

ATTORNEY GENERAL OF THE STATE OF NEW YORK

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In the Matter of

**Molina Healthcare of New York, Inc., formerly Total Care, A Today's Options of New York Health Plan**

Assurance No.: 17-015

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**ASSURANCE OF DISCONTINUANCE  
UNDER EXECUTIVE LAW  
SECTION 63, SUBDIVISION 15**

Pursuant to the provisions of Section 63(12) of the Executive Law and Article 22-A of the General Business Law, Eric T. Schneiderman, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of Molina Healthcare of New York, Inc., formerly Total Care A Today's Options® of New York Health Plan (hereinafter referred to as "Total Care"), relating to its provision of personal care services through the Consumer Directed Personal Assistance Program. Based upon that inquiry, the Office of the Attorney General ("the OAG") has made the following findings, and Total Care has agreed to modify its practices and assure compliance with the following provisions of this Assurance of Discontinuance ("Assurance").

**I. BACKGROUND**

1. Total Care is a for-profit prepaid health services plan corporation organized under the provisions of Article 44 of the New York Insurance Law. Total Care was acquired by Molina Healthcare, Inc. from Universal American Corp., and the completed acquisition was announced in August of 2016. Total Care's principal offices are located in Syracuse, New York.

2. In the regular course of business, Total Care enrolls consumers in health plans and contracts with health care providers for the delivery of health care services to those consumers. Total Care serves more than 35,000 members in Central New York through its Medicaid Managed Care and Child Health Plus health plans.

## **II. THE OAG'S INVESTIGATION AND FINDINGS**

3. The Civil Rights and Health Care Bureaus of the OAG conducted an investigation into Total Care's provision of personal care services through the Consumer Directed Personal Assistance Program for its Medicaid Managed Care health plans, following the OAG's receipt of complaints alleging that Total Care (1) failed to adequately notify and provide language assistance services to enrollees with limited English proficiency ("LEP"); (2) failed to adequately notify and provide communication assistance services to at least one enrollee who is deaf; and (3) used "Authorization Letters" (letters that authorize Consumer Directed Personal Assistance Services ("CDPAS")) that did not adequately describe member benefits.

4. The Consumer Directed Personal Assistance Program ("CDPAP") is intended to permit chronically ill and/or physically disabled individuals receiving home care services under the medical assistance program (Medicaid) flexibility and freedom of choice in obtaining such services, including affording them the opportunity to hire certain relatives and friends as caregivers.<sup>1</sup> Total Care, a Medicaid Managed Care health plan, provides Consumer Directed Personal Assistance Services to eligible enrollees.

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<sup>1</sup> New York Social Services Law § 365-f(1) – "Purpose and Intent. The consumer directed personal assistance program is intended to permit chronically ill and/or physically disabled individuals receiving home care services under the medical assistance program greater flexibility and freedom of choice in obtaining such services...."

Under the CDPAP, Medicaid enrollees oversee hiring, training, supervising and, if needed, firing caregivers.

5. Total Care's certificate of authority, issued by the New York State Department of Health ("DOH") states that Total Care's service area in New York State covers Cortland, Onondaga, and Tompkins counties. Total Care's enrollee and potential enrollee populations within this region include LEP individuals, many of whom are also refugees with limited reading proficiency.

6. According to 2014 Census data, of these counties' combined populations ages five and above, 11% speak a language other than English. Of this group, 34.5% speak English "less than very well."

**A. Language Access**

7. Federal regulations require that New York State require Total Care provide enrollment notices and informational materials in a manner and format that enrollees and potential enrollees may easily understand and must take reasonable measures to help LEP enrollees and potential LEP enrollees meaningfully understand plan benefits and eligibility.

8. Federal regulations further require that New York State require Total Care to provide translated materials in formats and in a manner that takes into consideration the special needs of enrollees who have limited reading proficiency.

9. Additionally, federal regulations require that New York State require Total Care to provide free oral interpretation services to LEP enrollees and potential LEP enrollees and notify them that this service is available to them without cost.

10. The New York State Department of Health's Medicaid Managed Care Model Contract ("MMC") requires Total Care to make available certain written advertising and other informational materials (e.g. member handbooks) in a language other than English whenever at least five percent (5%) of Total Care's prospective enrollees in a county (that is part of its services area) speak that particular language and do not speak English as a first language.



