

**Recitals:**

This Memorandum of Agreement (MOA) is a voluntary agreement among the \_\_\_\_\_ Skilled Nursing and/or Long Term Care Facilities for the purpose of providing mutual aid at the time of a disaster. Nothing in this MOA is intended to create any legal relationship among the organizations other than that of independent entities agreeing with each other solely for the purpose assisting each other during a disaster or other critical situation.

This MOA is not a legally binding contract but rather a voluntary agreement. It signifies the belief and commitment of the undersigned facilities that as a result of any emergency or disaster, regardless of cause, which exceed the effective response capabilities of the impacted facility, the affected participant may request assistance from another participant as is more generally set forth herein.

This document is intended to *augment*, not replace, each facility's disaster plan. No participant shall be *required* to provide medical supplies, equipment, services or personnel to another facility that are *needed to meet its own internal needs*. The document supplements the rules and procedures governing interaction with other organizations during a disaster. The disaster may be an "external" or "internal" event for one or more facilities and assumes that each affected facility's emergency management plan has been fully implemented. The terms of this MOA are to be incorporated into the facility's emergency management plan.

By signing this MOA, each facility is evidencing its intent to abide by the terms of the MOA in the event of a disaster. The facilities participating in this MOA agreement of mutual-aid concur to make a reasonable attempt to comply with the following:

Failure to comply with the MOA does not give rise to legal liability or cause of action.

**1. Evacuation of an Undersigned Facility:**

1.1 If a disaster affects an undersigned facility(s) resulting in partial or complete facility evacuation, the other undersigned facilities agree to participate in the distribution of patients from the affected facility.

1.2 In the event of an evacuation, the evacuating facility will contact their agreed- upon area coordinator, who will in turn contact EMSDOC (Emergency Medical Services Disaster Operations Center), Medical Operations Center (aka MOC), per established protocol, policy and/or guidelines.

1.3 Request for the transfer of patients; The request for the transfer of patients initially can be made verbally. The request however must be followed up with a written document of communication. This documentation can occur on the Web EOC via the Area Coordinators. The transferring facility, to the extent possible in an emergency situation, will identify to the accepting hospital the following information:

- The number of patients needing to be transferred
- The general nature of their illness or condition
- Any type of specialized services required
- Patient medications, and/or specialized equipment needed

1.4 Documentation: The transferring facility, to the extent possible in an emergency situation is responsible for providing the receiving facility with:

- The patient's medical record and/or accepted completed report form (including emergency/family contact information and physician contact information.)
- Insurance information
- Other patient information necessary for the care of the patient
- Patient medications and medication schedule with times of last meds given
- Specialized equipment necessary for the care of the patient

1.5 Transfer of Patients: The transferring facility is responsible for tracking the destination of all patients transferred out. The transferring facility is responsible for notifying both the patient's family or guardian and the patient's attending or personal physician of the situation. (In the event a patient is routed to a different facility than originally assigned, the final receiving facility will notify the original transferring facility of the change. This will help ensure proper patient tracking.) *[If a recipient facility is informed by the transporters that the patient's destination was altered during transfer to different facility than the information provided to the transferring facility, the receiving facility should contact the transferring facility in order to aid in reducing potential problems when tracking their patients.]*

1.6 Supervision: The recipient facility will designate the admitting service, the admitting physician for each patient, and, if requested, will provide at least temporary courtesy privileges to the patient's original attending physician, per the recipient facility's policy and procedure. (Emergency privileges for physicians and other health care providers will be granted in accordance with The California Association of Health Facilities standards)

## **2. Medical Supplies and Pharmaceuticals:**

2.1 In the event that medical supplies and/or pharmaceuticals and equipment are requested, the undersigned facilities will share (to the extent possible) the requested supplies to help ensure that patients in the San Diego area receive necessary treatment during a disaster. Reusable equipment will be returned to (the) facility of origin as soon as possible – dependent upon termination of event and return of transferred patients.

2.2 The above supply sharing will occur, in cooperation with the MOC, at the involved undersigned facilities. Requests initially can be made verbally but must be followed up with a written request.

2.3 Documentation: Documentation should detail the items involved in the transaction condition of the material prior to the loan (if applicable), and the party responsible for the material. Details can be provided to Area Coordinators for documentation.

