

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

This Agreement is made this \_\_\_\_day of\_\_\_\_, 2018, 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 County of Orange (GOVERNMENTAL FUNDING ENTITY) 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 GOVERNMENTAL FUNDING ENTITY, through its Health Care Agency, specifically pursuant to the provisions of the Intergovernmental Agreement Regarding Transfer of Public Funds, #17-94754, (“Intergovernmental Agreement”) effective for the period of July 1, 2017 through June 30, 2018 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 Care Rate Range (“LMMCRR”) IGT Payments. LMMCRR IGT Payments paid to PROVIDER shall not replace or supplant any other amounts paid or payable to PROVIDER by PLAN.

**B. Health Plan Retention**

(1) PLAN shall retain 34.41 percent 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 for Covered Services under PLAN’s contract with DHCS for Medi-Cal, in either the State fiscal year received, or in subsequent State fiscal years, as appropriated by the CalOptima Board of Directors.

(2) 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.

(3) 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 Covered Services rendered to Medi-Cal PLAN members by PROVIDER between July 1, 2017, and June 30, 2018, and shall be used by PROVIDER solely to fund the costs that exceed the fee-for-service rates paid by Medi-Cal PLAN for covered services provided to Medi-Cal PLAN Members during that period.

(b) To the extent that total payments received by PROVIDER for any State fiscal year under this Agreement exceed the cost of Covered Services provided to Medi-Cal PLAN members by PROVIDER during that fiscal year, any remaining LMMCRR IGT Payment amounts shall constitute an overpayment, and shall be returned to Medi-Cal PLAN pursuant to the provisions of Section 1.K., below

(2) Both parties agree that none of these funds, either from the GOVERNMENTAL FUNDING ENTITY or federal matching funds will be recycled back to the GOVERNMENTAL FUNDING ENTITY'S 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 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 approved in writing by PLAN, 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 approved in writing by PROVIDER 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. Overpayments and CalOptima Right to Recover**

PROVIDER has an obligation to report any overpayment identified by PROVIDER, and to repay such overpayment to CalOptima within sixty (60) days of such identification by PROVIDER, or of receipt of notice of an overpayment identified by CalOptima. PROVIDER acknowledges and agrees that, in the event that CalOptima determines that an amount has been overpaid or paid in duplicate, or that funds were paid which were not due under this Contract to PROVIDER, CalOptima shall have the right to recover such amounts from PROVIDER by recoupment or offset from current or future amounts due from CalOptima to PROVIDER, after giving notice and an opportunity to return/pay such amounts. This right to recoupment or offset shall extend to any amounts due from PROVIDER to CalOptima, including, but not limited to, amounts due because of overpayments as described in the provisions of this agreement

**L. 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.

**M. 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.

**N. 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.

**O. 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.

**P. 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, 7<sup>th</sup> 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, 2017 and shall terminate on September 30, 2020.

**SIGNATURES**

HEALTH PLAN: CalOptima

Date: \_\_\_\_\_

\_\_\_\_\_  
By: Michael Schrader, Chief Executive Officer

PROVIDER: Orange County Health Care Agency

Date: \_\_\_\_\_

\_\_\_\_\_  
By: David Souleles, Deputy Agency Director  
Public Health Services

APPROVED AS TO FORM  
OFFICE OF THE COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

DocuSigned by:  
*Eric Divine*  
\_\_\_\_\_  
By: Deputy

Date: 6/15/2018