

Optum-DaVita Undertakings

Collaborative Care Holdings, LLC, a subsidiary of Optum, Inc. (Optum), has agreed to purchase and become the sole shareholder of DaVita Medical Holdings, LLC (DMH) which is the indirect parent company of DaVita Health Plan of California, Inc. (DHPC). Optum owns the following California Knox-Keene licensed plans: PrimeCare Medical Network, Inc., Monarch Health Plan, Inc., U.S. Behavioral Health Plan of California, ACN Group of California, Inc. (collectively, Optum's Knox-Keene Licensed Plans).

DHPC has filed with the Department of Managed Health Care (Department) a Notice of Material Modification (filing number 20180077) regarding the purchase of its immediate parent corporation by Collaborative Care Holdings, LLC (Acquisition).

To demonstrate continued compliance with the Knox-Keene Health Care Service Plan Act of 1975 (Act), codified at Health and Safety Code section 1340 et seq., and the Act's corresponding regulations at Title, 28, California Code of Regulations (Rules), the following entities (collectively, the "Parties") agree to the Undertakings set forth herein and acknowledge that any Orders issued by the Department approving Material Modification number 20180077 are conditioned upon these Undertakings:

- DHPC
- PrimeCare Medical Network, Inc.
- Monarch Health Plan, Inc.
- U.S. Behavioral Health Plan of California
 - ACN Group of California, Inc.
- Optum, Inc.

The Parties agree to fully and completely comply with these Undertakings and agree they will not violate these Undertakings.

1. Restrictions on upstreaming of funds

As required by the provisions of the Act and the Rules, DHPC shall not declare or pay dividends, make other distributions of cash or property or in any other way upstream any funds or property to its parent, affiliates or any of its shareholders (Affiliate Company Distributions) if such actions would:

- a. Cause DHPC to fail to maintain at all times 100% of the minimum tangible net equity (TNE) required by the California Code of Regulations, title 28, section 1300.76; or
- b. Result in insufficient working capital or insufficient cash flow necessary to provide for the retirement of existing or proposed indebtedness of DHPC, as required by California Code of Regulations, title 28 section 1300.75.1 (a); or,

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- c. Result in DHPC being unable to provide or arrange health care services as required by and in accordance with the Act and the Rules.

For purposes of these Undertakings "Affiliate Company Distributions" shall not be deemed to refer to payments made under the terms of any administrative service agreement, tax sharing agreement or intercompany loan agreement, which has been filed with the Department in accordance with the Act and either approved or not disapproved by the Department.

2. *Material Modification required before guaranteeing, cosigning or assuming loans, or before borrowing*

DHPC acknowledges the Department's requirement that DHPC obtain the Department's prior approval of the following actions and, therefore, will not take any of the following actions prior to the submission of a Notice of Material Modification and the receipt of the Department's Order of Approval of the Notice:

- a. Cosign or guarantee any portion of any current or future loans and/or credit agreements entered into by its parent, affiliates, or any of its shareholders; or
- b. Permit any portion of loans obtained by its parent, affiliates or shareholders, to be assumed by DHPC; or
- c. Allow a pledge or hypothecation of DHPC's assets or capital stock in any way connected with any current or future loans of DHPC's parent, affiliates or shareholders; or
- d. Borrow any funds or otherwise incur any indebtedness for the purpose of making any Affiliate Company Distribution, except (i) any Affiliate Distribution that is made in compliance with Undertaking 1 herein, or (ii) a payment made pursuant to any written administrative services agreement or tax sharing agreement or intercompany loan agreement between or among DHPC's shareholders, DHPC's affiliates or DHPC's affiliate shareholders, which has been filed with the Department in accordance with the Act and either approved or not disapproved by the Department.

3. *Notice of undertakings to creditors*

DHPC will ensure that written disclosure of Undertakings (1) and (2) above is given to any and all current/future holders of any loans and/or credit agreements or any affiliates of shareholders of DHPC to the extent that DHPC's assets and/or stock are involved in such loans and/or credit agreements to ensure that the holder of such instrument(s) has written notice that the satisfaction of any obligation under such instruments is subordinated to DHPC's obligations under the Act and Rules hereunder.

