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UNITED STATES OF AMERICA NI

Rebecca Kelly  
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Respondents of all the jurisdictional facts set forth in the Draft Complaint; (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true; (3) waivers and other provisions as required by the Commission's Rules; and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent UnitedHealth Group Incorporated is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 9900 Bren Road East, Minnetonka, Minnesota 55343.
2. Respondent Collaborative Care Holdings, LLC is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 9900 Bren Road East, Minnetonka, Minnesota 55343.
3. Respondent DaVita Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 2000 16<sup>th</sup> Street, Denver, Colorado 80202.
4. Respondent DaVita Medical Holdings, LLC, is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of California with its executive offices and principal place of business located at 717 17<sup>th</sup> Street, Denver, Colorado 80202.
5. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.



Ownership Interest

information: (i) that relates both to the HealthCare Partners Nevada Business and the Retained Businesses and cannot be segregated in a manner that m2s









2. information specifically excluded from the HealthCare Partners Nevada Assets conveyed to the Acquirer; and
- 3.

Contracts”), including:

- a. the Amended and Restated Intracompany Services Agreement between VillageHealth DM LLC and DaVita Medical IPA Nevada, LLC, dated January 1, 2018;
- b. the Amended and Restated Provider Services Agreement between DaVita Inc. and DaVita Medical IPA Nevada, LLC, dated December 1, 2017;

provided, however, that where any such contract, agreement, mutual understanding, arrangement, or commitment covers services being provided by a Third Party to a Respondent that are used in both the HealthCare Partners Nevada Business and the Retained Businesses, the Respondent shall, at the Acquirer’s option, make available to the Acquirer all such services provided to that Respondent under that contract, agreement, mutual understanding, arrangement, or commitment as are used in the HealthCare Partners Nevada Business;

provided further, however, that HealthCare Partners Nevada Contracts excludes Intracompany Contracts where, on or before the Divestiture Date, Respondents and the Acquirer have agreed in a HealthCare Partners Nevada Divestiture Agreement for Respondents to provide the services covered by the Intracompany Contracts to the Acquirer.

AA. “HealthCare Partners Nevada Divestiture Agreement(s)” means the following:

1. Equity Purchase Agreement and between Collaborative Care Holdings, LLC and IHC Health Services, Inc., dated May 3, 2019, and as amended on May 31, 2019;
2. Transition Services Agreement and between Collaborative Care Holdings, LLC and IHC Health Services, Inc. to be executed on or before the Divestiture Date;
3. Trademark License Agreement and among Collaborative Care Holdings, LLC, DaVita Medical Management, LLC, and IHC Health Services, Inc. to be executed on or before the Divestiture Date;
4. all amendments, exhibits, attachments, agreements, and schedules attached to and submitted to the Commission with the foregoing listed agreement(s); and
5. any other agreement between a Respondent(s) and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of this Order.

The HealthCare Partners Nevada Divestiture Agreements submitted to the Commission by the Respondents on or before

providing transition services, such Software shall be licensed to the Acquirer immediately upon the Divestiture Date, and shall include rights to all updates and improvements made to such Software during the time that the Respondents are providing Transition Services to the Acquirer. Respondents are not required to provide rights to any updates or improvements made by Respondents thereafter;

2. an exclusive as to UnitedHealth, Collaborative Care Holdings, and DaVita Medical Holdings and non-exclusive as to DaVita (with respect to the “DaVita” Trademark), fully paid-up, and royalty-free sublicense within the State of Nevada to use the Trademarks “DaVita” and “DaVita Medical Group” and related logos in the operation of the HealthCare Partners Nevada Business for a period continuing until six (6) months after the Divestiture Date or until March 1, 2020, whichever is later, provided, however that the granting of such sublicense shall not restrict DaVita from using the Trademark “DaVita” and related logos within the State of Nevada; and
3. for at least a three-year period, an exclusive, fully paid-up, and royalty-free license within the State of Nevada, without rights to sublicense, to use the Trademark “HealthCare Partners” and certain related acronyms, corporate names, logos, and social media accounts in the operation of the HealthCare Partners Nevada Business, including rights to use the foregoing in connection with any Marketing Materials, Web Portals, or Websites related to the HealthCare Partners Nevada Business that may be disseminated, or are capable of being viewed or accessed, outside the State of Nevada for a period continuing until (a) 6 ( )-6 ( )-4 ( o)-4 ( r)-1 ( a)-10 ( cces)-5 ( s

or customizations of protocols adapted from Third-Parties.

