

MEMORANDUM OF UNDERSTANDING
BETWEEN
ORANGE COUNTY IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY
AND
ORANGE COUNTY HEALTH AUTHORITY DBA CALOPTIMA
FOR THE PROVISION OF
IN-HOME SUPPORTIVE SERVICES MANAGED CARE SUPPORT

This Memorandum of Understanding (MOU) between the Orange County In-Home Supportive Services Public Authority (PA) and the Orange County Health Authority, doing business as CalOptima (CALOPTIMA), a public agency, is entered into this 1st day of July 2014, and contains program content and purpose, along with specific guidelines for the activities to support the provision of In-Home Supportive Services (IHSS) as a managed care benefit.

PA and CALOPTIMA may be referred to individually as “Party,” and collectively as “the Parties.” The County of Orange may be referred to as “COUNTY.” The relationship between PA and CALOPTIMA, with regard to this MOU, is based upon the following:

1. IHSS is a program that provides domestic services, personal care, protective supervision, and paramedical services to individuals age sixty-five (65) or older, and to blind or disabled individuals, of any age, in their own homes. The purpose of the program is to allow eligible individuals to live safely at home, rather than in costly and less desirable out-of-home placement facilities. COUNTY administers the IHSS Program under the direction of the California Department of Social Services. COUNTY delegates certain functions, in accordance with California Welfare and Institutions Code (WIC) Sections 12301.6 and 12302.25, to PA, with the Orange County Board of Supervisors as the governing body, to provide these mandated services.
2. This MOU is authorized and provided for pursuant to WIC Section 14186 et seq.; specifically, WIC Section 14186.35(a) requires that, as a managed care benefit, managed care health plans must administer the program in a specified manner, including entering into an MOU with each county where IHSS is provided as a managed care benefit to allow the county to continue to perform specified functions.
3. This MOU contains the procedural guidelines authorized by both PA and CALOPTIMA, for their respective employees to follow in providing services.

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I. TERM

The term of this non-financial MOU shall commence on July 1, 2014, following execution by both Parties, and end on December 31, 2017, unless terminated in accordance with Paragraph XII of this MOU. However, the Parties shall be obligated to perform such duties as would normally extend beyond this term, including, but not limited to, obligations with respect to indemnification, record retention, and confidentiality.

II. PURPOSE

The purpose of this MOU is to establish the procedures and activities for PA and CALOPTIMA to perform and support the provision of IHSS as a managed care benefit.

III. DEFINITIONS

- A. California In-Home Supportive Services Authority: An Authority to be established in accordance with WIC Section 12300.5 to serve as the bargaining unit and employer of record for IHSS providers in the State of California.
- B. Consumer: A Medi-Cal recipient who is enrolled in CALOPTIMA's managed care health plan.
- C. In-Home Supportive Services: Services available to individuals who are blind, aged, or disabled who are unable to perform activities of daily living, and cannot remain safely in their own homes without assistance, thus enabling the recipient to remain in their home, as required by WIC Section 12300.
- D. Managed Care Benefit: A Medi-Cal benefit, such as, but not limited to IHSS, available to Consumers through CALOPTIMA pursuant to a contract with the California Department of Health Care Services (DHCS).
- E. Orange County In-Home Supportive Services Public Authority or PA: A public agency created by local ordinance whose purpose is maintaining a registry of IHSS providers, investigating the background of potential providers, providing training for Consumers and providers, and other functions as specified by law or pursuant to contract with local Social Services Agency responsible for administering IHSS services.

IV. POPULATION TO BE SERVED

Individuals to be served pursuant to this MOU are Consumers who meet the IHSS eligibility requirements.