2.4 Authorization: The recipient facility will have supervisory direction over the (all) donor borrowed medical supplies, pharmaceuticals and equipment, once they are received by the recipient facility, until returned to donating facility. (consider, items lost or damaged in transit, who will be responsible)

## **3. Medical Operations/Loaning Personnel:**

3.1 Communication of Request: The request for the transfer of personnel can initially be made verbally and should be followed by written or Web Emergency Operations Center (Web EOC) documentation of the request. [Web EOC is an internet-based documentation and communication tool used by multiple systems throughout the County of San Diego collaboratively with the MOC (Medical Operations Center) and EOC (Emergency Operations Center)]. Web EOC will be used primarily by area coordinators to facilitate information provision and updates. Requests will be made in a standardized format. A request and documented response will occur prior to the arrival of personnel at the recipient facility. The recipient facility will identify to the donor facility the following:

- The type and number of requested personnel

- An estimate of how quickly the request is needed
- The location where they are to report
- An estimate of how long the personnel will be needed

3.2 Documentation: The arriving personnel will be required to present their donor facility identification badge at the check-in site designated by the recipient facility's command center. The recipient facility will be responsible for the following:

- Meeting the arriving donated personnel (usually by the recipient facility's security department or a designated employee).
- Providing adequate identification, e.g., "visiting personnel" badge, to the arriving donated personnel.
- Directing arriving personnel to where they will be working and what they will be doing.
- Providing arriving personnel with minimal but adequate orientation to facility and equipment to be able to function within their scope of practice.

3.3 Staff Support: The recipient facility shall provide food, housing and/or transportation for donor healthcare facility personnel asked to work for extended periods and for multiple shifts. The costs associated with these forms of support will be borne by the recipient healthcare facility.

3.4 Financial Liability: The recipient facility will reimburse the donor facility for the actual salaries and benefits of donated personnel if the personnel are not being employed for the care of transferring (*donor*) facility patients, and are employees being paid by the donor facility. The reimbursement will be made within ninety (90) days following receipt of the invoice.

The following fixed rate components for the evacuee's use of site and facilities will be charged by receiving facility on a per day basis. "Day" is defined as a 24 hour period, or any part thereof, beginning at 12:00 a.m. and ending at 11:59 p.m.

Daily use of facility and grounds: \$175.00 per day  
Related services: \$ negotiable

**TOTAL DAILY RATE: \$175.00 per day**

**Note:** Additional expenses may be incurred by patients with extensive needs and shall be billable accordingly.

3.5 The Medical Director/Medical Staff: The recipient facility will be responsible for providing a mechanism for granting emergency privileges for physicians, nurses, and other licensed healthcare providers to provide services at the recipient facility.

3.6 Demobilization procedures: The recipient facility will provide and coordinate any necessary demobilization procedures and post-event stress debriefing.

#### **4. Miscellaneous Provisions:**

4.1 In the event of an emergency situation the undersigned facilities will voluntarily provide staff assistance, if feasible, to participating facilities.

4.2 Any party may propose amendments to this MOA by providing written notice.

4.3 An undersigned facility may at any time terminate its participation in the Mutual-Aid Agreement by providing thirty-day (30-day) written notice to the administrator at each of the undersigned facilities.

4.4 All compensation for equipment or supplies provided to the recipient facility pursuant to this Mutual-Aid agreement will be paid by the recipient facility within 90 days of its receipt of an invoice from the transferring facility for such supplies.

#### **5. Financial & Legal Liability:**

5.1 The recipient facility will assume legal responsibility for the personnel, equipment, medical supplies and pharmaceuticals from the donor facility during the time the personnel, equipment, supplies, and pharmaceuticals are at the recipient facility. The recipient facility will reimburse the donor facility, to the extent permitted by federal law, for all of the donor facility's costs determined by the donor facility's regular rate. Costs include all use, breakage, damage, replacement, and return costs of borrowed materials, for personnel injuries that result in disability, loss of salary, and reasonable

expenses, and for reasonable costs of defending any liability claims, except where the donor facility has not provided preventive maintenance or proper repair of loaned equipment which resulted in patient injury. Reimbursement will be made within 90 days following receipt of the invoice.

5.2 The recipient facility assumes the legal and financial responsibility for transferred patients upon arrival into the accepting facility. Upon admission the recipient facility is responsible for liability claims originating from the time the patient is admitted to the recipient facility (until discharge). Reimbursement for care should be negotiated with each facility's insurer under the conditions for admissions without pre-certification requirements in the event of emergencies.

Sections 5.3 to 6.1.3 are confusing and not clear as to who will be responsible for the actual personnel.

