

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

July 23, 2024

FROM

MICHAEL BOWERS, Director, Human Resources Department

SUBJECT

Kaiser Medical Plan Contract

RECOMMENDATION(S)

Approve the **Contract No. 24-667** with Kaiser Foundation Health Plan, Inc. to provide group medical plan benefits for eligible employees, Consolidated Omnibus Budget Reconciliation Act participants, and all eligible dependents for the period of July 27, 2024, through July 31, 2027 (plan years 2024-25 through 2026-27), with the option to extend for one additional two-year term.

(Presenter: Michael Bowers, Director, 387-5570)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost). Rates for this item were approved by the Board of Supervisors (Board) on May 21, 2024, (Item No. 35). There is no additional cost associated with the approval of this item as the increase to the County's contribution to employee medical insurance premiums pursuant to ordinances, compensation plans, and negotiated Memoranda of Understanding with individual labor unions is not greater than what has already been approved by the Board. Additionally, the County does not contribute to the cost of premiums for Consolidated Omnibus Budget Reconciliation Act (COBRA) participants. Sufficient appropriation is included in each County department budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

On May 21, 2024 (Item No. 35), the Board approved Blue Shield of California (Blue Shield) and Kaiser Foundation Health Plan, Inc. (Kaiser) as the group health plan providers for plan years 2024-25 through 2026-27, with the option to extend for one additional two-year term. The item also directed HR staff to negotiate contracts with both carriers. Approval of this item accepts the terms of the contract between the County and Kaiser.

Key provisions of the contract with Kaiser include:

- An approximate 8.0% increase to the current premiums for the Kaiser HMO plans. HR and Employee Benefits Advisory Committee (EBAC) requested that Kaiser remove the wellness allowance of \$500,000 to reduce the proposed increase from 8.6% to 8.0%.

The recommended contract includes terms that differ from the standard County contract and omits certain County standard contract terms. Kaiser is unwilling to negotiate these terms. The non-standard and missing terms include, but are not limited to, the following:

1. The Contract omits the requirement that Contractor's indemnification obligations apply regardless of the existence or degree of fault of indemnities.
 - (c) The County's standard contract language requires that the Contract's indemnification language apply regardless of the existence or degree of fault of indemnities.
 - (d) Potential Impact: Kaiser's indemnification obligations to the County may be potentially limited. If the County is sued for claims not covered by Contractor's indemnification obligations, the County may be solely liable for the costs of defense and damages, which could exceed the Contract amount.
2. The Agreement does not require Contractor to meet all of the County's insurance requirements pursuant to County Policies 11-05, 11-07 and 11-07 SP, including the waiver of subrogation provisions, that policies be primary and non-contributory, the additional insured requirements, severability of interest requirements, proof of coverage requirements, acceptability of insurance carrier requirements, deductibles and self-insured requirements, failure to procure coverage provisions, insurance review and specification requirements, commercial/general liability requirements and automobile insurance requirements. The Contract excludes Workers' Compensation from the waiver of subrogation requirements, and further the Contract does not require that all general or auto liability insurance coverage provided shall not prohibit Kaiser and its employees from waiving the rights of subrogation, and that Kaiser waive all rights of subrogation against the County.
 - (c) County policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and as set forth in County policy and in the County standard contract.
 - (d) Potential Impact: The County has no assurance that the Contractor will be financially responsible for claims that may arise under the Agreement, which could result in expenses to the County that exceed the total contract amount. No waiver of subrogation may allow Kaiser's insurers to bring suit against the County, which could result in expenses that exceed the total contract amount. Additionally, the County's additional insured requirements may not be applicable to insurance policies (other than General Liability), which could result in expenses to the County that exceed the total contract amount. Further, the County has no assurances that coverages provided by all of Contractor's policies (other than General Liability) will be applicable separately to each insured and that there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and other insured. This could result in expenses to the County that exceed the total contract amount.
3. This Contract provides that amendments that are required by law, subject to government approval, Medicare charges or changes, or due to tax or other charges imposed by a government agency or other taxing authority (other than a tax on or measured by net income) are exempt from this requirement.
 - The County's standard contract language requires Contractors to agree that Contract amendments will be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.
 - Potential Impact: By excluding amendments required by law or subject to government approval, Medicare charges and tax or other charges from the requirement that such amendments be reduced to a writing and approved by the person's authorized to do so

on behalf of the parties, amendments may become effective without prior written approval by the County where such amendments are required by law, subject to government approval, or due to Medicare charges and tax or other charges.

