AGREEMENT
BETWEEN
ORANGE COUNTY HEALTH AUTHORITY DBA CALOPTIMA
AND
ORANGE COUNTY HEALTH CARE AGENCY
FOR
INTERGOVERNMENTAL TRANSFER

This Agreement is made this 1st day of May, 2016, by and between the Orange County Health Authority, a public agency, dba Orange Prevention and Treatment Integrated Medical Assistance, dba CalOptima ("CalOptima"), hereinafter referred to as ("PLAN"), and the County of Orange, through its division the Orange County Health Care Agency ("HCA"), hereinafter referred to as ("PROVIDER"), a political subdivision of the State of California, with respect to the following:

RECITALS

WHEREAS, PLAN and PROVIDER have previously entered into a Health Plan-Provider Agreement effective June 1, 2013 for coordination and provision of Public Health Care Services;

WHEREAS, PLAN is a public agency formed pursuant to California Welfare and Institutions Code Section 14087.54 and County of Orange Ordinance No. 3896, as amended by Ordinance Nos. 00-8, 05-008, 06-12, 09-001, 11-013, 14-002 and 16-001, and is a party to a Medi-Cal managed care contract with DHCS, entered into pursuant to Welfare and Institutions Code Section 14087.3, under which PLAN arranges and pays for the provision of covered Medi-Cal health care services to eligible Medi-Cal members residing in Orange County;

WHEREAS, PROVIDER, a political subdivision of the State of California, provides various public health programs, as provided under State Law , including pulmonary disease services, human immunodeficiency virus (HIV)-related services, sexually transmitted disease services, and medical assistance pursuant to the Child Health and Disability Prevention/Early and Periodic Screening, Detection and Treatment program;

WHEREAS, PROVIDER's public health programs are provided to CalOptima Members;

WHEREAS, PLAN and PROVIDER desire to enter into an Agreement to provide for Medi-Cal managed care capitation rate increases to PLAN as a result of intergovernmental transfers ("IGTs") from HCA to the California Department of Health Care Services ("State DHCS") to maintain the availability of Medi-Cal health care services to Medi-Cal beneficiaries.

NOW, THEREFORE, PLAN and PROVIDER hereby agree as follows:

IGT MEDI-CAL MANAGED CARE CAPITATION RATE RANGE INCREASES

1. IGT Capitation Rate Range Increases to PLAN

A. Payment

Should PLAN receive any Medi-Cal managed care capitation rate increases from State DHCS where the nonfederal share is funded by the County of Orange, through its Health Care Agency, specifically pursuant to the provisions of the Intergovernmental Agreement Regarding Transfer of Public Funds ("Intergovernmental Agreement") effective for the period July 1, 2014 through June 30, 2015 for Intergovernmental Transfer Medi-Cal Managed Care Rate Range Increases (IGT MMCRRIs"), PLAN shall pay to PROVIDER the amount of the IGT MMCRRIs received from State DHCS, in accordance with paragraph 1.E below regarding the form and timing of Local Medi-Cal Managed Rate Range ("LMMCRR") IGT Payments. LMMCRR IGT Payments paid to PROVIDER shall not replace or supplant other amounts paid to PROVIDER by PLAN.

B. Health Plan Retention

(1) Medi-Cal Managed Care Seller's Tax

The PLAN shall be responsible for any Medi-Cal Managed Care Seller's ("MMCS") tax due pursuant to the Revenue and Taxation Code Section 6175 relating to any IGT MMCRRIs through June 30, 2015. If the PLAN receives any capitation rate increases for MMCS taxes based on the IGT MMCRRIs, PLAN may retain an amount equal to the amount of such MMCS tax that PLAN is required to pay to the State Board of Equalization, and shall pay, as part of the LMMCRR IGT Payments, the remaining amount of the capitation rate increase to PROVIDER.

(2) PLAN shall retain One Million One Thousand Nine Hundred Twenty Nine dollars ($1,001,929) or 19.21255% from the Medi-Cal managed care rate increases paid to PLAN by DHCS as described in this Agreement prior to disbursing LMMCRR IGT payments to PROVIDER.

(a) Such retained funds will be fully expended by PLAN to fulfill one or more of the following upon approval by the CalOptima Board of Directors, in either the State fiscal year received or subsequent State fiscal years:

(i) Community health investments to improve adult mental health, children's mental health, reduce childhood obesity, strengthen the safety net, and/or improve children's health;

(ii) Planning and implementing innovative programs required under the Health Homes Program and the 1115 Waiver initiatives. This would be a one-time funding allocation for planning and implementation of pilot programs as approved by the CalOptima Board of Directors.

