

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

August 20, 2019

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Agreement with National Decision Support Company

RECOMMENDATION(S)

Approve **Agreement No. 19-582** with National Decision Support Company, LLC in the amount of \$245,000 for the three-year period of August 20, 2019 to August 19, 2022, for CareSelect Subscription, which includes consulting services for diagnosis of advanced diagnostic imaging exams.

(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 will not result in the use of Discretionary General Funding (Net County Cost) as the total aggregate cost of \$245,000 is funded by State Medi-Cal, Federal Medicare, private insurances, and 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. Adequate appropriation and revenue is included in the Arrowhead Regional Medical Center's (ARMC) 2019-20 budget and will be included in future recommended budgets.

Year	One-Time Cost	Subscription Cost	Annual Cost
1	\$20,000	\$75,000	\$95,000
2		\$75,000	\$75,000
3		\$75,000	\$75,000
Total	\$20,000	\$225,000	\$245,000

BACKGROUND INFORMATION

Approval of the recommendation will allow ARMC to become compliant with the federally mandated "Protecting Access to Medicare Act" (PAMA) for advanced diagnostic imaging exams. Effective January 1, 2020, PAMA requires that all physicians ordering advanced imaging exams such as computed tomography, magnetic resonance, nuclear medicine, and positron emission tomography, to consult with an Appropriate Use Criteria (AUC) through a qualified Clinical Decision Support Mechanism (qCDSM). National Decision Support Company (NDSC) offers a widely-adopted, market-validated solution for delivery of national standard imaging guidelines within Meditech. NDSC's CareSelect™ solution has been qualified by Centers for Medicare and

Medicaid Services (CMS) for use in compliance with AUC for all advanced imaging exams through a qCDSM. Ordering Providers are required to consult AUC for all Medicare Part B Advanced Diagnostic Imaging Services.

CMS has outlined eight Priority Clinical Areas (PCA's) as a baseline of clinical coverage to measure outlier physicians. With a focus on significant savings and quality improvement opportunities, the PCA's offer a springboard to create meaningful, immediate impact to address imaging over-utilization for coronary artery disease, suspected pulmonary embolism, headache, hip pain, low back pain, shoulder pain, cancer of the lung, and cervical or neck pain. The platform's comprehensive clinical coverage ensures that providers can consult a required AUC for every imaging exam and that a payable claim is always generated.

Compliance of PAMA provides for the safety, health and social service needs of patients by ensuring proper diagnosis by requiring physicians ordering advanced imaging consult AUC for qualified clinical decision support of diagnosis.

NDSC's Order terms and conditions that form the Agreement is its standard commercial license, as negotiated by the County, which contains terms that differ from the standard County contract. The non-standard terms include the following:

1. The County is required to indemnify NDSC, except to the extent prohibited by applicable law, against all claims arising from County's use of the subscriptions or otherwise arising from health care products and services offered by or through County.
 - The County standard contract does not include any indemnification or defense by the County of a Vendor.
2. Limitations of liability of each party to a maximum of the fees paid by or payable by County for the twelve (12) month period preceding the event giving rise to the claim, but excluding (a) the County's payment obligations, (b) either party's indemnification obligations, (c) either party's confidentiality obligations, and (d) to the extent prohibited by applicable law.
 - The County standard contract does not include a limitation of liability.
3. The contract does not require NDSC to meet the County insurance standards.
 - The County standard contract requires Contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department.
4. Governing law is New York
 - The County standard contract requires California governing law.
5. Venue is set as the state or federal courts in the State of New York.
 - The County standard contract requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.

Potential impacts of these non-standard provisions include:

1. By agreeing to indemnify NDSC, the County may be contractually waiving the protection of sovereign immunity. Claims that would otherwise be barred against the County, time limited, or expense limited could be brought against NDSC without such limitations and the County would be responsible to defend and reimburse NDSC for costs, expenses,

and damages, which could exceed the total contract amount. County Counsel cannot advise on, whether and to what extent, New York law may limit or expand this contract term.

2. NDSC caps its liability to a maximum of the fees paid by or payable by County for the twelve (12) month period preceding the event giving rise to the claim. Claims could exceed the liability cap and the contract amount leaving the County financially liable for the excess. County Counsel cannot advise on, whether and to what extent, New York law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
3. The contract does not include certain standard County insurance requirements, including the waiver of subrogation provision. This may allow NDSC's insurer to bring suit against the County, which could result in expenses that exceed the total contract amount.
4. The contract will be interpreted under New York law. Any questions, issues or claims arising under this contract will require the County to hire outside counsel competent to advise on New York law, which may result in fees that exceed the total contract amount.
5. Having a venue in any state or federal court in the State of New York, may result in additional expenses that exceed the total contract amount.

ARMC recommends approval of the contract with NDSC, including the non-standard terms, as NDSC is the sole authorized provider of the subscription services. Approval of the contract will allow ARMC to continue to provide quality medical services to County residents.

PROCUREMENT

This is an approved non-competitive procurement as NDSC is a sole source provider in that NDSC is the only federal partnering company that interfaces with ARMC's Electronic Health Record (Meditech).

Purchasing supports this procurement.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, County Counsel, 387-5455) on July 26, 2019; Purchasing Department (Ricardo Salazar, Supervising, 387-2060) on July 26, 2019; Finance (Amanda Trussell, Principal Administrative Analyst, 387-4773) on August 6, 2019; and County Finance and Administration (Katrina Turturro, Deputy Executive Officer, 387-5423) on August 6, 2019.

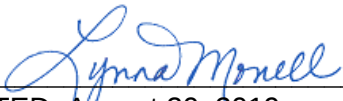
**Agreement with National Decision Support Company
August 20, 2019**

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

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: August 20, 2019



cc: ARMC- Gilbert w/agree
Contractor- C/O ARMC w/agree
File- w/agree
la 08/22/2019