

**PATIENT PLACEMENT AGREEMENT**

**THIS PATIENT PLACEMENT AGREEMENT** (the “Agreement”) is entered into as of April 12, 2020 (the “Effective Date”) by and between Canyon Transitional Rehabilitation Center, LLC, a Delaware limited liability company (“CTRC”), and the New Mexico Department of Health (the “DOH”).

WITNESSETH:

**WHEREAS**, CTCRC operates Canyon Transitional Rehabilitation Center, which is a skilled nursing center located at 10101 Lagrima de Oro NE, Albuquerque, NM 87111 with 74 licensed beds (the “Center”);

**WHEREAS**, On March 11, 2020, via Executive Order 2020-004, Governor Michelle Lujan Grisham declared a public health emergency due to the continuing spread of COVID-19 throughout New Mexico;

**WHEREAS**, the DOH has requested that the Center admit and care for patients diagnosed with COVID-19 and to not admit any patients that are not diagnosed with COVID-19; and

**WHEREAS**, CTCRC is willing to provide the services requested by the DOH upon the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1. OBLIGATIONS OF CTCRC.

- A. As soon as reasonably practicable, the Center shall discharge any residents that have tested negative for COVID-19. The Center shall follow federal and state transfer and discharge regulations, taking into account waivers and amendments made to those regulations by the federal government or the State of New Mexico. Residents have the right to be readmitted to the Center after the public health emergency, provided that the Center continues to operate as a skilled nursing facility.
- B. After all such residents have been discharged, the Center shall immediately begin admitting patients, herein after referred to as “resident patients” who have tested positive for COVID-19. The Center shall be required to admit any patient unless:
  - 1. The resident patient requires medical care that exceeds the scope of the nursing facility levels of care;
  - 2. The Center does not then have sufficient staffing to admit additional residents.
  - 3. The Center does not have a bed available; or
  - 4. The resident patient or authorized representative refuses admittance.
- C. The Center shall provide for same day admissions of patients. Conditions required for same day admission include but are not limited to: Center’s receipt of admission orders

from a licensed New Mexico provider, a signed copy of an Advance Directive, agreement by resident patient or authorized representative and the receipt of any necessary health records to ensure patient receives appropriate care and medications as needed.

- D. Any patient admitted to the Center or anyone having authority on behalf of the patient must sign the Center's Admissions Agreement and such other customary admission documents as reasonably requested by the Center.
- E. The Center shall use commercially reasonable efforts to maintain its normal staffing levels and shall request assistance in finding qualified staff from the DOH if it is unable to maintain its normal staffing levels, including licensed staff that meets the nursing care needs for each resident patient. The Center maintains the responsibility for paying the staff it employs.
- F. The Center shall, as appropriate upon the direction of the resident patient's attending physician or medical director, transfer to a hospital any resident patient whose condition exceeds the scope of the nursing facility levels of care.
- G. The Center shall bill whomever would otherwise be responsible for paying the Center for the care of the resident patients admitted to the Center pursuant to this Agreement, e.g., Medicare, Medicaid, managed care, etc. CTRC is responsible for billing all payer sources and shall identify and assist residents who may qualify to complete a Medicaid application as needed. The Center shall follow all laws, rules and regulations on Medicaid residents. The Center shall leverage all PPE resources prior to requesting assistance from the DOH. The Center shall comply in all material respects with all federal and state laws, rules and regulations pertaining to long-term care facilities.
- H. The resident patients admitted to the Center due to their COVID positive status maintain the rights guaranteed to them under federal and state regulations, limited only by waivers and amendments made by the federal government or the State of New Mexico.

## 2. OBLIGATIONS OF DOH.

- A. In the event that transportation services are not provided and paid for by Medicare/Medicaid or another health insurance source, the DOH shall either provide the transportation of, or reimburse the Center for transportation of, (i) the current residents of the Center to such other locations as are deemed appropriate, and the DOH shall provide assistance in identifying such other locations and (ii) the COVID-19 patients that will be admitted to the Center for isolation from other locations around the state. The DOH shall also provide for, or reimburse the Center for, the removal of deceased COVID-19 residents and the transportation to an OMI approved facility, but in no circumstances shall the Center be responsible for the costs of funeral expenses.
- B. The DOH shall cause hospitals and other referral sources that discharge COVID-19 patients to the Center to provide advance directives, attending physician coverage, a sufficient supply of thirty (30) days of required medications and the personal belongings of the patient.
- C. Within the limits of available resources, DOH shall make available to the Center, at no cost to the Center, collection test kits to test the resident patients and employees of the

Center, and Specimens submitted to the State Scientific Laboratory shall be expedited.