(3) The amounts referenced in this Agreement are estimates. The parties understand and agree that the total amount of the Medi-Cal managed care capitation rate increases paid by DHCS to PLAN may fluctuate as a result of enrollment. The parties further understand and agree that any such fluctuations will likewise affect the amount to be retained by the PLAN and the amount payable to PROVIDER by the same percentage as the variance in the capitation rate increases, if any.

(4) PLAN will not retain any other portion of the IGT MMCRRIs received from the State DHCS other than those mentioned above.

C. Conditions for Receiving Local Medi-Cal Managed Care Rate Range IGT Payments

As a condition for receiving LMMCRR IGT Payments, PROVIDER shall, as of the date the particular LMMCRR IGT Payment is due:

(1) remain a participating provider in the PLAN;

(2) continue to provide various public health program services to Plan Members, as provided under State Law, including pulmonary disease services, human immunodeficiency virus (HIV)-related services, sexually transmitted disease services, and medical assistance pursuant to the Child Health and Disability Prevention/Early and Periodic Screening, Detection and Treatment program.

D. Schedule and Notice of Transfer of Non-Federal Funds

(1) PROVIDER shall provide PLAN with a copy of the schedule regarding the transfer of funds to DHCS referred to in the Intergovernmental Agreement within fifteen (15) calendar days of establishing such schedule with DHCS. Additionally, PROVIDER shall notify PLAN, in writing, no less than seven (7) calendar days prior to any changes to an existing schedule, including but not limited to, changes to the amounts specified therein.

(2) PROVIDER shall provide PLAN with written notice of the amount and date of the transfer within seven (7) calendar days after funds have been transferred to DHCS for use as the nonfederal share of any IGT MMCRRIs.

E. Form and Timing of Payments

PLAN agrees to pay LMMCRR IGT Payments to PROVIDER in the following form and according to the following schedule:

(1) PLAN agrees to pay the LMMCRR IGT Payments to PROVIDER using the same mechanism through which compensation and payments are normally paid to PROVIDER (e.g., electronic transfer).

(2) PLAN will pay the LMMCRR IGT Payments to PROVIDER no later than thirty (30) calendar days after receipt of the IGT MMCRRIs from State DHCS.

F. Consideration

(1) As consideration for the LMMCRR IGT Payments, PROVIDER shall use the LMMCRR IGT Payments for the following purposes and shall treat the LMMCRR IGT Payments in the following manner:

(a) The LMMCRR IGT Payments shall represent compensation for Medi-Cal services rendered to Medi-Cal PLAN members by PROVIDER during the State fiscal year to which the LMMCRR IGT Payments apply.

(b) To the extent that total payments received by PROVIDER for any State fiscal year under this Agreement exceed the cost of Medi-Cal services provided to Medi-Cal beneficiaries by PROVIDER during that fiscal year, any remaining LMMCRR IGT Payment amounts shall be retained by PROVIDER to be expended for health care services. Retained LMMCRR IGT Payment amounts may be used by the PROVIDER in either the State fiscal year for which the payments are received or subsequent State fiscal years.

(2) For purposes of subsection (1) (b) above, if the retained LMMCRR IGT Payments, if any, are not used by PROVIDER in the State fiscal year received, retention of funds by PROVIDER will be established by demonstrating that the retained earnings account of PROVIDER at the end of any State fiscal year in which it received payments based on LMMCRR IGT Payments funded pursuant to the Intergovernmental Agreement, has increased over the unspent portion of the prior State fiscal year's balance by the amount of LMMCRR IGT Payments received, but not used. These retained PROVIDER funds may be commingled with other County of Orange funds for cash management purposes provided that such funds are appropriately tracked and only the depositing facility is authorized to expend them.

(3) Both parties agree that none of these funds, either from the County of Orange or federal matching funds will be recycled back to the County of Orange general fund, the State, or any other intermediary organization. Payments made by the health plan to providers under the terms of this Agreement constitute patient care revenues.

G. PLAN's Oversight Responsibilities

PLAN's oversight responsibilities regarding PROVIDER's use of the LMMCRR IGT Payments shall be limited as described in this paragraph. PLAN shall request, within thirty (30) calendar days after the end of each State fiscal year in which LMMCRR IGT Payments were transferred to PROVIDER, a written confirmation that states whether and how PROVIDER complied with the provisions set forth in Paragraph 1.F above. In each instance, PROVIDER shall provide PLAN with written confirmation of compliance within thirty (30) calendar days of PLAN's request.

H. Cooperation Among Parties

Should disputes or disagreements arise regarding the ultimate computation or appropriateness of any aspect of the LMMCRR IGT Payments, PROVIDER and PLAN agree to work together in all the respects to support and preserve the LMMCRR IGT Payments to the full extent possible on behalf of the safety net in Orange County.

