

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

April 23, 2024

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Organizational Membership Agreement with MGMA-ACMPE for Access to Training and Benchmarking Data

RECOMMENDATION(S)

Approve Organizational Membership **Agreement No. 24-325** with MGMA-ACMPE, including non-standard terms, for membership access to specialized classes, training and data resources, in the amount of \$39,114 plus sales tax for a one-year contract term of September 1, 2024 through August 31, 2025.

(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 this item will not result in the use of Discretionary General Funding (Net County Cost). The cost of \$39,114 plus sales tax 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 have been included in the Arrowhead Regional Medical Center (ARMC) 2023-24 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

The Organizational Membership Agreement (Agreement) with MGMA-ACMPE (MGMA) will allow ARMC to access, through MGMA product licenses, benchmarking data and statistics consisting of ambulatory care key performance indicators from regional and national ambulatory care clinics and includes, but is not limited to, provider/staff compensation, operations, cost and revenue. The Agreement also provides ARMC with access to specialized classes and training (such as how to increase volume, utilization of exam rooms to enhance patient access, and telehealth strategies) for ambulatory care leadership related to Federal and State program rules and regulations. ARMC has been accessing data and training through MGMA since 2022. Access to the data and training are available for the duration of the Agreement period.

The training and data sources provided by this organization assists ARMC in aligning its services with State and Federal regulations and managing its contracted physician groups, ensuring that ARMC meets the needs of the patient community. MGMA provides industry standards to benchmark against ambulatory care operations to help with improving patient care and workflows.

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The Agreement is MGMA's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. MGMA is unwilling to negotiate these terms. The non-standard and missing terms include the following:

1. Governing law is the State of Colorado.
 - The County standard contract requires California governing law.
 - Potential Impact: The Agreement will be interpreted under Colorado law. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on Colorado law, which may result in fees that exceed the total Agreement amount.
2. MGMA may assign the Agreement without notice to the County and without the County's approval.
 - In the County standard contract the County must approve any assignment of the contractor.
 - Potential Impact: MGMA 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. County Counsel cannot advise on whether and to what extent Colorado law may permit or restrict a party's right to assign without an express provision in the Agreement.
3. There is no provision in the Agreement addressing each party's responsibility for paying attorneys' fees.
 - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: County Counsel cannot advise on, whether and to what extent, Colorado law may affect a party's requirement to pay the prevailing party's attorneys' fees and costs in a legal action where no specific provision is provided in the Agreement.
4. The Agreement does not require MGMA 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: MGMA is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from MGMA'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 MGMA's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total Agreement amount. County Counsel cannot advise on whether and to what extent Colorado law may allow the

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County to require MGMA to defend or indemnify it absent an express provision in the Agreement.

5. The County is required to indemnify MGMA against claims arising from County's: (i) use of DataDive, DataDiscovery, or Data, (ii) unacceptable use of DataDive, DataDiscovery, or Data, and County's breach of the Agreement.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify MGMA, 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 MGMA without such limitations and the County could be responsible to defend and reimburse MGMA for costs, expenses, and damages, which could exceed the total Agreement amount. County Counsel cannot advise on, whether and to what extent, Colorado law may limit or expand this Agreement term.
6. The Agreement does not require MGMA 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 MGMA 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.
7. MGMA's maximum liability to the County in the aggregate for all claims is limited to the total amount paid by the County during the 12-month period prior to the date the cause of action arose, or \$1,000 if no amount has been paid.
 - 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. County Counsel cannot advise on, whether and to what extent, Colorado law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
8. Payment is due on receipt 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 upon receipt of invoice may result in a material breach of the Agreement, which could allow MGMA to terminate the Agreement and seek other legal remedies, including charging the County interest at a rate of 1.5% month, accruing until payment is made, which could exceed the Agreement amount.
9. There is no termination for convenience without penalty. The County may terminate the Agreement at any time without cause, but remains liable for all payments through the end of the term.
 - The County standard contract gives the County 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.

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- Potential Impact: Upon termination without cause, the County remains liable for all payments due for the remainder of the Agreement term, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.

10. Venue for disputes arising under the Agreement is in the state and federal courts of the State of Colorado.

- County Policy 11-05 requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
- Potential Impact: Having a venue in the State of Colorado may result in additional expenses that exceed the amount of the Agreement.

ARMC recommends approval of the agreement, including non-standard terms, to provide for the health and safety of county residents through the use of the MGMA membership access to its network of resources, classes and training, which will allow for the advancement of healthcare for patients and San Bernardino County.

PROCUREMENT

The Purchasing Department supports this non-competitive procurement based on specialized credentials as MGMA is the “gold standard” provider of specialized classes, training, and data resources, as well as ambulatory care benchmarking data and statistics, for ARMC administrators and staff required to maintain a high level of healthcare industry insight and resources.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387- 5455) on March 14, 2024; Purchasing (Veronica Pedace, Buyer III, 387-2464) on March 15, 2024; Risk Management (Victor Tordesillas, Director, 386-8623) on April 10, 2024; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on April 1, 2024; Finance (Jenny Yang, Administrative Analyst, 387-4884) on April 5, 2024; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387- 5423) on April 5, 2024.

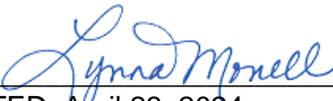
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY  _____
DATED: April 23, 2024



cc: ARMC - Gilbert w/agree
Contractor - c/o ARMC w/agree
File - w/agree
CCM 04/26/2024