

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

March 14, 2023

FROM

GEORGINA YOSHIOKA, Director, Department of Behavioral Health

SUBJECT

Agreement with ProviderTrust, Inc. for Exclusion Screening, License Monitoring, and Drug Enforcement Agency Monitoring

RECOMMENDATION(S)

Approve **Agreement No. 23-189** with ProviderTrust, Inc., including non-standard terms, for exclusion screening, license monitoring, and Drug Enforcement Agency monitoring in the total amount of \$60,000 for the contract period of March 14, 2023 through March 13, 2026, with an option to renew for up to two consecutive one-year periods.
(Presenter: Georgina Yoshioka, Director, 252-5142)

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

This item does not impact Discretionary General Funding (Net County Cost). The Platform Monitoring Services Agreement (Agreement) with ProviderTrust, Inc. (ProviderTrust) in the total amount of \$60,000 for exclusion screening, license monitoring, and Drug Enforcement Agency (DEA) monitoring, is funded by 1991 Realignment. Adequate appropriation and revenue have been included in the Department of Behavioral Health's (DBH) 2022-23 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

DBH is responsible for providing mental health and substance use disorder services to San Bernardino County (County) residents experiencing severe and persistent mental illness, substance use, and other addictions. Federal and State regulations require DBH to conduct specified exclusion screenings, license monitoring and DEA monitoring.

DBH has been utilizing ProviderTrust to provide exclusion screening and license monitoring since March 2018 through a purchase order agreement, which expired March 12, 2023. This new Agreement will add DEA monitoring services to those already provided by ProviderTrust. Continued utilization of the services provided by ProviderTrust will allow DBH the most efficient and effective means to comply with, and document completion of, the mandated screenings and monitoring as described and detailed below:

- Exclusion Screening: Per Title 42 of the Code of Federal Regulations (CFR), Parts 1001 and 1002, DBH shall not hire, contract or utilize the services of any individual or entity

Agreement with ProviderTrust, Inc. for Exclusion Screening, License Monitoring, and Drug Enforcement Agency Monitoring
March 14, 2023

identified as excluded or ineligible from participation in Federal or State funding. This includes DBH employees, volunteers and interns, as well as Fee-For-Service providers and contract agencies. The exclusion screening is performed prior to hire of a DBH employee, volunteer, or intern, as well as bringing a new provider on board, and monthly thereafter.

- License Monitoring: Per CFR, Title 42, Chapter IV, Section 438.608, DBH is responsible for verifying and monitoring DBH licensed and credentialed employees for any Registered Professional to be employed. DBH must also ensure compliance with California Board of Behavioral Sciences and Substance Use Disorder registration requirements. This includes researching licenses and credentials through the appropriate licensing board and preparing employee and Human Resources expired license/credential notifications as appropriate.
- DEA Monitoring: Per 21 United States Code (U.S.C.) § 822 (a)(2), DEA regulations require every practitioner who prescribes, administers, and/or dispenses any controlled substance must obtain a DEA registration, also referred to as a DEA license. DBH must monitor these registrations to ensure the practitioners are in, and remain in, compliance with these regulations.

Previously, DEA monitoring was done internally by DBH staff. The addition of this service by ProviderTrust will allow DBH staff to perform other time-sensitive compliance assignments, as well as providing a more effective way to document the DEA monitoring.

The Agreement is ProviderTrust'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 the terms, ProviderTrust would not agree to certain County standard terms. The non-standard and missing terms include the following:

1. ProviderTrust provides a limited indemnity for certain claims based on its negligence and intellectual property infringement, but excludes from its indemnity obligations: (a) any remittance, reimbursement, or rescission of money paid to the County as compensation or other sources; (b) County's indirect, consequential, incidental, punitive, exemplary or special damages; (c) ProviderTrust's reliance on incorrect, inaccurate, or incomplete County Data; (d) information provided to ProviderTrust by a local, state, or federal regulatory entity; and (e) in the event the Primary Source is unable to update its most current list for any extended period of time.
 - 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: If the County is sued for any claim, the County would be solely liable to defend itself and, to the extent that a determination is made that the claim was a result of any of the exclusions, the County may be solely liable for the costs of defense and damages, which could exceed the total Agreement amount.

Agreement with ProviderTrust, Inc. for Exclusion Screening, License Monitoring, and Drug Enforcement Agency Monitoring
March 14, 2023

2. The Agreement does not require ProviderTrust to meet the County's insurance standards as required pursuant to County Policy 11-07. In addition, ProviderTrust will bill the County for any coverage required by the County in addition to or in excess of its current portfolio.
 - The County Policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and set forth in the County standard contract.
 - Potential Impact: The County has no assurance that ProviderTrust will be financially responsible for claims that may arise from the County's use of the software and services, which could result in expenses to the County that exceed the total Agreement amount.
3. In addition to the indemnity exclusions, the Agreement limited the liability of both parties to a maximum amount of \$150,000, except for liability arising from breach of confidentiality, breach of security, indemnification obligation, gross negligence or willful misconduct. ProviderTrust also limits its liability for data breach to \$5 million dollars.
 - 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.

DBH recommends approval of this Agreement, including the non-standard terms, as it will allow DBH to continue to utilize ProviderTrust for the exclusion screening and license monitoring, and begin DEA monitoring services, which are essential for providing mental health and substance use disorder services.

PROCUREMENT

In October 2017, DBH utilized the informal procurement process to request quotes and demonstrations from three vendors for exclusion screening and license monitoring services. ProviderTrust was successful through the selection process as they met Federal and State requirements, as well as being the most cost effective.

In February 2023, DBH again used the informal procurement process and requested quotes from seven vendors, including ProviderTrust. The seven vendors were provided the DBH requirements as related to the Federal and State regulations. Six vendors responded within four days, with three providing quotes. After reviewing the three submitted quotes, two could provide all of the requested services. It was determined that ProviderTrust remains the successful vendor through the selection process as they continue to meet all of the Federal and State requirements, as well as remaining the most cost effective. The continued utilization of ProviderTrust will allow for continuity of these essential services. The Purchasing Department agrees with the continuation of these services by ProviderTrust.

REVIEW BY OTHERS

This item has been reviewed by Behavioral Health Contracts (Natalie Kessee, Contracts Manager, 388-0869) on February 16, 2023; County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on February 13, 2023; Risk Management (Victor Tordesillas, Director, 386-8623) on February 13, 2023; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on February 16, 2023; Finance (Christopher Lange, Administrative Analyst, 386-8392) on February 17, 2023; and County Finance and Administration (Cheryl Adams, Deputy Executive Officer, 388-0238) on February 17, 2023.

Agreement with ProviderTrust, Inc. for Exclusion Screening, License Monitoring, and Drug Enforcement Agency Monitoring
March 14, 2023

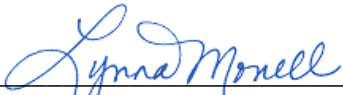
Record of Action of the Board of Supervisors
San Bernardino County

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: March 14, 2023



cc: DBH - Hoatson w/agree
Contractor - C/O DBH w/agree
File - w/agree

CCM 03/16/2023