4. DHPC to pay costs associated with DMHC's review for compliance with undertakings

DHPC agrees to pay within 20 business days from the receipt of billings from the Department the actual costs arising from the activities of the Department, including any necessary out-of-state travel, incurred in the course of verifying and auditing compliance by the DHPC with the Act and each of the Undertakings set forth herein. Such activities, including any of the routine and non-routine surveys, audits, examinations, investigations or inquiries required or permissible under the Act, will be conducted, at the Department's discretion. The costs arising from the activities of the Department will be approved by the Department's Accounting Division following the state travel guide.

5. Books and records to stay in California unless approved by the Department

DHPC agrees that it shall not remove, or require, permit, or cause the removal of DHPC books and records, as defined in the Act, from California before filing a Notice of Material Modification and receiving the written approval from the Department, in accordance with the Act. Further, notwithstanding any failure or omission of DHPC's parent, or that of an affiliate, to maintain DHPC's records in California, DHPC agrees that it shall return to California, as may be *required* by the Department, within the timeframe specified by the Department, any such DHPC books and records that have been removed from California without the Department's express, written permission. This Undertaking shall not restrict DHPC from maintaining books and records in an electronic format as long as electronic books and records are contemporaneously available in California.

6. Key Functions and Management Based in California

Optum and DHPC commit to keeping DHPC's Chief Executive Officer/President(s), Chief Financial Officer, and Chief Operating Officer currently in California overseeing the California operations of DHPC based in California, as well as the leaders responsible for local functions described below. Optum and DHPC further commit that job functions, performed at the time of the filing by employees in California who directly interact with members and providers in California for DHPC, will continue to be performed in California after the Acquisition. After the Acquisition is completed, DHPC shall maintain leaders and personnel to assure adequate organizational and administrative capacity and to perform, at a minimum, the following functions and positions in California consistent with DHPC's practices in effect prior to the Acquisition, to the extent delegated to DHPC by their respective full-service health plan customers:

- a. Clinical decision-making and California medical policy development including determination of DHPC's prescription drug formularies, including a Chief Medical Officer(s), medical directors and other clinicians;
- b. Prior authorization and referral functions;
- c. Enrollee grievance and appeal functions to the extent delegated;
- d. Network management;

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- e. Provider services, including membership, accounting and provider directories;
- f. Provider Dispute Resolution Mechanism process;
- g. Key management personnel, including senior financial staff; and
- h. Key regulatory, legal, financial and compliance officers and other personnel performing state and federal compliance functions, including personnel knowledgeable with the Act and Rules as well as the laws governing Medi-Cal and any other applicable law.

These aforementioned functions shall be conducted in conformity with California standards, and timeframes, as required by the Act. DHPC confirms to the Department that it intends to maintain offices in California, which shall continue to serve as headquarters for DHPC's health care operations.

However, DHPC may utilize and share Optum's administrative services consistent with all Administrative Services Agreements filed and approved by DMHC.

7. No increase in premiums because of the acquisition

Optum represents and warrants that costs incurred in financing, analyzing and/or consummating the Acquisition (Acquisition Costs) will not be applied to premiums charged by its affiliates and will not impact the costs to California consumers enrolled in health plans offered by its affiliates. Acquisition costs include but are not limited to, attorneys' and investment bankers' fees, travel expenses, executive compensation due to the acquisition (including change in control payments, acceleration of outstanding equity incentives or signing/retention bonuses), due diligence expenses, and expenses related to concurrent or future mergers or acquisitions by its affiliates.

Annually, within sixty (60) days following the end of the calendar year, Optum shall file an attestation signed by its Chief Actuary, Chief Financial Officer or similar officer, certifying that no portion of the cost components of any premium rate charged for any commercial product offered in California by its affiliates include a charge related to the Acquisition Costs.

