



# Revision to ASR and/or Attachments

**Date:** 11/7/2023  
**To:** Clerk of the Board of Supervisors *Frank*  
**CC:** Frank Kim, County Executive Office  
**From:** Debra Baetz, Agency Director, Health Care Agency *Debra Baetz*  
**Re:** ASR Control #: 23-000861, Meeting Date 11/28/23, Item No. # 11  
**Subject:** Amendment 13 for Coordination and Provision of Public Health Care Services

Digitally signed by Frank Kim  
DN: cn=Frank Kim, ou=County of Orange, ou=CEO,  
email=frank.kim@ocgov.com,  
c=US  
Date: 2023.11.17 16:20:32 -0800

**Explanation:**

The Health Care Agency would like to make the following changes:

Replace Attachment A. The Business Associate Agreement (Exhibit E) was added to the Amendment.

Revised Recommended Action(s)

Make modifications to the:

Subject     Background Information     Summary     Financial Impact

Revised Attachments (attach revised attachment(s) and redlined copy(s))

Attachment A - Amendment 13 with CalOptima

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COUNTY OF ORANGE  
BOARD OF SUPERVISORS

**AMENDMENT 13**

**TO THE**

**COORDINATION AND PROVISION OF PUBLIC HEALTH CARE SERVICES CONTRACT**

This Amendment 13 to the Coordination and Provision of Public Health Care Services Contract (“Amendment 13”) is entered into by and between the Orange County Health Authority, a public agency, dba CalOptima Health (“CalOptima”), and the County of Orange, a political subdivision of the State of California, through its division the Orange County Health Care Agency (“County”), and shall become effective on the first day of the first month following execution of this Amendment (“Effective Date”), with respect to the following:

**RECITALS**

- A. CalOptima and County entered into a Coordination and Provision of Public Health Care Services Contract (“Contract”) effective June 1, 2013, to set forth the manner in which their respective services shall be coordinated, and outline the specific services for which County will be reimbursed by CalOptima as required by CalOptima’s contract with the Department of Health Care Services (“DHCS”).
- B. CalOptima and County desire to extend the Coordination and Provision of Public Health Care Services Contract, expiring December 31, 2023, for three (3) years through the terms and conditions set forth herein.
- C. On January 8, 2021, DHCS released a revised California Advancing and Innovating Medi-Cal (“CalAIM”) proposal that takes a whole-person care approach to improving health outcomes for Medi-Cal members by incorporating both clinical and nonclinical services. Implementation of CalAIM initiatives by managed care plans began on January 1, 2022.
- D. Several CalAIM Community Supports were added to the Contract via Amendment 11 effective October 1, 2022. CalOptima and County desire to amend this Contract to include two (2) additional Community Supports, update two (2) Community Support rates, and extend Enhanced Care Management through the terms and conditions set forth herein.
- E. CalOptima and County wish to incorporate a Business Associate Agreement to perform the necessary terms and conditions set forth therein.

NOW, THEREFORE, the parties agree as follows:

- 1. Section 8.1 “Term” shall be deleted in its entirety and replaced with the following:  
 “8.1. Term. The Term of this Contract shall be from June 1, 2013, through December 31, 2026.”
- 2. Delete Attachment A, Part XIV “CalAIM Transition Coordination Services” in its entirety and replace it with the attached new Attachment A, Part XIV – Amendment 13 “CalAIM Enhanced Care Management Services”
- 3. Add the following new Sections H and I to Section I “SCOPE OF WORK” of Attachment A, Part XV “CalAIM Community Supports Services”.

**H. Community/Nursing Facility Transition to a Home**

Description/Overview

- A. Community Transition /Nursing Facility Transition to a Home Services, as described in this Section 1, help Members live in the community and avoid further institutionalization.
- B. Community Transition/Nursing Facility Transition to a Home Services cover non-recurring setup expenses for Members who are transitioning from a licensed facility to a living arrangement in a private residence where the person is directly responsible for his or her own living expenses. Allowable expenses are those necessary to enable a Member to establish a basic household that do not constitute room and board and include:
- i. Assessing the Member's housing needs and presenting options. Refer to the Housing Transition/Navigation Services and/or Housing Tenancy/Sustaining Services Community Supports for additional details.
  - ii. Assisting in searching for and securing housing, including the completion of housing applications and securing required documentation (e.g., Social Security card, birth certificate, prior rental history).
  - iii. Communicating with the landlord (if applicable) and coordinating the move.
  - iv. Establishing procedures and contacts to retain housing.
  - v. Identifying, coordinating, securing, or funding non-emergency, nonmedical transportation to assist Members' mobility to ensure reasonable accommodations and access to housing options prior to transition and on move-in day.
  - vi. Identifying the need for and coordinating funding for environmental modifications to install necessary accommodations for accessibility. Refer to the Housing Transition/Navigation Services and/or Housing Tenancy/Sustaining Services for additional details.
  - vii. Identifying the need for and coordinating funding for services and modifications necessary to enable a Member to establish a basic household refers to funding that does not constitute room and board, such as security deposits required to obtain a lease on an apartment or home; setup fees for utilities or service access; first-month coverage of utilities, including telephone, electricity, heating, and water; funds for services necessary for the Member's health and safety, such as pest eradication and one-time cleaning prior to occupancy; funds for home modifications, such as an air conditioner or heater; and funds for other medically necessary services, such as hospital beds and Hoyer lifts, etc. to ensure access and reasonable accommodations. Refer to the Environmental Accessibility Adaptations and/or Asthma Remediation Community Supports for additional details.

#### Eligibility

- A. Is currently receiving medically necessary nursing facility level of care ("LOC") services and, in lieu of remaining in the nursing facility or Medical Respite setting, is choosing to transition home and continue to receive medically necessary nursing facility LOC services;
- B. Has lived 60+ days in a nursing home and/or medical respite setting;
- C. Is interested in moving back to the community; and
- D. Is able to reside safely in the community with appropriate and cost-effective supports and

services.

Restrictions/Limitations

- A. Community Transition/Nursing Facility Transition to a Home Services do not include monthly rental or mortgage expense, food, regular utility charges, and/or household appliances or items that are intended for purely diversionary/recreational purposes.
- B. Community Transition/Nursing Facility Transition to a Home Services are payable up to a total lifetime maximum amount of \$7,500.00. The only exception to the \$7,500.00 total maximum is if the Member is compelled to move from a Provider-operated living arrangement to a living arrangement in a private residence through circumstances beyond his or her control.
- C. Community Transition/Nursing Facility Transition to a Home Services must be necessary to ensure the health, welfare, and safety of the Member, and without which the Member would be unable to move to the private residence and would then require continued or re-institutionalization.
- D. Community supports shall supplement and not supplant services received by the Medi-Cal beneficiary through other State, local, or federally-funded programs, in accordance with the CalAIM special terms and conditions (“STCs”) and federal and DHCS guidance.

Licensing/Allowable Providers

- A. Community Supports Providers must have experience and expertise with providing these unique services. The list is provided to show examples of the types of Community Supports Providers that may provide Community Transition/Nursing Facility Transition, but it is not an exhaustive list of Providers that may offer the services.
  - i. Case management agencies
  - ii. Home health agencies
  - iii. Medi-Cal managed care plans
  - iv. County mental health providers
  - v. 1915c home and community-based alternatives/assisted living waiver providers
  - vi. California community transitions/money follows the person providers

Community Supports Providers that have a state-level enrollment pathway must enroll in the Medi-Cal program, pursuant to relevant DHCS APLs, including Provider Credentialing/Recertification and Screening/Enrollment APL 19-004. If there is no state-level enrollment pathway, CalOptima must have a process for vetting the Community Supports Provider, which may extend to individuals employed by or delivering services on behalf of the Community Supports Provider, to ensure it can meet the capabilities and standards required to be a Community Supports Provider.

**I. Nursing Facility Transition/Diversion Services**

Description/Overview

- A. Nursing Facility Transition/Diversion Services, as defined in this Section 1, help Members live in the community and/or avoid institutionalization when possible.
- B. The goal is to both facilitate nursing facility transition back into a home-like, community setting and/or prevent skilled nursing admissions for Members with an imminent need for nursing facility level of care (“LOC”). Members have the choice of residing in an assisted living setting as an alternative to long-term placement in a nursing facility when they meet eligibility requirements.
- C. The assisted living Provider is responsible for meeting the needs of the Member, including helping with Activities of Daily Living (“ADLs”) and Instrumental ADLs (“IADLs”) and providing meals, transportation, and medication administration, as needed.
- D. Nursing Facility Transition/Diversion Services are for individuals who are transitioning from a licensed health care facility to a living arrangement in a Residential Care Facility for the Elderly (“RCFE”) or an Adult Residential Facility (“ARF”). They include wraparound services such as assistance with ADLs and IADLs as needed, companion services, medication oversight, and therapeutic social and recreational programming, provided in a home-like environment. It also includes 24- hour direct care staff on-site to meet scheduled unpredictable needs in a way that promotes maximum dignity and independence and to provide supervision, safety, and security. Allowable expenses are those necessary to enable a person to establish a community facility residence (except room and board), including but not limited to:
  - i. Assessing the Member’s housing needs and presenting options. Refer to Housing Transition/Navigation Services Community Support for additional details.
  - ii. Assessing the service needs of the Member to determine whether the Member needs enhanced on-site services at the RCFE/ARF so the Member can be safely and stably housed in an RCFE/ARF.
  - iii. Assisting in securing a facility residence, including the completion of facility applications and securing required documentation (e.g., Social Security card, birth certificate, prior rental history).
  - iv. Communicating with facility administration and coordinating the move.
  - v. Establishing procedures and contacts to retain facility housing.
  - vi. Coordinating with CalOptima to ensure that the needs of Members who need enhanced services to be safely and stably housed in RCFE/ARF settings have Community Supports services and/or ECM services that provide the necessary enhanced services.
    - a. CalOptima may also fund RCFE/ARF operators directly to provide these enhanced services.