4. The Contract does not require Kaiser to provide the County with specific background check results on all of Kaiser's personnel providing services to the County and does not require that the background checks must have been performed at a minimum within the preceding 12-month period. The Contract does not require that personnel who do not meet the County's hiring criteria, in the County's sole discretion, will not be assigned to work on County property or services or that the County has the right to refuse access to Kaiser's personnel.
 - County standard contract language requires that if requested by the County, Contractors must provide the results of a background check of each individual providing Services to the County. The background check must have been performed within the preceding 12-month period. Further, Contractor's personnel who do not meet the County's hiring criteria will not be assigned to work on County property/services, and that the County has the right to refuse access to any personnel.
 - Potential Impact: The County's ability to request the results of background checks on individuals providing services to the County and control Contractor's personnel who do not meet the County's hiring criteria, will be limited as specified.
5. The Contract does not require Kaiser to obtain the County's written consent before entering into contracts with subcontractors that may supply services to the County. The Contract does not require Kaiser to provide information regarding subcontractors' qualifications or a listing of key personnel.
 - The County's standard contract language requires Contractors to obtain the County's written consent before entering into Contracts or engaging subcontractors who may supply services to the County. Further, at the County's request, Contractor is required to provide information regarding subcontractor's qualifications and a listing of a subcontractor's key personnel, as well as resumes of proposed personnel.
 - Potential Impact: Contractor will be able to contract with subcontractors without the County's prior written consent and will not be required to provide the County with information regarding subcontractors' qualifications or a listing of key personnel.
6. Contractor may terminate the Group Agreements (for active employees and COBRA participants) with 30 days' notice for nonpayment of premiums, with 90 days written notice due to discontinuance of a product, or with 180 days written notice due to termination of all Kaiser products. Contractor may also terminate the Group Agreements due to failure to comply with Kaiser's participation or contribution requirements. The Group Agreements may also terminate due to non-acceptance of amendments subject to government approval, amendments due to Medicare changes, and other amendments within 30 days of the County's non-acceptance of the amendments or the day before the effective date of the amendment.
 - The County's standard termination clause states that the County reserves the right to terminate the contract for convenience with 30 days written notice.
 - Potential Impact: Although the County may terminate the Contract for any reason with 30 days written notice, Contractor also reserves the right to terminate the Group Agreements as summarized above. Such termination could occur prior to the end of the three year contract term.

7. If Contractor does not receive the required Premiums after a 45-day grace period has been exhausted, the Agreement will terminate and all coverage issued under the Agreement will end on the date specified in a notice of nonpayment, which will be at least 30 days after the date of the notice. Further, if payments of premiums are not made by the end of the grace period, the Premiums may include an additional administrative charge upon renewal.
 - County standard payment term is Net 60 days with no interest or late payment penalties.
 - Potential Impact: Failing to pay by the due date would allow Contractor to terminate the Group Agreements and obtain an additional administrative charge from the County upon renewal, which could exceed the Contract amount.
8. The Contract requires the County to provide reasonable notice to Kaiser to conduct an audit and limits the County's ability to audit to only records related to the services procured under this Contract.
 - The County's standard contract language provides the County, State and Federal government the absolute right to review and audit all records, documents, and other pertinent items.
 - Potential Impact: The County's ability to audit Kaiser's documents and records will be limited as specified.
9. In the event of a material breach, the Contract does not provide the County the right to discontinue reimbursement to Kaiser during the period in which Kaiser is in breach, and it does not provide the County the right to offset against any monies billed by Kaiser but yet unpaid by County.
 - In the event of a material breach, the County's standard contract language allows the County to discontinue reimbursement to contractor for and during the period of the breach (which is not subject later recovery) and/or to offset against any monies billed by contractor but yet unpaid by County.
 - Potential Impact: The Contract limits the remedies available to the County under the Contract in the event of a breach and could require additional costs and expenses for the County to seek remedies available at law, which could exceed the Contract amount.

HR recommends approval of this contract, including the non-standard terms, in order to continue providing eligible employees, COBRA participants, and eligible dependents with medical plan benefits for the plan years of 2024-25 through 2026-27.

PROCUREMENT

On November 20, 2023, HR began the request for proposals (RFP) process and issued RFP No. HRD223-HR2-5185 to solicit vendor proposals for medical plan benefits by the deadline of December 22, 2023. All respondents (i.e., Blue Shield, United Health Care, Kaiser, and Anthem Blue Cross) met the minimum proposer requirements.

The proposals were evaluated according to the following criteria: proposed rates, benefits, provider access, network enhancement, quality of care, financial stability, customer service, and demonstrated experience with implementing innovative wellness and cost containment strategies. The County's contracted benefits consultant, The Segal Company (Segal), conducted a comprehensive analysis of the proposals and provided its conclusions to HR and the EBAC for review and consideration.

After a thorough examination of the analysis provided by Segal, HR and the EBAC invited all four medical proposers to interview. The carriers were also asked to submit a last, best, and final (LBF) proposal of premium rates.

Segal analyzed the LBF proposals, including provider access, network enhancement, and plan design and provided the final analysis to HR and the EBAC. HR and the EBAC evaluated the final proposals and recommended that the County contract with Blue Shield and Kaiser as these proposals were the most beneficial to County employees and retirees, producing the least disruption in plan benefits, prescription drug formulary and provider network. Additionally, Blue Shield provided the greatest premium stability through the term of the contract and the lowest retiree premium rates, while offering a generous allowance used to support the County employees' wellness program. The vendors not recommended for contract award were notified by email on March 28, 2024. No protests were received.

As a result of the competitive process, on May 21, 2024 (Item No.35), the Board approved Blue Shield and Kaiser as the group health plan providers for all eligible employees and their dependents for plan years 2024-25 through 2026-27, with the option to extend for one additional two-year term. Further, Item No. 35 authorized HR Staff to negotiate a contract with Kaiser.

The Purchasing Department supports this competitive procurement based on the formal solicitation described above.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Jose Mendoza, Deputy County Counsel, 387-5455) on July 3, 2024; Purchasing (Jessica Barajas, 387-2065) on July 3, 2024; Finance (Abigail Grant, Administrative Analyst, 387-4603) on July 8, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on July 5, 2024.

Kaiser Medical Plan Contract
July 23, 2024

Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Curt Hagman Seconded: Joe Baca, Jr.
Ayes: Col. Paul Cook (Ret.), Dawn Rowe, Curt Hagman, Joe Baca, Jr.
Absent: Jesse Armendarez

Lynna Monell, CLERK OF THE BOARD

BY



DATED: July 23, 2024



cc: HR - Wakcher w/agree
 Contractor - c/o HR w/agree
 File - w/agree w/CD

CCM 07/25/2024