V. CALOPTIMA RESPONSIBILITIES

CALOPTIMA shall have the following responsibilities:

- A. Provide IHSS, as a Managed Care benefit, if and as required through a contract with DHCS.
- B. Designate a contact position to be responsible for oversight and supervision of the

terms of this MOU. The employee assigned to this position shall act as the liaison with PA throughout the term of this MOU. CALOPTIMA shall immediately notify PA, in writing, of changes in personnel assigned as the liaison throughout the term of this MOU. The contact position at CALOPTIMA shall be:

Long Term Care Integration Manager
505 City Parkway West
Orange, CA 92868

VI. PA RESPONSIBILITIES

PA shall have the following responsibilities, as delegated by SSA pursuant to WIC Section 12300.7:

- A. In accordance with WIC Sections 12301.24 and 12305.81:
 1. IHSS provider enrollment;
 2. Provider orientation; and
 3. Retention of enrollment documentation.
- B. Assist IHSS recipients in finding eligible IHSS providers through the establishment of a registry, and provide training for providers and recipients, as set forth in WIC Section 12301.6.
- C. Conduct criminal background checks on all potential providers of IHSS and exclude providers consistent with the provisions set forth in WIC Sections 12305.81, 12305.86 and 12305.87.
- D. Act as employer of record for IHSS individual providers serving the IHSS Consumers, for the purposes of bargaining only, and provide access to trained IHSS providers and backup providers.
- E. Receive referral information from SSA and CALOPTIMA of all IHSS providers, for the purposes of wages and benefits, until the transition to the California In-Home Supportive Services Authority is complete.
- F. Provide the California In-Home Supportive Services Authority with referral information of all IHSS providers, for the purposes of wages and benefits, upon the transition of COUNTY into the California In-Home Supportive Services Authority pursuant to subdivision (a) of WIC Section 12300.7.
- G. Provide administrative support for the IHSS advisory committee. Designate a contact person to be responsible for oversight and supervision of the terms of this MOU. The employee assigned to this position shall act as the liaison with CALOPTIMA throughout the term of this MOU. PA will immediately notify CALOPTIMA, in writing, of changes in personnel assigned as the liaison throughout the term of this MOU. The contact person at PA will be:

IHSS Contract Administrator
888 N. Main St.
Santa Ana, CA 92701

VII. CONFIDENTIALITY AND DATA SHARING

- A. Each Party will ensure accurate and timely documentation, recording and storage of data consistent with its practices for its own documentation, recording and storage of data, subject to any mutually agreed upon processes.
- B. PA and CALOPTIMA shall share with, and receive from, the other Party Consumer information necessary to promote shared understanding of consumers' needs and ensure appropriate access to IHSS.
- C. PA and CALOPTIMA shall share, and will receive, confidential information necessary to implement the provisions of WIC Section 14186.35 and this MOU.
- D. PA and CALOPTIMA shall agree to the roles and responsibilities of the sharing of protected health information (PHI), and other confidential beneficiary information, for the purposes set forth in WIC Sections 14186.35 (a)(8) and (9)(B)(ix).
- E. PA and CALOPTIMA shall agree on a secure process of sharing information relating to the dispensation of Fair Hearing cases of IHSS recipients.
- F. PA and CALOPTIMA agree to maintain confidentiality of all records and information about persons pursuant to all applicable federal and/or State laws or regulations, including, without limitation, U.S. Privacy Act of 1974, the Health Insurance Portability and Accountability Act (HIPAA), as amended, WIC Sections 10850-10853 and 14100.2, the California Department of Social Services Manual of Policies and Procedures, Division 19-000, and all other provisions of law, and regulations promulgated thereunder relating to privacy and confidentiality, as each may now exist or be hereafter amended.
- G. All records and information concerning any and all persons referred to CALOPTIMA by PA or PA's designee shall be considered and kept confidential by CALOPTIMA, CALOPTIMA's staff, agents, employees and volunteers. CALOPTIMA shall require all of its employees, agents, and volunteer staff who may provide services for CALOPTIMA under this MOU to sign an agreement with CALOPTIMA before commencing the provision of any such services, to maintain the confidentiality of any and all materials and information with which they may come into contact, or the identities or any identifying characteristics or information with respect to any and all participants referred to CALOPTIMA by PA, except as may be required to provide services under this MOU, or to those specified in CALOPTIMA's contract with DHCS as having the capacity to audit CALOPTIMA, and as to the latter, only during such audit.
- H. All records and information concerning any and all persons referred to PA by CALOPTIMA or CALOPTIMA's designee shall be considered and kept confidential by PA, PA's staff, agents, employees and volunteers. PA shall require all of its employees, agents, and volunteer staff who may provide services for PA under this MOU to sign an agreement with SSA before commencing the provision of any such services, to maintain the confidentiality of any and all materials and information with which they may come into contact, or the identities or any identifying characteristics or information with respect to any and all participants referred to PA by

CALOPTIMA, except as may be required to provide services under this MOU, or to those specified in regulations applicable to PA as having the capacity to audit PA, and as to the latter, only during such audit.