8. Charitable contributions

- a. UnitedHealth Group (UHG), through its affiliated entities and its employees have provided more than \$40 million in time and money contributions to philanthropic activities in California since the beginning of 2015. UHG employees have contributed over 420,000 volunteer hours to local charities over the same time period. UHG has provided consistent philanthropic support to citizens and organizations in California and commits to continue that consistent level of support of \$10 million annually over the next four (4) calendar years (2019-2022). UHG also agrees over the next four (4) calendar years to provide an additional \$2.5 million annually to philanthropic activities in California. These contributions of time and money shall be consistent with past UHG contributions in one or more of the following areas:

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- i. The United Health Foundation (UHF), whether through scholarships awarded through the UHF Diverse Scholars Initiative, grants to organizations that are committed to innovative health care delivery that improves access and outcomes, grants to support strategic partnerships, programs and initiatives for responsive, compassionate service to seniors, the military and veterans community, mothers and children in need, the chronically ill, and vulnerable and diverse communities, or matching contributions to support the charitable donations of UHG employees.
 - ii. Medical grants to California families for medical services not (or not completely) covered by commercial health benefits by the UnitedHealthcare Children's Foundation (UHCCF).
 - iii. Investments in communities and citizens of California to help address social determinants of health (e.g., the intersection of poverty and health) such as, but not limited to, supportive housing for individuals formerly recently incarcerated and low-income housing tax credit projects.
 - iv. Broad enterprise-wide charitable giving and support by UHG, Optum and UnitedHealthcare (UHC) across a range of issue areas, including: health care, health and wellness, chronic disease prevention and care, access to care, education, disaster relief and recovery, and the environment.
 - v. UHG's California employees giving generously of their time and treasure through charitable donations in the communities they live and work together with the associated dollar for dollar match by UHF and the economic value of the thousands of hours volunteering annually (hours value derives from Independent Sector valuations at <http://independentsector.org>).
- b. UHG also agrees over the next four (4) calendar years to provide an additional \$2.0 million annually in grants and scholarships specifically to the UHF Diverse Scholars Initiative for the sole purpose of awarding grants and scholarships to those seeking to become a psychiatrist or psychiatric nurse practitioner in the field of Child and Adolescent Psychiatry.
 - c. UHG shall actively promote these funding opportunities by, among other things, seeking grant requests, funding proposals and/or contributions from various well-qualified organizations; provided however, all funding decisions shall be made by UHF, UHCCF, UHG, Optum or UHC, as applicable, in their sole discretion in accordance with such respective entities' applicable purpose, guidelines, requirements, and grant eligibility criteria.
 - d. Optum shall submit an annual report to the Department by March 1 of each year confirming that during the preceding calendar year UHG made the contributions in satisfaction of this undertaking and detailing how such contributions were used.

9. Activities to address the opioid crisis

- a. Over the course of calendar year 2019, Monarch Health Plan, PrimeCare Medical Network, and DHPC shall develop and deploy provider education on co-prescribing naloxone and provider education on buprenorphine prescribing (e.g. waiver training) and will evaluate network adequacy for opioid addiction treatment consistent with the authority granted under those limited or restricted licenses as well as contract requirements with full service health plans.
- b. Over the course of calendar year 2019, U.S. Behavioral Health Plan of California will develop and deploy provider education on Medication Assisted Treatment programs through its provider MAT webpage ([MAT page](#)) and education to assist providers in identifying substance abuse on its Behavioral Health toolkit page ([BH Toolkit](#)), both pages will include Substance Use Disorder Helpline.
- c. Over the course of calendar year 2019 ACN Group of California shall develop and deploy provider education on the opioid crisis and substance abuse detection.
- d. Optum shall submit a report to the Department by March 1 of 2020 detailing how the subject plans have complied with this undertaking.

10. Compliance with CMS billing guidelines

Optum agrees that all of its Knox Keene licensed health plans will comply with the Medicare Advantage laws related to billing and coding, as applicable.

11. Compliance with Timely Access Standards

Optum's Knox-Keene Licensed Plans shall comply with the Knox-Keene Act timely access standards codified in Health and Safety Code section 1367.03, 1367.031, and 1367.035, and the implementing regulations, consistent with the authority granted under those limited or restricted licenses as well as contract requirements with full service health plans.

12. Providers to be available to negotiate contracts with non-United plans' networks

For a period of at least three (3) years from issuance of the Order of Approval, Optum through its medical groups, risk bearing organizations, and individual providers, in addition to DHPC, will continue to contract with non-United Healthcare California health plans on an arms' length basis in the normal course of business as Optum and DHPC do currently.

