

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
HEALTH CARE BUREAU

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In the Matter of

Assurance No. 24-012

**Investigation by LETITIA JAMES,  
Attorney General of the State of New York, of**

**The New York-Presbyterian Hospital,**

Respondent.

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation of The New York-Presbyterian Hospital (“NYP”) pursuant to New York Executive Law Section 63(12) to determine whether NYP: (i) provided required emergency treatment to individuals who presented to its emergency departments (“EDs”) with behavioral health presentations, particularly its Brooklyn Methodist (“NYP-Methodist”) campus; and (ii) did not operate all inpatient psychiatric beds for which it was certified by New York State, as required. This Assurance of Discontinuance (“Assurance”) contains the findings of OAG’s investigation and the relief agreed to by OAG and NYP, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the “Parties”).

**RELEVANT STATUTORY FRAMEWORK**

**Emergency Behavioral Health Services**

1. The Emergency Medical Treatment and Active Labor Act (“EMTALA”) requires that when an individual requests examination or treatment for a medical condition in the ED of a Medicare-participating hospital (or a request is made on their behalf), the hospital must: (i)

conduct an appropriate medical screening examination within the capability of the hospital's emergency department, including services available in the emergency department, such as psychiatry,<sup>1</sup> to determine if they have an emergency medical condition, which includes psychiatric disturbances and/or symptoms of substance abuse;<sup>2</sup> (ii) stabilize them if they have an emergency medical condition; and (iii) not transfer or discharge them until stabilized. 42 U.S.C. § 1395dd; 42 C.F.R. § 489.24. Patients experiencing acute psychiatric symptoms that, in the absence of immediate medical attention, could reasonably be expected to pose a threat of serious harm to themselves or others, for example, patients who express suicidal or homicidal thoughts or gestures, have an emergency medical condition requiring stabilizing treatment within the capabilities of the hospital.<sup>3</sup> A patient with an emergency medical condition is “stabilized” when “no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during” the patient’s transfer or discharge from the hospital.<sup>4</sup> A psychiatric patient may be considered stable for purposes of discharge under EMTALA when, for example, they are no longer considered to be a threat to themselves or others,<sup>5</sup> or when “protected and prevented from injuring or harming [themselves] or others.”<sup>6</sup> If a patient requires inpatient treatment to fully stabilize their behavioral health condition and the hospital does not have capacity to provide that treatment, the hospital must arrange for an “appropriate” transfer of the individual, which includes providing treatment within the hospital’s capacity to minimize the

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<sup>1</sup> 42 U.S.C. § 1395dd(a); State Operations Manual, Appendix V – Interpretive Guidelines – Responsibilities of Medicare Participating Hospital in Emergency Cases at 48 (Guidelines for 42 C.F.R. § 489.24(d), Necessary Stabilizing Treatment for Emergency Medical Conditions) (“EMTALA Interpretive Guidelines”), [https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap\\_v\\_emerg.pdf](https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_v_emerg.pdf).

<sup>2</sup> 42 C.F.R. § 489.24(b).

<sup>3</sup> See *id.*; *Thomas v. Christ. Hosp. & Med. Ctr.*, 328 F.3d 890, 895 (7<sup>th</sup> Cir. 2003); EMTALA Interpretive Guidelines at 51.

<sup>4</sup> 42 U.S.C. § 1395dd(e)(3)(B); 42 C.F.R. § 489.24(b).

<sup>5</sup> *Jones v. Beth Israel Hospital*, No. 17-cv-3445-GHW, 2018 WL 1779344 (S.D.N.Y. April 12, 2018), at \*3, citing *Thomas v. Christ Hosp. and Med. Ctr.*, 328 F.3d 890, 893 (7<sup>th</sup> Cir. 2003).

<sup>6</sup> EMTALA Interpretive Guidelines at 51.

risk to the individual’s health, arranging for a receiving facility that has agreed to accept the patient and has received all relevant medical records, and effecting the transfer through qualified personnel and transportation equipment.<sup>7</sup>

2. The New York Public Health Law requires general hospitals to admit any person who is “in need of immediate hospitalization with all convenient speed.” NY PHL § 2805-b(2).<sup>8</sup> Additionally, prior to May 9, 2025, it required general hospitals in New York City to “provide emergency medical care and treatment to all persons in need of such care and treatment who arrive at the entrance to such hospital.” NY PHL § 2805-b(2)(a). From May 9, 2025 through present, NY PHL § 2805-b(3) imposes on New York hospitals similar requirements as set forth in EMTALA.

3. The New York Public Health Law requires general hospitals to “develop, maintain and disseminate, written policies and procedures, for the identification, assessment and referral of individuals with a documented substance use disorder or who appear to have or be at risk for a substance use disorder[.]” NY PHL § 2803-u(2)(a). General hospitals must also “establish and implement training ... for all individuals licensed or certified pursuant to title eight of the education law who provide direct patient care regarding the policies and procedures established pursuant to [the statute].” NY PHL § 2803-u(2)(b).

4. The New York Public Health Law and regulations further require that hospitals maintain a quality assurance review program that provides for the “maintenance and continuous collection of information concerning the hospital’s experience with negative health care outcomes and incidents injurious to patients,” NY PHL § 2805-j(e), and at a minimum includes

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<sup>7</sup> 42 U.S.C. §§ 1395dd(c), (e)(3); 42 CFR § 489.24(e)(2).

<sup>8</sup> Prior to May 9, 2025, this provision was numbered NY PHL § 2805-b(1).

“review of medical records . . . incidents and staff suggestions regarding patient care and safety,”  
10 NYCRR § 405.6(b)(5), and assures:

- a. “(i) the identification of actual or potential problems concerning patient care and clinical performance;
- b. (ii) the assessment of the cause and scope of problems identified;
- c. (iii) the development and recommendation of proposed courses of action to address problems identified;
- d. (iv) the use, in the revision of hospital policies and procedures, of information gathered regarding problems identified;
- e. (v) the implementation, through established mechanisms, of actions necessary to correct the identified problems;
- f. (vi) the monitoring and evaluation of actions taken and the implementation of remedial action to ensure effectiveness; and
- g. (vii) the documentation of all measures taken pursuant to this section in the quality assurance program.”

10 NYCRR § 405.6(a)(2).

5. New York regulations require that hospitals:
  - a. honor the rights of each patient to receive considerate and respectful care in a clean and safe environment, and to limit the use of physical restraints. 10 NYCRR § 405.7(b)(3), (5).
  - b. develop and maintain written policies and procedures for inpatient and outpatient care of individuals with documented substance use disorders (“SUDs”) or who appear to have or be at risk of SUDs, including identification, assessment, and

referral. 10 NYCRR § 405.9(f). Hospitals must also ensure that each patient has a discharge plan that meets the patient's post-hospital care needs and may not discharge a patient who requires continuing health care services until such services are secured or determined by the hospital to be reasonably available to the patient. 10 NYCRR § 405.9(h).

- c. maintain for each patient a medical record that contains a discharge summary with outcome of hospitalization, disposition of case, and provisions for follow-up care. 10 NYCRR § 405.10(b)(2)(vii). Each medical record of a patient who presents to the ED must be integrated or cross-referenced with the inpatient and outpatient medical records system to assure the timely availability of previous patient care information, and shall include the prehospital care report or equivalent report for patients who arrive by ambulance, and document the name of the patient's primary care provider, if known. 10 NYCRR § 405.19(c)(9).
- d. assess and refer to treatment individuals who present to the ED with documented SUDs or who appear to be at risk of SUDs. 10 NYCRR § 405.19(c)(5).
- e. create for each ED patient a discharge plan that includes the patient's completed and pending laboratory and other diagnostic test/service results, medications, diagnoses, and follow-up care. 10 NYCRR § 405.19(c)(10)(iii). Emergency care must meet generally accepted standards of practice, and examination, diagnosis and treatment must be in accordance with hospital triage and transfer policies. 10 NYCRR § 405.19(e)(1) & (2).

#### **Diversion**

- 6. Diversion is when a hospital requests that, due to conditions in its ED, the

emergency medical service (“EMS”) temporarily may transport ambulance patients to another hospital (“Diversion”). Diversion requests can be made for various categories, including psychiatric conditions (“Psychiatric Diversion”). The New York Public Health Law states that, for general hospitals in New York City, “a request for diversion of emergency patients with life threatening conditions shall only be made by a hospital when acceptance of an additional critical patient may endanger the life of that patient or the life of another patient,” NY PHL § 2805-b(5)<sup>9</sup>, and that “a request for the diversion of other emergency patients shall only be made when all appropriate beds are filled and shall be withdrawn as soon as a bed is available.” The Fire Department of New York City (“FDNY”) is responsible for reviewing all requests for Diversion and ensuring that more than half the hospitals in a geographic area are not on Diversion at a given time.<sup>10</sup> When approved, FDNY limits Diversion to four hours, but it can be renewed.

### **Changes to Inpatient Psychiatric Bed Capacities**

7. The New York Public Health Law prohibits hospitals from reducing operations from a certified bed capacity to a lesser bed capacity unless they have prior written approval of the Department of Health, show satisfactory cause for the requested reduction, and maintain staff for the reduced number of patients (“the Certificate of Need Law”). NY PHL § 2802; 10 NYCRR § 401.3(a) & (e). Violations of the New York Public Health Law are subject to fines of up to \$2,000 per violation. NY PHL § 12(1)(a).

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<sup>9</sup> Prior to May 9, 2025, this provision was numbered NY PHL § 2805-b(3).

<sup>10</sup> *Emergency Department Ambulance Diversion/Redirection*, FDNY (Sept. 1, 2011), [https://www.gnyha.org/wpcontent/uploads/2021/04/EMS-OGP-115\\_01-Emergency-Department-Ambulance-Diversion.pdf](https://www.gnyha.org/wpcontent/uploads/2021/04/EMS-OGP-115_01-Emergency-Department-Ambulance-Diversion.pdf).

8. The New York Mental Hygiene Law prohibits hospitals from taking licensed inpatient psychiatric beds offline without obtaining the approval of the Commissioner of OMH (the “Prior Approval Review Law”). MHL § 31.23(b)(1); 14 NYCRR § 551.6.

