

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

June 11, 2024

FROM

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

SUBJECT

Revenue Agreement with Total Longterm Care, Inc., DBA InnovAge California PACE-Inland Empire for Provision of Medical Services

RECOMMENDATION(S)

1. Approve Revenue **Agreement No. 24-467**, including non-standard terms, with Total Longterm Care, Inc., dba InnovAge California PACE-Inland Empire for the provision of medical services, retroactively effective March 1, 2024 through February 28, 2029.
2. Direct the Clerk of the Board of Supervisors to maintain confidentiality of the Agreement in Recommendation No. 1 pursuant to Health and Safety Code section 1457(c)(1).
(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). Costs for direct patient care services provided to Total Longterm Care, Inc., dba InnovAge California PACE-Inland Empire (InnovAge) participants are reimbursed by InnovAge to Arrowhead Regional Medical Center (ARMC) at the current Medicare Diagnostic Related Group or Ambulatory Payment Classification rate. Revenue associated with this Agreement will vary dependent upon patient volume. Adequate appropriation and revenue have been included in the ARMC 2023-24 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

The Agreement will allow InnovAge to refer its Medicare and Medi-Cal members to ARMC for provision of medical services, providing for the safety, health and social service needs of county residents. InnovAge is a San Bernardino-based program for all-inclusive care for the elderly, providing aging individuals within the county with affordable services to live independently in their homes and communities for as long as possible. InnovAge will reimburse ARMC at the current Medicare rates for the provision of direct patient care services to InnovAge participants, as authorized or prescribed by an InnovAge primary care physician to attain specialty or higher levels of care at ARMC.

On February 12, 2019 (Item No. 6), the Board of Supervisors approved a revenue agreement with InnovAge, effective March 1, 2019 through February 29, 2024, for the provision of medical

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services at ARMC. The proposed Agreement is retroactively effective March 1, 2024, as InnovAge provided ARMC with the initial draft Agreement on February 28, 2024, the day before the previous agreement expired. To ensure continuity of care while negotiations and necessary reviews were being conducted, a retroactive effective date of March 1, 2024, is requested with the recommended Agreement.

The Agreement with InnovAge is its standard commercial agreement, negotiated by the parties, which include non-standard contract terms or are missing the standard County contract terms, as follows:

1. The County agrees to indemnify InnovAge from any losses arising from the duties and obligations of the County, except to the extent otherwise covered by policies of insurance.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify InnovAge, 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 InnovAge without such limitations and the County could be responsible to defend and reimburse InnovAge for costs, expenses, and damages.
2. InnovAge limits its indemnity to losses that arise out of its duties and obligations under the Agreement, except to the extent otherwise covered by policies of insurance.
 - The County's standard general 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.
 - Potential Impact: InnovAge's indemnity obligation is significantly more limited to the indemnity obligation under the standard County indemnity provision. In the event a claim arises that falls outside the scope of the indemnity provision, the County could be financially responsible for the defense of the claim and any resulting settlement/judgment.
3. The County is required to maintain malpractice and general liability insurance in the amount of \$1 million per occurrence and \$3 million in the aggregate.
 - The County standard contract does not impose any insurance obligations on the County.
 - Potential Impact: ARMC will need to be mindful of these insurance obligations to ensure that the County maintains the proper insurance for the term of the Agreement.
4. InnovAge is not required to meet the County standard insurance requirements.
 - 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 InnovAge will be financially responsible for claims that may arise under the Agreement, which could result in expenses to the County.
5. The Agreement is silent on InnovAge's ability to assign the Agreement.

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- The County standard contract requires that the County must approve any assignment of the contract.
 - Potential Impact: Without an express provision prohibiting assignment, InnovAge 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.
6. In the event of a dispute, the prevailing party is entitled to its attorneys' fees and costs.
- The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: If either party institutes any legal proceedings related to the Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees and costs.

ARMC recommends approval of this Agreement, including non-standard terms, to allow ARMC to continue to provide specialty and higher level of care services to elderly InnovAge participants residing within San Bernardino County. This Agreement supports fiscally-responsible and business-like operations by providing ARMC with reimbursement by InnovAge.

Pursuant to Health and Safety Code section 1457(c)(1) specific terms related to the rates of payment for health care services are not immediately subject to laws related to public records; therefore, the Clerk of the Board of Supervisors is directed to maintain confidentiality of this Agreement.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, Supervising Deputy County Counsel, 387-5455) on April 16, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst II, 386-9008) on June 7, 2024; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on May 17, 2024; Finance (Jenny Yang, Administrative Analyst, 387-4884) on May 21, 2024; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on May 22, 2024.

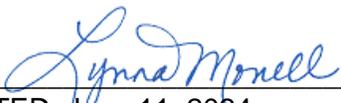
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Record of Action of the Board of Supervisors
San Bernardino County

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: June 11, 2024



cc: ARMC - Golfrach w/agree
Contractor - c/o ARMC w/agree
File - w/agree (BAI only)
File - Confidential files w/agree
CCM 06/24/2024