

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

June 9, 2020

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Agreement with R1 RCM Inc. for Physician Advisory Services

RECOMMENDATION(S)

Approve **Agreement No. 20-360** with R1 RCM Inc. in the amount not to exceed \$750,000 for the period of June 9, 2020, through June 8, 2025, for secondary physician review process for certain patients that require inpatient hospitalization.

(Presenter: William L. Gilbert, Director, 580-6150)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Provide for the Safety, Health and Social Service Needs of County Residents.

FINANCIAL IMPACT

Approval of the recommendation with R1 RCM Inc. (R1) will not result in the use of Discretionary General Funding (Net County Cost). The not to exceed cost of \$750,000 is funded by State Medi-Cal, Federal Medicare, private insurances, and/or other departmental revenue. Funding sources may change in the future pending any legislative activity related to the repeal and/or replacement of the Affordable Care Act. Sufficient appropriation and revenue are included in the Arrowhead Regional Medical Center (ARMC) 2020-21 recommended budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

The approval of this Agreement will allow ARMC to utilize secondary physician review processes for all patients that require inpatient hospitalization, but do not meet the criteria using the state approved Interqual or MCG software, which align clinical decisions with payer criteria to lower denial of payments and improve patient care. The service provided by R1 will allow ARMC to get the secondary review within 60 minutes for Emergency Department cases and within two hours for medical necessity cases. The state requires a secondary physician review process for Medi-Cal reimbursement. The review of the medical record must include a review for each day the patient meets an acute level of care, but does not meet the criteria in the Interqual or MCG software and the facility plans to bill Medi-Cal for those dates of service. The secondary reviewer must sign off on the approved days in writing with a clinical reason for justifying the inpatient stay. The secondary review must be conducted by a California licensed physician that did not participate in the care of the patient.

The Agreement is based on the county's standard contract, negotiated by the parties, with several non-standard terms, including the following:

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- Exclusivity: The Agreement provides that R1 will be the exclusive contractor during the term of this Agreement to provide level of care utilization reviews.
 - The County's standard contract term provides that the Contract is not an exclusive contract, and that the County may contract with other vendors.
 - Potential Impact: ARMC would not be permitted to utilize other vendors to provide the same type of services for the duration of the Agreement.

- Assignability: This Agreement provides that neither party may assign the Agreement without the prior written consent of the other party, which may not be unreasonably withheld, but that no consent is required under certain circumstances involving the transfer to a subsidiary or sale of the business.
 - The County's standard contract provides that the contractor may not assign the Contract without the County's written consent.
 - Potential Impact: The County's ability to prevent R1 from assigning this Agreement would be limited to certain circumstances, and the County would forgo its unfettered discretion to prevent any assignment of the Agreement by R1.

- Material Misstatement/Misrepresentation: The County may terminate the Agreement with 30 days written notice if the County reasonably determines that R1 intentionally made a material misrepresentation regarding its qualifications, and the County reasonably relied on that misrepresentation in awarding the Agreement.
 - The County's standard contract provides that the County may immediately terminate the contract if the contractor makes a material misrepresentation or misstatement or that materially inaccurate information was provided to the County.
 - Potential Impact: The circumstances under which the County may terminate the Agreement for material misstatements/misrepresentation is limited to intentional conduct by R1 regarding its qualifications, and 30 days written notice must be provided prior to termination.

- Termination: Each party may terminate the Agreement for any reason with thirty days notice, after expiration of the initial 12 months of the term of the Agreement.
 - The County's standard contract provides that either party may terminate the Agreement for any reason with 30 days notice.
 - Potential Impact: The County will be unable to terminate this contract with 30 days notice during the first 12 months of the term of the Agreement.

- Venue: Any lawsuit filed in relation to the Agreement will need to be brought in the federal court in Riverside.
 - The County's standard contract provides that any lawsuit filed in relation to the contract must be brought in the San Bernardino County Superior Court.
 - Potential Impact: If either party brings a lawsuit in relation to this Agreement, it must be filed in the US District Court for the Central District of California in Riverside, California. Litigation in federal court tends to be more costly compared to state court given the more stringent procedural requirements.

- Testimony: In the event the County requests or compels R1 or any of its service providers to either give testimony or produce documents in any official proceedings (such as a lawsuit), other than in a proceeding where R1 is a party, the County will

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reimburse R1 at the applicable rate for the time of the participating professional, and all associated expenses, including the fees and expenses of R1's counsel.