Eligibility

- A. For Nursing Facility Transition Services:



- i. Has resided 60+ days in a nursing facility;
  - ii. Is willing to live in an assisted living setting as an alternative to a nursing facility; and
  - iii. Is able to reside safely in an assisted living facility with appropriate and cost-effective supports.
- B. For Nursing Facility Diversion Services:
- i. Is interested in remaining in the community;
  - i. Is willing and able to reside safely in an assisted living facility with appropriate and cost-effective supports and services; and
  - ii. Must be currently receiving medically necessary nursing facility LOC or meet the minimum criteria to receive nursing facility LOC services and, in lieu of going into a facility, is choosing to remain in the community and continue to receive medically necessary nursing facility LOC services at an assisted living facility.

#### Restrictions/Limitations

- A. Members are directly responsible for paying their own living expenses.
- B. Community supports shall supplement and not supplant services received by the Medi-Cal beneficiary through other State, local, or federally-funded programs, in accordance with the CalAIM special terms and conditions (“STCs”) and federal and DHCS guidance.

#### Licensing/Allowable Community Supports Providers

- A. Community Supports Providers must have experience and expertise with providing these unique services in a culturally and linguistically appropriate manner. The below list is provided to show examples of the types of Community Supports Providers that may provide Nursing Facility Transition/Diversion Services but is not an exhaustive list of Community Supports Providers that may offer the services.
  - i. Case management agencies
  - ii. Home Health Agencies
  - iii. Medi-Cal managed care plans
  - iv. ARF/RCFE operators
- B. Community Supports Providers that have a state-level enrollment pathway must enroll in the Medi-Cal program, pursuant to relevant DHCS APLs, including Provider Credentialing/Rec credentialing and Screening/Enrollment APL 19-004. If there is no state-level enrollment pathway, managed care plans must have a process for vetting the Community Supports Provider, which may extend to individuals employed by or delivering services on behalf of the Community Supports Provider, to ensure it can meet the capabilities and standards required to be a Community Supports Provider.

C. RCFEs/ARFs are licensed and regulated by the California Department of Social Services, Community Care Licensing Division.

- 3. Delete Attachment B – Amendment 10 “Compensation” in its entirety and replace it with the attached new Attachment B – Amendment 13 “Compensation”.
- 4. Exhibit E, Business Associate Agreement, attached to this Amendment and incorporated into the Contract by this reference..
- 5. This Amendment may be executed in multiple counterparts, and counterpart signature pages may be assembled to form a single, fully executed document.
- 6. Except as specifically amended by this Amendment 13, all other conditions contained in the Contract as previously amended shall continue in full force and effect. After the Amendment 13 Effective Date, any reference to the Contract shall mean the Contract as amended and supplemented by this Amendment 13. Notwithstanding anything to the contrary in the Contract, in the event of a conflict between the terms and conditions of this Amendment 13 and those contained within the Contract, the terms and conditions of this Amendment 13 shall prevail. Capitalized terms not otherwise defined in this Amendment 13 shall have the meanings ascribed to them in the Contract. This Amendment 13 is subject to approval by the Government Agencies and by the CalOptima Board of Directors.

IN WITNESS WHEREOF, CalOptima and County have executed this Amendment 13.

FOR COUNTY:

FOR CALOPTIMA:

Signature

Debra Baetz

Print Name

Interim Director, Health Care Agency

Title

Date

Signature

Veronica Carpenter

Print Name

Chief of Staff

Title

Nov 17, 2023

Date

Approved as to form:

County Counsel

County of Orange, California

DocuSigned by:

By: Brittany McLean

Date: 11/17/2023

Date:

Brittany McLean

**Attachment A, Part XIV – Amendment 13  
CalAIM Enhanced Care Management Services**

**CalAIM Program Services to be provided by County for CalOptima Medi-Cal Members**

**I. SCOPE OF WORK---**

Service Categories: ECM Services to be provided by County for CalOptima Members who are experiencing SMI/SUD inclusive of other related population of focus criteria to be effective January 1, 2022 under CalOptima's CalAIM program such as homelessness and high utilizers (CalAIM Program enrolled Members only).

**A. Enhanced Care Management (ECM)**

1. ECM Core Services – Upon authorization by CalOptima Member's assigned Health Network and acceptance by County, County will perform the following core ECM Services to CalOptima Members who are enrolled in CalAIM Program and are experiencing SMI and/or SUD inclusive of other related population of focus criteria to be effective January 1, 2022 under CalOptima's CalAIM program such as homelessness and high utilizers (adults and children/youth), per policy GG.1354 Enhanced Care Management Eligibility and Outreach:
  - a. Outreach and engagement;
  - b. Comprehensive assessment and care management plan;
  - c. Enhanced coordination of care;
  - d. Health promotion;
  - e. Comprehensive transitional care;
  - f. CalOptima Member and family supports; and
  - g. Coordination of and referral to community and social support services.
  
2. ECM Provider Requirements – County, shall satisfy the ECM Provider requirements for County identified, CalAIM enrolled and CalOptima authorized Members as set forth in CalOptima Policies and as follows:
  - 2.1 County shall have experience serving CalOptima Members experiencing SMI and/or SUD inclusive of other related population of focus criteria to be effective January 1, 2022 under CalOptima's CalAIM program such as homelessness and high utilizers and experience and expertise with the services County will provide.
  - 2.2 County shall comply with all applicable State and federal laws and regulations and all ECM requirements in the DHCS-CalOptima ECM and Community Supports Contract and associated guidance.
  - 2.3 County shall have the capacity to provide culturally appropriate and timely in-person care management activities including accompanying CalOptima Members to critical appointments when



necessary. County shall be able to communicate in culturally and linguistically appropriate and accessible ways.

- 2.4 County shall have agreements, procedures, and processes in place to engage and cooperate with CalOptima, CalOptima Health Networks, area hospitals, primary care practices, behavioral health Providers, Specialists, and other entities, including Community Supports Providers, to coordinate care as appropriate to each CalOptima Member. County shall comply with CalOptima's applicable process for vetting providers, which may extend to the individuals employed by or delivering services on behalf of County, to ensure the providers can meet the capabilities and standards required to be an ECM Provider.
- 2.5 County shall use a care management documentation system or process that supports the documentation and integration of physical, behavioral, social service, and administrative data and information from other entities to support the management and maintenance of an ECM Member care plan that can be shared with other providers and organizations involved in each ECM Member's care. Care management documentation systems may include Certified Electronic Health Record Technology, or other documentation tools that can: document CalOptima Member goals and goal attainment status; develop and assign care team tasks; define and support CalOptima Member care coordination and care management needs; gather information from other sources to identify CalOptima Member needs and support care team coordination and communication and support notifications regarding CalOptima Member health status and transitions in care (e.g., discharges from a hospital, long-term care facility, housing status).
3. Identifying CalOptima Members for ECM – CalOptima and County shall proactively identify CalOptima Members who are eligible for ECM Services and would benefit from ECM outreach. CalOptima Members identified by County shall be communicated to CalOptima on a monthly basis consistent with CalOptima's process, as described in CalOptima Policy GG.1354: Enhanced Care Management Eligibility and Outreach.
4. County Responsibilities for Assigned ECM Members.
  - 4.1 Upon authorization of ECM by CalOptima and acceptance by County, County shall ensure each assigned ECM Member has a Lead Care Manager who interacts directly with the ECM Member and/or their family member(s), guardian, caregiver, and/or authorized support person(s), as appropriate, and coordinates all covered physical, behavioral, developmental, oral health, Specialty Mental Health Services, Drug Medi-Cal/Drug Medi-Cal Organized Delivery System services, any Community Supports, and other services that address social determinants of health needs, regardless of setting.
  - 4.2 County shall:
    - (i) Advise the ECM Member on the process for changing ECM Providers, which is permitted at any time;
    - (ii) Advise the ECM Member on the process for switching ECM Providers, if requested; and
    - (iii) Notify CalOptima if the ECM Member wishes to change ECM Providers. CalOptima shall implement any requested ECM Provider change within thirty (30) calendar days.
5. County Staffing – At all times, County shall have adequate staff to ensure its ability to carry out responsibilities for each assigned ECM Member consistent with this Contract, applicable CalOptima Policies, DHCS ECM Provider Standard Terms and Conditions, the DHCS-CalOptima ECM and Community Supports Contract and any other related DHCS guidance.