- D. Subject to availability, the DOH will provide necessary PPE to the Center.
- E. The DOH acknowledges that the Center may have difficulty maintaining staff levels because of the nature of the services being provided under this Agreement. In the event that the Center provides notice to the DOH pursuant to Section 1.B above, the DOH shall provide assistance to the Center, to the extent practicable, to add additional staffing. To the extent required staffing levels cannot be maintained and crisis standards of care are implemented, the DOH Division of Health Improvement shall not take any action against the Center for its failure to maintain required staffing levels unless the Center was willfully negligent in providing such staffing.
- F. The DOH, in association with the Aging and Long-Term Services Department's Ombudsman, will provide to the Center guidance and technical assistance related to-(i) infection control measures, (ii) and communications with residents and their families and (iii) community relations.
- G. The Center shall defend, indemnify and hold harmless the DOH and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Center, its officers, employees, servants, subcontractors or agents, resulting in injury or damage to persons or property during the time when the Center or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Center or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Center, the Center shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the DOH. DOH shall assume liability for any negligence of its officers, employees, and agents arising from DOH's services or performance provided under this Agreement.
- H. Option 1:  
The DOH acknowledges the medical complexity of the residents admitted to the Center pursuant to Section 1.A. As a result of the medical complexity of the residents admitted, the Center may have a disproportionate negative impact to Quality Metrics that may result in reduced reimbursement in the Health Care Quality Surcharge (HCQS) program. In the event that the Center falls below the top tier for the Quality Metrics component of the HCQS program the DOH or the Human Services Department (HSD) will hold the Center harmless by awarding the Center the number of points equivalent to number of points needed to allow the center to rank in the top tier of the Quality Metrics component for each quarter of the HCQS program for the duration of this agreement. This provision will allow the Center to receive the maximum reimbursement for the Quality Metrics component for each quarter for the duration of this agreement. The DOH or the Human Services Department shall submit a State Plan Amendment if required.
- Option 2:  
The DOH acknowledges the medical complexity of the residents admitted to the Center pursuant to Section 1.A. As a result of the medical complexity of the residents admitted, the Center may have a disproportionate negative impact to Quality Metrics that may

result in reduced reimbursement in the Health Care Quality Surcharge (HCQS) program. In the event that the Center falls below the top tier for the Quality Metrics component of the HCQS program the DOH will hold the Center harmless by reimbursing the Center for the difference between the amount actually received for the Quality Metrics component of the HCQS program and the amount that would have been received if the center would have ranked in the top tier of the Quality Metrics component for each quarter of the HCQS program for the duration of this agreement. The DOH or the Human Services Department shall submit a State Plan Amendment if required.

- I. The DOH acknowledges that that the amounts billed by the Center pursuant to Section 1.G will be less than the costs the Center will incur in connection with providing the services under this Agreement. The DOH agrees to pay the Center as follows:
  - a. For each COVID-19 resident, if the amount collected by the Center pursuant to Section 1.G is less than \$600 per day, the DOH shall pay to the Center an amount which, when added to the amounts collected by the Center pursuant to Section 1.G, shall equal \$600.00 per day.
  - b. For licensed beds that remain, are not filled, or are otherwise reserved for COVID-19 patients, the DOH shall pay to the Center six hundred (\$600.00) dollars per day, provided, however, that the number of such beds for payment shall not exceed thirty (30). This provision shall continue in effect for fifteen (15) days after that last COVID-19 resident is discharged from the Center. Upon the expiration of such period, the DOH shall pay to the Center two-hundred and fifty dollars (\$250.00) per day for each licensed bed that is not filled with a non-COVID-19 resident while the Center is resuming its normal operations, provided, however, that the number of such beds for payment shall not exceed thirty (30) beds for a term of sixty (60) days.

3. TERM.

- A. The initial term (the “Initial Term”) of this Agreement shall commence on the Effective Date and shall continue for a period of six (6) months, notwithstanding the limitations stated in Paragraph 2(I) above. Thereafter, DOH has the option to renew for successive terms of six (6) months (each a “Renewal Term”).
- B. After the Initial Term, either party may terminate this Agreement at any time upon at least thirty (30) days prior notice.
- C. The contract and rate amounts shall be reviewed every three months.

4. HIPAA ADDENDUM.

To the extent CTRC is a Covered Entity and the DOH is a Business Associate of Operator under 45 CFR 160.103, CTRC and the DOH hereby agree to enter into a Business Associate Agreement in a form mutually acceptable to the parties. The parties agree that if necessary, they shall amend this Section of the Agreement to comply with or effectuate changes to, or the interpretation of, HIPAA and the regulations issued under it.

5. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

6. COUNTERPARTS.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission, in portable document format via email or by means of some other electronic transmission shall be effective as delivery of a manually executed original counterpart of this Agreement.

7. CAPTIONS.

The captions in this Agreement have been inserted for convenience of reference only and shall not be construed to define or to limit any of the terms or conditions hereof.

8. PARTIAL INVALIDITY

If any provision of this Agreement is found to be invalid or unenforceable by any court, such provision shall be ineffective only to the extent that it is in contravention of applicable law and shall not invalidate the remaining provisions hereof, unless such invalidity or unenforceability would defeat an essential business purpose of this Agreement.

9. MODIFICATIONS

This Agreement represents the entire and final agreement of the parties hereto with respect to the subject matter hereof and may not be amended or modified except by written instrument signed by the parties hereto. This Agreement supersedes all prior agreements between the parties hereto regarding the matters herein.

IN WITNESS WHEREOF, the parties hereby execute this Agreement.

**Canyon Transitional Care Center, LLC**

By: Wendy LaBate  
Name: Wendy LaBate  
Title: President *SVPO*  
Date: 4/14/20

**The New Mexico Department of Health**

By: Kathleen M. Kunkel  
Kathleen M. Kunkel  
Cabinet Secretary  
Date: 4/14/20

**Reviewed for legal sufficiency:**

By: [Signature]  
Name: Billy Jimenez  
Title: General Counsel  
Date: 4/14/20