</sup>.
- Determine patients that could meet criteria for a planned safe transfer.
- Apply your clinical judgment, in deciding whether the patient is stable for transfer.
- The **consent** of the patient or the authorized health care decision maker **is not required for transfer**. However, the patient or other authorized health care decision maker **must be consulted** prior to transfer to another facility. Consequently, you must undertake a discussion with the patient or the authorized health care decision maker regarding the rationale for transfer.
- If the patient or authorized health care decision maker does not agree with to the transfer, the patient may nevertheless be transferred so long as they are advised of the benefits of the transfer and the risks of remaining at the facility. In addition, the need for transfer must be explained to the patient or the authorized health care decision maker before the transfer.
- Be aware of and be sensitive to any logistical issues that may arise when a patient is transferred.
- A mere disagreement to the transfer that is expressed by the patient or their authorized health care decision maker should not affect your determination for a transfer. However, you should do everything to work with the patient or the authorized health care decision maker prior to transfer.

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<sup>1</sup> EMTALA mandates that when an individual present to the hospital with an emergency medical condition, the hospital must provide an appropriate medical screen examination, and if an emergency medical condition is determined to exist, provide any necessary stabilizing treatment or an appropriate transfer. Individuals who have not been admitted may be transferred to another hospital as long as a medical screening examination has been completed and the receiving hospital has the capacity to treat the individual which would then be required to accept the patient transfer.

<sup>2</sup> The sending facility must be at or near capacity in order to transfer in compliance with Executive Order No. 4 and with the DOH directive.

- If the prospect of transfer is so upsetting to the patient or their authorized health care decision maker that is likely to affect the patient's clinical condition or the safety of the transfer, such factors must be taken into account when you determine whether the transfer is safe.
- Prior notification must be made to the receiving facility.
- Enter a written order for the transfer of the patient and document the discussion with the patient in the medical record.
- The authorized health care decision maker may sign the patient out against medical advice if there is no consent to the transfer.

Please see below suggested talking points for discussion with the latest or authorized health care decision maker:

### **Level Loading Talking Points**

"As you know, the impact of COVID has put a strain on hospitals across the state. We know that patients are safer when hospitals have adequate space and capacity to care for them. Based on this, we may need to move patients between our hospitals to ensure that each of our sites can safely care for patients.

Our hospital is currently nearing capacity. Our team has determined that your loved one still requires hospitalization, but we can plan for a safe move to hospital x. We have gone through the chart and reviewed the case with the doctors at hospital x to ensure that the current treatment plan can be continued there.

We want you to know that hospital x will have access to any information needed to continue this care. We know this is probably stressful or frustrating from your perspective, and we are sorry for that.

Please let us know how we can make the transition any easier.

We will provide you with contact information for the hospital that will be continuing with your care or your loved one's care.

If you are objecting to the transfer, we should discuss the reasons for your objection.

If you do not agree to the transfer, you have the option of signing out against medical advice.

### **Points of Documentation in the Record**

- The patient's medical record should reflect which physician made the determination to transfer the patient and why there was such a determination.
- Patient or authorized health care decision maker has been informed that hospitalization is still required but that a safe transfer has been planned. The patient or authorized health care decision maker has been informed that the current treatment plan will be continued at the receiving hospital. The patient has been offered contact information for the receiving facility.

- If the patient has agreed to the transfer, document the agreement. Any objections regarding transfer must be documented in the patient's chart and include a description of who spoke with the patient or their authorized health care decision maker and what was discussed. If the patient or their authorized health care decision maker opts to be discharged against medical advice it should be documented in the progress note and the NYC Health + Hospitals form entitled Departure Against Medical Advice should be completed.
- If there is no agreement by the patient or their authorized health care decision maker, the documentation should reflect that the patient is stable for transfer and that the planned transfer is safe, necessary for level loading and complies with Executive Order No.4, Executive Order No.11, and DOH guidance.

**EPIC Template (.levelloadingtransfernote smartphrase)**

**Level Loading Transfer Note**

Based on the facility's assessment of limited capacity and the clinical assessment of and determination made by {physician: 32632} that this patient is stable for transfer, it has been determined that this transfer for level-loading is appropriate.

The patient or their authorized health care decision maker has been informed that hospitalization is still required but that a safe transfer has been planned.

The patient or authorized health care decision maker has been informed that the current treatment plan will be continued at the receiving hospital. The patient or the authorized health care decision maker has been provided with contact information for the receiving facility.

The patient or authorized health care decision maker has {transferdecision: 32553}

If applicable, the objection and the underlying reasons for the objection and the reasons for the decision to transfer (describe the reasons: \*\*\*) were discussed between the patient or the authorized healthcare decision maker and {physician: 32632}.

If applicable, the patient or the authorized health care decision maker has signed out against medical advice.

The transfer complies with Executive Order No. 4, Executive Order No. 11, and DOH guidance.

**Other Records**

- 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.