13. Limitation on data sharing between Optum and other UHG affiliates

UHG and Optum policies and procedures prohibit and prevent the sharing of any of Optum's health plan confidential customer information between UHC health plan entities and Optum managed and owned medical practices and IPAs. Optum does not share with UHC health plans the confidential information Optum receives and holds from its health plan customers, including strategy, intellectual property, and other confidential information. Critical claims and administrative technology systems used by UHC health plans or Optum practices and IPAs are separate. Access to all confidential information is limited by virtue of UHG and Optum specific administrative (policies and procedures), physical, and technical barriers and safeguards. Optum agrees to continue this practice.

14. Cooperate with the Provider Directory Utility

DHPC and Optum's KnoxKeene Licensed Plans agree that accurate, complete, and accessible provider directories reflecting adequate networks of contracted providers are essential to enrollees. DHPC and all Optum- medical health plans (limited/restricted licensees) in California will continue to work with their contracted full-service health plan customers (e.g., Aetna, UHC, etc.) to upstream information to them about the DHPC and Optum limited/restricted medical health plan contracted providers to maintain accurate digital and printed directories as required by existing regulations as applied to full-service health plans.

15. Optum's KnoxKeene Licensed Plans to correct all uncorrected survey and financial exam deficiencies.

Within twelve (12) months of the date of the Order of Approval, the Optum California licensed medical health plans shall correct deficiencies and shall submit a report via eFiling demonstrating how the deficiencies have been corrected.

- a. Monarch Health Plan, Inc.—June 21, 2018 Final Report of Routine Survey
 - i. Deficiency: Monarch Health Plan, Inc. does not adequately document its review of Potential Quality Issues.
 - ii. Deficiency: Monarch Health Plan, Inc. does not identify and review grievances involving Potential Quality Issues.
 - iii. Deficiency: Monarch Health Plan, Inc. has not filed its updated Quality Assurance program and related policies and procedures with the Department.
 - iv. Deficiency: Monarch Health Plan, Inc.'s grievance system does not provide reasonable procedures in accordance with statutory and regulatory requirements.
 - v. Deficiency: Monarch Health Plan, Inc. has not filed its updated Grievances and Appeals policies with the Department.

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- vi. Deficiency: Monarch Health Plan, Inc. has not established an adequate process to evaluate and assess its compliance with Section 1367.01.
 - vii. Deficiency: Monarch Health Plan, Inc.'s written communications to providers of a denial, delay, or modification of requested health care services, do not include the direct telephone number or extension of the health care professional responsible for the decision.
 - viii. Deficiency: Monarch Health Plan, Inc. has not filed its updated Utilization Management policies and procedures with the Department.
- b. ACN Group of California, Inc.- January 24, 2018 Follow Up Report of Routine Survey
- i. Deficiency: For decisions to deny, delay, or modify health care service requests by providers based in whole or in part on medical necessity, the plan does not consistently include in its written response:
 - A clear and concise explanation of the plan's decision
 - A description of the criteria or guidelines used
 - The clinical reason for the decision regarding medical necessity
- c. U.S. Behavioral Health Plan of California- February 14, 2018 Follow Up Report of Routine Survey
- i. Deficiency: U.S. Behavioral Health Plan of California does not correctly categorize grievances and appeals and ensure that quality of care and quality of service issues are appropriately and consistently identified so that effective action is taken to improve care.

16. HealthCare Partners Medical Group to improve its ratings on the Office of the Patient Advocate Scorecard

Optum and DHPC shall use commercially reasonable efforts to, within twenty-four (24) months of the date of the Order of Approval, cause HealthCare Partners Medical Group and HealthCare Partners IPA to achieve scores of at least three stars (on a four star scale) or four stars (on a five star scale) on all areas of the Office of the Patient Advocate scorecard.

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17. Reports to the Department

- a. Optum shall submit all reports required by these Undertakings through the Department's eFiling portal. Unless otherwise specified by these undertakings, Optum shall cause all reports and information to be submitted under DHPC's material modification number 20180077 in eFiling.
- b. Unless otherwise specified in these Undertakings, Optum shall submit an annual report to the Department by March 1 informing the Department of Optum's, or its subsidiaries' or related entities', activities and compliance regarding these Undertakings during the preceding calendar year. These reports shall be organized by Undertaking and shall provide sufficient detail for the Department to determine whether Optum or its affiliates are compliant with each Undertaking.