11. When the OAG commenced its investigation, Total Care was providing LEP enrollees, whose primary language was neither English nor Spanish, informational materials and notices, including Authorization and Final Adverse Determination<sup>2</sup> letters that were not in the enrollees' primary languages and which did not provide sufficient information about the availability of language assistance services from Total Care.

12. These LEP individuals were not new enrollees, and Total Care knew or should have known that neither English nor Spanish was their primary language. However, all informational materials and notices sent to them, including Final Adverse Determination letters, were only in English or Spanish and not in their primary language. The enrollees did not receive any documents or phone calls translating the notice into their primary languages.

13. Additionally, after Total Care learned or should have learned the primary language of these LEP members, Total Care did not inform them about the availability of or means of accessing free interpretation or translation assistance in their primary language.

14. Total Care's Medicaid member enrollment packet did not include any documents or guidance on how new enrollees could self-identify a primary language for future communication. The 2015 English-language and Spanish-language Member Handbook<sup>3</sup> disseminated to all new enrollees similarly did not include information about the availability of and method for accessing interpretation or translation services in any languages other than English or Spanish, or about how to submit a complaint about such services.

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<sup>2</sup> Final Adverse Determination is defined in 10 NYCRR § 98-2.2(c) as "Final adverse determination means an adverse determination which has been upheld by a utilization review agent with respect to a proposed health care service following a standard appeal, or an expedited appeal where applicable, pursuant to section 4904 of the Public Health Law. If a health care plan offers two levels of internal appeals, a final adverse determination shall mean the adverse determination of the first level appeal."

<sup>3</sup> Total Care asserts that the Total Care Member Handbook adopted the DOH Model Member Handbook for Medicaid plans.

15. Total Care affirmatively asked new enrollees about needs for materials or services in a language other than English, at only one point during the enrollment process: during a health risk assessment that was voluntary and limited to those new members who agreed to participate.

16. Total Care has two written policies for employee use that governed provision of language assistance services, “Written Member Communications – Translation and Special Needs” and “Cyracom Interpreter Services.” Only after the OAG commenced its investigation, did Total Care revise the sections relevant to language assistance services to include the phone number of its interpretation/translation service providers.

17. The revised policies did not use the terms “limited English proficiency” or “LEP” (referring to “ESL” instead which, while not defined in the policy, means “English as a Second Language”) and did not instruct Member Service representatives as to Total Care’s responsibility to affirmatively inform enrollees and potential enrollees of the availability of interpretation or translation services and that such services were free of charge. The policy also did not instruct that the Member Service representative should contact an interpreter in situations in which the representative could not identify the language spoken by the caller.

18. Thereafter, Total Care again updated its language assistance policies and procedures, this time amending: (1) its call script for Member Service representatives on language assistance, (2) the “Written Member Communications – Translation and Special Needs” policy (by adding a definition for LEP and changing all references to “ESL” to “LEP”); and (3) “Written Member Communications – Translation and Special Needs” and the “Cyracom Interpreter Services” policies (to include the process by which Total Care employees arrange translation services for members).

19. After commencement of the OAG investigation, Total Care (1) added language in Nepali to the end of its Authorization Letters notifying recipients of the availability of free telephonic interpretation services, and (2) included in all correspondence with members a statement in English, Spanish, and Nepali that a free written translation or telephonic interpretation is available.<sup>4</sup>

**B. Communication Access**

20. Total Care's Authorization Letter to an enrollee who is deaf and does not read English did not notify the enrollee of the availability of language access or communication assistance options in a manner that the enrollee could reasonably understand. This enrollee was not a new consumer and the consumer's communication needs were known or should have been known by Total Care at the time the Authorization Letter was sent.

21. At the time the OAG commenced its investigation, Total Care had one written policy for employee use concerning the provision of communication assistance services, "Written Member Communications – Translation and Special Needs." The policy states that, "Network Providers are requested to notify [Total Care] Member Services staff by telephone, fax, or in written correspondence" about members who may have "Hearing Impairments." The policy further states that, "Member Services representatives will also identify disabilities and special needs through Member encounters including new member orientation calls, completion of health assessments, and general interactions." Member Service representatives are directed to make a notation in Total Care's electronic record-keeping system indicating that the member is "Hearing Impaired."