9. Violations are subject to fines by the Commissioner of OMH. In May 2023, New York State increased potential penalties to include up to \$2,000 per individual bed per day or a total of \$25,000 per violation for failure to comply with the terms of the operating certificate or any applicable statute, rule or regulation. MHL § 31.16(g). The May 2023 amendment also provides that the inability to secure proper staff or other necessary resources is not a defense if the lack of staff or other resources was foreseeable and could be prudently planned for or involved routine staffing needs. MHL § 31.16(g)(2).

10. In March 2020, Executive Order 202.1 temporarily suspended certain regulations, including the Certificate of Need Law and the Prior Approval Review Law, to allow for additional beds to be used for the treatment of COVID-19 patients. On May 25, 2021, DOH issued DAL 21-02, stating that OMH-licensed beds must be converted back to their certified use within 30 days unless justification was submitted.<sup>11</sup> On June 25, 2021, E.O. 202.1 was rescinded by E.O. 210. In a letter dated January 10, 2023, DOH and OMH jointly instructed hospitals to restore all offline psychiatric beds to their licensed use by February 10, 2023, or to submit a plan to OMH to bring all offline inpatient beds online by April 1, 2023.<sup>12</sup>

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<sup>11</sup> [https://www.health.ny.gov/professionals/hospital\\_administrator/letters/2021/docs/dal\\_21-02.pdf](https://www.health.ny.gov/professionals/hospital_administrator/letters/2021/docs/dal_21-02.pdf).

<sup>12</sup> [https://www.health.ny.gov/professionals/hospital\\_administrator/letters/2023/docs/2023-01-10\\_reopening\\_of\\_inpatient\\_psychiatric\\_beds.pdf](https://www.health.ny.gov/professionals/hospital_administrator/letters/2023/docs/2023-01-10_reopening_of_inpatient_psychiatric_beds.pdf).

## FINDINGS

### The Mental Health Crisis in New York

11. Three million adult New Yorkers — one in five — live with mental illness.<sup>13</sup> In February 2023, 31 percent of New Yorkers reported symptoms of anxiety or depression.<sup>14</sup> In 2022, almost 500,000 children age 3 through 17 had a behavioral health condition.<sup>15</sup>

12. The COVID-19 pandemic dramatically increased the need for mental health services.<sup>16</sup> In 2022, 28.7 percent of New Yorkers with anxiety or depression reported an unmet need for counseling or therapy within the prior four weeks.<sup>17</sup> In 2022, 196,000 (40 percent) of New York children aged three through 17 with a behavioral health condition did not receive treatment or counseling.<sup>18</sup>

13. Behavioral health crises can be life threatening. 1,765 New Yorkers died by suicide in 2022.<sup>19</sup> Drug overdose deaths in New York increased threefold from 9.7 per 100,000 people in 2011 to 31.4 per 100,000 in 2022,<sup>20</sup> but according to provisional data from the Centers for Disease Control and Prevention declined from May 2023 to August 2025.<sup>21</sup>

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<sup>13</sup> Kaiser Family Found. (KFF), *New York: Mental Health & Substance Abuse*, <https://www.kff.org/state-category/mental-health/?state=NY> (indicating that 3,273,000 (21.1%) adults reported mental illness from 2021-22).

<sup>14</sup> Kaiser Family Found. (KFF), *Mental Health in New York*, <https://www.kff.org/statedata/mental-health-and-substance-use-state-fact-sheets/new-york>.

<sup>15</sup> Child and Adolescent Health Measurement Initiative, *2022 National Survey of Children's Health*, <https://www.childhealthdata.org/browse/survey/results?q=10029&r=34>.

<sup>16</sup> See N.Y. State Health Found., *Mental Health Impact of the Coronavirus Pandemic in New York State (2021)*, <https://nyshealthfoundation.org/wp-content/uploads/2021/02/mental-health-impact-coronavirus-pandemic-new-york-state.pdf>; NYC Dep't of Health and Mental Hygiene, *Impacts of COVID-19 on Mental Health in New York City, 2021 (2021)*, <https://www1.nyc.gov/assets/doh/downloads/pdf/epi/databrief130.pdf>.

<sup>17</sup> KFF, *Mental Health in New York*, *supra* note 14.

<sup>18</sup> *2022 National Survey of Children's Health*, *supra* note 15.

<sup>19</sup> KFF, *New York: Mental Health & Substance Abuse*, *supra* note 13.

<sup>20</sup> *Id.*; New York State Dep't of Health, *New York State Opioid Annual Data Report (2025)*, [https://www.health.ny.gov/statistics/opioid/data/pdf/nys\\_opioid\\_annual\\_report\\_2025.pdf](https://www.health.ny.gov/statistics/opioid/data/pdf/nys_opioid_annual_report_2025.pdf).

<sup>21</sup> Nat'l Center for Health Statistics, *Provisional Drug Overdose Death Counts*, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> (based on data available for analysis as of January 4, 2026).

14. Hospital Emergency Departments (“EDs”) play a vital role in the system of care for individuals with mental health conditions, as they identify and triage behavioral health emergencies, saving lives. In 2019, New York EDs experienced an estimated 231,878 visits for mental health-related conditions and 196,600 visits for alcohol or substance abuse-related concerns.<sup>22</sup>

15. Inpatient psychiatric treatment plays a critical role in the continuum of care for some persons with mental illness, helping them recover and return to the community.

16. NYP is a not-for-profit health care provider in New York. NYP operates 10 hospital campuses in New York City and Westchester.

17. Most of NYP’s hospitals have EDs, including NYP-Methodist, the Allen Hospital (“NYP-Allen”), Columbia University Irving Medical Center (“NYP-Columbia”), Weill Cornell Medical Center (“NYP-Cornell”), Lower Manhattan Hospital (“NYP-Lower Manhattan”), Queens Hospital (“NYP-Queens”), Hudson Valley Hospital (“NYP-Hudson Valley”), and Westchester (“NYP-Westchester”) (collectively, the “NYP EDs”). NYP EDs receive more than 360,000 emergency department visits each year.

18. Six of NYP’s healthcare facilities have inpatient psychiatric units: NYP-Methodist, NYP-Allen, NYP-Columbia, NYP-Cornell, NYP-Gracie Square, and NYP-Westchester Behavioral Health. At the beginning of the COVID-19 pandemic, these facilities had a total of 507 licensed inpatient psychiatric beds.

#### **Treatment of NYP-Methodist ED Patients with Behavioral Health Conditions**

19. In September 2019, the Centers for Medicare and Medicaid Services (“CMS”) issued to NYP-Methodist a Statement of Deficiencies for “fail[ing] to implement its Emergency

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<sup>22</sup> N.Y.S. Dep’t of Health, *NYS Health Connector*, <https://nyshc.health.ny.gov/web/nyapd/emergency-department-visits-in-new-york>.

Department policies and procedures to ensure patients with elopement risk were placed on elopement precautions to ensure their safety” and found that these failures “place[d] patients at a potential risk for harm.” In August 2022, CMS issued to NYP-Methodist a Statement of Deficiencies for failing “to identify all the problems that contributed to [a particular] patient’s elopement and implement all corrective actions to prevent recurrence,” which “place[d] patients at risk for potential harm.” Current NYP policy defines elopement as “[a]n event in which a patient who is cognitively, physically, mentally, emotionally, and/or chemically impaired, and incapable of adequately protecting oneself, wanders, walks away from, or escapes unsupervised from the care of the facility prior to discharge.”

20. From 2015 through 2022, including during OAG’s investigation, vulnerable patients with mental health and SUD conditions eloped from NYP-Methodist’s ED. Each of these patients, incapable of adequately protecting themselves, left the hospital unsupervised.

21. OAG’s review of a sample of medical records of patients who presented to the NYP-Methodist ED with behavioral health conditions between September 2018 and July 2024 (during which there were over 35,000 such visits) indicates that in some instances NYP has failed to: (i) properly screen and stabilize ED patients with behavioral health conditions, in violation of its EMTALA policies; (ii) protect vulnerable ED patients with behavioral health conditions from elopement risk, in violation of its elopement policies; (iii) obtain relevant information from collateral sources such as community providers and family members; (iv) include complete information in medical records, including documentation of searches for needed inpatient beds; (v) create appropriate discharge plans, and (vi) maintain accurate records of all elopements at the hospital in NYP’s event reporting system and perform quality assurance reviews for all elopement incidents.

22. In July 2019, a woman in her 50s who resided at a supportive housing facility and had a history of schizophrenia and bipolar disorder, was sent to the NYP-Methodist ED by a mobile crisis team for a psychiatric evaluation. Her ED medical record shows that she was sent to the hospital because she was agitated, verbally aggressive, disorganized, decompensating, and had been noncompliant with medication for several months. The triaging nurse assessed the patient as alert, awake, and oriented, and not aggressive toward her. Although the patient had been assessed as a risk for elopement during triage, she was not placed on any elopement precautions. The patient eloped while a nurse was on a break, before she could receive any psychiatric evaluation. CMS found that NYP-Methodist failed to implement its ED policies and procedures to ensure patients with elopement risk were placed on elopement precautions to ensure their safety, placing patients at risk of harm.

23. Also in July 2019, a man in his 50s was brought to the NYP-Methodist ED by his nursing home due to aggressive and violent outbursts. Two triage nurses documented that the patient was a high risk for elopement due to dementia and a history of elopement, but did not implement any elopement precautions. The medical record contains a note by one triage nurse stating that the patient was “calm and cooperative at this time.” Approximately one hour later, an ED physician’s assistant made a “priority stat” order for a psychiatric consultation due to the patient’s worsening paranoia, and aggression at his nursing home. However, 11 minutes after the “priority stat” order was recorded, the patient eloped from the hospital before the examination took place. CMS found that NYP-Methodist failed to implement its ED policies and procedures to ensure patients with elopement risk were placed on elopement precautions to ensure their safety, placing patients at risk of harm.