6. County Outreach and Member Engagement – County shall be responsible for conducting outreach to each assigned ECM Member, in accordance with CalOptima Policy GG.1354: Enhanced Care Management Eligibility and Outreach.
  - 6.1 County shall conduct outreach primarily through in-person interaction where ECM Members and/or their family member(s), guardian, caregiver, and/or authorized support person(s) live, seek care, or prefer to access services in their community. County may supplement in-person visits with secure teleconferencing and telehealth, where appropriate, with the ECM Member's consent, and in compliance with applicable CalOptima Policies. County shall use the following modalities, as appropriate and as authorized by the ECM Member, if in-person modalities are unsuccessful or to reflect an ECM Member's stated contact preferences: (i) Mail; (ii) Email; (iii) Texts; (iv) Telephone calls; and (v) Telehealth.
  - 6.2 County shall comply with applicable non-discrimination requirements set forth in State and federal law and this Contract.
  - 6.3 CalOptima and County will coordinate to ensure that ECM Members who the parties know meet exclusionary criteria as defined in CalOptima Policy GG.1354: Enhanced Care Management Eligibility and Outreach do not receive ECM Services.
7. Initiating Delivery of ECM Services – County shall obtain, document, and manage ECM Member authorization for the sharing of personally identifiable information between CalOptima and ECM, Community Supports, and other Providers involved in the provision of ECM Member care to the extent required by federal law.
  - 7.1 ECM Member authorization for ECM-related data sharing is not required for County to initiate delivery of ECM Services unless such authorization is required by federal law. When federal law requires authorization for data sharing, County shall communicate that it has obtained ECM Member authorization for such data sharing back to CalOptima.
  - 7.2 County shall notify CalOptima to discontinue ECM under the following circumstances: (i) The ECM Member has met their care plan goals for ECM; (ii) The ECM Member is ready to transition to a lower level of care and/or services; (iii) The ECM Member no longer wishes to receive ECM Services or is unresponsive or unwilling to engage; and/or (iv) County has not had any contact with the ECM Member despite multiple attempts.
  - 7.3 When ECM is discontinued, or will be discontinued for the ECM Member, CalOptima is responsible for sending a notice of action notifying the ECM Member of the discontinuation of the ECM benefit and ensuring the ECM Member is informed of the right to appeal and the appeals process as instructed in the notice of action. County shall communicate to the ECM Member other benefits or programs that may be available to the ECM Member, as applicable (e.g., ECM Complex Case Management, ECM Basic Case Management, etc.).
8. County and CalOptima Coordination – Both County and CalOptima including its Health Networks will coordinate all aspects of the CalOptima Members enrollment, navigation, and care coordination within the community in a direct and collaborative model to ensure the CalOptima Member is benefiting from all services.
9. ECM Requirements – County shall ensure ECM is a whole-person, interdisciplinary approach to care that addresses the clinical and non-clinical needs of high-need and/or high-cost Medi-Cal Members assigned to the CalOptima Health Networks. County shall ensure the approach is person-centered, goal oriented, and culturally appropriate.

- 9.1 Subject to all applicable requirements set forth in this Contract (including, but not limited to, subcontracting requirements), if County subcontracts with other entities to administer ECM functions, County shall ensure agreements with each entity bind the entities to the applicable terms and conditions set forth in this Contract and applicable CalOptima Policies and that its Subcontractors comply with all applicable requirements in DHCS County Standard Terms and Conditions and the DHCS-CalOptima ECM and Community Supports Contract. Notwithstanding any subcontracting arrangements, County shall remain responsible and accountable for any subcontracted ECM functions.
- 9.2 County shall: (i) Ensure each ECM Member receiving ECM has a Lead Care Manager; (ii) Coordinate across all sources of care management in the event that an ECM Member is receiving care management from multiple sources; (iii) Notify CalOptima to ensure non-duplication of services in the event that an ECM Member is receiving care management or duplication of services from multiple sources; and (iv) Follow CalOptima's instruction and participate in efforts to ensure ECM and other care management services are not duplicative.
- 9.3 County shall collaborate with area hospitals, Primary Care Providers CalOptima and CalOptima's Health Networks, behavioral health Providers, Specialists, dental Providers, Providers of services for LTSS and other associated entities, such as Community Supports Providers, as appropriate, to coordinate Member care for ECM.
- 9.4 County shall ensure the establishment of an ECM Care Team and a communication process between Members' ECM Care Team participants related to services being rendered, in accordance with the requirements set forth in CalOptima Policies.
- 9.5 County shall complete a health needs assessment and develop a comprehensive, individualized, person-centered care plan for each ECM Member. County shall ensure case conferences are conducted by the ECM Care Team and the ECM Member's health needs assessment and care plan are updated as necessary.
10. Training – County shall participate in all mandatory, Provider-focused ECM training and technical assistance provided by CalOptima, including in-person sessions, webinars, and/or calls, as necessary. County shall ensure that its staff who will be delivering ECM services complete training required by CalOptima and DHCS prior to participating in the administration of the ECM services.
11. Data Sharing to Support ECM – CalOptima, including its Health Networks, and County agree to exchange available information and data as required by DHCS guidance and as reasonably required by CalOptima Policies, including but not limited to notification of hospital emergency department visits, inpatient admissions and discharges, health history, behavioral health history, and other agreed upon information to support the physical and mental health of ECM Members. CalOptima, including its Health Networks, and County shall conduct such sharing in compliance with all applicable Health Insurance Portability and Accountability Act (HIPAA) requirements (including applying the minimum necessary standard when applicable), and other federal and California state laws and regulations. Further, County shall establish and maintain a data-sharing agreement with other providers that is compliant with all federal and California state laws and regulations as necessary. If applicable laws and/or regulations require an ECM Member's valid authorization for release of health information and a legal exception does not apply, County may not release such information without the ECM Member's valid authorization.
- 11.1 CalOptima will provide to County the following data at the time of assignment and periodically thereafter, and following DHCS guidance for data sharing where applicable:

- (i) CalOptima Member assignment files, defined as a list of Medi-Cal Members authorized for ECM and assigned to County;
  - (ii) Non-duplicative Encounter and/or claims data, as appropriate;
  - (iii) Non-duplicative physical, behavioral, administrative and social determinants of health data (e.g., Homeless Management Information System (HMIS data)) for all assigned CalOptima Members, as available; and
  - (iv) Reports of performance on quality measures and/or metrics, as requested.
12. Claims Submission and Reporting – County shall submit claims or invoices for provision of ECM Services to CalOptima using the national standard specifications and code sets defined by DHCS. In the event County is unable to submit claims to CalOptima for ECM Services using the national standard specifications and DHCS-defined code sets, County shall submit an invoice to CalOptima with a minimum set of data elements (as defined by DHCS) necessary for CalOptima to convert the invoice to an encounter for submission to DHCS.
13. Quality and Oversight – County acknowledges that CalOptima will conduct oversight of County’s provision of ECM Services under this Contract to ensure the quality of ECM Services and compliance with program requirements, which may include audits and/or corrective actions. County shall respond to all reasonable requests from CalOptima for information and documentation related to County’s provision of ECM Services.
14. ECM Data and Reports – County shall submit to CalOptima complete, accurate, and timely ECM data and reports in the manner and form reasonably acceptable to CalOptima as required by applicable CalOptima Policies or otherwise required by DHCS in order for CalOptima to monitor and meet the following: (i) program performance targets; and (ii) its data reporting requirements to DHCS.
15. County Agent Qualifications – County shall verify that the qualifications of County staff and agents on behalf of County providing ECM Services under this Contract comply with the requirements of this Contract and applicable CalOptima Policies and DHCS guidance. In addition, for County staff and agents providing services on behalf of County who enter CalOptima Members’ homes or have face-to-face interactions with CalOptima Members, County shall also conduct background investigations, including, but not limited to, County, State and Federal criminal history and abuse registry screening. County shall comply with all applicable laws in conducting background investigations and shall exclude unqualified persons from providing services under this Contract.
16. County will provide ECM Services from January 2022, through the Term of the Contract.

## **II. CRITERIA FOR REIMBURSEMENT---**

- A. CalOptima shall reimburse County for ECM provided to a CalOptima Member, subject to authorization from CalOptima.

## **III. DEFINITIONS SPECIFIC TO THIS ATTACHMENT A, PART XIV---**

- A. “CalAIM (California Advancing and Innovating Medi-Cal”) is a multi-year initiative by DHCS to improve the quality of life and health outcomes of County of Orange population by implementing broad delivery system, program, and payment reform across the Medi-Cal program. The major components of CalAIM build upon the successful outcomes of various pilots (including but not limited to the Whole Person

Care Pilots (WPC), Health Homes Program (HHP), and the Coordinated Care Initiative) from the previous federal waivers and will result in a better quality of life for Medi-Cal members as well as long-term cost savings/avoidance.

- B. "Homeless" means a CalOptima Member who, as defined in 24 C.F.R section 91.5, lacks a fixed, regular, and adequate nighttime residence, or who will imminently lose their primary nighttime residence; or are an unaccompanied CalOptima Member under twenty-five (25) years of age; or a CalOptima Member who is fleeing dangerous or life-threatening conditions, has no other residence, and lacks the resources to obtain permanent housing.
- C. "Member" means a Medi-Cal eligible beneficiary as determined by the County of Orange Social Services Agency, the California Department of Health Care Services (DHCS) Medi-Cal Program, or the United States Social Security Administration, who is enrolled in CalOptima.
- D. "WPC (Whole Person Care)" means the program administered by the Orange County Health Care Agency, providing infrastructure and integrated systems of care to coordinate services for vulnerable Medi-Cal beneficiaries experiencing homelessness.