- I. Each Party shall disclose to all of its employees, agents, volunteers and partners their obligation to maintain confidentiality of consumer information consistent with this paragraph, and that any person knowingly and intentionally violating the provisions of the indicated State law may be guilty of a crime.

VIII. INDEMNIFICATION AND INSURANCE

- A. CALOPTIMA agrees to indemnify, defend with counsel approved in writing by PA, and hold PA, its officers, employees, agents, and those special districts and agencies for which COUNTY's Board of Supervisors acts as the governing Board ("PA INDEMNITEES") harmless from any claims, demands, including defense costs, or liability of any kind or nature, including, but not limited to, personal injury or property damage, arising from or related to the services, products or other performance provided by CALOPTIMA pursuant to this MOU.
- B. PA agrees to indemnify, defend with counsel approved in writing by CALOPTIMA, and hold CALOPTIMA, its elected and appointed officials, officers, employees, agents, directors, members, shareholders, and/or affiliates ("CALOPTIMA Indemnities") harmless from any claims, demands, including defense costs, or liability of any kind or nature, including, but not limited to, personal injury or property damage, arising from or related to the services, products or other performance provided by PA pursuant to this MOU.
- C. If judgment is entered against one Party by a court of competent jurisdiction because of the concurrent active negligence of the other Party or that Party's Indemnities, the Parties agree that liability will be apportioned as determined by the court.
- D. Each Party agrees to provide the indemnifying Party with written notification of any claim related to services provided by either Party pursuant to this MOU within thirty (30) calendar days of notice thereof, and in the event the indemnifying Party is subsequently named Party to the litigation, each Party shall cooperate with the indemnifying Party in its defense.
- E. Without limiting CALOPTIMA's indemnification, CALOPTIMA guarantees that it is either self-insured, and shall at all times during the term of this MOU maintain self-insurance covering its operations in amounts acceptable to the PA, or shall maintain a policy or policies of insurance covering its operations, placed with insurance companies licensed to do business in the State of California, in amounts as specified in the table below. Upon request by PA, CALOPTIMA shall provide evidence of such insurance.

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employer's Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claims made or per occurrence

F. Without limiting the PA's indemnification, PA guarantees that it is either self-insured, and shall at all times during the term of this MOU maintain self-insurance covering its operations in amounts acceptable to CALOPTIMA, or shall maintain policies of insurance placed with insurance companies licensed to do business in the State of California, in amounts as specified in the table below. Upon request by CALOPTIMA, PA shall provide evidence of such insurance.

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,200,000 per occurrence
Workers' Compensation	Statutory
Employer's Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per occurrence

IX. RETENTION OF RECORDS

CALOPTIMA and PA agree to retain all documents pertinent to this MOU for five (5) years from the termination of this MOU, or until all pending Federal, State, and County audits are completed, whichever is later.

X. NOTICE AND CORRESPONDENCE

A. All notices and correspondence concerning this MOU will be in writing and sent to:

PA:

Attn: Contract Services
888 North Main Street
Santa Ana, CA 92701

CALOPTIMA:

Attn: Contracting Department
505 City Parkway West
Orange, CA 92868

B. All notices shall be deemed effective when in writing and deposited in the United States mail, first class, postage prepaid, and addressed as above. Any notices, claims, correspondence, reports and/or statements authorized or required by this MOU addressed in any other fashion shall be deemed not given. In the event of a change of address by one Party, that Party shall notify the other, in writing, in accordance with the notice provisions herein of the new address to which notices are sent.

XI. RESOLUTION OF CONFLICTS

For resolution of conflicts between PA and CALOPTIMA in regards to the provisions of this MOU, the following shall apply:

Step 1: Conference between the PA Program Manager and the CALOPTIMA's Contracts Manager, Contracting and Provider Relations Department.