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<sup>4</sup> Both before and after commencement of the OAG's investigation, Total Care's Authorization Letters and correspondence with members included a statement in English that the member may obtain the letter in another language or format by calling a 1-800 number or a TTY number.



22. Total Care identified the above-referenced (see Paragraph 21) written policies and training materials as setting forth its communication access guidelines.

23. During the course of the OAG investigation, Total Care added to its Member Handbook a page prominently located at the start of the Handbook noting that it will provide additional assistance to individuals who may have difficulty hearing, including through use of a TTY relay service and help in scheduling appointments.

**C. Personal Care Assistant Services Notification Issues**

24. Section 13.8 of the MMC requires a Medicaid Plan to submit to DOH the “format and content” of all written notifications to members for review and approval.

25. The state regulation (18 NYCRR 505.28(b)(3)) in effect through 2015 (the “2015 regulation”) and state statute (NY Soc. Serv. §365-f) that became effective on April 1, 2016 (the “2016 law”), set forth the parameters of who may or may not serve as a Medicaid enrollee’s personal care assistant, the circumstances under which a relative may serve as a personal care assistant, and the restrictions on where an enrollee’s personal care representative may reside. In its Authorization Letters, Total Care did not provide clear information to enrollees about the individuals who may serve as a personal care assistant, the circumstances under which a relative could provide care as a personal care assistant, or the restrictions on where the personal care assistant could reside.

26. The 2015 regulation prohibited an enrollee’s spouse, parent or designated representative from being a personal assistant but did permit “any other adult relative who resides with the [enrollee] because the amount of care the [enrollee] requires makes such relative’s presence necessary” to be a personal assistant. 18 NYCRR 505.28(b)(3). Thus, under the 2015 regulation, a relative who lived with the enrollee could serve as a personal care attendant if the amount of care the enrollee needed made that relative’s presence necessary.

27. The 2016 law prohibits an enrollee's spouse or designated representative from being a personal assistant, but eliminated the requirement that any other relative serving as a personal assistant must reside with the enrollee. NY Soc. Serv. §365-f(3). Thus, under the 2016 law, relatives (other than an enrollee's spouse or designated representative) may or may not reside with the enrollee and still serve as a personal care assistant.

28. Authorization Letters issued by Total Care in 2015 and 2016 contained misleading information to over 150 members as to who could or could not be the personal care assistant for a Medicaid enrollee. Specifically, these Letters misstated that relatives could be personal care assistances only if: (i) they lived outside the home of the Medicaid enrollee, and (ii) the Medicaid enrollee needed ongoing help with toileting, walking, or feeding. The OAG notified Total Care of the errors in the Letters in June 2016.

29. On or about September 16, 2016, Total Care began using OAG-approved revised letters to inform members who may serve as a CDPAS assistant.

30. On or about October 10, 2016 Total Care mailed out OAG-approved letters to 158 members who had CDPAS authorized since April 1, 2016 informing them who may serve as a CDPAS assistant.

### **III. RELEVANT LAWS**

31. Under Title VI of the Civil Rights Act of 1964 ("Title VI"), 2 U.S.C. §§ 2000d to 2000d-4a, and its implementing regulations, 45 C.F.R. Part 80, programs or services that receive federal financial assistance are prohibited from discriminating on the basis of national origin, including through the use of programs or policies that have an adverse impact on individuals with limited English proficiency.

32. Federal regulations governing New York State's administration of managed care health plans require that the State ensure that "each MCO [managed care organization] ... complies



with any other applicable Federal and State laws (such as: title VI of the Civil Rights Act of 1964 as implemented by regulations at 45 CFR part 80[])... .” 42 C.F.R. 438.100(d).

33. Apart from the above-referenced provisions concerning Title VI compliance, other federal regulations require managed care organizations (“MCOs”) to “participate[] in the State’s efforts to promote the delivery of services in a culturally competent manner to all enrollees, including those with limited English proficiency and diverse cultural and ethnic backgrounds.” 42 C.F.R. 438.206(c)(2).