- EE. “HealthCare Partners Nevada Policies and Procedures” means all policies and procedures owned by DaVita Medical Holdings, whether in hard copy or electronic format, and the related operational systems that have been used or in effect in the HealthCare Partners Nevada Business at any time since January 1, 2017 including such policies and procedures that are modifications or customizations of policies and procedures adapted from Third-Parties.
- FF. “Healthcare Plan(s)” means any Person that administers, pays, or insures health or medical expenses on behalf of



UU. “Owned Intellectual Property” means Intellectual Property owned by a Respondent as of the Divestiture Date.

VV. “Owned Real Property” means all real property in which any HealthCare Partners Nevada Company has fee title (or equivalent) interest, together with all buildings and other structures, facilities or improvements located thereon, all fixtures, systems, equipment and items of personal property of any HealthCare Partners Nevada Company attached or appurtenant thereto and all easements, licenses, rights and appurtenances relating to the foregoing, including all such property related to the clinics owned or managed by any of the HealthCare Partners Nevada Companies.

WW. “Ownership Interest” means any voting securities, non-voting securities, share capital, non-corporate interest, notes convertible into any voting or non-voting stock, contractual power to designate a director of an entity, equity, or other interest in an entity or its assets.

XX. “Person(s)” means any individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons, or Government Entity, and any subsidiaries, divisions, groups, or affiliates thereof.

YY. “Retained Businesses” means all businesses acquired by Respondent UnitedHealth pursuant to the Acquisition Agreement other than the HealthCare Partners Nevada Business.

ZZ. “Shared Intellectual Property” means all Owned Intellectual Property (other than Trademarks and Domains Names) that is (often36.14 -11E1BJ ( )4 (, c (p)-(ean)-42.-2 c 0 Tw 12.5t)-2 (, )TJ -0.004 Tl

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Technology (and all related Intellectual Property) who will be responsible for communicating directly with the Acquirer and the Monitor for the purpose of effecting such delivery ~~unless~~ such Persons are hired by the Acquirer;

2. preparing technology transfer protocols and transfer acceptance criteria for both the processes and analytical methods related to the Information Technology that are acceptable to the Acquirer to the extent that any such technology is not maintained and fully available on a system that is being divested to the Acquirer pursuant to this Order;
3. preparing and implementing a detailed technological transfer plan that contains, *inter alia*, the transfer and delivery of all relevant information, data, all appropriate documentation, all other materials, and projected time lines for the delivery of all such Information Technology (including all related Intellectual Property) to the Acquirer to the extent that any such technology and information is not maintained and fully available on a system that is being divested to the Acquirer pursuant to this Order; and
4. to the extent the Persons with the relevant knowledge about the Information Technology remain employees of a Respondent, providing, in a timely manner, assistance and advice from these employees to enable the Acquirer to:
  - a. use the Information Technology in the quality and manner consistent with past practices; and
  - b. receive, integrate, and use all such Information Technology and all such Intellectual Property related to the HealthCare Partners Nevada Business.

CCC. “Third Party(ies)”

employees or by affiliated physicians or other Persons that comprise the network of HealthCare Partners Nevada Business) or for external use, (e.g., by patients or Healthcare Plans) that are (i) acquired or to be acquired by UnitedHealth pursuant to the Acquisition Agreement and (ii) used in the conduct of the HealthCare Partners Nevada Business as of the Divestiture Date, and the related operational systems.

GGG. “Website(s)” means the content of all external Website(s) located at the Domain Names, the Domain Names, and all copyrights in such Website(s), to the extent owned by a Respondent as of the Divestiture Date; provided, however, the term “Website” shall not include the following: (1) content owned by Third-Parties and other Intellectual Property not owned by a Respondent that are incorporated in such Website(s), such as stock photographs used in the Website(s), except to the extent that a Respondent can convey its rights, if any, therein; or (2) content not directly related to operation of the HealthCare Partners Nevada Business.

## **II. Divestiture**

**IT IS FURTHER ORDERED** that:

- A. Not later than forty (40) days after the Acquisition Date, Respondents shall divest the HealthCare Partners Nevada Assets and grant the HealthCare Partners Nevada Licenses, absolutely and in good faith, to Intermountain pursuant to, and in accordance with, the HealthCare Partners Nevada Divestiture Agreements and in a manner consistent with the Technical Transfer Standards, as applicable.
- B. If Respondents have divested the HealthCare Partners Nevada Assets to Intermountain prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents thagi (q)2: (v)-10iotn



- D. Prior to the Divestiture Date, Respondents shall secure all consents and waivers from all Third-Parties that are necessary to permit Respondents to divest the HealthCare Partners Nevada Assets to an Acquirer, and to permit the Acquirer to continue the HealthCare Partners Nevada Business without interruption or impairment;
- provided, however Respondents may satisfy this requirement by certifying that the Acquirer has executed all such agreements directly with each of the relevant Third-Parties.
- E. Respondents shall not use or license any Third Party to use the Trademark “HealthCare Partners” and related acronyms, corporate names, social media accounts, Domain Names, and logos within the State of Nevada for a period of at least three (3) years following the term of any HealthCare Partners Divestiture Agreement to license such Trademarks to the Acquirer within the State of Nevada, except to the extent it would be permissible as nominative or descriptive fair use under the applicable trademark laws.