**ATTACHMENT B – AMENDMENT 13****COMPENSATION****I. COMPENSATION****A. Medi-Cal Program**

1. With the exception of the services and reimbursement rates specified in Sections I.B, I.C, and I.D of this Attachment B – Amendment 13, CalOptima or a Member’s Health Network shall reimburse County, and County shall accept as payment in full from CalOptima, the lesser of:
  - a. billed charges, or:
  - b. the following rates:
    - 1) 123% of the Current CalOptima Medi-Cal Fee Schedule on a fee-for-service basis for **physician services**, as defined in the Provider Manual.
    - 2) 100% of the Current CalOptima Medi-Cal Fee Schedule on a fee-for-service basis for **non-physician services**, as defined in the Provider Manual.
    - 3) 100% of the Current CalOptima Medi-Cal Fee Schedule on a fee-for-service basis, as defined in the Provider Manual for **Child Health and Disability Prevention (CHDP) services** provided by County.
    - 4) 140% of the Current CalOptima Medi-Cal Fee Schedule on a fee-for-service basis, as defined in the Provider Manual for **professional services provided by a qualifying CCS paneled specialist** to a Member less than 21 years of age.
2. Services with Unestablished Fees. If a fee has not been established by Medi-Cal for a particular procedure, and CalOptima has provided authorization for County to provide such service, CalOptima shall reimburse County under the following guidelines:
  - a. “By Report & Unlisted” codes that CalOptima has provided authorization for County to provide such service will be paid at forty percent (40%) of billed charges and must follow Medi-Cal billing rules, policies and guidelines. When billing CalOptima for these codes, County shall include documentation of Covered Services provided.
  - b. County shall utilize current billing codes and modifiers for Medi-Cal.
  - c. CPT or HCPC codes not contained in the Medi-Cal fee schedule at the time of service are not reimbursable.
  - d. If the billed charges are determined to be unallowable, in excess of usual and customary charges, or inappropriate pursuant to a medical review by CalOptima, CalOptima will contact provider for additional justification and these will be handled on a case-by-case basis.

**B. WPC/HHP Crossover Services**

1. REIMBURSEMENT— County shall be reimbursed for its services provided on or before December 31, 2021, according to the monthly rates listed below:

<b>Services</b>	<b>HHP Enrollment Status</b>	<b>Rate per Month (per Member)</b>
Targeted Engagement	Eligible	\$207.50
Housing Navigation and Sustainability	Enrolled	\$960.00

2. **INVOICE SUBMISSION---** On a monthly basis, County shall submit an invoice to CalOptima at the address specified below for reimbursement of services provided to CalOptima Members during the previous month. The invoice shall include member details which can be utilized by CalOptima to prepare DHCS reporting, including member-identifying information and which services were provided to each member during that month.

CalOptima  
Attn: Accounts Payable  
505 City Parkway West  
Orange, CA 92868

### C. CalAIM Enhanced Care Management Services

1. **REIMBURSEMENT---** County shall be reimbursed for its services according to the monthly rates listed below:

<b>Services</b>	<b>CalAIM Eligible or Enrolled</b>	<b>Rate</b>
Enhanced Care Management Services (SMI/SUD) and inclusive of other related population of focus criteria to be effective January 1, 2022 under CalOptima's CalAIM program such as homelessness and high utilizers	Enrolled and Authorized by CalOptima	\$553.83 Per Enrollee Per Month (PEPM) for each CalOptima Member who receives two (2) or more hours of ECM Services in a given month as identified by twelve (12) or more units.  For purposes of Attachment B – Amendment 13, the term “Per Enrollee Per Month” means an all-inclusive case rate that applies whenever County, has provided the minimum level of service payment to an enrolled CalOptima Member. This rate is paid on the basis of submitted invoices and is not considered a capitation payment.

2. **INVOICE SUBMISSION---** On a monthly basis, County shall submit an invoice to CalOptima at the address specified below for reimbursement of services provided to CalOptima Members during the previous month. The invoice shall include member details which can be utilized by CalOptima to prepare DHCS reporting, including member-identifying information and which services were provided to each member during that month.

CalOptima  
Attn: Accounts Payable  
505 City Parkway West  
Orange, CA 92868

**D. PACE Program Services**

1. For Covered Services provided to PACE Members, CalOptima shall reimburse County, and County shall accept as payment in full from CalOptima, the lesser of:
  - a. billed charges, or
  - b. 100% of the current Medicare Allowable Participating Provider Fee Schedule for locality 26.
2. Prior authorization rules apply for payment of services.
3. Medicare billing rules and payment Policies and guidelines for billing and payment will apply.
4. Services with Unestablished Fees. If a fee has not been established by Medicare for a particular procedure, and CalOptima has provided authorization for Professional to provide such service, CalOptima shall reimburse County under the following guidelines:
  - a. "By Report & Unlisted" codes that CalOptima has provided authorization for County to provide such service will be paid at **forty percent (40%)** of billed charges and must follow Medicare billing rules and guidelines. When billing CalOptima for these codes, County shall include documentation of Covered Services provided.
  - b. County shall utilize current payment codes and modifiers for Medicare.
  - c. CPT or HCPC codes not contained in the Medicare fee schedule at the time of service are not reimbursable.
  - d. If the billed charges are determined to be unallowable, in excess of usual and customary charges, or inappropriate pursuant to a medical review by CalOptima, CalOptima will contact County for additional justification and these will be handled on a case-by-case basis.
5. Should Medicare consider a service as non-covered, then Medi-Cal guidelines shall be applied. County may need to resubmit claim in accordance with Medi-Cal codes, billing rules, Policies, and guidelines for reimbursement.

**E. CalAIM Community Supports Services**

1. REIMBURSEMENT -- County shall be reimbursed for its services according to the rates and effective dates listed below:

**Housing Deposits – Effective 10/01/2022.**

Service	Lifetime maximum of \$5,000.00. The amount of the Housing Deposit, up to the maximum allowed
Billing Code(s); including modifiers	See DHCS guidance for specific billing codes and modifiers

**Housing Transition Navigation Services Service Rate - Effective 10/01/2022.**

Bundled Payments (per Enrollee per Month (PEPM))	\$449.00 PEPM
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Billing Code(s); including modifiers	See DHCS guidance for specific billing codes and modifiers
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**Housing Tenancy and Sustaining Services Service Rate - Effective 10/01/20221**

Bundled Payments (per Enrollee per Month (PEPM))	\$475.00 PEPM
Billing Code(s); including modifiers	See DHCS guidance for specific billing codes and modifiers

**Recuperative Care (Medical Respite) Service Rate - Effective 10/01/2022**

Service Rate	\$226.00 Per Day, All Inclusive
Billing Code(s); including modifiers	See DHCS guidance for specific billing codes and modifiers

**Medically Tailored Meals Service Rate - Effective as of the Effective Date of this Amendment.**

Service Rate	\$12.00 Per Delivered Meal \$66.00 Per Weekly Grocery Box Delivered \$38.00 Per Nutritional Assessment
Billing Code(s); including modifiers	See DHCS guidance for specific billing codes and modifiers

**Day Habilitation Programs Service Rate - Effective 7/01/2022**

Service Rate	\$67.30 Per Day, All Inclusive
Billing Code(s); including modifiers	See DHCS guidance for specific billing codes and modifiers

**Short-Term Post-Hospitalization Housing Service Rate - Effective as of the Effective Date of this Amendment.**

Service Rate	\$119.00 Per Day, All Inclusive
Billing Code(s); including modifiers	See DHCS guidance for specific billing codes and modifiers

**Community/Nursing Facility Transition to a Home Service Rate - Effective as of the Effective Date of this Amendment.**

Service Rate	Lifetime maximum of \$7,500.00. The amount of Community/Nursing Facility Transition to Home Services, up to the maximum allowed.
Billing Code(s); including modifiers	See DHCS guidance for specific billing codes and modifiers

**Nursing Facility Transition/Diversion Services Service Rate - Effective as of the Effective Date of this Amendment.**

Bundled Payments (per Enrollee per Month (PEPM))	\$496.00 PEPM
Billing Code(s); including modifiers	See DHCS guidance for specific billing codes and modifiers

BILLING -- County shall submit Community Supports Services claims to CalOptima's Claims Department in accordance with DHCS billing guidelines specific to Community Supports. Billing and payment provisions in Sections II.E and II.F of Attachment A – Part XV “CalAIM Community Supports Services” of this Contract also apply.