34. New York State is specifically required by these regulations to ensure that MCOs:
- a. make “written information available in the prevalent non-English languages in its particular service area,” 42 C.F.R. 438.10(c)(3);
  - b. provide “all enrollment notices, informational materials, and instructional materials relating to enrollees and potential enrollees in a manner and format that may be easily understood,” *id.* 438.10(b)(1);
  - c. “[m]ake oral interpretation services available ... free of charge to each potential enrollee and enrollee,” regardless whether the person’s primary language is a prevalent or non-prevalent language in the relevant service area, *id.* 438.10(c)(4);
  - d. notify enrollees “[t]hat oral interpretation is available for any language and written information is available in prevalent languages” and the method/procedure for accessing such interpretation services, *id.* 438.10(c)(5);
  - e. provide potential enrollees the “[n]ames, locations, telephone numbers of, and non-English language spoken by current contracted providers,” which,

at minimum shall include primary care physicians, specialists, and hospitals, as well as those providers that are not accepting new patients, *id.* 438.10(e)(2)(ii)(D); and

- f. provide enrollees the same information but limited to the enrollee's service area, *id.* 438.10(f)(6)(i).

35. Section 1557 of the Patient Protection and Affordable Care Act ("ACA") states that an individual may not, on grounds protected by, *inter alia*, Title VI or section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, which guarantees against disability-based discrimination, "be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance" from or administered by the Department of Health and Human Services. 42 U.S.C. § 18116(a).

36. During the pendency of the OAG's investigation, the Department of Health and Human Services promulgated implementing regulations that went into effect on July 18, 2016, and for which the deadline for compliance was October 18, 2017. These regulations required covered entities such as Total Care to "take reasonable steps to provide meaningful access to each individual with limited English proficiency eligible to be served or likely to be encountered in its health programs and activities," 45 C.F.R. § 92.201, and "take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others in health programs and activities...." 45 C.F.R. § 92.202. Minimum requirements with respect to each of these goals, as relevant to the type of services provided by the covered entity, are set forth in these regulations.

37. Additionally, covered entities must “take appropriate initial and continuing steps to notify beneficiaries, enrollees, applicants, and members of the public” about the availability of free and timely-provided “language assistance services, including translated documents and oral interpretation” and “appropriate auxiliary aids and services, including qualified interpreters for individuals with disabilities and information in alternate formats ... when such aids and services are necessary to ensure an equal opportunity to participate to individuals with disabilities.” 45 C.F.R. § 92.8(a)(2), (3). Such notice shall include information on how to obtain such services, how to file a complaint with the entity about such services (including the name and contact information of the employee responsible for investigating such complaints), and how to file a complaint with the Office of Civil Rights of the Department of Health and Human Services.

38. New York Social Services Law 365-f and its implementing regulations (including 18 NYCRR 505.28), sets forth the eligibility and other requirements for the CDPAP. The New York State Medicaid Managed Care Model Contract sets forth the obligations of the Medicaid Managed Care Contractor, including those pertaining to personal care services, CDPAS, translation and oral interpretation, and communication with the visually, hearing and cognitively impaired.

39. The New York State Executive Law authorizes the Attorney General, where there are “repeated fraudulent or illegal acts” or “persistent fraud or illegality in the carrying on, conducting or transaction of business,” to seek relief, including enjoining the continuance of such business activity or of any fraudulent or illegal acts, as well as restitution and damages. N.Y. Exec. Law § 63(12).

40. Based on the findings of the Attorney General’s investigation, the Attorney General has determined that Total Care’s conduct has resulted in violations of N.Y. Executive Law Section



63(12), provisions of the New York Social Services Law and its implementing regulations as they pertain to the CDPAP, and provisions of Title VI of the Civil Rights Act of 1964 and its implementing regulations.