### **III. Divestiture Agreements**

#### **IT IS FURTHER ORDERED that:**

- A. The HealthCare Partners Nevada Divestiture Agreements shall be incorporated by reference into this Order and made a part hereof, and any failure by a Respondent to comply with any term of the HealthCare Partners Nevada Divestiture Agreements shall constitute a violation of the Order; provided, however that the HealthCare Partners Nevada Divestiture Agreements shall not limit, or be construed to limit, the terms of this Order. To the extent any provision in the HealthCare Partners Nevada Divestiture Agreements varies from or conflicts with any provision in the Order such that the Respondents cannot fully comply with both, Respondents shall comply with the Order.
- B. The Order shall not be construed to reduce any right or benefits of the Acquirer or to reduce any obligations of the Respondents to the Acquirer under the HealthCare Partners Nevada Divestiture Agreements.
- C. Respondents shall include in the HealthCare Partners Nevada Divestiture Agreements a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of each Respondent’s obligation to the Acquirer pursuant to this Order.
- D. No Respondent shall seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any HealthCare Partners Nevada Divestiture Agreement, a decision the result of which would be inconsistent with the terms of this Order or the remedial purposes thereof.
- E. Respondents shall not modify or amend any of the terms of any HealthCare Partners Nevada Divestiture Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5).

#### **IV. Transition Assistance**

**IT IS FURTHER ORDERED** that:

- A. Respondents shall, upon written request of the Acquirer, provide Transition Services in a timely manner and under reasonable terms and conditions at no greater than Direct Cost for a period of time sufficient to allow the Acquirer to perform the services independently of Respondents.
- B. Respondents shall provide access to, and use of, all of the Information Technology, Business Information, Web Portals, and Intellectual Property (whether owned by, or licensed to, the Respondents) as is necessary to ensure the uninterrupted operations of the HealthCare Partners Nevada Business as of the Divestiture Date in the quality and manner consistent with past practices and for a period of time sufficient to allow the Acquirer to integrate and fully operate the HealthCare Partners Nevada Business.
- C. During the term of any agreement with the Acquirer to provide Transition Services and pursuant to such agreement and this Order, Respondents shall:
  - 1. provide such Transition Services to the Acquirer in a manner commensurate to the performance of such services immediately prior to the Divestiture Date (in nature, quality, degree of care, skill, diligence, and timeliness);
  - 2. take all actions as are reasonably necessary to ensure that the provision of Transition Services to the Acquirer are uninterrupted;
  - 3. not limit damages (such as indirect, special, and consequential damages) that the Acquirer would be entitled to receive in the event of Respondents' breach of such agreement;
  - 4. not be entitled to terminate such agreement due to the Acquirer filing a petition in bankruptcy, or entering into an agreement with its creditors, or applying for or consenting to appointment of a receiver or trustee, or making an assignment for the benefit of its creditors, or becoming subject to involuntary proceedings under any bankruptcy or insolvency Law;
  - 5. provide consultation with knowledgeable employees of Respondents and training, at the written request of the Acquirer, for the purposes of enabling the Acquirer to provide such services independently of the Respondents;
  - 6. permit the Acquirer to terminate such agreement at any time upon commercially reasonable notice and without cost or penalty (other than costs or penalties due or owed to Third-Parties pursuant to the termination of any such agreement, which shall be the responsibility of the Acquirer); and
  - 7. upon the Acquirer's request, file with the Commission a written request to extend the time period of any such agreement.
- D. For a period of three (3) years after the Divestiture Date, Respondents shall provide to the Acquirer an automatic forwarding of all e-mails sent to any e-mail address with the DaVita or DaVita Medical Holdings domain names that was used by an employee or affiliate of the



least six (6) months prior to being hired by the Respondents.

