

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

December 19, 2023

FROM

JOSHUA DUGAS, Director, Department of Public Health

SUBJECT

Non-Financial Participation Agreement with the Inland Empire Health Information Organization and Manifest MedEx for Sharing Electronic Health Information

RECOMMENDATION(S)

1. Approve the non-financial Participation **Agreement No. 23-1328**, including non-standard terms, with the Inland Empire Health Information Organization and Manifest MedEx, which includes Terms and Conditions, Remote Access Agreement, and the Business Associate Agreement, for ongoing participation in the Inland Empire Health Information Organization to electronically provide and receive health information for the period of December 19, 2023 through December 18, 2028.
2. Authorize the Chair of the Board of Supervisors, Chief Executive Officer, or Director of the Department of Public Health to execute and submit all non-substantive amendments to the Participation Agreement with the Inland Empire Health Information Organization and Manifest MedEx, including changes to the Terms and Conditions, Remote Access Agreement, and the Business Associate Agreement, that do not add costs or liability to the San Bernardino County, for ongoing participation in the Inland Empire Health Information Organization, subject to review by County Counsel.
3. Direct the Director of the Department of Public Health to transmit all non-substantive amendments to the Participation Agreement with the Inland Empire Health Information Organization and Manifest MedEx to the Clerk of the Board of Supervisors within 30 days of execution.

(Presenter: Joshua Dugas, Director, 387-9146)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost), as the Participation Agreement is non-financial in nature.

BACKGROUND INFORMATION

The Department of Public Health (DPH) will enter into a non-financial Participation Agreement for the secure exchange of electronic patient health information with the Inland Empire Health Information Organization (IEHIO) and Manifest MedEx (MX), a health information exchange (HIE) vendor. The IEHIO is formally known as the Inland Empire Health Information Exchange, of which San Bernardino County has been a member since 2011. MX is one of the nation's

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largest nonprofit HIEs, maintaining five million clinical patient records from 150 participating partners. The HIE supports physicians, nurses, hospitals, and health plans in securely sharing critical health information to ensure that patients receive continuity of safe, efficient, and high-quality care during transition from one provider or hospital to another.

MX periodically updates policies that apply to all participants. DPH will be given advance notice to review any proposed changes that would affect the Participation Agreement. The Chair of the Board of Supervisors (Board), Chief Executive Officer, or DPH Director will be authorized to approve changes to the Participation Agreement, including Terms and Conditions, Remote Access Agreement, or Business Associate Agreement, that do not add costs, risks or liability to the County.

Assembly Bill 133 requires most health care providers to enter into a data sharing agreement and exchange health information in real time by January 2024. This improves access to healthcare and ensures health care providers can access information needed to provide safe, effective whole person care.

The Participation Agreement, following negotiation, contains non-standard terms that require approval by the Board per County Policy 11-05. The non-standard terms include the following:

1. Payment terms are Net 30 days 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: The County standard processing time is 60 days or more. Failing to pay within 30 days will result in charging the County interest at a rate of 1.5%, which would exceed the agreement amount.
2. MX provides the services “AS IS” and disclaims all warranties of any kind.
 - There is no warranty requirement in the County standard contract. The County expects its vendors and service providers to fully warrant the products and services provided to the County.
 - Potential Impact: The County’s use of the software and services is solely at its own risk.
3. Limitations of liability to the County of a maximum of \$1,000,000, excluding MX’s indemnification obligations, gross negligence or willful misconduct.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: MX caps its liability to the County at a maximum of \$1,000,000 for all claims arising under the agreement except for MX’s indemnity obligations. Claims could exceed the liability cap and the agreement amount leaving the County financially liable for the excess.
4. The County is required to indemnify MX against third party claims.
 - The County standard contract does not include any indemnification or defense by the County of a Contractor.
 - Potential Impact: By agreeing to indemnify MX, 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 MX without such limitations and the County would be responsible to defend and

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reimburse MX for costs, expenses, and damages, which could exceed the total agreement amount.

DPH recommends approval of the Participation Agreement, including non-standard terms, as the use of MX will meet the requirements of health care providers in California to securely exchange electronic patient health information in real time amongst health care and social service organizations.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by Human Services Contracts (Patty Steven, Contracts Manager, 388-0241) on November 16, 2023; County Counsel (Adam Ebright, Deputy County Counsel, 387-5455) on November 29, 2023; Innovation and Technology (Robert Pittman, Chief Information Security Officer, 388-5510) on December 11, 2023; Risk Management (Victor Tordesillas, Director, 386-8723) on November 17, 2023; Finance (Paul Garcia, Administrative Analyst, 386-8392) on November 30, 2023; and County Finance and Administration (Cheryl Adams, Deputy Executive Officer, 388-0332) on November 30, 2023.

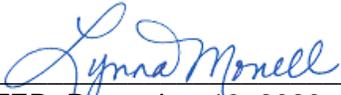
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY  _____
DATED: December 19, 2023



cc: PH - Rosales w/agree
Contractor - c/o PH w/agree
File - w/agree
CCM 12/27/2023