## II. SERVICES ELIGIBLE FOR REIMBURSEMENT

Category	County	CalOptima/Health Networks
<b>Non-DOT TB Treatment</b>	<b>Medi-Cal:</b> PDS will bill CalOptima for covered TB screening and treatment services for both CalOptima Direct and Health Network Members.	<b>Medi-Cal:</b> CalOptima will pay County for claims for covered TB screening and treatment services for both CalOptima Direct and Health Network Members. CalOptima shall not pay County for DOT professional services.
<b>HIV and STD Services (17th Street Testing, Treatment and Care)</b>	<p><b>Medi-Cal:</b> For CalOptima clients in the process of transitioning to a CalOptima provider, County will bill CalOptima for medical services provided to CalOptima Direct Members, and the appropriate Health Network for Health Network Members.</p> <p><b>PACE:</b> County will bill CalOptima for HIV testing and counseling services, and STD Services provided to PACE Members.</p>	<p><b>Medi-Cal and PACE:</b> CalOptima will pay claims submitted for Medi-Cal and PACE Covered Services provided at 17th Street Testing, Treatment and Care to CalOptima Direct Medi-Cal Members and to PACE Members, respectively.</p> <p><b>Medi-Cal:</b> CalOptima's Health Networks are responsible for Claims for Covered Services provided at 17th Street Testing, Treatment and Care to their Members.</p>
<b>Adult Immunizations</b>	<p><b>Medi-Cal:</b> County will bill CalOptima or the appropriate Health Network for Health Network Members for Medi-Cal covered adult immunizations provided to CalOptima Direct and Health Network Members over the age of 18.</p> <p>For Members 18 to 21 years of age, County will bill CalOptima on a CMS-1500, UB-04 claim form, or electronic equivalent.</p> <p><b>PACE:</b> County will bill CalOptima for Medicare covered adult immunizations provided to CalOptima PACE Members.</p>	<p><b>Medi-Cal:</b> CalOptima or the appropriate Health Network for Health Network Members will reimburse County for Medi-Cal covered adult immunizations provided to CalOptima Direct and Health Network Members over the age of 18.</p> <p><b>PACE:</b> CalOptima will reimburse County for Medicare covered adult immunizations provided to CalOptima PACE Members.</p>



Category	County	CalOptima/Health Networks
<p><b>Pediatric Preventive Services</b></p>	<p><b>Medi-Cal:</b> County Children’s Clinic will bill CalOptima or the appropriate Health Network for Health Network Members for Pediatric Preventive Services on a CMS-1500, UB-04 claim form, or electronic equivalent.</p> <p>For vaccines supplied free through the Vaccine For Children (VFC) Program, County will bill CalOptima or the appropriate Health Network for Health Network Members for vaccine administration costs only.</p> <p>Sick care (i.e. non-CHDP/PPS services) will be provided to CalOptima Direct patients only. County Children’s Clinic will bill CalOptima for covered medical services provided to CalOptima Direct Members.</p>	<p><b>Medi-Cal:</b> CalOptima or the appropriate Health Network for Health Network Members will pay claims submitted for Pediatric Preventive Services (PPS) provided to CalOptima Members when claim is submitted on a CMS-1500, UB-04 claim form, or electronic equivalent.</p> <p>CalOptima or the appropriate Health Network for Health Network Members will reimburse providers for the administration fee only for vaccine supplied free through the Vaccine For Children (VFC) Program.</p> <p>CalOptima will pay County for covered non-PPS medical services provided to CalOptima Direct Members.</p>
<p><b>Services provided at Orangewood</b></p>	<p><b>Medi-Cal:</b> County/JHS - Orangewood shall bill CalOptima or the appropriate Health Network for Health Network Members, using the CMS-1500, UB-04 claim form, or electronic equivalent for Pediatric Preventive Services (CHDP health assessments) provided to CalOptima Members.</p> <p>County/JHS -Orangewood shall bill Health Networks or CalOptima Direct for other medically necessary services provided on site at Orangewood.</p>	<p><b>Medi-Cal:</b> CalOptima or the appropriate Health Network for Health Network Members, will pay for Pediatric Preventive Services (PPS) billed on a CMS-1500, UB-04 claim form, or electronic equivalent for CalOptima Members at Orangewood.</p> <p>CalOptima or the Member’s Health Network shall pay claims for medically necessary services to County/JHS - Orangewood at CalOptima fee-for-services rates.</p> <p>CalOptima or the Member’s Health Network shall reimburse providers to whom County/JHS – Orangewood has referred Orangewood residents for medically necessary services at CalOptima fee-for-services rates.</p>

Category	County	CalOptima/Health Networks
<b>Public Health Lab Services</b>	<b>Medi-Cal:</b> County will bill CalOptima or the appropriate Health Network for Health Network Members for Medi-Cal covered lab services provided to CalOptima Members. County will bill CalOptima on a CMS-1500, UB-04 claim form, or electronic equivalent.	<b>Medi-Cal:</b> CalOptima or the appropriate Health Network for Health Network Members will reimburse County for Medi-Cal covered lab services provided to CalOptima Members.
<b>WPC/HHP Crossover Services</b>	<p><b>Medi-Cal:</b> County will bill CalOptima for the select HHP services listed below, for services provided on or before December 31, 2021, for CalOptima Direct Members via invoice.</p> <ol style="list-style-type: none"> <li>1. Targeted Engagement Services</li> <li>2. Housing Services</li> </ol> <p>County shall not bill CalOptima for HHP services provided to a Medi-Cal Member assigned to Health Network. If a Health Network refers one of their assigned Medi-Cal Members to County for HHP services, County will bill the appropriate Health Network for the HHP services. County's arranged reimbursement rates with Health Network shall apply.</p>	<p><b>Medi-Cal:</b> CalOptima will pay County for invoices submitted for the select HHP services listed below provided to CalOptima Direct Members for dates of service on or before December 31, 2021.</p> <ol style="list-style-type: none"> <li>1. Targeted Engagement Services</li> <li>2. Housing Services</li> </ol>
<b>CalAIM Enhanced Care Management (ECM) Services</b>	<p><b>Medi-Cal:</b> County will bill CalOptima for the select CalAIM Program services listed below, for CalOptima Members via invoice.</p> <ol style="list-style-type: none"> <li>1. Enhanced Care Management Services for CalOptima Members in the SMI and/or SUD populations inclusive of other related population of focus criteria to be effective January 1, 2022 under CalOptima's CalAIM program such as homelessness and high utilizers.</li> </ol>	<p><b>Medi-Cal:</b> CalOptima will pay County for invoices submitted for the select CalAIM Program services listed below provided to CalOptima Members.</p> <ol style="list-style-type: none"> <li>1. Enhanced Care Management Services for CalOptima Members in the SMI and/or SUD populations inclusive of other related population of focus criteria to be effective January 1, 2022 under CalOptima's CalAIM program such as homelessness and high utilizers.</li> </ol>

Category	County	CalOptima/Health Networks
<b>CalAIM Community Supports Services</b>	<p><b>Medi-Cal, Medicare Advantage (OneCare), and Cal MediConnect (OneCare Connect)*:</b> County will bill CalOptima for the select CalAIM Program services listed below, for CalOptima Members.</p> <p>Effective 10/01/2022</p> <ol style="list-style-type: none"> <li>1. Housing Deposits</li> <li>2. Housing Transition Navigation Services</li> <li>3. Housing Tenancy and Sustaining Services</li> <li>4. Recuperative Care (Medical Respite)</li> </ol> <p>Effective 7/01/2022</p> <ol style="list-style-type: none"> <li>5. Medically Tailored Meals</li> <li>6. Day Habilitation Programs</li> <li>7. Short-Term Post-Hospitalization Housing</li> </ol> <p>Effective as of the Effective Date of this Amendment..</p> <ol style="list-style-type: none"> <li>8. Community/Nursing Facility Transition to a Home</li> <li>9. Nursing Facility Transition/Diversion</li> </ol> <p>*CalOptima's Cal MediConnect (OneCare Connect) program ended 12/31/2022.</p>	<p><b>Medi-Cal, Medicare Advantage (OneCare), and Cal MediConnect (OneCare Connect)*:</b> CalOptima will pay County for claims submitted for the select CalAIM Program services listed below provided to CalOptima Members.</p> <p>Effective 10/01/2022</p> <ol style="list-style-type: none"> <li>1. Housing Deposits</li> <li>2. Housing Transition Navigation Services</li> <li>3. Housing Tenancy and Sustaining Services</li> <li>4. Recuperative Care (Medical Respite)</li> </ol> <p>Effective 7/01/2022</p> <ol style="list-style-type: none"> <li>5. Medically Tailored Meals</li> <li>6. Day Habilitation Programs</li> <li>7. Short-Term Post-Hospitalization Housing</li> </ol> <p>Effective as of the Effective Date of this Amendment.</p> <ol style="list-style-type: none"> <li>8. Community/Nursing Facility Transition to a Home</li> <li>9. Nursing Facility Transition/Diversion</li> </ol> <p>*CalOptima's Cal MediConnect (OneCare Connect) program ended 12/31/2022.</p>

**EXHIBIT E****Business Associate Agreement**

This Business Associate Agreement is entered into by and between the Orange County Health Authority, a California local public agency, doing business as CalOptima Health (“**CalOptima**”), and County of Orange, a political subdivision of the State of California, through its division the Orange County Health Care Agency (“**Business Associate**”), effective January 1, 2024 (“Effective Date”). CalOptima and Business Associate are each a party to this Agreement and are collectively referred to as the “parties.” Any extensions or renegotiations of this Agreement shall be reviewed by both parties and pursuant to CalOptima Policy HH.3022: Business Associate Agreements.