24. In 2022, a woman in her 70s with schizophrenia and bipolar disorder was sent to the NYP-Methodist ED by her nursing home “for medication and evaluation,” after she refused to take her antipsychotic medication injection, had become delusional, and had struck a staff member. The ED triage nurse failed to review transfer paperwork from the patient’s nursing home and did not identify her as an elopement risk or implement elopement precautions. A psychiatrist familiar with the patient noted that she was at risk for elopement but failed to communicate this risk to ED staff. The psychiatrist also noted that the patient had an elevated risk of violence and was unable to live unsupervised. Although an injection of antipsychotic medication was administered and the patient was deemed ready for discharge, the patient eloped before an ambulance that was scheduled to bring the patient back to the nursing home arrived. Approximately 50 hours later, NYP learned from NYPD that after eloping from the ED, the patient had been sleeping in building lobbies during a rain storm. She contacted a family member who reached out to NYPD, which directed EMS to bring her to another hospital. CMS found that NYP-Methodist failed to implement corrective actions to prevent patient elopements, placing patients at risk for potential harm.

25. In August 2022, a man in his 20s, who had attacked a bystander in downtown Brooklyn was brought to the NYP-Methodist ED by EMS, accompanied by police. An ED physician noted that the patient had strange behavior and confusion, and may have psychosis, drug intoxication, schizophrenia, or mania, but the physicians who assessed him failed to review a prehospital care report from EMS indicating that he had attacked a bystander. ED staff determined that the patient was an elopement risk and implemented a 1:1 safety watch due to risk of harm to self or others, but the patient refused to change into the gown that NYP-Methodist used to designate patients as at risk of elopement, as part of NYP’s elopement precautions, and

staff did not remove or secure his belongings. A psychiatrist noted in the medical record that the patient denied suicidal or homicidal ideation, but could not complete a suicide risk screening due to impaired cognitive status. A dose of antipsychotic medication was given to the patient to treat his symptoms. The patient eloped from the hospital after he was again asked to change and became agitated. He left through ambulance triage doors when a security guard was away from his post to guard another exit to the ED. Security and nursing chased after the patient but were not successful in bringing him back to the ED. NYP did not notify the police, as required by the elopement policy, until the following day.

26. Later in August 2022, an unhoused man in his 40s with chronic psychosis and a history of multiple psychiatric hospitalizations presented to the ED with multiple complaints, including visual hallucinations and foot pain. The patient was assessed by a nurse as alert, calm, and cooperative. Several weeks before the patient's ED visit, NYP-Gracie Square had obtained a court order requiring Assisted Outpatient Treatment ("AOT") for him due to his history of hallucinations, suicidal thoughts, failure to comply with outpatient treatment, and multiple incarcerations for assault. The NYP doctor's affirmation in support of the AOT petition stated that in May 2022 the patient "verbalized the desire to get a gun and 'see the insides of skulls.'" When the patient arrived at the NYP-Methodist ED a few weeks later, ED staff – who knew the patient's history – made no attempt to contact any of his current treatment providers, including the AOT team responsible for monitoring his compliance with outpatient treatment, including an injection of antipsychotic medication that may have been due the following week. The psychiatrist noted in medical record that the patient "does not partake in outpatient [mental health] services and does not take his meds." In lieu of a concrete discharge plan, the psychiatrist noted in the medical record that the patient "has outpatient [mental health] follow up and can go

to his shelter.” The patient was discharged after he was given oral medication for his psychiatric conditions and his foot. Since this incident, the patient has continued to be treated at the NYP-Methodist ED, which has now put in place a special care plan for this patient due to his high utilization of the ED and behavioral health history.

27. In November 2022, a young adult man with a history of schizophrenia, past psychiatric hospitalization, and a past suicide attempt presented to the NYP-Methodist ED complaining of auditory hallucinations and was noted to be “possibly suicidal.” Four different physicians, including two who signed certificates for involuntary psychiatric admission, noted in the medical record that the patient had homicidal ideation. The patient required inpatient psychiatric treatment for safety and stabilization, but NYP-Methodist had no available inpatient psychiatric beds, and the patient eloped before he could be transferred, due to inadequate implementation of observation orders. During triage, the patient was identified as an elopement risk, after which elopement risk precautions were ordered, and the patient was placed on the “frequent rounding” level of observation. However, the medical record contains no observation log documenting this observation. A psychiatrist later ordered that his level of observation be upgraded to “safety watch 1:1” with a clinical observer. According to the medical record, the patient reported that he “couldn’t control when he wanted to hurt people,” and ED staff determined that he presented a risk of harm to himself or others necessitating involuntary inpatient treatment and treated him with a low dose of antipsychotic medication. After more than 55 hours in the ED waiting to be transferred to a hospital with an inpatient psychiatric bed, the patient eloped. The patient was not observed by staff at the time of his elopement, and it is unclear from the record for how long he had been without his 1:1 observation, as the medical record contains no notes reflecting his last seven and one-half hours in the ED. NYP-Methodist

later viewed security footage showing the patient exiting the ED approximately twenty minutes prior to a nurse reporting him missing.

28. In November 2022, a woman in her 30s with a history of hospitalizations for bipolar disorder was brought to the ED by EMS and police for erratic and aggressive behavior. The patient required inpatient psychiatric treatment for stabilization but eloped prior to NYP identifying a facility with an available inpatient psychiatric bed to transfer her to due to inadequate implementation of observation orders. Upon calling the patient's family members, staff learned that the patient had recently tried to attack family members, was demonstrating paranoia, was likely noncompliant with medication, and was drinking alcohol heavily. Because the patient was aggressive, the medical record indicates she was "sedated" with medications during triage and at least once more thereafter, after the patient continued to be noncompliant, aggressive, and threatening towards staff who were unable to change the patient into the gown NYP-Methodist used to designate patients at risk of elopement. The ED psychiatrist assessed the patient and determined she was a danger to self and/or others and required involuntary hospitalization. A request was submitted to NYP's internal Psychiatry Transfer Center for the patient to be transferred to a hospital with an inpatient psychiatric bed. Before she could be transferred, the patient eloped, after approximately 20 hours in the ED. She had been screened as an elopement risk because she was "cognitively impaired" and a 1:1 "safety watch" level of observation was ordered. She was then assigned a 1:1 security watch for physical aggression, violence, and "forceful elopement attempts." Later, the security watch was discontinued and replaced with an order for 1:1 safety watch by a clinical observer because she had been calm for several hours. However, the medical record does not contain any observation log, and it appears

that the 1:1 safety watch order was not followed, as the record indicates she had last been seen with a clinical observer 45 minutes before staff reported she was missing.

29. In April 2023, a teenage boy with a history of psychiatric hospitalizations was brought to the ED by school officials for a psychiatric assessment after he had an angry outburst when an unopened bottle of Nyquil was confiscated from him and stated, “I want to die.” The patient was not determined to meet any elopement risk factors. He was evaluated by a physician in the ED and denied suicidal or homicidal ideation, and the ED physician cleared the patient for discharge from a medical perspective, noting that he would “consult psych for psych clearance but suspect[ed] discharge home.” The patient was then evaluated by Psychiatry, during which he reported feeling calm and no longer angry, admitted he had not taken his antipsychotic medication that morning, and denied thoughts of self-harm or harm to others. Upon speaking to the patient’s mother a few minutes later, the psychiatric nurse practitioner learned that the patient had been physically aggressive, made suicidal statements, was noncompliant with antipsychotic medications and outpatient services, abusing substances, and brought knives to school. Based on the information obtained from the patient’s mother, Psychiatry determined that the patient required inpatient admission and should have 1:1 observation “for safety and elopement risk,” due to elevated suicide and violence risk. However, minutes after Psychiatry evaluated the patient, the patient eloped from the ED without further treatment. No elopement precautions had been put into place. This incident was also not logged in NYP’s event reporting system, Keepsafe, and consequently was not reviewed in its quality assurance review procedures.

30. Also in April 2023, a young adult man with a history of schizophrenia was brought to the NYP-Methodist ED by EMS with a police escort for a psychiatric evaluation after the patient, who had been released from jail two days prior, had said in court that he wanted to

seek revenge against his brother's shooter. According to the triage nurse's notes, the patient said he "only had the thought in the moment and does not actually feel that way," and at another point the patient said it was a "misunderstanding." The patient was not determined to be an elopement risk and no elopement precautions were taken. Staff also reported incorrectly that the patient was not presenting with a behavioral health condition as the chief complaint for seeking care/evaluation, and thus did not conduct a suicide risk screening. After an examination by a resident, who planned for "psych clearance," the patient then eloped from the ED, without receiving any psychiatric assessment and before he could be evaluated by the supervising physician. This incident was not logged in Keepsafe and consequently was not reviewed in NYP-Methodist's quality assurance review procedures.

31. In July 2024, a patient was brought to the NYP-Methodist ED by EMS, treated for alcohol intoxication, and was determined to be safe to leave and discharged the next morning. Just two hours after having been discharged, the patient presented again to the ED complaining of weakness and chest pain after drinking beers the night prior. The triage nurse determined that the patient was not an elopement risk and therefore elopement precautions were not implemented at that time. A few minutes later, an ED physician examined the patient, and the patient reported to him that he had a history of schizophrenia and was not currently taking medication. The ED physician reported that "[p]atient states he had 2 beers last night, woke up this morning and immediately started hearing voices in his head telling him to kill himself." The physician also wrote that the patient denied having a plan to commit suicide, and denied any past suicide attempt and homicidal ideation. The physician entered an order in the EHR for the patient to be placed on cohort watch because of "risk of harm due to impaired impulse control which is not intended to result in self-harm or

suicide, impaired cognition, delirium, risk of interference with medical care.” The physician also entered an order for a psychiatry consultation due to “hallucinations [and] suicidal ideation.” However, nurses and security were not aware of the cohort watch order and no elopement precautions were taken, such as placing the patient in a gown NYP-Methodist used to designate patients as at risk of elopement. Less than 15 minutes after the orders were entered, the patient eloped, before receiving any psychiatric evaluation.

