

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

November 5, 2024

FROM

ANDREW GOLDFRACH, ARMC Chief Executive Officer, Arrowhead Regional Medical Center

SUBJECT

Agreement with NDCHealth Corporation dba RelayHealth for Pharmacy Switch Claim Software

RECOMMENDATION(S)

Approve **Agreement No. 24-1040**, including non-standard terms, with NDCHealth Corporation dba RelayHealth for pharmacy switch claim software, in the total amount of \$24,650, for a term of November 5, 2024 through November 4, 2029.

(Presenter: Andrew Goldfrach, ARMC Chief Executive Officer, 580-6150)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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

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

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The cost of \$24,650 is funded by State Medi-Cal, Federal Medicare, private insurance, 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 have been included in the Arrowhead Regional Medical Center (ARMC) 2024-25 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

The Agreement with NDCHealth dba RelayHealth (RelayHealth) will allow ARMC to utilize pharmacy claim switch software (switch software) to efficiently process pharmacy medication claims to insurance providers. Switch software routes claims from the pharmacy to the pharmacy benefit manager, or insurance provider, for online claims adjudication and processing of electronic prescriptions. RelayHealth also interfaces with the hospital's electronic health record, Epic.

Since 2016, the Purchasing Agent has approved software agreements with Foundation Systems, Inc. (FSI), the current vendor that provides switch software for the ARMC Pharmacy. However, FSI is not compatible with Epic. Therefore, ARMC is seeking to implement an ambulatory module that will include a replacement for the switch software offered by FSI.

The Agreement is RelayHealth's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. While the

parties negotiated certain contract terms to County standards, RelayHealth would not agree to all County standard terms. The non-standard and missing terms include the following:

1. RelayHealth may assign the Agreement without notice to the County and without the County's approval.
 - The County standard contract requires that the County must approve any assignment of the contract.
 - Potential Impact: RelayHealth could assign the Agreement to a third party or business with which the County is legally prohibited from doing business due to issues of Federal debarment or suspension and conflict of interest, without the County's knowledge. Should this occur, the County could be out of compliance with the law until it becomes aware of the assignment and terminates the Agreement.
2. The Agreement does not require RelayHealth to indemnify the County, as required by County Policies 11-05 and 11-07, including for intellectual property infringement claims.
 - The County standard contract indemnity provision requires the contractor to indemnify, defend, and hold County harmless from third party claims arising out of the acts, errors or omissions of any person. The standard contract provision for intellectual property indemnity is: Contractor will indemnify, defend, and hold harmless County and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services.
 - Potential Impact: RelayHealth is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from RelayHealth's negligent or intentional acts and intellectual property infringement. If the County is sued for any claim, including intellectual property infringement based on its use of RelayHealth's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total Agreement amount.
3. The County is required to defend and indemnify RelayHealth against all claims arising out of: (i) information provided to RelayHealth by County; (ii) the use of such information when furnished by RelayHealth to County, to third persons at County's request; or (iii) County's failure to comply with its obligations under the Agreement, except to the extent arising solely from the gross negligence or willful misconduct of RelayHealth. In addition, the County is required to indemnify RelayHealth, Surescripts, and the Pharmacy Benefit Manager Data Sources against third party claims asserted against them arising out of the County's violation of any applicable laws or any breach of any of the Agreement's Flow Downs Terms.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify RelayHealth, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought against RelayHealth without such limitations and the County could be responsible to defend and reimburse RelayHealth for costs, expenses, and damages, which could exceed the total Agreement amount.

4. The Agreement does not require RelayHealth to meet the County's insurance standards as required pursuant to County Policies, 11-05, 11-07 and 11-07SP.
 - 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.
 - Potential Impact: The County has no assurance that RelayHealth will be financially responsible for claims that may arise under the Agreement, which could result in expenses to the County that exceed the total Agreement amount.
5. RelayHealth's maximum liability to the County is limited to the total fees paid (less any refunds or credits) by County to RelayHealth for the product or services giving rise to the claim in the one-month period prior to the date of the claim, without any exclusions.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the Agreement amount leaving the County financially liable for the excess.
6. Each party's right to bring legal claims is limited to two years from the date the action arose.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the Agreement amount leaving the County financially liable for the excess.
7. Payment terms are Net 30 date of invoice with late payment interest of 1.5% per month.
 - County standard payment terms are Net 60 days with no interest or late payment penalties.
 - Potential Impact: County standard processing time is 60 days or more. Failing to pay within 30 days from the date of the invoice may result in a material breach of the Agreement, which could allow RelayHealth to terminate the Agreement and seek other legal remedies, including charging the County interest at a rate of 1.5% per month, which could exceed the Agreement amount.
8. The County may not terminate the Agreement for convenience.
 - County Policy 11-05 requires that the County have the right to terminate the contract, for any reason, with a 30-day written notice of termination without any obligation other than to pay amounts for services rendered and expenses reasonably incurred prior to the effective date of termination.
 - Potential Impact: The County can only terminate the Agreement during the term for an uncured breach by RelayHealth. Any attempted termination by the County without cause could result in payment liability for the full Agreement amount, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.
9. There is no stated venue in the Agreement.
 - County Policy 11-05 requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: RelayHealth is located in Atlanta, Georgia. Having no express venue in the Agreement means that Fulton County, Georgia venue could be applied to disputes arising under this Agreement, which may result in additional expenses that exceed the amount of the Agreement.

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ARMC recommends the approval of the agreement, including non-standard terms, with RelayHealth to provide for the safety, health and social service needs of county residents by ensuring patients receive proper and efficient processing of pharmacy prescriptions for their medical treatment.

PROCUREMENT

ARMC Pharmacy requested quotes from three vendors that provide switch software. The results are as follows:

Company	Agency Address	5-Year Cost
Change Healthcare	11000 Optum Circle Eden Prairie, MN 55344	\$65,000
RelayHealth	NDC Plaza, Atlanta, GA 30329-2010	\$24,650
Rx Linc	P.O. Box 16430 Oklahoma City, OK 73113	\$25,300

ARMC reviewed the quotes, all functionality, implementation cost and monthly fees. RelayHealth was the lowest, responsive bidder.

The Purchasing Department supports this competitive procurement based on the informal solicitation mentioned above.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on October 4, 2024; Purchasing (Veronica Pedace, Buyer III, 387-2464) on October 8, 2024; Risk Management (Greg Ustaszewski, Staff Analyst II, 386-8623) on October 10, 2024; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on October 10, 2024; Finance (Jenny Yang, Administrative Analyst, 387-4884) on October 15, 2024; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on October 18, 2024.

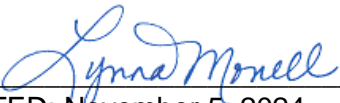
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: November 5, 2024



cc: ARMC - Goldfrach w/agree
Contractor - c/o ARMC w/agree
File - w/agree
CCM 11/6/2024