**RECITALS**

WHEREAS, the parties have executed an agreement(s) whereby Business Associate provides services to CalOptima, and Business Associate creates, receives, maintains, uses, transmits protected health information (“PHI”) in order to provide those services (“Services Agreement(s)”);

WHEREAS, as a covered entity, CalOptima is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996, Public Law 104-191, and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations (C.F.R.) Parts 160 and Subparts A and E of 45 C.F.R. Part 164 (“Privacy Regulations”) and the Security Standards for Electronic Protected Health Information (“Security Regulations”) at 45 C.F.R. Parts 160 and Subparts A and C of 45 C.F.R. Part 164, as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) of 2009, Public Law 111-5, and regulations promulgated thereunder including the Breach Notification Regulations at Subpart D of 45 C.F.R. Part 164, and is subject to certain state privacy laws;

WHEREAS, as a business associate, Business Associate is subject to certain provisions of HIPAA, and regulations promulgated thereunder, as required by the HITECH Act and regulations promulgated thereunder;

WHEREAS, CalOptima and Business Associate are required to enter into a contract in order to mandate certain protections for the privacy and security of PHI;

WHEREAS, CalOptima’s regulator(s) have adopted certain administrative, technical and physical safeguards deemed necessary and appropriate by it/them to safeguard regulators’ PHI and have required that CalOptima incorporate such requirements in its business associate agreements with subcontractors that require access to the regulators’ PHI;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. **Definitions.** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in HIPAA, the HITECH Act, and regulations promulgated thereunder.
  - 1.1. **Agreement** as used in this document means both this Business Associate Agreement and the Services Agreement to which this Business Associate Agreement applies, as specified in such Services Agreement.
  - 1.2. **Breach** means, unless expressly excluded under 45 C.F.R. § 164.402, the acquisition, access, use, or disclosure of PHI in a manner not permitted under Subpart E of 45 C.F.R. Part 164 which compromises the security or privacy of the PHI and as more particularly defined under 45 C.F.R. § 164.402.
  - 1.3. **Business associate** has the meaning given such term in 45 C.F.R. § 160.103.
  - 1.4. **Confidential information** refers to information not otherwise defined as PHI in Section 1.15 below, but to which state and/or federal privacy and/or security protections apply.
  - 1.5. **Data aggregation** has the meaning given such term in 45 C.F.R. § 164.501.
  - 1.6. **Designated record set** has the meaning given such term in 45 C.F.R. § 164.501.
  - 1.7. **Disclose** and **disclosure** mean the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.
  - 1.8. **Electronic health record** has the meaning given such term in 42 U.S.C. § 17921.
  - 1.9. **Electronic media** means:
    - 1.9.1. Electronic storage material on which data is or may be recorded electronically including, for example, devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or
    - 1.9.2. Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet, extranet or intranet, leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.
  - 1.10. **Electronic protected health information ("ePHI")** means individually identifiable health information that is transmitted by or maintained in electronic media.
  - 1.11. **Health care operations** has the meaning given such term in 45 C.F.R. § 164.501.
  - 1.12. **Individual** means the person who is the subject of PHI and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).



- 1.13. **Individually identifiable health information** means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 C.F.R. § 160.103.
- 1.14. **Information system** means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people.
- 1.15. **Protected health information** (“PHI”), as used in this Agreement and unless otherwise stated, refers to and includes both PHI as defined at 45 C.F.R. § 160.103 and personal information (“PI”) as defined in the Information Practices Act at California Civil Code § 1798.3(a). PHI includes information in any form, including paper, oral, and electronic.
- 1.16. **Required by law** means a mandate contained in law that compels an entity to make a use or disclosure of PHI and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing benefits.
- 1.17. **Secretary** means the Secretary of the U.S. Department of Health and Human Services or the Secretary’s designee.
- 1.18. **Security incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- 1.19. **Services** has the same meaning as in the Services Agreement(s).
- 1.20. **Unsecured protected health information** (“unsecured PHI”) means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of technology or methodology specified by the Secretary in the guidance issued under 42 U.S.C. § 17932(h)(2).
- 1.21. **Use** and **uses** mean, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination or analysis of such information within the entity that maintains such information.
2. CalOptima intends that Business Associate may create, receive, maintain, transmit or aggregate certain information pursuant to the terms of this Agreement, some of which information may constitute PHI and/or confidential information protected by federal and/or state laws.

3. Business Associate is the business associate of CalOptima acting on CalOptima's behalf and provides services or arranges, performs or assists in the performance of functions or activities on behalf of CalOptima, and may create, receive, maintain, transmit, aggregate, use or disclose PHI (collectively, "use or disclose PHI") in order to fulfill Business Associate's obligations under this Agreement.
4. **Permitted Uses and Disclosures of PHI by Business Associate.** Except as otherwise indicated in this Agreement, Business Associate may use or disclose PHI, inclusive of de-identified data derived from such PHI, only to perform functions, activities or services specified in this Agreement on behalf of CalOptima, provided that such use or disclosure would not violate HIPAA, including the Privacy Regulations, if done by CalOptima.
  - 4.1. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Agreement, Business Associate may use and disclose PHI if necessary for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. Business Associate may disclose PHI for this purpose if the disclosure is required by law, or the Business Associate obtains reasonable assurances, in writing, from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.
  - 4.2. **Data Aggregation.** If authorized as part of the services provided to CalOptima under the Services Agreement, Business Associate may use PHI to provide data aggregation services relating to the health care operations of CalOptima.
5. **Prohibited Uses and Disclosures of PHI**
  - 5.1. **Restrictions on Certain Disclosures to Health Plans.** Business Associate shall not Disclose PHI about an individual to a health plan for payment or health care operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction in accordance with HIPAA and the HITECH Act, including 45 C.F.R. § 164.522(a). The term PHI, as used in this Section, only refers to PHI as defined in 45 C.F.R. § 160.103.
  - 5.2. **Prohibition on Sale of PHI; No Remuneration.** Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written authorization of CalOptima and CalOptima's regulator(s), as applicable, and then, only as permitted by HIPAA and the HITECH Act. The term PHI, as used in this Section, only refers to PHI as defined in 45 C.F.R. § 160.103.
6. **Compliance with Other Applicable Law**
  - 6.1. To the extent that other state and/or federal laws provide additional, stricter and/or more protective (collectively, "more protective") privacy and/or security protections to PHI or other confidential information covered under this Agreement beyond those provided through HIPAA, Business Associate agrees:
    - 6.1.1. To comply with the more protective of the privacy and security standards set forth in applicable state or federal laws to the extent such standards provide a greater degree of protection and security than HIPAA or are otherwise more favorable to the individuals whose information is concerned; and
    - 6.1.2. To treat any violation of such additional and/or more protective standards as a breach or

security incident, as appropriate, pursuant to Section 17 of this Agreement.

- 6.2 Examples of laws that provide additional and/or stricter privacy protections to certain types of PHI and/or confidential information, as defined in Section 1 of this Agreement, include, but are not limited to the Information Practices Act, California Civil Code §§ 1798-1798.78, Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, Welfare and Institutions Code § 5328, and California Health and Safety Code § 11845.5.
- 6.3 If Business Associate is a Qualified Service Organization (“QSO”) as defined in 42 C.F.R. § 2.11, Business Associate agrees to be bound by and comply with subdivisions (2)(i) and (2)(ii) under the definition of QSO in 42 C.F.R. § 2.11.

## 7. **Additional Responsibilities of Business Associate**

- 7.1. **Nondisclosure.** Business Associate shall not use or disclose PHI or other confidential information other than as permitted or required by this Agreement or as required by law.

### 7.2. **Safeguards and Security**

- 7.2.1. Business Associate shall use safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI and other confidential data and comply, where applicable, with Subpart C of 45 C.F.R. Part 164 with respect to ePHI, to prevent use or disclosure of the information other than as provided for by this Agreement. Such safeguards shall be, at a minimum, at Federal Information Processing Standards (FIPS) Publication 199 protection levels. Business Associate shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of Subpart C of 45 C.F.R. Part 164, in compliance with 45 C.F.R. § 164.316. Business Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the Business Associate’s operations and the nature and scope of its activities.
- 7.2.2. Business Associate shall, at a minimum, utilize an industry-recognized security framework when selecting and implementing its security controls, and shall maintain continuous compliance with its selected framework as it may be updated from time to time. Examples of industry-recognized security frameworks include but are not limited to:
- 7.2.2.1. NIST SP 800-53 - National Institute of Standards and Technology Special Publication 800-53
  - 7.2.2.2. FedRAMP - Federal Risk and Authorization Management Program
  - 7.2.2.3. PCI - PCI Security Standards Council
  - 7.2.2.4. ISO/IEC 27002 - International Organization for Standardization / International Electrotechnical Commission standard 27002
  - 7.2.2.5. IRS PUB 1075 - Internal Revenue Service Publication 1075
  - 7.2.2.6. HITRUST CSF - HITRUST Common Security Framework
- 7.2.3. Business Associate shall employ FIPS 140-2 compliant encryption of PHI at rest and in motion unless Business Associate determines it is not reasonable and appropriate to do so based upon a risk assessment, and equivalent alternative measures are in