### **Psychiatric Diversion at NYP-Methodist**

32. From March 2022 through August 2022, NYP-Methodist went on Psychiatric Diversion at least once per week, sometimes for more than a full day (after renewed requests). As of May 2022, NYP-Methodist (then Brooklyn Methodist Hospital) lacked a defined policy or practice to determine when to call for Psychiatric Diversion, and may have requested Psychiatric Diversion when five behavioral health patients were in the ED, and sometimes may have allowed “pretty much anyone” to call for Diversion when an administrator was unavailable to make the request.

33. Since May 2022, NYP-Methodist’s practice has been to call for Psychiatric Diversion for emergency patients without life-threatening conditions when all appropriate beds are filled, and there are not sufficient technicians or other appropriate staff without levels of observation responsibilities are available to perform tasks essential to caring for all patients in the ED, which include but are not limited to taking vital signs, performing electrocardiograms, and escorting patients to other areas of the hospital for medical tests.

34. In October 2022, Brooklyn Methodist Hospital merged into NYP and became subject to NYP’s written Diversion policy, which governs all NYP EDs. The policy states that for behavioral health patients in EDs other than the CPEPs, “the need to request

EDP/psychiatric patient diversion should include the lack of the ability to perform the appropriate level of observation for all current patients in the department if additional such patients were to arrive.”

### **NYP’s Temporary Closure of Inpatient Psychiatric Beds**

35. On March 12, 2020 Governor Cuomo issued Executive Order 202.1, which suspended or modified certain New York State laws and regulations to aid in response to the COVID-19 emergency, including NYCRR § 401.3(a) and (e), which require hospitals to obtain prior written approval from DOH to reduce a licensed bed capacity.

36. In or around March 2020, pursuant to Executive Order 202.1 and upon receiving temporary approvals from OMH and DOH, NYP took offline all 50 licensed inpatient psychiatric beds at NYP-Methodist, all 36 licensed inpatient psychiatric beds at NYP-Cornell, all 30 licensed inpatient psychiatric beds at NYP-Allen, 41 licensed inpatient psychiatric beds at NYP-Gracie Square, and eight licensed inpatient psychiatric beds at NYP-Columbia. NYP took some of these beds offline to treat COVID-19 patients or to maintain social distancing. In June 2021, Executive Order 202.1 was rescinded and hospitals across New York State were directed to restore their licensed psychiatric bed capacities. NYP restored some but not all of these beds after June 2021, as required under the Certificate of Need Law and Prior Approval Law. Since the beginning of the COVID-19 pandemic and continuing through the Effective Date, NYP has communicated with OMH and DOH about the closure and reopening of NYP’s inpatient psychiatric beds.

37. A December 2021 NYP internal behavioral health initiatives presentation indicated that it had no plans to reinstate one of two units, including 25 offline beds, at NYP-Methodist, and in fact by 2027 planned to restore only 472 of its 514 system-wide licensed beds.

38. In September 2022, after receiving approval from OMH and DOH, NYP-Methodist restored one of two inpatient psychiatric units with 24 licensed beds.

39. From December 2020 to January 2023, NYP on several occasions communicated to OMH that its plan was to reopen only one of the two offline inpatient units at NYP-Methodist.

40. As of May 1, 2023, 106 (20%) of NYP's licensed inpatient psychiatric beds remained out of operation: 30 beds at NYP-Allen; 25 beds at NYP-Methodist; 23 beds at NYP-Westchester Behavioral Health; 23 beds at NYP-Gracie Square; and one bed at NYP-Columbia. NYP received only temporary approval during 2020-21 to use some beds for COVID purposes.

41. The psychiatric beds which were offline are clearly needed. New York has been in the midst of a mental health crisis, requiring additional inpatient psychiatric beds to stabilize patients and help them on their path to recovery.

42. The communities that NYP serves have a significant unmet need for mental health services. NYP's 2022-2024 Community Health Needs Assessment ranked mental health as the biggest health concern in the community. NYP noted that survey participants described "mental health needs that had always existed and needs that had been exacerbated by the COVID-19 pandemic" and "significant and increasing gaps in mental health services."

43. From October 2015 through November 2021, NYP-Methodist's ED saw an average of 400 persons per month seeking treatment for a mental health or substance use disorder condition. Repeat visits to the NYP-Methodist ED by individuals with behavioral health conditions within the same month were as high as 8% in December 2020, during the COVID-19 pandemic. From 2020 through 2022, a period that includes the COVID-19 pandemic, the number of individuals with behavioral health conditions who spent more than 24 hours in NYP-Methodist's ED also increased dramatically from less than five to almost 50 per month.

44. From 2015 to 2019, the average daily census of NYP-Methodist's inpatient psychiatric units was 39, far exceeding the 24 beds restored at the hospital in 2022. In March 2023, all 24 beds on the open inpatient unit at NYP-Methodist were occupied except for two days.

45. A registered psychiatric nurse at NYP-Methodist submitted written testimony at the Attorney General's January 2023 public hearing on access to mental health care that the continued closure of 25 beds at NYP-Methodist "has created a mental health void for the community and surrounding communities, which include many communities of color and those classified as having lower socioeconomic status."

46. The nurse also stated that "[The NYP-Methodist] inpatient behavioral health unit remains filled to capacity each day with patients who come to our emergency room with active suicidality and other mental health needs waiting for multiple days in an overcrowded emergency room for a bed only to be transferred sometimes far away to institutions like Westchester Medical Center when in fact we have the space to accept them. The need is glaring; we continue to see New Yorkers experience mental health symptoms every day with very few places to go," and that "[He sometimes finds his] patients admitted to facilities outside the borough where they reside, which creates a bigger burden on their support systems to be able to physically see them."

47. In January 2023, OMH directed hospitals, including NYP, to restore all offline licensed psychiatric inpatient beds to operation. Beginning in April 2023, OMH required all hospitals, including NYP, to provide monthly updates on the licensed inpatient psychiatric bed operating capacity at their facilities.

48. On November 8, 2023, NYP submitted a “Behavioral Health Enterprise Plan” to OMH. As part of its plan, NYP committed to “restore forty (40) out of their fifty-six (56) offline psychiatric inpatient beds”; “restore two (2) offline psychiatric units”; make renovations at three inpatient psychiatric units; “provide expanded access to outpatient psychiatric services by building a new program in Brooklyn”; and “[m]ake significant investments and strengthen[] partnerships with community-based and grass root organizations in Northern Manhattan.”

49. NYP outlined the number of inpatient psychiatric beds that would be reopened at each facility, including reductions in licensed bed capacity at some hospitals and increases at others. NYP’s plan would result in an enterprise-wide inpatient psychiatric bed capacity totaling 499, down from its then-licensed 513 beds, with construction estimated to be completed by December 2026. NYP also provided detail on the expanded outpatient program at NYP-Methodist, which would provide integrated outpatient services and primary care services—specifically, mental health, substance abuse, medical, and group therapy services—in Brooklyn, New York. NYP also described its Adult Intensive Outpatient Program at NYP-Columbia, which provides a flexible acute outpatient treatment program that helps stabilize patients and assists in diversion from inpatient hospitalization or unnecessary ED visits. OMH approved the framework for NYP’s plan on December 13, 2023.

50. OAG finds that NYP’s acts and omissions have violated:

a. the following laws and regulations governing emergency treatment:

Emergency Medical Treatment and Active Labor Act (“EMTALA”), 42

U.S.C. § 1395dd and regulations at 42 C.F.R. § 489.24; N.Y. Public Health

Law § 2805-b; NY Public Health Law § 2803-u; NY PHL § 2805-j(e); NY

Hospital Regulations (10 NYCRR 405 et seq.) (Patients’ Rights, 10 NYCRR §

405.7; Admission/Discharge, 10 NYCRR § 405.9; Medical Records, 10 NYCRR § 405.10; Emergency Services, 10 NYCRR § 405.19; Quality Assurance, 10 NYCRR § 405.6); and

- b. the following laws and regulations governing changes to inpatient psychiatric beds: N.Y. Public Health Law § 2802 (the “Certificate of Need” law) and regulations at 10 NYCRR § 401.3(a) and 10 NYCRR § 401.3(e); N.Y. Mental Hygiene Law § 31.23(b)(1) (the “Prior Approval Review” law) and regulations at MHL 31.16.

51. NYP neither admits nor denies OAG’s findings, Paragraphs 11 through 50 above.

52. OAG finds the relief and agreements contained in this Assurance appropriate and

in the public interest. THEREFORE, OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of the statutory and regulatory provisions set forth in Paragraphs 1 through 10 and 50 above.

**IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:**

**PROSPECTIVE RELIEF**

53. This Assurance binds NYP, as well as its principals, officers, successors, and assigns.

54. NYP shall not engage, or attempt to engage, in conduct in violation of any applicable laws and regulations relating to the findings described herein, including but not limited to those identified in Paragraphs 1 through 10 and 50 above, and expressly agrees and acknowledges that any such conduct is a violation of the Assurance, and that OAG thereafter may commence the civil action or proceeding contemplated in Paragraph 52, in addition to any other appropriate investigation, action, or proceeding.

55. NYP shall begin to implement the relief described in Paragraphs 56 through 81 below immediately upon the full execution of this AOD. The provisions set forth in Paragraphs 62(h), 62(o)(iv), 66, 69(b), 73(b), 73(c), 74(b) and 76(a) below apply only to NYP-Methodist.

**I. Reforms to Emergency Department (“ED”) Services**

56. Definitions. As used in this Assurance:

- a. The terms “Emergency Department” and “ED” refer to emergency departments in general hospitals as defined in PHL § 2810(10).
- b. “Behavioral health presentation” refers to an ED patient whose chief complaint (i.e., reason for coming to the ED) is related to a mental health or substance use disorder condition, in the clinical judgment of ED staff.