- The County's standard contract provides no such provision.
 - Potential Impact: The County would incur additional costs and expenses not normally required if the County requests or compels R1 or its service providers to participate in official proceedings where R1 or its service provider is not a party to the action.
- Limitation of Remedies: In the event of an error or omission by R1 in the performance of its services, the County's sole remedy is for R1 to re-perform its services at no additional cost. If R1 is unable to re-perform the services, the County may seek any other remedy available at law.
 - The County's standard contract contains no limitations on remedies due to the errors and omissions of the contractor.
 - Potential Impact: The County would have no resource against R1 due to any errors or omissions that R1 makes, other than to seek to have R1 redo its work.
- Limitation of Liability: R1's total cumulative liability under the Contract is capped at an amount equal to two times the fees paid by the County, but this cap does not apply to claims arising out of R1's willful or intentional misconduct, bodily injuries or property damage, taxes assessed against the County that is the responsibility of R1, and County's infringement of any intellectual property right of a third-party. Additionally, except for claims for personal injury or wrongful death, the indemnification obligations cannot exceed the lesser of five times the total fees paid by the County during the initial 12 months of the Contract or \$2,000,000.
 - The County's standard contract does not limit the liability of the contractor.
 - Potential Impact: There is a cap to R1's liability to the County under certain circumstances. Claims could exceed the liability cap, leaving the County financially liable for the excess. However, the County's liability to R1 is similarly capped.
- Limitation on Types of Damages: R1 will not be liable for any special, indirect, consequential, incidental or exemplary damages, or for any claim for loss of profits.
 - The County's standard contract contains no limitations on damages.
 - Potential Impact: In the event a claim or lawsuit is filed against R1, the County would not be able to recover any special, indirect, consequential, incidental or exemplary damages, or for loss of profits.
- Non-Disclosure: The parties agree to keep in strict confidence the confidential information of the other party, subject to disclosure as required by law (including under the Ralph Brown Act and Public Records Act, among other laws), during the term of the Agreement, and for five years thereafter. The parties also agree that after the five expiration, each party shall, at the option of the disclosing party, return or destroy all confidential information.
 - The County's standard contract does not contain any provision imposing any confidentiality requirements on the County.
 - Potential Impact: The County is obligated to maintain the confidentiality of certain information that R1 deems confidential. The County may incur liability to

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the extent any improper disclosures are made, regardless of whether the disclosure is made intentionally or inadvertently.

PROCUREMENT

The Request for Proposal (RFP) No. MCR18-37 for Physician Advisory Service was released through the County of San Bernardino's Electronic Procurement (ePro) network, on June 4, 2019, and proposals were submitted, as follows:

Name	Location	Met All Evaluation Criteria	5-Year Cost
Sound Advisory	Tacoma, WA	Yes	Sealed Cost
R1 RCM Inc. (R1)	Chicago, IL	Yes	Estimated \$750,000

Evaluations of the proposals were completed by a committee comprised of representatives from ARMC Administration, Case Management, Utilization review, and Internal Medicine. All proposals were evaluated and scored based on the criteria of qualification and experience, financial stability of company, technical abilities, references, and presentation. Based on the criteria listed above R1 received a higher score. The Evaluation Committee recommended that the contract be awarded to R1

On September 18, 2019, a tentative award letter was sent to R1, and on the same day, the unsuccessful company was notified in writing that they may protest the qualification review by submitting a formal protest letter to ARMC within 10 calendar days of the date of the non-selection letters. No protests were received.

County Purchasing supports the RFP competitive process and award for this procurement.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, County Counsel, 387-5455) on May 26, 2020; Purchasing Department (Jacqueline Ambrose, Lead Buyer, 777-0722) on May 26, 2020; Finance (Yael Verduzco, Administrative Analyst, 387-5285) on May 26, 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on May 26, 2020.

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Record of Action of the Board of Supervisors
County of San Bernardino

APPROVED (CONSENT CALENDAR)

Moved: Josie Gonzales Seconded: Robert A. Lovingood
Ayes: Robert A. Lovingood, Janice Rutherford, Dawn Rowe, Curt Hagman, Josie Gonzales

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: June 9, 2020



cc: ARMC- Gilbert w/agree
 Contractor- C/O ARMC w/agree
 File- w/agree
la 06/11/2020