- C. On or before the Divestiture Date, Respondents shall notify each Essential Employee of the above-described provisions of this Order that pertain to that employee. Respondents shall give such notification by e-mail with return receipt requested or similar transmission with a copy to the Acquirer.
- D. From the Divestiture Date until the date that is two (2) years after the Divestiture Date, Respondent UnitedHealth shall not permit any of its employees who are current or former employees of DaVita or DaVita Medical Holdings:
  - 1. to negotiate with any Healthcare Plan to provide Healthcare Provider services for the purposes of a Nevada Medicare Advantage Plan, or
  - 2. to participate in the internal or external discussions or communications related to any negotiations with that Healthcare Plan related to a Nevada Medicare Advantage Plan,if that employee engaged in such activities in connection with that Healthcare Plan as an employee of DaVita or DaVita Medical Holdings prior to the Divestiture Date.

## **VI. Asset Maintenance**

**IT IS FURTHER ORDERED** that:

- A. Until Respondents complete the divestiture of the HealthCare Partners Nevada Assets to the Acquirer, Respondents shall take actions as are necessary to:
  - 1. maintain the full economic viability and marketability of the HealthCare Partners Nevada Assets;
  - 2. minimize any risk of loss of competitive potential for the HealthCare Partners Nevada Business;
  - 3. ~~30706 (h)-as s. 36 prevent-2 (tear)-1 (en) t)-6 (h)-4 (e)-2 (r)(e P)-8 (-10a(e P)-m)-~~

- a. in good faith;
  - b. in a timely manner, i.e., as soon as practicable, avoiding any delays in transmission of the respective information; and
  - c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;
2. pending complete delivery of all such HealthCare Partners Nevada Confidential Business Information to the Acquirer, provide the Acquirer and the Monitor with access to all such HealthCare Partners Nevada Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files that contain such HealthCare Partners Nevada Confidential Business Information and facilitating the delivery in a manner consistent with this Order;
3. not use, directly or indirectly, any such HealthCare Partners Nevada Confidential Business Information other than as necessary to comply with the following:
  - a. the requirements of the Orders;
  - b. Respondents' obligations to the Acquirer under the terms the HealthCare Partners Nevada Divestiture Agreements; or
  - c. applicable Law;
4. not disclose or convey any HealthCare Partners Nevada Confidential Business Information, directly or indirectly, to any Person **except** (i) the Acquirer, (ii) other Persons authana5 (u)-q N4 (c)4 (t)-2 (l)-12 (y)20 (, t)-2 ( (y)20 ( a)4 (n)-110 (xc15 ( ) )TJA)-2)20 (

7. take all actions necessary and appropriate to prevent access to, and the disclosure or use of



F. The Monitor shall serve, without bond or other security, at the expense of Respondent UnitedHealth



necessary to permit that Monitor to monitor each Respondent's compliance with the Orders in a manner consistent with the purposes of the Orders.

- L. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.
- M. The Monitor may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

#### **IX. Divestiture Trustee**

**IT IS FURTHER ORDERED** that:

- A. If the Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver, or otherwise convey the HealthCare Partners Nevada Assets as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. §

or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed.

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestiture(s) can be achieved within a reasonable time, the divestiture period may be extended by the Commission;

provided, however, the Commission may extend the divestiture period only two (2) times.

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by a Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture(s) shall be made in the manner and to an Acquirer as required by this Order; provided, however, Rc1 (ur6 (n)-o(i)-2-3 d2 (lf(s [ o3 T)1 -1.17 Td [')T'

including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent UnitedHealth, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be

## **X. Prior Notification of Acquisitions**

**IT IS FURTHER ORDERED** that:

A. For a period of ten (10) years beginning on the Order Date, Respondent UnitedHealth shall not, without providing advanced written notification to the Commission in the manner described in this paragraph (“Notification”), directly or indirectly, through subsidiaries, partnerships or otherwise:

1. acquire any Ownership Interest in (i) any Person that owns any interest in, operates, or employs any Las Vegas Healthcare Provider, or (ii) any Person that owned any interest in, operated, or employed any Las Vegas Healthcare Provider within six (6) months prior to such proposed transaction;
2. acquire rights to control, choose, or designate any Ownership Interest in any of the Persons described in Paragraph X.A.1; or
3. enter into any contract to affiliate with and to become a management services organization (e.g., control all back office or administrative functions) for f(tl)a(hns)-1 ( )3FTJ -T



**XII.**

**XV. Term**

**IT IS FURTHER ORDERED** that this Order shall terminate on August 12, 2029.

By the Commission, Chairman Simons recused.

**NON-**



**NON-**

**PUBLIC APPENDIX III**  
**MONITOR AGREEMENT**  
**[Cover Page]**

**NON-**