Step 2: Conference between the PA Program Manager and/or Deputy Director or designee, and the CALOPTIMA Medi-Cal Manager, Network Management Department, or designee.

Step 3: Conference between the PA Director of Adult Services and Assistant Programs, or designee, and the CALOPTIMA Director of Network Management Department, or designee.

XII. TERMINATION

A. This MOU may be terminated by either Party, immediately, with cause. Notice shall be deemed served on the date of mailing. Cause shall be defined as any breach of this MOU, any misrepresentation, or fraud on the part of PA or CALOPTIMA. Exercise by PA or CALOPTIMA of the right to terminate this MOU shall relieve the respective Party of all further obligations under this MOU, except indemnification obligations for actions occurring before termination, and the confidentiality provisions of Paragraph VII.

B. CALOPTIMA may immediately terminate this MOU if CALOPTIMA elects not to participate in the demonstration project authorized under WIC 14132.275. Furthermore, this MOU will be immediately terminated if the contract between

DHCS and the Plan is terminated. In either such case, CalOptima shall provide written notice upon such determination.

- C. This MOU may be terminated after thirty (30) days' written notice, without cause, unless otherwise specified. Notice shall be deemed served on the date of mailing. Exercise by PA or CALOPTIMA of the right to terminate this MOU shall relieve the respective Party of all further obligations under this MOU, except indemnification obligations for actions occurring before termination, and the confidentiality provisions of Paragraph VII.
- D. Upon termination, or notice thereof, the Parties agree to cooperate with each other in the orderly transfer of service responsibilities, case records, and pertinent documents.
- E. Notwithstanding the above, the Parties shall be obligated to perform such duties as would normally extend beyond termination, including, but not limited to, obligations with respect to indemnification, record retention, and confidentiality.
- F. The obligations of PA under this MOU are contingent upon the availability of Federal and/or State funds, as applicable, and inclusion of sufficient funds for the services hereunder in the budget approved by the Orange County Board of Supervisors each fiscal year this MOU remains in effect or operation. In the event that such funding is terminated or reduced, PA may immediately terminate or modify this MOU, without penalty. The decision of PA shall be binding on CALOPTIMA. PA shall provide CALOPTIMA with written notification of such determination. CALOPTIMA shall immediately comply with PA's decision.
- G. The obligations of CALOPTIMA under this MOU are contingent upon the availability of Federal and/or State funds, as applicable, and inclusion of sufficient funds for the services hereunder in the budget approved by the CALOPTIMA Board of Directors each fiscal year this MOU remains in effect or operation. In the event that such funding is terminated or reduced, CALOPTIMA may immediately terminate or modify this MOU, without penalty. The decision of CALOPTIMA shall be binding on PA. CALOPTIMA shall provide PA with written notification of such determination. PA shall immediately comply with CALOPTIMA's decision.

XIII. GENERAL PROVISIONS

- A. The Parties shall provide initial and on-going training with respect to integration of IHSS as a Managed Care Benefit as the parties mutually agree. Without limiting the foregoing, such training may be, for example, in person, by webinar, by telephone conference or in writing.
- B. The Parties to this MOU are subject to the California Public Records Act. Neither Party shall be liable for any disclosure made pursuant to that Act.
- C. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between either Party and any provider participating in this program, or any of either Party's agents or employees.

- D. This MOU represents the entire understanding of the Parties with respect to the subject matter. No change, modification, extension, termination or waiver of this MOU, or any of the understandings herein contained, shall be valid unless made in writing and signed by duly authorized representatives of the Parties hereto.
- E. This MOU has been negotiated and executed in the state of California, and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this MOU, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

WHEREFORE, the Parties hereto have executed the Memorandum of Understanding in the County of Orange, California.

By: _____

Chair, Governing Body
"AUTHORITY"

By: _____

Michael Schrader
Chief Executive Officer
CALOPTIMA

Dated: _____

Dated: _____

Approved As To Form
County Counsel
County of Orange, California

By: _____

Deputy

Dated: _____