I. Reconciliation

Within one hundred twenty (120) calendar days after the end of each of PLAN's fiscal years in which LMMCRR IGT Payments were made to PROVIDER, PLAN shall perform a reconciliation of the LMMCRR IGT Payments transmitted to the PROVIDER during the preceding fiscal year to ensure that the supporting amount of IGT MMCRRIs were received by PLAN from State DHCS. PROVIDER agrees to return to PLAN any overpayment of LMMCRR IGT Payments made in error to PROVIDER within thirty (30) calendar days after receipt from PLAN of a written notice of the overpayment error, unless PROVIDER submits a written objection to PLAN. Any such objection shall be resolved in accordance with the dispute resolution processes set forth in Section 9.1 of the Health Plan-Provider Agreement. The reconciliation processes established under this paragraph are distinct from the indemnification provisions set forth in Section J, below. PLAN agrees to transmit to the PROVIDER any underpayment of LMMCRR IGT Payments within thirty (30) calendar days of PLAN's identification of such underpayment.

J. Indemnification

PROVIDER agrees to indemnify, defend with counsel and hold PLAN, its elected and appointed officials, officers, employees, agents, directors, members and/or affiliates ("PLAN Indemnitees") harmless from any claims, demands, including defense costs, or liability of any kind or nature arising from or related to performance by PROVIDER of this Agreement.

PLAN agrees to indemnify, defend with counsel and hold PROVIDER, its elected and appointed officials, officers, employees, agents and those special districts for which PROVIDER's Board of Supervisors acts as the governing Board ("PROVIDER Indemnitees") harmless from any claims, demands, including defense costs, or liability of any kind or nature arising from or related to services performance by PLAN of this Agreement.

If judgment is entered against one party by a court of competent jurisdiction because of the concurrent negligence of the other party or that party's Indemnitees, the Parties agree that liability will be apportioned as determined by the court.

PLAN and PROVIDER further agree and acknowledge that (1) PLAN has no obligation to make any payments hereunder until PLAN has received IGT MMCRRIs from DHCS; (2) that PLAN is not responsible for DHCS payments to PLAN, including any mathematical calculations made by DHCS; and (3) PLAN is not responsible for the timing of the payments from DHCS to PLAN (including the conditions precedent to the timing of such payments which includes the timing of DHCS submission to CMS and/or CMS review and approval). PLAN and PROVIDER further agree and acknowledge that nothing herein is intended to create an obligation on the part of PLAN to agree to delays in capitation payment(s) from DHCS in order to accommodate this IGT.

K. Severability

If a court of competent jurisdiction declares any provision of this Agreement or application thereof to any person or circumstances to be invalid or if any provision of this Agreement contravenes any federal, state or county statute, ordinance, or regulation, the

remaining provisions of this Agreement or the application thereof shall remain valid, and the remaining provisions of this Agreement shall remain in full force and effect, and to that extent the provisions of this Agreement are severable.

L. Status of Contractor

Each party is, and shall at all times be deemed to be, an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Agreement. Each party is entirely responsible for compensating staff, subcontractors, and consultants employed by that party. This Agreement shall not be construed as creating the relationship of employer and employee, or principal and agent, between PLAN and PROVIDER or any of either party's employees, agents, consultants, or subcontractors. Each party assumes exclusively the responsibility for the acts of its employees, agents, consultants, or subcontractors as they relate to the services to be provided during the course and scope of their employment. Each party, its agents, employees, consultants, or subcontractors, shall not be entitled to any rights or privileges of the other party's employees and shall not be considered in any manner to be employees of the other party.

M. Third Party Beneficiary

Neither party hereto intends that this Agreement shall create rights hereunder in third parties including, but not limited to, any subcontractors or any clients provided services pursuant to this Agreement.

N. Waiver of Default or Breach

Waiver by either party of any default by the other party shall not be considered a waiver of any subsequent default. Waiver by either party of any breach by the other party of any provision of this Agreement shall not be considered a waiver of any subsequent breach. Waiver by either party of any default or any breach by the other party shall not be considered a modification of the terms of this Agreement.

O. Notices and Correspondence

All notices and correspondence concerning this Agreement will be in writing and sent to:

HCA: David M. Souleles
Deputy Agency Director, Public Health Services
Orange County Health Care Agency
405 W. 5th Street, 7th Floor
Santa Ana, CA 92701

CalOptima: Michael Schrader
Chief Executive Officer
CalOptima
505 City Parkway West
Orange, CA 92868

2. Term

The Term of this Agreement shall commence on July 1, 2014 and shall terminate on September 30, 2017.

SIGNATURES

HEALTH PLAN: CalOptima Date: _____

_____
By: Michael Schrader, Chief Executive Officer

PROVIDER: Orange County Health Care Agency Date: _____

_____
By: Richard Sanchez, Assistant Director

APPROVED AS TO FORM
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA
By _____ Deputy
Date 4/20/16