57. NYP shall, as necessary to comply with this Assurance, revise and implement written policies and procedures across all hospitals in its system, except as indicated below, containing the requirements set forth in Paragraphs 59 through 73 below (the “Revised Policies and Procedures”). NYP shall submit the Revised Policies and Procedures to OAG within 120 days of the Effective Date. NYP shall be permitted to modify these Revised Policies and Procedures: (a) to make changes, provided that such changes shall not interfere with or otherwise conflict with NYP’s obligations under this Assurance, including but not limited to Paragraphs 59 through 73 below, and NYP provides to OAG a copy of such revised policy or procedure within thirty (30) days of adoption (except for NYP’s Elopement Risk Screening and Management policy, to which NYP may only make non-material changes without prior notice to OAG); or (b) in accordance with Paragraph 83 below.

58. Electronic health record (“EHR”) systems:

- a. NYP shall maintain its EHR system so authorized users at any hospital or campus can easily access records from other NYP hospitals in real time.
- b. NYP shall maintain or incorporate into its EHR system tools that generate treatment workflows that prompt medical staff to perform and document in its EHR system the actions set forth in Paragraphs 59 (Suicide Risk), 60 (Substance Use Disorder), 61 (Violence Risk), and 62 (Elopement Risk Screening and Management). Such workflows shall include workflows, checklists, or other tools that prompt staff to perform and document safety risk screenings during triage.

#### **A. Screening and Assessment Protocols**

##### **59. Suicide Risk**

- a. NYP ED staff shall continue to screen for suicide and self-harm risk all individuals who are brought to or present to the ED with a behavioral health presentation using an evidence-based instrument such as the Columbia-Suicide Severity Rating Scale (C-SSRS). If NYP ED staff make the clinical determination that based on a patient's presentation, such screening cannot or should not be conducted, NYP shall not be in violation of this provision. This is not intended to relieve NYP of its obligation to comply with the requirements of 10 N.Y.C.R.R. § 405.19(c)(5).
- b. For individuals who are classified as "moderate" or "high" risk of suicide or self-harm in the suicide risk screening, a suicide risk assessment (such as the SAFE-T) shall be conducted by a licensed professional trained in assessing suicide risk. If non-psychiatrists conduct such assessments, they must continue to have access to a board-certified psychiatrist during the assessment.

- c. For individuals classified as “low” risk, NYP must document why such individual is low risk.
  - d. NYP shall continue to include in its EHR system a tool for suicide risk screening and assessment that enables ED medical staff with access to the EHR system to perform and document such screening and assessment in the EHR system.
60. Substance Use Disorder (“SUD”)
- a. NYP ED staff shall continue to screen all individuals over the age of 12 who present to the ED for any reason for substance use disorder using an evidence-based instrument, such as TAPS for adults or CRAFFT for adolescents, and the results of such screening shall be maintained in the patient’s EHR. If NYP ED staff make the clinical determination that based on a patient’s presentation, such screening cannot or should not be conducted, NYP shall not be in violation of this provision. This is not intended to relieve NYP of its obligation to comply with the requirements of 10 N.Y.C.R.R. § 405.19(c)(5).
  - b. For individuals with a documented active substance use disorder or who appear to have or be at risk for a substance use disorder, as clinically appropriate, an assessment shall be conducted by a licensed professional who is experienced in working with individuals using substances but not necessarily meeting the criteria for a substance use disorder diagnosis. The assessment shall include risk of acute withdrawal (including use of the CIWA-Ar or another evidence-based tool such as OWA or COWS) and risk of accidental overdose post-discharge, as clinically appropriate.
  - c. For individuals who screen positive for a risk of overdose or of acute

withdrawal, an evaluation shall be conducted by a physician, nurse practitioner, or physician's assistant.

- d. NYP shall continue to include in its EHR system a tool for substance use disorder risk screening and assessment that enables ED medical staff with access to the EHR system to perform and document such screening and assessment in the EHR system.

#### 61. Violence Risk

- a. NYP ED staff shall continue to screen for violence risk all individuals who are brought to or present to the ED with behavioral health presentations, using an add-on to the C-SSRS or an evidence-informed tool. If NYP ED staff make the clinical determination that based on a patient's presentation, such screening cannot or should not be conducted, NYP shall not be in violation of this provision. This is not intended to relieve NYP of its obligation to comply with the requirements of 10 N.Y.C.R.R. § 405.19(c)(5).
- b. NYP ED staff shall continue to reassess individuals' violence risk throughout their stay in the ED at intervals that are clinically indicated. For avoidance of doubt, this obligation does not require NYP staff to use an assessment tool for reassessment but to recognize that one's violence risk often changes throughout the course of treatment, for example as a result of triggering events.
- c. For patients who present with a behavioral health presentation and screen as presenting a risk of violent behavior, an NYP staff member trained in violence risk assessment shall perform a complete violence risk assessment, including

review of the individual's self-report; a detailed review of the history of present illness; history from available electronic health records; records, if any, available in the PSYCKES database (in accordance with 10 NYCRR § 405.19(c)(5)(ii)(a)); and, if not present in electronic health records, to the extent clinically appropriate and reasonably available to the staff member, other sources such as police reports, notes from nursing homes and juvenile detention facilities, access to lethal means, and if the patient consents (or if NYP deems overriding the patient's consent appropriate) and if such contact information is available, collateral information from family, friends, and community providers.

- d. To the extent clinically appropriate, NYP staff shall implement observation, which may include one-to-one observation if deemed clinically appropriate, for individuals who screen positive for violence risk in the ED.

62. Elopement Risk Screening and Management

- a. NYP ED staff shall continue to assess all patients who present to the ED for elopement risk. If NYP ED staff make the clinical determination that based on a patient's presentation, such screening cannot or should not be conducted, NYP shall not be in violation of this provision.
- b. NYP shall continue to include in its EHR system a tool for elopement risk screening and assessment that enables ED medical staff with access to the EHR system to perform and document such screening and assessment in the EHR system.
- c. Elopement risk screening shall be conducted while a patient is being triaged in

the ED and as clinically indicated or needed thereafter.

- d. In assessing elopement risk, NYP ED staff shall review transfer paperwork from residential and/or congregate care facilities (including nursing homes, mental health housing, detention, etc.) and pre-hospital care reports (“PCRs”) during the triage process, to the extent clinically appropriate and provided such documentation is available at the time of assessment.
- e. In assessing elopement risk for adult patients, NYP ED staff shall continue to identify at least the following risk factors (and may use additional risk factors):
  - i. Patients who are self-ambulatory or self-mobile in a wheelchair;
  - ii. Patients with poor decision-making skills (e.g. altered levels of orientation or patients with periods of confusion) and who are unsafe to leave;
  - iii. Patients with a known history of/or suspected diagnosis or behavior such as developmental delay, autism spectrum, dementia, cognitive impairment (acute or chronic), or acute psychiatric symptoms; and
  - iv. Patients currently under involuntary or voluntary admission status in a psychiatric hospital and in the ED for evaluation.
- f. In assessing elopement risk for pediatric patients, NYP ED staff shall continue to identify at least the following risk factors (and may use additional risk factors):
  - i. unaccompanied minors;
  - ii. patients with poor decision-making skills and who are unsafe to leave;

- iii. patients with a known history of/or suspected concerning diagnosis or behaviors, including but not limited to developmental delay, autism spectrum, cognitive impairment (acute or chronic), or acute psychiatric symptoms; and
  - iv. patients currently under involuntary or voluntary admission status in a psychiatric hospital and in the ED for evaluation.
- g. In assessing elopement risk, NYP ED staff shall also identify the following risk factors, to the extent appropriate based on clinical assessment and judgment:
- i. Patients deemed to need a voluntary or involuntary inpatient psychiatric admission but are waiting for an inpatient bed.
  - ii. Patients with altered levels of orientation or periods of confusion for whom substance use is suspected (e.g., whose judgment is suspected of being temporarily impaired due to the influence of drugs or alcohol, or withdrawal from drugs or alcohol).
  - iii. Patients with behavioral health presentations who have a known history of elopement or wandering.
- h. For patients presenting to the NYP-Methodist ED, patients living in nursing homes or assisted living facilities shall automatically be designated as elopement risks.
- i. If NYP ED staff determine that elopement risk precautions are needed, staff shall continue to identify, and implement where clinically appropriate, the following elopement risk precautions:
- i. securing patient's belongings away from the patient's bedside or returning

- them to a caregiver, as feasible;
- ii. attempting to have adult patients remove their clothing and change into a designated colored gown and non-skid socks;
  - iii. assessing the need for a level of observation, and when clinically appropriate, applying a level of observation, which may include one-to-one observation, by order if needed. If no level of observation is ordered, the rationale shall be reasonably documented in the medical record;
  - iv. notifying the patient's care team (namely the provider and nurse) that a patient is an elopement risk through a persistent banner in the patient's EHR or a notation in the digital system used to track the status and location of ED patients; and
  - v. if a patient attempts to elope, reassessing and applying, if needed, an appropriate level of observation, with a new order issued if needed.
- j. For each patient for whom a level of observation is ordered, a monitoring log shall be used to document the patient's status at hourly or more frequent intervals and the individual(s) assigned to monitor.
- k. For patients who screened negative for elopement risk at triage, if an ED staff member learns of that patient's elopement history or notes in the medical record that the patient is an elopement risk, these facts must be communicated to nursing who then must ensure such information is reflected in the elopement risk screening tool, which triggers flags on the white board, storyboard, and elopement risk precautions as clinically indicated.

- l. For patients being transferred to another facility for inpatient psychiatric treatment, the transferring psychiatrist shall make a clinical determination as to whether a security escort and/or an advanced life support (“ALS”) or basic life support (“BLS”) ambulance are needed. To the extent appropriate based on clinical judgment and assessment, factors to be considered may include agitation, elopement risk, and risk of harm to self and others. The rationale for use of a security escort must be documented in the medical record.
- m. NYP shall continue to require that, upon becoming aware that a patient identified as at risk for elopement is deemed missing, the primary nurse assigned to the patient must notify security, a responsible provider, and patient services administration or an administrator on call. The policy shall be amended to clarify that such notifications to security shall be made “immediately.”
  - i. NYP shall continue to clearly establish the procedures staff must follow to conduct a search for the patient and promptly determine whether an elopement should be reported to law enforcement.
  - ii. NYP shall continue to enumerate what information must be documented in both the patient’s medical record and in the medical event reporting system if an elopement event occurs.
- n. NYP shall continue to maintain a policy that explains the procedure hospital staff must follow when patients who have capacity wish to leave against medical advice. That policy further shall continue to describe the steps ED staff must follow when a patient with capacity wishes to leave against medical advice prior to receiving discharge instructions.

