

<p>DISTRICT COURT, EL PASO COUNTY, COLORADO</p> <p>270 S Tejon St Colorado Springs, CO 80903</p>	<p style="text-align: center;"><b>^ COURT USE ONLY ^</b></p>
<p>STATE OF COLORADO, ex rel. PHILIP J. WEISER, ATTORNEY GENERAL Plaintiff,</p> <p>v.</p> <p>UNITEDHEALTH GROUP INCORPORATED,  and  DAVITA INC.,  Defendants.</p>	
	<p>Case No. [CASE NO]</p> <p>Div.: [DIVISION] Ctrm.: [COURTROOM]</p>
<p><b>CONSENT JUDGMENT</b></p>	

The State of Colorado, through Philip J. Weiser, its Attorney General, filed its Complaint on June 19, 2019; Colorado and Defendants, UnitedHealth Group Incorporated and DaVita Inc., consent to the entry of this Consent Judgment without trial or adjudication of any issue of fact or law; and without this Consent Judgment constituting any evidence against or admission by any party regarding any issue of fact or law.

Defendants agree to be bound by the provisions of this Consent Judgment pending approval by the Court.

The purpose of this Consent Judgment is to ensure that competition in the market for Medicare Advantage insurance plans in El Paso and Teller Counties, Colorado, is not substantially lessened by the proposed acquisition of DaVita Medical Holdings LLC by Defendant UnitedHealth's subsidiary.

Colorado requires Defendants to implement the operational and contractual measures described below to remedy the loss of competition alleged in the Complaint.

Subject to the consummation of the acquisition of DaVita Medical Holdings, LLC by Defendant United's subsidiary, Optum, Defendants promise Colorado that the remedies required below will be accomplished and that Defendants will later raise no claim of hardship or difficulty in undertaking the remedies specified below as grounds for asking the Court to modify any of the remedy provisions contained below.

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED ADJUDGED AND DECREED:

#### **I. Jurisdiction**

This Court has jurisdiction over the subject matter and over each of the parties to this action. The Complaint states a claim upon which relief may be

granted against Defendants under § 6-4-107(1), C.R.S., and venue is proper under § 6-4-109(2), C.R.S. Defendants waive any objection to jurisdiction in this Court and any objection of any kind that could arise from § 6-4-107(3), C.R.S.

## II. Definitions

As used in this Consent Judgment:

A. “DaVita” means defendant DaVita Inc., a for-profit corporation with its principal place of business in Denver, Colorado; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. “Document” means all “writings,” “photographs,” and “recordings” as those terms are defined in Rule 1001(1) of the Federal Rules of Evidence.

C. “Centura Health” means Centura Health, a not-for-profit corporation with its principal place of business in Centennial, Colorado; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Centura Health Agreement” means the Hospital Services Agreement entered into January 1, 2004 by and between PacifiCare of Colorado and Centura Health, as amended.

E. “CSHP” means DaVita Medical Group Colorado Springs, LLC (d/b/a Colorado Springs Health Partners, LLC), a limited liability company with its principal place of business in Denver, Colorado; its successors and assigns; and its

subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures; and their directors, officers, managers, agents, and employees.

F. “Humana” means Humana Inc., a for-profit corporation with its principal place of business in Louisville, Kentucky; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures; and their directors, officers, managers, agents, and employees.

G. “Humana-CSHP Agreement” means the Physician Participation Agreement, dated November 1, 2010 by and between CSHP and Humana, as amended by the Seventh Amendment dated April 28, 2016.

H. “Mountain View” means Mountain View Medical Group, LLC (d/b/a Mountain View Medical Group, a DaVita Medical Group), a limited liability company with its principal place of business in Denver, Colorado; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures; and their directors, officers, managers, agents, and employees

I. “United” means defendant UnitedHealth Group Incorporated, a for-profit corporation with its principal place of business in Minnetonka, Minnesota; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures; and their directors, officers, managers, agents, and employees.

### **III. Applicability**

This Consent Judgment applies to United and DaVita and all other persons in active concert or participation with any of them in connection with the subject matter of this Consent Judgment.