Below are a couple of concise statements of liability depending on the goal:

1. If the goal is to have all parties maintain liability of their own employees:  
Each party to this Agreement shall defend, indemnify and hold harmless all other parties to this Agreement from and against any and all liability, loss, expense, attorneys fees, or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the party, its officers, agents, or employees.
2. If the goal is to have the borrowing facility assume liability of borrowed staff: Requesting party shall hold harmless, indemnify, and defend the assisting party, its officers, agents, and employees against all liability, claims, losses, demands or actions for injury to, or death of, a person or persons, or damages to property arising out of, or alleged to arise out of or in consequence of, this Agreement provided such liability, claims, losses, demands, or actions are claimed to be due to the acts or omissions of the requesting party, its officers, agents, or employees, or employees of the assisting party working under the direction and control of the requesting party when the act or omission of such assisting party employee

occurs or is alleged to occur within the scope of employment under the direction and control of the requesting party.

5.3 **Hold Harmless Condition:** The recipient facility should hold harmless the donor facility for acts of negligence or omissions, on the part of the donor hospital, in their good faith response for assistance during a disaster. The donor hospital, however, is responsible for appropriate credentialing of personnel and for the safety and integrity of the equipment and supplies provided for use at the recipient facility.

5.4 **Liability, malpractice and disability claims, attorneys' fees, and other incurred costs** are the responsibility of the recipient hospital. An extension of liability coverage will be provided by the recipient facility, to the extent permitted by federal law, insofar as the donated personnel are operating within their scope of practice.

## **6. Indemnity Clause:**

6.1.1 Sending facility, including all employees and agents, shall not be liable to receiving facility against all claims, demands, liabilities, judgments, awards, fines, liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorney's fees and court costs (hereinafter collectively referred to as 'Claims') related directly to this MOA and arising either directly or indirectly from any act, error or omission or negligence of Recipient facility or its contractors, licensees, agents, servants, or employees, including without limitation Claims caused by the concurrent negligent act, error or omission, whether active or passive of sending facility.

6.1.2 Recipient facility, also, including all employees and agents, shall not be liable to sending facility against all claims, demands, liabilities, judgments, awards, fines, liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorney's fees and court costs (hereinafter collectively referred to as 'Claims') related directly to this MOA and arising either directly or indirectly from any act, error or omission or negligence of Sending facility or its contractors, licensees, agents, servants, or employees, including without limitation Claims caused by the concurrent negligent act, error or omission, whether active or passive of recipient facility.

- 6.1.3 Both Sending and Recipient facilities shall have obligation however, to defend or indemnify accused facility from a Claim if it determined by a court of competent jurisdiction that such claim was caused by sole negligence or willful misconduct of accused facility.

**7. Conformance with Rules and Regulations Permits and Licenses:**

- 7.1.1. All parties shall be in conformity with all applicable Federal, State, County, and local laws, rules, and regulations, current and hereinafter enacted, including facility and professional licensing and/or certification laws and keep in effect any and all licenses, permits, notices and certifications as are required. All parties shall further comply with all laws applicable to wages and hours of employment, occupational safety, and to fire safety, health and sanitation.
- 7.1.2. All undersigned parties certify that they possess and shall continue to maintain or shall cause to be obtained and maintained, at no cost to other parties, all approvals, permissions, permits, licenses, and other forms of documentation required for it and its employees to comply with all existing foreign or domestic statutes, ordinances, and regulations, or other laws, that may be applicable to performance of services hereunder.

**Term of the Agreement**

The term of this agreement shall be effective from January 1, 20\_ through December 31, 20\_. This agreement shall be reviewed every three (3) years under the terms and conditions then in effect, this agreement shall be renewed automatically, unless either party gives the other party written notice of intention, not to renew, no less than thirty (30) days prior to the expiration date of the then current term.

**Effective Date, Future Amendment and Construction**

Development of operational procedures, forms and other tools to operationalize this MOA shall be conducted by the SNF Disaster Preparedness Area Coordinators and participants through the “Skilled Nursing Facility Disaster Preparedness Task Force”. Updates to those procedures, forms, or tools do not require revision of this MOA.

Sample MOA For Long Term Care Health Facilities During An Emergency Event

This Memorandum of Agreement is in no way meant to affect any of the participants' rights, privileges, titles, claims, or defenses provided under federal or state law or common law.

This MOA may not be assigned and shall be governed under California law and may be amended upon written consent of the participants. This MOA contains the entire agreement of the subject matter contained herein and shall give rights to no other parties except where expressly stated. In the event a court of competent jurisdiction deems one or more provisions invalid, the remaining provisions shall remain in full force and effect. Waiver of any breach shall not operate to be a waiver of any other or subsequent breach. The participants shall maintain the confidentiality of patient and other records as required by law.

IN WITNESS AND AGREEMENT WHEREOF, we have set our hands and seals that date below written.

**Nursing Home name** \_\_\_\_\_  
**Signature/Title** \_\_\_\_\_ **Date** \_\_\_\_\_