**NOW, WHEREAS,** Total Care neither admits nor denies the Attorney General's findings in Paragraphs 3 through 30; and

**WHEREAS,** effective communications between Medicaid applicants/enrollees with LEP and/or disabilities and Total Care are essential for ensuring that personal care and other services are properly assessed and administered; and

**WHEREAS,** Total Care has cooperated with the OAG's investigation; and

**WHEREAS,** the Attorney General is willing to accept the terms of this Assurance under Executive Law Section 63(15) and to discontinue his investigation; and

**WHEREAS,** this Assurance will apply solely to enrollees in Total Care's Medicaid Managed Care products; and

**WHEREAS,** the parties each believe that the obligations imposed by this Assurance are prudent and appropriate; and

**WHEREAS,** the Attorney General has determined that this Assurance is in the public interest.

**IT IS HEREBY UNDERSTOOD AND AGREED,** by and between the parties that:

**IV. PROSPECTIVE RELIEF**

41. Within thirty (30) days of the Effective Date, Total Care will implement the following reforms:

- a. Revise internal policies concerning the provision of interpretation and translation services so as to meet the legal requirements summarized in Paragraphs 31 through 40 above and, at minimum:

- i. Through the Member Handbook and use of the DOH-approved form with all “significant communications” to members (as defined by 45 C.F.R. § 92), notify enrollees or potential enrollees about the availability of free interpretation and translation services, as well as auxiliary aids to aid in communication, even if they do not inquire about such matters.
  - ii. Require Member Service representatives to document an enrollee’s preferred mode and/or language of communication and any other information necessary to provide meaningful access to Total Care’s services.
  - iii. Provide instruction for Member Service representatives on how an individual may file a complaint concerning language assistance or auxiliary communication aids.
  - iv. Perform periodic analysis of internal records, any complaints, and employee feedback regarding its language assistance and communication access policies and practices.
- b. Submit the revised policies referenced in subsection (a) above to the OAG for review and, within 15 days of OAG approval, disseminate the approved policies to all relevant personnel.
  - c. Revise, as appropriate, its training materials to reflect the changes made to its written language access and communication access policies and submit them to the OAG for review and approval.

d. In addition to continuing to use the revised policies and language referenced in Paragraphs 18, 19, and 23 above, adhere to DOH requirements issued pursuant to 45 C.F.R. § 92.8 to notify consumers of their right to free language assistance and communication services by, at minimum:

i. Providing a link on its website homepage to a page advising consumers of (i) the availability of free language assistance services and auxiliary aids for those with visual or hearing impairments, (ii) the method for accessing those services via telephone or email, printed in English and Total Care's primary languages, and (iii) the method for filing a complaint about those services or provision thereof, printed in English and Total Care's primary languages.

42. Total Care shall follow the policies and practices approved by the OAG, as discussed in Paragraph 41 above.

#### **V. PENALTIES**

43. In consideration of the making and execution of this Assurance, and within thirty (30) days of the Effective Date of this Assurance, Total Care shall pay \$25,000 to the OAG as a civil penalty. Checks issued pursuant to this Assurance shall be made payable to "State of New York Department of Law" and must reference "Assurance 17-015."

#### **VI. MISCELLANEOUS**

##### **Compliance**

44. Total Care shall submit to the OAG, within 60 days of the Effective Date, a detailed report certifying and setting forth its compliance with this Assurance. Such report shall include the following:



- a. Evidence of Total Care's implementation of the reforms specified in Section IV of this Assurance (including copies of communications to members, internal policies and procedures, and plan documents, as applicable).
- b. Evidence of Total Care's distribution of the revised policies described in Section IV. and training of its staff regarding these changes, including training materials and lists of attendees at and dates of training sessions.

#### **Total Care's Representations**

45. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Total Care and its counsel and the OAG's own factual investigation as set forth in the above Findings. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

#### **Communications**

46. All communications, reports, correspondence, and payments that Total Care submits to the OAG concerning this Assurance or any related issues is to be sent to the attention of the people identified below:

Brant Campbell  
Assistant Attorney General  
Health Care Bureau  
Office of the New York Attorney General  
120 Broadway, 26<sup>th</sup> Floor  
New York, NY 10271  
Brant.Campbell@ag.ny.gov

Anjana Samant  
Assistant Attorney General  
Civil Rights Bureau  
Office of the New York Attorney General  
120 Broadway, 23<sup>rd</sup> Floor  
New York, NY 10271  
Anjana.Samant@ag.ny.gov

47. Receipt by the OAG of materials referenced in this Assurance, with or without comment, shall not be deemed or construed as approval by the OAG of any of the materials, and Total Care shall not make any representations to the contrary.