- o. Elopement Risk Quality Review and Monitoring: NYP shall maintain a quality review procedure that ensures each Elopement is logged and reviewed through NYP's quality assurance review procedures.
  - i. "Elopement" for purposes of this Assurance means any incident in which a patient who is cognitively, physically, mentally, emotionally, and/or chemically impaired, or incapable of adequately protecting oneself, wanders, walks away from, or escapes unsupervised from the care of the facility prior to discharge.
  - ii. NYP shall continue to utilize Keepsafe, or another similar database system, as the event reporting system that NYP staff use to track Elopements.
  - iii. Each Elopement shall be added to Keepsafe and reviewed under NYP's quality assurance practices. In addition to this quality assurance review, each Elopement shall be reviewed by NYP to determine if the incident is properly classified as an Elopement, as such term is defined in this subparagraph, and logged as an Elopement in the patient's EHR.
  - iv. NYP-Methodist shall maintain a complete list of Elopements as logged in patients' EHR and in Keepsafe.
- p. NYP shall implement a Longitudinal Care Plan (described in Paragraph 63(d) below) for patients who have previously eloped from an NYP ED and whom ED staff, in the exercise of their clinical judgment, consider to have a high risk of elopement. The Longitudinal Care Plan shall operate as a pop-up in the patient's EHR to alert providers that the patient previously eloped from an

NYP ED and is considered to have a high risk of elopement. A determination of whether a patient who has previously eloped from an NYP ED has a high risk of elopement will be a multidisciplinary determination made by ED attendings and other attending physicians familiar with the patient (i.e., nursing, social work, mobile crisis teams, or other external outpatient providers connected with the patient).

63. Patients with Complex Needs

- a. NYP ED staff shall screen all individuals who are brought to or present to the ED with behavioral health presentations to determine if they are “individuals with complex needs” related to their ability to successfully transition to community-based care following discharge. If NYP ED staff make the clinical determination that based on a patient’s presentation, such screening cannot or should not be conducted, NYP shall not be in violation of this provision. This is not intended to relieve NYP of its obligation to comply with the requirements of 10 N.Y.C.R.R. § 405.19(c)(5).
- b. “Individual with complex needs” shall have the meaning set forth in 14 NYCRR § 580.3(e).
- c. When feasible and appropriate based on clinical judgment and assessment by NYP staff, NYP staff shall invite outpatient providers and/or care managers working with individuals with complex needs to meet with the patient and collaborate with the ED team (within legal requirements for consent), even when the provider and/or care manager is not an employee or otherwise affiliated with NYP.

d. NYP staff shall regularly assess, as clinically appropriate, whether individuals with complex needs would benefit from development of a Longitudinal Care Plan, which may reflect strategies to improve care outside of ED visits for that individual, and which will be available to staff in the EHR if the patient returns to the ED. The Longitudinal Care Plan may list the patient's individual needs and common complaints, challenges for managing the patient's care, medications previously used for the patient, recommended interventions and goals for NYP staff to improve the safety, quality, and consistency of care for the patient in the ED. It may also include contact information for other treatment providers for the patient, and proposed further referrals for the patient to receive services outside of the ED, which may include referral to NYP's Case Management Department, community resources, and/or day programs.

64. Level of Care

- a. When deciding to admit or discharge from the ED an individual with a behavioral health presentation, to the extent clinically appropriate, NYP ED staff shall consider existing symptoms and level of risk of harm to self or others based on observation in the ED and the individual's overall clinical history, engagement in care, and availability of existing services in the patient's community.
- b. Under the guidance of consulting psychiatrists, NYP ED staff shall consider an involuntary or emergency psychiatric admission for individuals who meet clinical and legal criteria.

- c. NYP ED staff shall evaluate whether a voluntary inpatient admission would be clinically appropriate for an individual even if the individual does not meet involuntary or emergency admission criteria.
- d. If NYP providers decide that involuntary inpatient psychiatric admission is appropriate for a patient and there is no available inpatient bed at that hospital, NYP staff shall search for a bed at another facility. NYP shall implement and/or revise relevant policies and procedures to require documentation of the results of such efforts and reason for the transfer in the applicable documentation tool used by NYP staff. The search need not be limited to the NYP hospital system. Hospital staff shall attempt, including communicating with a patient's health insurance plan as needed, to secure a psychiatric inpatient bed for a patient in need.
- e. If NYP ED staff determine that a voluntary or involuntary inpatient psychiatric admission is appropriate for a patient, any reassessment of such patients shall involve a psychiatric consultation. In such cases, the examining physician or psychiatric nurse practitioner shall clearly document the basis for any changes to the patient's plan. If a patient who had earlier agreed to a voluntary admission later demands to leave prior to the initiation of admission paperwork, and if NYP makes a clinical determination that such patient could pose a risk of harm to themselves or others if the patient were to leave, NYP staff shall reassess the patient and create a clinically appropriate treatment plan. If NYP determines that the patient is sufficiently stable and does not pose a safety risk upon discharge, NYP shall create a discharge plan that sets

forth an appropriate lower level of care.

**B. Communication and Collaboration with Non-Hospital Providers, Family Members and Friends**

65. For all individuals who are brought to or present to the ED with behavioral health presentations, NYP ED staff shall make efforts to perform the following:
- a. review the individual's prior psychiatric and medical history, including in the EHR and the PSYCKES database, and, within legal requirements for consent, obtain contact information for outpatient treatment teams and care managers, family and friends.
  - b. when assessing individuals who are brought in by the police due to behavioral disturbances in the community or individuals who are involuntarily removed from the community, within legal requirements for consent, make at least one effort to obtain collateral information from the individual that initiated the involuntary removal and other sources of information, including family members and friends, outpatient providers, staff at residential or long-term care programs, health home care managers, mobile crisis teams, schools, child welfare, and/or managed care organization care managers.
  - c. attempt to identify and contact additional sources of collateral information if the initial source of collateral information is not able to provide sufficient information, within legal requirements for consent.
  - d. not make a disposition decision solely based on behavioral observation in the ED when other information is reasonably available to treating staff, including the information set forth in subparagraphs (a), (b), and (c) of this Paragraph.

- e. document collateral outreach.
- f. If NYP ED staff make the clinical determination that based on a patient's presentation, subparagraphs (a) through (e) of this Paragraph cannot or should not be implemented, NYP shall not be in violation of this provision. This is not intended to relieve NYP of its obligation to comply with the requirements of 10 N.Y.C.R.R. § 405.19(c)(5).

66. NYP-Methodist shall attempt to develop an improved communication mechanism to coordinate care with clinicians at community behavioral health agencies and residential or long-term care programs that provide behavioral health services such as congregate care facilities, nursing homes, and supportive housing facilities. This communication mechanism could include a plan for regular communication with community behavioral health agencies and residential facilities that frequently refer patients to the ED to collaborate on how best to coordinate care and to foster a collaborative relationship between the hospital and the facility.

67. For all individuals with behavioral health presentations, and to the extent clinically relevant in determining disposition, NYP ED staff shall review all available transfer documentation that is available at the time of assessment, including but not limited to emergency medical services pre-hospital care reports, transfer notes from other facilities, referral documentation, and involuntary removal forms, ensuring that, to the extent feasible, all such documentation is uploaded into the medical record.

### **C. Coordinated Discharge Planning**

68. For patients with complex needs (as defined above in Paragraph 63(b)), NYP ED staff shall:

- a. schedule an appointment for psychiatric aftercare with an identified provider within seven calendar days following discharge.
  - b. provide a discharge summary detailing the presenting mental health history, hospital course, and other relevant information to the program for a patient who wishes to receive psychiatric aftercare services.
  - c. document efforts to schedule an appointment for psychiatric aftercare.
  - d. If NYP ED staff make the clinical determination that based on a patient's presentation, subparagraphs (a) through (c) of this Paragraph cannot or should not be implemented, NYP shall not be in violation of this provision. This is not intended to relieve NYP of its obligation to comply with the requirements of 10 N.Y.C.R.R. § 405.19(c)(5).
69. NYP shall continue to follow policies and procedures regarding transfer between its facilities of patients needing inpatient mental health treatment. At a minimum:
- a. such policies and procedures shall establish a protocol for effectuation of transfers between NYP's facilities of patients needing inpatient mental health services.
  - b. NYP-Methodist shall ensure the provision of appropriate transportation from NYP's facilities for patients needing inpatient mental health services, including medically supervised treatment when clinically indicated, when NYP staff have determined that such a transfer is clinically appropriate for a patient.
  - c. ED staff, to the extent relevant to their role, shall be trained in the use of NYP's "EMTALA Transfer Form." Such training shall include discussion of what may qualify as an emergency medical condition that is psychiatric ("Psychiatric

EMC”) and how Psychiatric EMCs may be treated for the purposes of transfer under EMTALA.

#### **D. Pre-Discharge Interventions**

70. For individuals with a moderate or high risk of self-harm or suicide, as determined by a suicide risk assessment (*see* Paragraph 59 above) NYP ED staff shall:
  - a. implement an evidence-based community suicide safety plan such as the Safety Planning Intervention (“SPI”) before discharge.
  - b. where applicable, share the safety plan with outpatient, residential or long-term care providers, within legal requirements for consent.
  - c. If NYP ED staff make the clinical determination that based on a patient’s presentation, subparagraphs (a) through (b) of this Paragraph cannot or should not be implemented, NYP shall not be in violation of this provision. This is not intended to relieve NYP of its obligation to comply with the requirements of 10 N.Y.C.R.R. § 405.19(c)(5).
71. For individuals at risk for an opioid overdose, NYP ED staff shall:
  - a. to the extent clinically appropriate, dispense or prescribe naloxone or a similar agent and provide education on how to use it, as well as how to obtain more naloxone in the community.
  - b. standardize the provision of additional education about harm reduction strategies, such as never using alone, using fentanyl test strips, and information about contaminants by, for example, providing educational pamphlets in the waiting room.
72. NYP ED staff shall, if appropriate to the clinical condition of a patient, offer

buprenorphine or long-acting naltrexone to individuals who meet criteria for opioid use disorder, and NYP staff shall assess whether referring such individuals to an outpatient provider that can continue the treatment would be clinically appropriate.