18. Enforceability of Undertakings

The Undertakings set forth herein shall be enforceable to the fullest extent of the authority and power of the Director of the Department under the provisions of the Act, including all civil, criminal, and administrative remedies (such as Cease and Desist Orders, freezing enrollment, and assessment of fines and penalties). The Undertakings shall act as an Order of the Director.

Optum and DHPC acknowledge that the Act's enforcement remedies are not exclusive, and may be sought and employed in any combination deemed advisable by the Department to enforce these Undertakings.

19. Terms and conditions of Undertakings

The Undertakings set forth herein shall be subject to the following terms and conditions:

- a. *Binding Effect.* The Undertakings set forth herein shall be binding on Optum and DHPC and their respective successors and permitted assigns. If either fails to fulfill its obligations to the Department as provided under the Undertakings set forth herein, Optum and DHPC stipulate and agree that the Department shall have the authority to enforce the provisions of these Undertakings in a California court of competent jurisdiction or in a hearing before the Office of Administrative Hearings.
- b. *Governing Law.* The Undertakings set forth herein and their validity, enforcement, and interpretation, shall for all purposes be governed by and construed in accordance with the laws of the State of California.
- c. *Venue.* The proper venue of any dispute arising from the Undertakings set forth herein shall be Sacramento, California.
- d. *Invalidity.* In the event that any Undertakings or any portion of any Undertaking set forth herein shall be declared invalid or unenforceable for any reason by a court of

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competent jurisdiction, the validity or enforceability of any other Undertakings or any portion of any Undertaking shall not affect the validity or enforceability of any other undertakings, and such other Undertakings shall remain in full force and effect and shall be enforceable to the maximum extent permitted by applicable law.

- e. *Duration.* The Undertakings set forth herein shall become effective upon the closing date of the Acquisition and except as to those provisions of the Undertakings that contain separate termination provisions, shall remain in full force and effect for four (4) years, ending on the anniversary of the closing date of the Acquisition, unless terminated sooner by the Department or by Optum and DHPC with the written consent of the Department.
- f. *Third Party Rights.* Nothing in the Undertakings set forth herein is intended to provide any person other than Optum, DHPC, and the Department, and their respective successors and permitted assignees or agents, with any legal or equitable right or remedy with respect to any provision of any Undertaking set forth herein.
- g. *Amendment.* The Undertakings set forth herein may be amended only by written agreement executed by Optum, DHPC and the Department.
- h. *Assignment.* No Undertaking set forth herein may be assigned by Optum or DHPC, in whole or in part, without the prior written consent of the Department.
- i. *Specific Performance.* In the event of any breach of these Undertakings, Optum and DHPC acknowledge that the State of California would be irreparably harmed and could not be made whole by monetary damages. It is accordingly agreed that Optum and DHPC shall waive the defense in any action brought by the Department for specific performance that a remedy at law would be adequate, and the Department should be entitled to seek an injunction or injunctions to prevent breaches of the provisions of these Undertakings and to seek to specifically enforce the terms and provisions stated herein. The Department's right to seek an injunction does not supersede the remedies available to the Director described in subsection (a) of this Undertaking.

Optum, Inc.

Signature: ORIGINAL SIGNED BY

Date: 11/20/18

Print Name: Richard J. Mattera

Print Title: Executive Vice President, Chief Legal Officer

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DaVita Health Plan of California, Inc.

Signature: ORIGINAL SIGNED BY

Date: 11/19/18

Print Name: Jim Rehtin

Print Title: President and Chief Executive Officer

ACN Group of California, Inc.

Signature: ORIGINAL SIGNED BY

Date: 11/20/18

Print Name: Stephen Castro

Print Title: President

U.S. Behavioral Health Plan of California

Signature: ORIGINAL SIGNED BY

Date: 11/26/18

Print Name: Marian Maquire

Print Title: President

PrimeCare Medical Network, Inc.

Signature: ORIGINAL SIGNED BY

Date: 11/20/18

Print Name: Leigh Hutchins

Print Title: CEO

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Monarch Health Plan, Inc.

Signature: ORIGINAL SIGNED BY

Date: 11/20/18

Print Name: Ray Chicoine

Print Title: President