- place and documented as such. Business Associate shall maintain, at a minimum, the most current industry standards for transmission and storage of PHI and other confidential information, including, but not limited to, encryption of all workstations, laptops, and removable media devices containing PHI and data transmissions of PHI.
- 7.2.4. Business Associate shall apply security patches and upgrades, and keep virus software up-to-date, on all systems on which PHI and other confidential information may be used.
- 7.2.5. Business Associate shall ensure that all members of its workforce with access to PHI and/or other confidential information sign a confidentiality statement prior to access to such data. The statement must be renewed annually.
- 7.2.6. Business Associate shall identify the security official who is responsible for the development and implementation of the policies and procedures required by 45 C.F.R. Part 164, Subpart C.
- 7.3. **Minimum Necessary.** With respect to any permitted use, disclosure, or request of PHI under this Agreement, Business Associate shall make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request respectively, as specified in 45 C.F.R. § 164.502(b).
- 7.4. **Business Associate's Agent.** Business Associate shall ensure that any agents, subcontractors, subawardees, vendors or others (collectively, "agents") that use or disclose PHI and/or confidential information on behalf of Business Associate agree through a written agreement to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI and/or confidential information.
8. **Mitigation of Harmful Effects.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI and other confidential information in violation of the requirements of this Agreement.
9. **Access to PHI.** Except as otherwise provided in Section 9.1 below, Business Associate shall, to the extent CalOptima determines that any PHI constitutes a designated record set, make the PHI specified by CalOptima available to the individual(s) identified by CalOptima as being entitled to access and copy that PHI. Business Associate shall provide such access for inspection of that PHI within fifteen (15) calendar days after receipt of request from CalOptima. Business Associate shall also provide copies of that PHI ten (10) calendar days after receipt of request from CalOptima. If Business Associate maintains an electronic health record with PHI, and an individual requests a copy of such information in electronic format, Business Associate shall make such information available in that format as required under the HITECH Act and 45 C.F.R. § 164.524(c)(2)(ii).
- 9.1. **Business Associate of CalOptima PACE.** This Section applies when Business Associate is a business associate of CalOptima in CalOptima's capacity as a health care provider through CalOptima Program of All-Inclusive Care for the Elderly ("CalOptima PACE"). Business Associate shall, to the extent CalOptima determines that any PHI constitutes a designated record set or patient records (as defined in California Health and Safety Code § 123105), make the PHI specified by CalOptima available to the individual(s) identified by CalOptima as being entitled to access and copy that PHI. To enable compliance with California Health & Safety Code § 123110 and 45 C.F.R. § 164.524, Business Associate shall provide such access for inspection of that PHI within three (3) working days after receipt of request from CalOptima. Business Associate shall also provide copies of that PHI ten (10) calendar days after receipt of request from CalOptima. If Business Associate maintains an electronic health record with PHI, and an individual requests a copy of such information in electronic format, Business Associate shall

make such information available in that format as required under the HITECH Act and 45 C.F.R. § 164.524(c)(2)(ii).

10. **Amendment of PHI.** Business Associate shall, to the extent CalOptima determines that any PHI constitutes a designated record set, make PHI available for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526 as requested by CalOptima in the time and manner designated by CalOptima.
11. **Accounting of Disclosures.** Business Associate shall document and make available to CalOptima or (at the direction of CalOptima) to an individual, such disclosures of PHI and information related to such disclosures, necessary to respond to a proper request by the subject individual for an accounting of disclosures of PHI in accordance with HIPAA, the HITECH Act and implementing regulations. Unless directed by CalOptima to make available to an individual, Business Associate shall provide to CalOptima, within thirty (30) calendar days after receipt of request from CalOptima, information collected in accordance with this Section to permit CalOptima to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. The term PHI, as used in this Section, only refers to PHI as defined in 45 C.F.R. § 160.103. Any accounting provided by Business Associate under this Section shall include:
  - 11.1. The date of the disclosure;
  - 11.2. The name, and address if known, of the entity or person who received the PHI;
  - 11.3. A brief description of the PHI disclosed; and
  - 11.4. A brief statement of the purpose of the disclosure.

For each disclosure that could require an accounting under this Section, Business Associate shall document the information enumerated above, and shall securely maintain the information for six (6) years from the date of the disclosure (but beginning no earlier than April 14, 2003).

12. **Compliance with HITECH Act.** Business Associate shall comply with the requirements of Title XIII, Subtitle D, of the HITECH Act, which are applicable to business associates, and shall comply with the regulations promulgated thereunder.
13. **Compliance with Obligations of CalOptima or DHCS.** To the extent Business Associate is to carry out an obligation of CalOptima or the California Department of Healthcare Services (“DHCS”) under 45 C.F.R. Part 164, Subpart E, Business Associate shall comply with the requirements of such Subpart that apply to CalOptima or DHCS, as applicable, in the performance of such obligation.
14. **Access to Practices, Books and Records.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI on behalf of CalOptima available to CalOptima upon reasonable request, and to the DHCS and the Secretary for purposes of determining CalOptima’s compliance with 45 C.F.R. Part 164, Subpart E. Business Associate also agrees to make its internal practices, books and records relating to the use and disclosure of PHI on behalf of CalOptima available to DHCS, CalOptima, and the Secretary for purposes of determining Business Associate’s compliance with applicable requirements of HIPAA, the HITECH Act, and implementing regulations. Business Associate shall immediately notify CalOptima of any requests made by DHCS or the Secretary and provide CalOptima with copies of any documents produced in response to such request.
15. **Return or Destroy PHI on Termination; Survival.** At termination of this Agreement, if feasible, Business Associate shall return to CalOptima or, if agreed to by CalOptima, destroy all PHI and other confidential information received from, or created or received by Business Associate on behalf of, CalOptima that Business Associate or its agents or subcontractors still maintains in any form, and shall retain no copies of such information. If CalOptima elects destruction of PHI and/or other confidential information, Business Associate shall ensure such information is destroyed in accordance with the destruction methods specified in Sections 15.1 and 15.2 below, and shall certify in writing to CalOptima that such information has been destroyed accordingly. If return or destruction is not feasible, Business Associate shall notify CalOptima of the conditions that make the return or destruction infeasible. Subject to the approval of CalOptima’s regulator(s) if necessary, if such return or destruction is not feasible, CalOptima shall determine the terms and conditions under which Business Associate may retain the PHI. Business Associate shall also extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- 15.1 **Data Destruction.** Data destruction methods for CalOptima PHI or confidential information must conform to U.S. Department of Defense standards for data destruction DoD 5220.22-M (7 Pass) standard or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of CalOptima and, if necessary, CalOptima’s regulator(s).
- 15.2 **Destruction of Hard Copy Confidential Data.** CalOptima PHI or confidential information in hard copy form must be disposed of through confidential means, such as cross cut shredding and pulverizing.

16. **Special Provision for SSA Data.** If Business Associate receives data from or on behalf of CalOptima that was verified by or provided by the Social Security Administration (“SSA data”) and is subject to an agreement between DHCS and SSA, Business Associate shall provide, upon request by CalOptima, a list of all employees and agents and employees who have access to such data, including employees and agents of its agents, to CalOptima.
17. **Breaches and Security Incidents.** Business Associate shall implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and take the following steps:
- 17.1. **Notice to CalOptima**
- 17.1.1. **Immediate Notice.** Business Associate shall notify CalOptima immediately upon the discovery of a suspected breach or security incident that involves SSA data. This notification will be provided by email upon discovery of the breach. If Business Associate is unable to provide notification by email, then Business Associate shall provide notice by telephone to CalOptima.
- 17.1.2. **24-Hour Notice.** Business Associate shall notify CalOptima within 24 hours by email (or by telephone if Business Associate is unable to email CalOptima) of the discovery of:
- 17.1.2.1. Unsecured PHI if the PHI is reasonably believed to have been accessed or acquired by an unauthorized person;
- 17.1.2.2. Any suspected security incident which risks unauthorized access to PHI and/or other confidential information;
- 17.1.2.3. Any intrusion or unauthorized access, use or disclosure of PHI in violation of this Agreement; or
- 17.1.2.4. Potential loss of confidential data affecting this Agreement.
- 17.1.3. Notice shall be provided to the CalOptima Privacy Officer (“CalOptima Contact”) using the CalOptima Contact Information at Section 17.7 below. Such notification by Business Associate shall comply with CalOptima’s form and content requirements for reporting privacy incident and shall include all information known at the time the incident is reported.
- 17.2. **Required Actions.** Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PHI, Business Associate shall take:
- 17.2.1. Prompt action to mitigate any risks or damages involved with the security incident or breach;
- 17.2.2. Any action pertaining to such unauthorized disclosure required by applicable federal and state law; and
- 17.2.3. Any corrective actions required by CalOptima or CalOptima’s regulator(s).
- 17.3. **Investigation.** Business Associate shall immediately investigate such security incident or confidential breach. Business Associate shall comply with CalOptima’s additional form and content requirements for reporting such privacy incident.
- 17.3.1. Incident details including the date of the incident and when it was discovered;