73. Psychiatric Diversion

- a. NYP's Diversion policy shall continue to limit calls for Diversion to when: (i) for emergency patients with life-threatening conditions, the acceptance of an additional critical patient to the Emergency Department may endanger the life of that patient or the life of another patient therein; or (ii) for emergency patients without life-threatening conditions, when all appropriate beds are filled.
- b. NYP shall create a written document applicable to NYP-Methodist that states as follows:
  - i. Staff at NYP-Methodist may call for Psychiatric Diversion in the Methodist ED, in addition to meeting the requirements set forth in subparagraph (a) of this Paragraph, when a clinical determination is made that there are not sufficient qualified technicians or other appropriate staff without levels of observation responsibilities available to perform tasks essential to caring for all patients in the NYP-Methodist ED, which include but are not limited to taking vital signs, performing electrocardiograms, and escorting patients to other areas of the hospital for medical tests.
  - ii. prior to making Psychiatric Diversion requests at the NYP-Methodist ED, NYP-Methodist staff shall attempt to use appropriate staff, including a "float pool" of technicians who can be reassigned to the ED to assist with levels of observation and other tasks.

- iii. Psychiatric Diversion at NYP-Methodist shall continue to be withdrawn as soon as the ability to provide appropriate levels of observation is available.
- c. NYP-Methodist shall document and review: (i) Psychiatric Diversion incidents, including the reasons for Psychiatric Diversion calls; (ii) its efforts to use the float pool to avoid the need for Psychiatric Diversion; and (iii) its compliance with the written Diversion policy.

#### **E. Training**

74. NYP shall develop a written training protocol regarding the provisions in Paragraphs 59 through 73 above for all ED staff, including, as applicable, security personnel. NYP shall submit such training materials to the Compliance Administrator for review and confirmation with the terms of this Assurance within one hundred and twenty (120) days of the Effective Date. NYP shall also provide the training materials to OAG.

- a. NYP shall train all relevant personnel based on the written materials.
- b. All relevant NYP-Methodist personnel shall be trained on the materials within ninety (90) days of Compliance Administrator approval of such materials. Thereafter, new ED relevant personnel shall be trained, as applicable, within sixty (60) days of commencing their duties. Training shall continue on an annual basis and must be provided to all NYP-Methodist ED medical staff, as applicable, no less than one (1) time per year until three (3) years after the Effective Date. Relevant personnel shall be educated and re-trained if necessary whenever new policies or procedures are implemented.
- c. NYP shall create and maintain records regarding all training conducted pursuant to this Paragraph, including records of attendance or completion of

training. Such records shall be reviewed by the Compliance Administrator as part of its audits and shall be provided to OAG no more than thirty (30) days after a demand for such records is made.

## **F. Additional Measures**

75. NYP shall make new and meaningful investments after the Effective Date in implementing one or more of the following services and shall report annually to OAG a summary of the investments made:

- a. operating a behavioral health outpatient clinic at NYP-Methodist. This facility shall accept patients from both the NYP network and the Brooklyn community. The clinic shall provide primary care services as well as both individual therapy and group therapy to patients as needed. At least one (1) staff member at the clinic shall be trained in and provide addiction medicine services to patients as needed, and at least one (1) staff member at the clinic shall be trained in and provide psychiatric medication management and assessment to patients as needed.
- b. conducting an assessment of the possibility of partnering with community-based providers to deploy peer counselors in its EDs to attempt to assist behavioral health patients with linkages to post-discharge care.
- c. conducting an assessment of the possibility of developing a crisis stabilization program, such as the emergency psychiatry assessment treatment and healing (“EmPATH”) model, to provide a humane, appropriate alternate treatment setting for individuals in mental health crisis. Such program could be designed to provide short-term intensive treatment focused on rapid assessment, early

intervention, and proactive discharge planning, using an interdisciplinary team that includes psychiatrists, nurses, behavioral health technicians, case managers, social workers, peer counselors, psychiatric nurse practitioners and physician assistants.

- d. putting into place an evidence-based procedure for assigning staff to make at least two follow-up calls to patients who screen for moderate or high risk of self-harm or suicide and are discharged from the ED as follows:
  - i. The first attempt at contact to be made within ten days of discharge. If the patient does not respond to the call, staff should make at least two more attempts at contact within one week.
  - ii. During each call with a patient, staff should assess current risk of self-harm or violence, review and revise the safety plan as needed, and support treatment engagement.
  - iii. Staff should continue calls with patients who are not engaged in community-based services on a weekly basis until the patient is engaged in regular treatment or withdraws from contact.
  - iv. Making referrals for eligible patients with complex needs who are not enrolled in care management to an intensive care management provider such as Health Home Plus for AIDS/HIV population, an OMH Designated Specialty Mental Health Care Management Agency, or Health Homes Serving Children who can meet the patient prior to their leaving the ED, or else document why a referral was not possible.
- e. outreach to the community regarding available behavioral health services in

the NYP system.

## **II. Inpatient Psychiatric and Substance Use Disorder Beds**

76. Subject to required approvals by OMH and DOH, which may be modified by these agencies, NYP shall restore inpatient psychiatric beds as follows:

- a. At NYP-Methodist, NYP shall restore 12 of 25 offline licensed beds, for a total of at least 36 licensed and operational inpatient psychiatric beds, by or before the Effective Date. For avoidance of doubt, the term “operational” means that the beds are online and available for use by patients as needed.
- b. At NYP-Allen, NYP shall restore 24 of 30 offline licensed beds, for a total of at least 24 licensed and operational inpatient psychiatric beds, by or before the Effective Date.

77. Subject to required approvals by OMH and DOH, which may be modified by those agencies, NYP shall add inpatient psychiatric beds as follows:

- a. At NYP-Columbia, NYP shall add three (3) inpatient psychiatric beds, for a total of 28 licensed and operational inpatient psychiatric beds, by October 2026.
- b. At NYP-Westchester Behavioral Health, NYP shall add two (2) inpatient psychiatric beds, for a total of 235 licensed and operational inpatient psychiatric beds, by December 2026.

78. NYP shall maintain the current level of beds at certain hospitals as follows:

- a. At NYP-Gracie Square, NYP shall maintain 140 licensed and operational inpatient psychiatric beds.
- b. At NYP-Cornell, NYP shall maintain 36 licensed and operational inpatient

psychiatric beds.

79. NYP shall not take any of the beds identified above in Paragraphs 76 through 78 offline or submit any application or plan to any state or federal agency to decertify or take offline any of the beds until three (3) years after the last of the currently offline beds is restored. After three (3) years from the Effective Date, if NYP wishes to decertify or take any of the beds offline for a regulatory, legal, clinical, financial, or operational reason, prior to filing Certificate of Need and/or Prior Approval Review applications, it shall notify OAG in writing and provide documentation explaining the basis for the same, and the Parties shall meet and confer. OAG's consideration of NYP's request shall factor in commitments by other providers in the region to maintain capacity and the financial strain on the affected facility or the NYP system overall. During this period, all licensed beds shall remain operational, except for short-term closures consistent with N.Y. Mental Hygiene Law § 31.16(g)(2).

80. For the avoidance of doubt, this Assurance does not require NYP to act in contravention to the regulations, guidance, directives, and/or instructions of OMH or DOH regarding NYP's inpatient psychiatric beds.

### **III. Oversight by Compliance Administrator**

81. Within thirty (30) days after the Effective Date, NYP shall designate a NYP employee or consultant, reasonably approved by OAG, with health care management experience to serve as a compliance administrator (the "Compliance Administrator"). The Compliance Administrator shall submit to OAG bi-annual reports assessing NYP's compliance with the requirements set forth in Paragraphs 57 through 74 and 76 through 78 above, and other information as described in this Paragraph ("Compliance Reports"). The

Compliance Administrator shall review NYP's compliance with the requirements of this Assurance over a minimum of four (4) reporting periods ("Reporting Period(s)"). The first Reporting Period shall begin three (3) months after NYP-Methodist staff complete the training described in Paragraph 74 and end six (6) months thereafter. The second through fourth Reporting Periods shall each begin at the close of the prior reporting period and end six (6) months thereafter. The Compliance Administrator shall file each of its Compliance Reports with NYP and OAG within 30 days of the end of each Reporting Period. In any case where the circumstances warrant, OAG may require NYP to file an interim report of compliance upon thirty (30) days' notice. All Compliance Reports shall be kept confidential unless a court of competent jurisdiction orders disclosure pursuant to the New York State Freedom of Information Law, N.Y. Public Officers Law Art. 6.

- a. The Compliance Reports shall include:
  - i. analysis of NYP's compliance with the requirements set forth above, which may include policies, trainings, and other steps undertaken to comply with the requirements of this Assurance;
  - ii. analysis of a randomly selected sample of 25 (twenty-five) medical records of NYP-Methodist ED patients with behavioral health presentations who were screened as being at-risk of elopement, to assess compliance with NYP's Elopement Prevention, Risk Screening and Management Policy and Levels of Observation Policy. The Compliance Administrator's review shall include examination of appropriate risk assessment and implementation of appropriate precautionary interventions. If there are fewer than twenty-five (25) such cases, the Compliance Administrator shall review all of the qualifying cases

and note that limitation in the applicable Compliance Report to OAG.