48. All notices, correspondence, and requests to Total Care shall be directed as follows:

Molina Healthcare of New York, Inc.  
5232 Witz Drive  
North Syracuse, NY 13212  
Attention: Director of Compliance

#### **Valid Grounds and Waiver**

49. Total Care hereby accepts the terms and conditions of this Assurance and waives any rights to challenge it in a proceeding under Article 78 of the Civil Practice Law and Rules or in any other action or proceeding.

#### **No Deprivation of the Public's Rights**

50. Nothing herein shall be construed to deprive any member or other person or entity of any private right under law or equity.

#### **No Blanket Approval by the Attorney General of Total Care's Practices**

51. Acceptance of this Assurance by the OAG shall not be deemed or construed as approval by the OAG of any of Total Care's acts or practices, or those of its agents or assigns, and none of them shall make any representation to the contrary.

#### **Monitoring by the OAG**

52. To the extent not already provided under this Assurance, Total Care shall, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance. This Assurance does not in any way limit the OAG's right to obtain, by subpoena or by any other means permitted by law, documents, testimony, or other information.

### **No Limitation on the Attorney General's Authority**

53. Nothing in this Assurance in any way limits the OAG's ability to investigate or take other action with respect to any non-compliance at any time by Total Care with respect to this Assurance, or Total Care's noncompliance with any applicable law with respect to any matters.

### **No Undercutting of Assurance**

54. Total Care shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Total Care's (a) testimonial obligations or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party. This Assurance is not intended for use by any third party in any other proceeding.

### **Governing Law; Effect of Violation of Assurance of Discontinuance**

55. Under Executive Law Section 63(15), evidence of a violation of this Assurance shall constitute *prima facie* proof of a violation of the applicable law in any action or proceeding thereafter commenced by the OAG.

56. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

57. If a court of competent jurisdiction determines that Total Care has breached this Assurance, Total Care shall pay to the OAG the cost, if any, of such determination and of enforcing this Assurance, including, without limitation, legal fees, expenses, and court costs.

58. If the Assurance is voided or breached, Total Care agrees that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event the Assurance is voided or breached, Total Care expressly agrees and acknowledges that this



Assurance shall in no way bar or otherwise preclude the OAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against Total Care, or from using in any way any statements, documents or other materials produced or provided by Total Care prior to or after the date of this Assurance.

**No Presumption Against Drafter; Effect of any Invalid Provision**

59. None of the parties shall be considered to be the drafter of this Assurance or any provision for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Assurance was drafted with substantial input by all parties and their counsel, and no reliance was placed on any representation other than those contained in this Assurance.

60. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

**Entire Agreement; Amendment**

61. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Total Care in agreeing to this Assurance.

62. This Assurance contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties, and the Assurance is not subject to any condition not provided for herein. This Assurance supersedes any prior agreements or understandings, whether written or oral, between and among the OAG and Total Care regarding the subject matter of this Assurance.

63. This Assurance may not be amended or modified except in an instrument in writing signed on behalf of all the parties to this Assurance.

64. The division of this Assurance into sections and subsections and the use of captions and headings in connection herewith are solely for convenience and shall have no legal effect in construing the provisions of this Assurance.

#### **Binding Effect**

65. This Assurance is binding on and inures to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without prior written consent of the OAG.

#### **Effective Date**

66. This Assurance is effective on the date that it is signed by the Attorney General or his/her authorized representative (the "Effective Date"), and the document may be executed in counterparts, which shall all be deemed an original for all purposes.

#### **AGREED TO BY THE PARTIES:**

Dated: Syracuse New York  
October, 23, 2017

**Total Care by Molina Health Care of New  
York, Inc. Successor in Interest**

By:   
COLLEEN SCHMIDT  
President and CEO  
Molina Healthcare of New York, Inc.

Dated: New York, New York  
October 30, 2017

**ERIC T. SCHNEIDERMAN**  
Attorney General of the State of New York

LISA LANDAU  
Health Care Bureau Chief

LOURDES M. ROSADO  
Civil Rights Bureau Chief



By: \_\_\_\_\_  
BRANT CAMPBELL  
Assistant Attorney General  
Health Care Bureau



By: \_\_\_\_\_  
ANJANA SAMANT  
Assistant Attorney General  
Civil Rights Bureau