

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

July 23, 2024

FROM

MICHAEL BOWERS, Director, Human Resources

SUBJECT

Blue Shield Medical Plan Contract

RECOMMENDATION(S)

Approve the **Contract No. 24-668** with Blue Shield of California to provide group medical plan benefits for eligible employees, Consolidated Omnibus Budget Reconciliation Act participants, and all eligible dependents for the period of July 27, 2024, through July 31, 2027 (plan years 2024-25 through 2026-27), with the option to extend for one additional two-year term. (Presenter: Michael Bowers, Director, 387-5570)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost). Rates for this item were approved by the Board of Supervisors (Board) on May 21, 2024 (Item No.35). There is no additional cost associated with the approval of this item as the increase to the County's contribution to employee medical insurance premiums pursuant to ordinances, compensation plans, and negotiated Memoranda of Understanding with individual labor unions is not greater than what has already been approved by the Board. Additionally, the County does not contribute to the cost of premiums for Consolidated Omnibus Budget Reconciliation Act (COBRA) participants. Sufficient appropriation is included in each County department budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

On May 21, 2024 (Item No. 35), the Board approved Blue Shield of California (Blue Shield) and Kaiser Foundation Health Plan, Inc. (Kaiser) as the group health plan providers for plan years 2024-25 through 2026-27, with the option to extend for one additional two-year term. The item also directed Human Resources Department (HR) staff to negotiate contracts with both carriers. Approval of this item accepts the terms of the contract between the County and Blue Shield.

Key provisions of the contract with Blue Shield include the following:

- An approximate 5.4% increase to the current premiums for Blue Shield HMO and PPO plans. HR and the Employee Benefits Advisory Committee (EBAC) requested that Blue Shield apply \$500,000 (\$250,000 wellness program and \$250,000 discretionary funding) of the \$1,000,000 annual wellness contribution towards lowering the rate increase. This resulted in the proposed rate increase being reduced from 5.9% to the final rate of 5.4%.

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- Not-to-exceed rate caps of 6.9% and 8.9% for plan years 2025-26 and 2026-27, respectively.
- Changes to the Blue Shield Signature HMO plan, adding chiropractic benefits (20 visit limit annually) with a required medical diagnosis and increasing the emergency room copay from \$50 to \$75.
- Addition of a custom Virtual Blue plan option for the Needles area with lower premium costs and higher copayments/coinsurance.
- An additional annual wellness allowance of \$116,500 to help pay for wellness-related applications (e.g., Cordico, Wellable).

The recommended contract includes terms that differ from the standard County contract and omits certain County standard contract terms. Blue Shield is unwilling to negotiate these terms. The non-standard and missing terms include, but are not limited to, the following:

1. This Contract does not require Blue Shield to obtain the County's written consent before entering into contracts with subcontractors that may supply parts of the services to the County. Further, this Contract does not require subcontractors to be subject to the provisions of the Contract applicable to Contractor's personnel or require Blue Shield to include in subcontractor's subcontract substantially the same terms as are provided in the Contract pertaining to Contractor Responsibilities and General Contract Requirements.
(c)The County's standard contract language requires Contractors to obtain the County's written consent before entering into Contracts with or engaging any subcontractors who may supply any part of the Services to the County. Further, the County's standard contract language requires that all approved subcontractors must be subject to the provisions of the Contract applicable to Contractor Personnel and that the Contractor will be responsible for subcontractor's compliance with the Contract and the subcontract terms and conditions; that Contractor must ensure that the subcontractor follows County's reporting formats and procedures as specified by the County; and that Contractor must include in the subcontract substantially similar terms as are provided in Sections B. Contractor Responsibilities and C. General Contract Requirements.
(d)Potential Impact: Contractor will be able to contract with subcontractors without the County's prior written consent and subcontractors are not expressly required to be subject to the provisions of the Contract between Contractor and the County.
2. The County may terminate the Contract for any reason with 90 day written notice of termination. Further, Contractor may cancel coverage if the County does not pay the required premiums on time following a 60-day grace period and subsequent 30 day written notice of intent to terminate or due to fraud, misrepresentation of material fact, or failure to meet Blue Shields' participation and contribution requirements.
(c)The County standard contract gives the County the right to terminate the contract, for any reason, with a 30-day written notice of termination.
(d)Potential Impact: The County will need to be mindful of the additional notice period (i.e., 90 days) required to terminate the Contract. Further, because Blue Shield may cancel coverage, coverage may terminate prior to the end of the three year contract term.
3. The County is required to indemnify, defend and hold Blue Shield harmless against any claims, causes of action or costs arising out of a breach by the County, its employees, agents or independent contractors of the terms of the Contract. Additionally, the County is required to hold Blue Shield harmless for violations of Section 2708 of the Patient Protection & Affordable Care Act or California state law. The Contract also includes the following

additional non-standard contract terms: the Contract does not require that counsel be reasonably approved by the County when Contractor is required to defend the County; and Contractor's indemnity obligations to the County would extend only to authorized officers or employees of the County (and not other agents or volunteers) and to claims, actions, losses, damages or liability in proportion to and to the extent caused by any negligent act, omission, or willful misconduct of the Contractor or its employees with respect to the performance or non-performance of Blue Shield's obligations under the Contract.