- iii. analysis of a randomly selected sample of twenty-five (25) medical records of NYP-Methodist ED patients with behavioral health presentations who were screened as not being at-risk of elopement and for whom a psychiatric evaluation was ordered, to assess whether NYP should supplement the risk factors enumerated in its Elopement Prevention, Risk Screening and Management Policy. In this assessment, the Compliance Administrator shall consider whether the patient presented with a potential serious risk of harm to self or others. If there are fewer than twenty-five (25) such cases, the Compliance Administrator shall review all of the qualifying cases and note that limitation in the applicable Compliance Report to OAG.
- iv. Analysis of a randomly selected sample of twenty-five (25) medical records of NYP-Methodist patients with behavioral health presentations who “walked out” of the ED or left the ED “against medical advice,” to assess compliance with NYP’s Patients Wishing to Leave Against Medical Advice Policy, Elopement Prevention, Risk Screening and Management Policy, and Levels of Observation Policy. Within the meaning of this subparagraph, a “walk out” occurs when a patient with capacity goes missing from an inpatient unit or ED without a discussion with a physician, nurse practitioner, physician assistant, or other member of his or her care team of their intent to leave, and a patient leaves “against medical advice” when a patient with capacity informs a physician, nurse practitioner, physician assistant, or other member of his or her care team of their intent to leave, and there is a discussion between the

patient and a provider on the risks and benefits of declining further care, but the patient still decides to leave. If there are fewer than twenty-five (25) such cases, the Compliance Administrator shall review all of the qualifying cases and note that limitation in the applicable Compliance Report to OAG. The Compliance Administrator shall review whether each incident was an Elopement. If the Compliance Administrator determines that the incident was an Elopement, the Compliance Administrator will log the incident into all appropriate medical event reporting systems which may be the patient's EHR, Keepsafe, or other record to enable review by the responsible clinical service(s) and NYP-Methodist's Quality and Patient Safety Department.

- v. Analysis of medical records of all patients who eloped from the NYP-Methodist ED, to assess compliance with NYP's Elopement Risk Screening and Management Policy and Levels of Observation Policy. The Compliance Administrator shall review to ensure that each such elopement has been documented in Keepsafe (or, if applicable, another medical event reporting system used by NYP) and has been reviewed by the responsible clinical service(s) and NYP-Methodist's Quality and Patient Safety Department.
  - vi. analysis of data regarding ED services for NYP-Methodist patients with behavioral health presentations, including: average daily census; length of stay; patient flow/timeliness; recidivism; patients who eloped (after being deemed to be an elopement risk), walked out of, or left the ED against medical advice; and other metrics deemed relevant by the Compliance Administrator.
- b. For purposes of Paragraph 81, "patients with behavioral health presentations"

shall mean patients for whom a psychiatric consult was ordered.

- c. Within ninety (90) days from submission of the fourth Compliance Report, the Compliance Administrator's role shall cease to function if, after the Compliance Administrator has submitted at least four (4) Compliance Reports to OAG, NYP makes a showing to OAG, including through the Compliance Reports, that: (i) the medical records reviewed by the Compliance Administrator are in substantial compliance with NYP's Elopement Prevention, Risk Screening and Management Policy and its Levels of Observation Policy; and (ii) NYP is in substantial compliance with all other terms of this Assurance.
- d. If, after the receipt of the fourth Compliance Report, OAG determines that NYP is not in substantial compliance with the terms of this Assurance as described in subparagraph (c) above, OAG shall have ninety (90) days to provide such notice to NYP, in which case the Compliance Administrator will continue to function and OAG shall produce a written report within sixty (60) days thereafter setting forth NYP's alleged substantial non-compliance with the terms of this Assurance and proposed steps for NYP to come into substantial compliance. Following any such OAG report, NYP, in consultation with OAG, shall develop a plan of corrective action to achieve substantial compliance with the terms of this Assurance. In the event the Compliance Administrator continues to serve pursuant to the provisions of this Paragraph following the submission of the fourth Compliance Report, the Compliance Administrator's role shall terminate upon the conclusion of a reporting cycle after which OAG deems that NYP is in substantial compliance with the terms of this Assurance as described in subparagraph (b)

above. Such termination shall occur no later than ninety (90) days after submission of the applicable Compliance Report to OAG; provided, however, that in no event shall the Compliance Administrator's role or the term of the Assurance continue for more than five (5) years past the Effective Date.

### **General Provisions**

82. Acceptance of this Assurance by OAG is not an approval or endorsement by OAG of any of NYP's policies practices or procedures, and NYP shall make no representation to the contrary.

83. Compliance with Other Obligations. In the event that NYP reasonably believes that the performance of its obligations under any provision of this Assurance would conflict with any federal or state law or regulation, or Joint Commission, DOH, OMH and/or any other regulatory or accreditation body mandatory directive, standard, guidance, or instruction that may be enacted or adopted after the effective date of this Assurance such that compliance with both this Assurance and such provision of law, regulation, and/or regulatory or accreditation body mandatory directive, standard, guidance, or instruction is not possible, NYP shall notify OAG promptly and the Parties shall meet and confer at their earliest convenience to attempt to resolve such alleged conflict, and OAG shall not unreasonably delay such meet and confer. In the event that NYP reasonably believes that the performance of its obligations under any provision of this Assurance would conflict with any emergency provision of federal or state law or regulation, or emergency Joint Commission, DOH, OMH and/or any other regulatory or accreditation body mandatory directive, standard, guidance, or instruction that may be enacted or adopted after the effective date of this Assurance such that compliance with both this Assurance and such emergency provision of law, regulation,

and/or regulatory or accreditation body mandatory directive, standard, guidance, or instruction is not possible, and prior notice to OAG is not practicable, NYP shall not be prevented from revising its existing policies and procedures to comply with such but will notify OAG promptly and the parties shall meet and confer at their earliest convenience to attempt to resolve such alleged conflict, and OAG shall not unreasonably delay such meet and confer.

84. NYP expressly agrees and acknowledges that a default in the performance of any obligation under this Assurance is a violation of the Assurance, and that OAG thereafter may commence the civil action or proceeding contemplated in Paragraph 52, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described in Paragraph 50, pursuant to Executive Law § 63(15).

85. If, while this Assurance is in effect, OAG believes that NYP has violated the terms of this Assurance, OAG shall provide notice to NYP, as provided for in Paragraph 94. Within thirty (30) days of its receipt of such notice, NYP shall provide a written response, including an explanation as to how any such deficiency has been cured or addressed, to OAG. If OAG determines that the issue has not been sufficiently addressed, OAG and NYP shall meet and confer to determine whether the issue can be resolved to OAG's satisfaction before OAG initiates a subsequent investigation, civil action or proceeding as contemplated in Paragraphs 89 and 90, or assesses additional penalties, as set forth in Paragraph 88.

#### **Ongoing Cooperation**

86. NYP agrees to cooperate with all ongoing requests by OAG for information related to this investigation and to ensure compliance with this Assurance.

### **Penalties, Fees, and/or Costs**

87. NYP shall pay to the State of New York \$500,000 for fees and costs. Payment shall be made in full within one hundred eighty (180) days of the Effective Date of this Assurance. Payments shall be made in accordance with instructions provided by an OAG representative and shall reference Assurance No. 24-012.

88. The Parties agree that it would be difficult to value the damages caused by default in the performance of any obligation under this paragraph, and therefore agree that NYP shall pay to the State of New York a stipulated penalty of \$10,000 for repeated, material defaults in the performance of any obligation under this paragraph occurring after the Effective Date of the Assurance. In the event that a stipulated penalty is issued, OAG shall delineate at which NYP facility or campus the default(s) occurred, so that NYP may appropriately rectify and account for the default(s).

### **MISCELLANEOUS**

#### **Subsequent Proceedings**

89. NYP expressly agrees and acknowledges that OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to Paragraph 95, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses at the time of the Effective Date of this Assurance shall be tolled;
- b. OAG may use statements, documents or other materials produced or provided by NYP prior to or after the Effective Date of this Assurance;

- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that NYP irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue; and
- d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

90. If a court of competent jurisdiction determines that NYP has materially violated this Assurance, NYP shall pay to OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

#### **Effects of Assurance**

91. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of NYP. NYP shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of OAG, which shall not be unreasonably withheld.

92. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

93. Any failure by OAG to insist upon the strict performance by NYP of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by NYP.

### **Communications**

94. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 24-012, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to NYP, to: Mary Beth Claus, or in her absence, to the person holding the title of Chief Legal Officer and General Counsel, with a copy to Emily A. Vance at Paul, Weiss, Wharton, Rifkind & Garrison LLP.

If to OAG, to: Michael D. Reisman and Gina Bull, or in their absence, to the person holding the title of Bureau Chief, Health Care Bureau.

### **Representations and Warranties**

95. OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by NYP and their counsel and OAG's own factual investigation as set forth in the Findings, Paragraphs 11 through 50 above. NYP represents and warrants that neither it nor its counsel has made any material representations to OAG that are inaccurate or misleading. If any material representations by NYP or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by OAG in its sole discretion.

96. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by NYP in agreeing to this Assurance.

97. NYP represents and warrants, through the signatures below, that the terms and

conditions of this Assurance are duly approved. NYP further represents and warrants that NYP, by Mary Beth Claus, as the signatory to this AOD, is a duly authorized officer acting at the direction of the Board of Trustees of NYP.

98. The obligations of this Assurance set forth in Paragraphs 56 through 75 and Paragraphs 78 through 79 shall expire at the conclusion of five (5) years after the Effective Date.

### **General Principles**

99. Unless a term limit for compliance is otherwise specified within this Assurance, NYP's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve NYP of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

100. NYP shall not in any manner discriminate or retaliate against any of its employees or staff members, including but not limited to employees or staff members who cooperated or are perceived to have cooperated with the investigation of this matter or any future investigation related to enforcing this agreement.

101. NYP agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, the propriety of this Assurance. This Paragraph shall not: (1) preclude NYP from acknowledging that, by entering this Assurance, it did not admit to OAG's Findings and entered the Assurance to avoid the time and expense of litigation; (ii) affect NYP's testimonial obligations; or (iii) affect NYP's right to take legal or factual positions in response to, or defense of, any inquiry, audit, litigation, or other proceedings, including, without limitation, any inquiry or action brought by an individual, entity, or governmental authority.

102. Nothing contained herein shall be construed to limit the remedies available to OAG in the event that NYP violates the Assurance after its Effective Date.

103. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

104. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

105. NYP acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

106. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

107. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

108. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the Effective Date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