- 17.3.2. The identification of each individual whose unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during the breach;
  - 17.3.3. The nature of the data elements involved and the extent of the data involved in the breach;
  - 17.3.4. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data;
  - 17.3.5. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized;
  - 17.3.6. A description of the probable causes of the improper use or disclosure;
  - 17.3.7. Any other available information that the Business Associate is required to include in notification to the individual under 45 C.F.R. § 164.404(c);
  - 17.3.8. Whether the PHI or confidential data that is the subject of the security incident, breach, or unauthorized use or disclosure of PHI or confidential data included unsecured PHI;
  - 17.3.9. Whether a law enforcement official has requested a delay in notification of individuals of the security incident, breach, or unauthorized use or disclosure of PHI or confidential data because such notification would impede a criminal investigation or damage national security and whether such notice is in writing; and
  - 17.3.10. Whether Section 13402 of the HITECH Act (codified at 42 U.S.C. § 17932), California Civil Code §§ 1798.29 or 1798.82, or any other federal or state laws requiring individual notifications of breaches are triggered.
- 17.4. **Complete Report.** Business Associate shall provide a complete written report of the investigation ("Final Report") to the CalOptima Contact within seven (7) working days of the discovery of the security incident or breach. Business Associate shall comply with CalOptima's additional form and content requirements for reporting of such privacy incident.
- 17.4.1. The Final Report shall provide a comprehensive discussion of the matters identified in Section 17.3 above and the following:
    - 17.4.1.1. An assessment of all known factors relevant to a determination of whether a breach occurred under HIPAA and other applicable federal and state laws;
    - 17.4.1.2. A full, detailed corrective action plan, including its implementation date and information on mitigation measures taken to halt and/or contain the improper use or disclosure and to reduce the harmful effects of the breach;
    - 17.4.1.3. The potential impacts of the incident, such as potential misuse of data, identity theft, etc.; and
    - 17.4.1.4. A corrective action plan describing how Business Associate will prevent reoccurrence of the incident in the future. Notwithstanding the foregoing, all corrective actions are subject to the approval of CalOptima and CalOptima's regulator(s), as applicable.



- 17.4.2. If CalOptima or CalOptima's regulator(s) requests additional information, Business Associate shall make reasonable efforts to provide CalOptima with such information. A supplemental written report may be used to submit revised or additional information after the Final Report is submitted.
- 17.4.3. CalOptima and CalOptima's regulator(s), as applicable, will review and approve or disapprove Business Associate's determination of whether a breach occurred, whether the security incident or breach is reportable to the appropriate entities, if individual notifications are required, and Business Associate's corrective action plan.
- 17.4.4. **New Submission Timeframe.** If Business Associate does not complete a Final Report within the seven (7) working day timeframe specified in Section 17.4 above, Business Associate shall request approval from CalOptima within the seven (7) working day timeframe of a new submission timeframe for the Final Report. Business Associate acknowledges that a new submission timeframe requires the approval of CalOptima and, if necessary, CalOptima's regulator(s).
- 17.5. **Notification of Individuals.** If the cause of a breach is attributable to Business Associate or its agents, then CalOptima or, as required by CalOptima, Business Associate shall notify individuals accordingly. The notifications shall comply with applicable federal and state law. All such notifications shall be coordinated with CalOptima. CalOptima and CalOptima regulator(s), as applicable, shall approve the time, manner and content of any such notifications. Business Associate acknowledges that such review and approval by CalOptima and CalOptima regulator(s), as applicable, must be obtained before the notifications are made.
- 17.6. **Responsibility for Reporting of Breaches to Entities Other than CalOptima.** If the cause of a breach of PHI is attributable to Business Associate or its subcontractors, Business Associate agrees that CalOptima shall make all required reporting of the breach as required by applicable federal and state law, including any required notifications to media outlets, the Secretary, and other government agency/regulator.
- 17.7. **CalOptima Contact Information.** To direct communications to CalOptima Privacy Officer, the Business Associate shall initiate contact as indicated here. CalOptima reserves the right to make changes to the contact information below by giving written notice to Business Associate. These changes shall not require an amendment to this Agreement.

**CalOptima Privacy Office**

Privacy Officer  
 c/o: Office of Compliance  
 CalOptima  
 505 City Parkway West  
 Orange, CA 92868

Email: [privacy@caloptima.org](mailto:privacy@caloptima.org)

Telephone: (714) 246-8400 (ask the operator to connect to Privacy Officer)

**18. Responsibilities of CalOptima**

- 18.1 CalOptima agrees to not request the Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA and/or other applicable federal and/or state law.
- 18.2 **Notification of SSA Data.** CalOptima shall notify Business Associate if Business Associate receives data that is SSA data from or on behalf of CalOptima.

19. **Indemnification.** Business Associate will immediately indemnify and pay CalOptima for and hold it harmless from (i) any and all fees and expenses CalOptima incurs in investigating, responding to, and/or mitigating a breach of PHI or confidential information caused by Business Associate or its subcontractors or agents; (ii) any damages, attorneys' fees, costs, liabilities or other sums actually incurred by CalOptima due to a claim, lawsuit, or demand by a third party arising out of a breach of PHI or confidential information caused by Business Associate or its subcontractors or agents; and/or (iii) for fines, assessments and/or civil penalties assessed or imposed against CalOptima by any government agency/regulator based on a breach of PHI or confidential information caused by Business Associate or its subcontractors or agents. Such fees and expenses may include, without limitation, attorneys' fees and costs and costs for computer security consultants, credit reporting agency services, postal or other delivery charges, notifications of breach to individuals, and required reporting of breach. Acceptance by CalOptima of any insurance certificates and endorsements required under the Service Agreement(s) does not relieve Business Associate from liability under this indemnification provision. This provision shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.

20. **Audits, Inspection and Enforcement**

20.1. From time to time, CalOptima or CalOptima's regulator(s) may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement. Business Associate shall promptly remedy any violation of this Agreement and shall certify the same to the CalOptima Privacy Officer in writing. Whether or how CalOptima or CalOptima's regulator(s) exercises this provision shall not in any respect relieve Business Associate of its responsibility to comply with this Agreement.

20.2. If Business Associate is the subject of an audit, compliance review, investigation or any proceeding that is related to the performance of its obligations pursuant to this Agreement, or is the subject of any judicial or administrative proceeding alleging a violation of HIPAA, Business Associate shall promptly notify CalOptima unless it is legally prohibited from doing so.

21. **Term and Termination**

21.1. **Term.** The term of this Agreement shall be effective as of the Effective Date and shall terminate in either (i) accordance with this Section 21 or (ii) when all of the PHI provided by CalOptima to Business Associate, or created or received by Business Associate on behalf of CalOptima, is destroyed or returned to CalOptima in accordance with Section 15. CalOptima may terminate this BAA, without cause, on five (5) days' prior written notice to Business Associate.

21.2. **Termination for Cause.** Upon CalOptima's knowledge of a violation of this Agreement by Business Associate, CalOptima may in its discretion:

21.2.1. Provide an opportunity for Business Associate to cure the violation and terminate this Agreement if Business Associate does not do so within the time specified by CalOptima; or

21.2.2. Terminate this Agreement if Business Associate has violated a material term of this Agreement.

21.3. **Judicial or Administrative Proceedings.** CalOptima may terminate this Agreement if Business Associate is found to have violated HIPAA, or stipulates or consents to any such conclusion, in any judicial or administrative proceeding.

## 22. Miscellaneous Provisions

- 22.1. **Disclaimer.** CalOptima makes no warranty or representation that compliance by Business Associate with this Agreement will satisfy Business Associate's business needs or compliance obligations. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI and other confidential information.
- 22.2. **Amendment**
- 22.2.1. Any provision of this Agreement which is in conflict with current or future applicable federal or state laws is hereby amended to conform to the provisions of those laws. Such amendment of this Agreement shall be effective on the effective date of the laws necessitating it, and shall be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties.
- 22.2.2. Failure by Business Associate to take necessary actions required by amendments to this Agreement under Section 22.2.1 shall constitute a material violation of this Agreement.
- 22.3. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and its employees and agents available to CalOptima or CalOptima's regulator(s) at no cost to CalOptima or CalOptima's regulator(s), as applicable, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CalOptima or CalOptima's regulator(s), their respective directors, officers and/or employees based upon claimed violation of HIPAA, which involve inactions or actions by the Business Associate.
- 22.4. **No Third-Party Beneficiaries.** Nothing in this Agreement is intended to or shall confer, upon any third person any rights or remedies whatsoever.
- 22.5. **Interpretation.** The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and other applicable laws.
- 22.6. **No Waiver of Obligations.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- 22.7. **Statutory or Regulatory Reference.** Any reference to statutory or regulatory language in this Agreement shall be to such language as in effect or as amended.
- 22.8. **Injunctive Relief.** Notwithstanding any rights or remedies provided in this Agreement, CalOptima retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of PHI or confidential information by Business Associate or any agent, subcontractor, employee or third party that received PHI or confidential information.
- 22.9 **Monitoring.** As applicable, Business Associate shall comply with monitoring requirements of CalOptima's contracts with regulator(s) or any other monitoring requests by CalOptima's regulator(s).

**EXECUTION**

Subject to the execution of a Services Agreement or amendments thereto by Business Associate and CalOptima, this Business Associate Agreement shall become effective on the Effective Date.

In witness thereof, the parties have executed this Business Associate Agreement:

**Business Associate:**

Debra Baetz

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

Interim Director, Health Care Agency

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**CalOptima:**

Veronica Carpenter

\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Veronica Carpenter (Nov 17, 2023 12:48 PST)

\_\_\_\_\_  
Signature

Chief of Staff

\_\_\_\_\_  
Title

Nov 17, 2023

\_\_\_\_\_  
Date

Approved as to form:

County Counsel

County of Orange

By:  \_\_\_\_\_  
9713A4061D4343D...

Date: 11/17/2023 \_\_\_\_\_

Brittany McLean