(c) The County's standard contract does not contractually require the County to indemnify or hold its contractors harmless under any circumstances. The County's standard contract language requires contractors to defend the County with counsel reasonably approved by the County, and to indemnify and defend the County, its officers, employees, agents, and volunteers for all claims arising out of the contract from any cause whatsoever, including the acts, errors or omissions of any person except where such indemnification would be prohibited by law. Further, the County's standard contract language requires contractors' indemnification obligations to apply regardless of the existence or degree of fault of the County/indemnitees, including the County's active and passive negligence.

(d) Potential Impact: By agreeing to indemnify and hold the Contractor harmless, 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 the Contractor without such limitations and the County would be responsible to defend, hold harmless, and reimburse the Contractor for costs, expenses, and damages, which could exceed the total Contract amount. If the County is sued for claims not caused by the negligent acts, omissions, or willful misconduct of the Contractor or its employees, the County may be solely liable for the costs of defense and damages, which could exceed the Contract amount. Finally, if Contractor is required to defend the County, the County's approval of counsel may not be required.

4. The Agreement does not require Blue Shield to meet all of the County's insurance standards as required by County Policies 11-05, 11-07 and 11-07SP. More specifically, the Contract excludes Blue Shield's Cyber liability coverage from the following standard County insurance requirements: additional insured requirements, waiver of subrogation rights, requirement that the policies be primary and non-contributory, and severability of interests requirements. Further, Cyber Liability Insurance with limits of no less than \$1,000,000 will be maintained for each claim with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.

(c) 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.

(d) Potential Impact: By limiting or restricting Blue Shield's Cyber Liability coverage as summarized above, the County has no assurances that Blue Shield will be financially responsible for all claims that may arise from the Contract, and which otherwise would be covered under the County's standard insurance requirements for Cyber Liability insurance. This could result in expenses to the County that exceed the total Contract amount.

5. In the event of a breach, the Contract does not provide the County the right to discontinue reimbursement to Blue Shield for and during the period in which Blue Shield is in breach,

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and it does not provide the County the right to offset those amounts against monies billed by Blue Shield but yet unpaid by County.

- The County's standard contract language allows the County to discontinue reimbursement to contractor for and during the period in which contractor is in breach (which reimbursement is not later recoverable) and to offset those amounts against moneys not yet paid by the County to contractor.
- Potential Impact: The remedies available to the County under the Contract in the event of a breach would be limited. This could require additional costs and expenses for the County to seek remedies available at law, which could exceed the Contract amount.

HR recommends approval of this contract, including the non-standard terms, in order to continue providing eligible employees, COBRA participants, and eligible dependents with medical plan benefits for the plan years of 2024-25 through 2026-27.

PROCUREMENT

On November 20, 2023, HR began the Request For Proposals (RFP) process and issued RFP No. HRD223-HR2-5185 to solicit vendor proposals for medical plan benefits by the deadline of December 22, 2023. All respondents (i.e., Blue Shield, United Health Care, Kaiser, and Anthem Blue Cross) met the minimum proposer requirements.

The proposals were evaluated according to the following criteria: proposed rates, benefits, provider access, network enhancement, quality of care, financial stability, customer service, and demonstrated experience with implementing innovative wellness and cost containment strategies. The County's contracted benefits consultant, The Segal Company (Segal), conducted a comprehensive analysis of the proposals and provided its conclusions to HR and the EBAC for review and consideration.

After a thorough examination of the analysis provided by Segal, HR and the EBAC invited all four medical proposers to interview. The carriers were also asked to submit a last, best, and final (LBF) proposal of premium rates.

Segal analyzed the LBF proposals, including provider access, network enhancement, and plan design and provided the final analysis to HR and the EBAC. HR and the EBAC evaluated the final proposals and recommended that the County contract with Blue Shield and Kaiser as these proposals were the most beneficial to County employees and retirees, producing the least disruption in plan benefits, prescription drug formulary and provider network. Additionally, Blue Shield provided the greatest premium stability through the term of the contract and the lowest retiree premium rates, while offering a generous allowance used to support the County employees' wellness program. The vendors not recommended for contract award were notified by email on March 28, 2024. No protests were received.

As a result of the competitive process, on May 21, 2024 (Item No. 35), the Board approved Blue Shield and Kaiser as the group health plan providers for all eligible employees and their dependents for plan years 2024-25 through 2026-27, with the option to extend for one additional two-year term. Further, Item No. 35 authorized HR Staff to negotiate a contract with Blue Shield.

The Purchasing Department supports this competitive procurement based on the formal solicitation described above.

REVIEW BY OTHERS

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This item has been reviewed by County Counsel (Jose Mendoza, Deputy County Counsel, 387-5455) on July 3, 2024; Purchasing (Jessica Barajas, 387-2065) on July 3, 2024; Finance (Abigail Grant, Administrative Analyst, 387-4603) on July 8, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on July 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.), Dawn Rowe, Curt Hagman, Joe Baca, Jr.
Absent: Jesse Armendarez

Lynna Monell, CLERK OF THE BOARD

BY  _____
DATED: July 23, 2024



cc: HR - Bowers w/agree
 Contractor - c/o HR w/agree
 File - w/agree
CCM 07/25/2024