### **IV. Remedies**

By this Consent Judgment:

A. United and its subsidiaries (a) shall not enforce the provisions of the Centura Health Agreement to the extent that they require Centura Health to deal exclusively with United in the provision of hospital services for Medicare Advantage health plans on a capitated basis in El Paso or Teller Counties; and (b) shall not enter into any new exclusive arrangement with Centura Health prior to January 1, 2024 that would prevent Centura Health from providing healthcare services to a Medicare Advantage health plan in El Paso or Teller Counties.

B. Defendants shall not, absent cause, provide notice of non-renewal of any existing CSHP or Mountain View contract, or contract covering CSHP or Mountain View, with (1) a health plan that includes Medicare Advantage enrollees in El Paso or Teller Counties, that would be effective prior to the end of the 2019 plan year; and (ii) a health plan in El Paso or Teller Counties to the extent that the contract exclusively covers Medicare Advantage enrollees that would be effective prior to the end of the 2020 plan year, including providing notice of non-renewal of the Humana-CSHP Agreement under Section 6.1 of the Humana-CSHP Agreement

prior to January 1, 2020 so that the contract extends through at least December 31, 2020. Nothing in this Consent Judgment alters Humana's right of non-renewal under Section 6.1 of the Humana-CSHP Agreement or any other rights to terminate consistent with the contract's terms.

## **V. Compliance Inspection**

A. For the purposes of determining or securing compliance with this Consent Judgment, and subject to any legally recognized privilege, authorized representatives of the State shall, on reasonable notice to Defendants, be permitted:

- (1) To inspect and copy, or at the State's option, to require Defendants to provide hard-copy or electronic copies (in a searchable and, if available, sortable format) of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in Section IV of this Consent Judgment; and
- (2) To interview, either informally or on the record (at the discretion of the State), Defendants' officers, employees, or agents about any matters contained in Section IV of this Consent Judgment. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants. The interviewee may have counsel present at any such interview.

B. Upon the written request of an authorized representative of the State sent to the address provided in Section VI, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Consent Judgment as may be reasonably requested with reasonable notice and time to respond.

C. No information or documents obtained by the means provided in this section shall be divulged by the State to any person other than an authorized representative of the State, except during legal proceedings to which the State is a party, or for securing compliance with this Consent Judgment, or as otherwise required by law.

D. Nothing in this Consent Judgment shall prevent any party from seeking a protective order or other, suitable confidentiality protections to shield confidential business information and personal information. In particular, any party may request protections under the exemptions set out in the Colorado Open Records Act, 24-72-201 C.R.S. *et seq.* (“CORA”). Colorado agrees to provide notice as soon as practicable to Defendants if and when it receives a CORA request for information related to the subject-matter of this Consent Judgment.

## VI. Notice

Whenever notice must be provided to the Defendants pursuant to the terms of this Consent Judgment, such notice shall be made by first-class mail, return receipt requested, and email addressed to the following:

For United:

Cole Finegan  
Andrew C. Lillie  
Hogan Lovells US LLP  
1601 Wewatta Street  
Suite 900  
Denver, CO 80202

For DaVita:

Alissa H. Gardenswartz  
Brownstein Hyatt Farber Schreck, LLP  
410 Seventeenth Street  
Suite 2200  
Denver, CO 80202

or to such other person whom the Defendants may designate from time to time.

## VII. Retention of Jurisdiction

This Court retains jurisdiction over this Consent Judgment. Any party may seek relief from this Court at any time to carry out or construe this Consent Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.



### VIII. Expiration of Consent Judgment

Absent extension, this Consent Judgment shall expire on June 18, 2024.

However, if the State and United jointly move to terminate it after January 1, 2024, it shall automatically expire upon the filing of such motion.

Jointly Approved and Submitted for Entry on Behalf of:

Plaintiff, the State of Colorado ex. Rel. Philip J. Weiser, Colorado Attorney General

By: /s/ Eric R. Olson

Date: June 18, 2019

Eric R. Olson  
Solicitor General  
Colorado Department of Law

Defendant, UnitedHealth Group Incorporated

By: /s/ Cole Finegan

Date: June 18, 2019

Cole Finegan  
Hogan Lovells US LLP

Defendant, DaVita Inc.

By: /s/ Alissa H. Gardenswartz Date: June 18, 2019

Alissa H. Gardenswartz  
Brownstein Hyatt Farber Schreck, LLP

SO ORDERED:

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

s/  
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DISTRICT COURT JUDGE