

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

January 14, 2025

**FROM**

**GEORGINA YOSHIOKA, Director, Department of Behavioral Health**

**SUBJECT**

Agreements with Netsmart Technologies, Inc. and Laboratory Corporation of America Holdings for Behavioral Health Management Information Systems

**RECOMMENDATION(S)**

1. Approve **Contract No. 25-26** with Netsmart Technologies, Inc., which includes non-financial Laboratory Data Management Terms of Use Agreement with Laboratory Corporation of America Holdings, incorporated as Attachment A-3 of the contract to maintain the Behavioral Health Management Information System, in an amount not to exceed \$22,479,308, for the period of July 1, 2024, through June 30, 2029.
2. Authorize the Director of the Department of Behavioral Health to execute Change Orders, subject to review by County Counsel, provided such acceptance does not increase the total not-to-exceed amount of \$22,479,308 or change the duration of the contract.
3. Authorize the Director of the Department of Behavioral Health or the Assistant Director of the Department of Behavioral Health to electronically accept the non-financial Laboratory Data Management Terms of Use Agreement with Laboratory Corporation of America Holdings, incorporated as Attachment A-3 of the contract in Recommendation No. 1, and non-substantive amendments to the Laboratory Data Management Terms of Use Agreement, subject to review by County Counsel.
4. Direct the Director of the Department of Behavioral Health to transmit copies of documents in Recommendations Nos. 2 and 3 to the Clerk of the Board of Supervisors within 30 days of acceptance.

(Presenter: Georgina Yoshioka, Director, 252-5142)

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Promote the Countywide Vision.**

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

**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 total contract amount of \$22,479,308 with Netsmart Technologies, Inc. (Netsmart) is funded by Mental Health Services Act funds. Adequate appropriation and revenue have been included in the Department of Behavioral Health's (DBH) 2024-25 budget and will be included in future recommended budgets.

**BACKGROUND INFORMATION**

DBH is responsible for providing mental health and substance use disorder (SUD) services to County residents experiencing severe mental illness and/or SUD. To meet the needs of such residents and comply with State and Federal requirements, DBH implemented a Behavioral Health Management Information System (BHMIS) in partnership with Netsmart, following a competitive Request for Proposal process in 2017. This system went live in July 2020 and has since supported over 100,000 clients and processed more than 6.8 million services.

DBH anticipates that BHMIS will serve approximately 55,000 unduplicated clients annually. At an average annual cost of \$81.74 per client, this cost includes hosting, which covers all hardware, servers, technical support, and disaster recovery, eliminating any additional expenses for infrastructure or County technical resources. Disaster recovery support ensures that client data and services can be restored quickly in the event of a system outage or emergency, thereby maintaining continuous access to critical health records and minimizing potential service disruptions.

Netsmart is responsible for the ongoing enhancement, customization, configuration, and maintenance of the BHMIS. The BHMIS provides a fully integrated, web-enabled platform that supports critical clinical, administrative, and financial functions, along with secure data-sharing capabilities. In doing so, it meets the requirements of the State Department of Health Care Services' Medi-Cal and Federal Medicare programs, facilitating essential billing, reporting, interoperability, and data-sharing initiatives, including the California Advancing and Innovating Medi-Cal program.

Netsmart's proprietary framework enables seamless integration among its components, enhancing the interoperability of the BHMIS with other Netsmart modules. This contract ensures that the necessary maintenance, disaster recovery measures, and software upgrades are secured to maintain compliance with ongoing data-sharing, interoperability, and reimbursement requirements, thereby sustaining critical behavioral health services for the County.

The Contract with Netsmart is the County standard Information Technology Contract. Netsmart would not agree to all County standard terms, so the parties negotiated certain non-standard modifications to the County standard terms. The non-standard terms include the following:

1. The Agreement has modified insurance terms, including exempting Errors and Omissions and Cyber liability insurance policies from naming the County as an additional named insured and only providing additional insured endorsements, not additional named insured endorsements, on all other policies.
  - The County standard contract requires contractors to carry appropriate insurance at limit and under conditions determined by the County's Risk Management Department.
  - Potential Impact: The modifications to the additional insured provision limits the County's ability to recover losses for certain types of claims, which could result in expenses that exceed the total Agreement amount.
2. Netsmart's maximum cumulative liability to the County is limited to 1.5 times the fees paid to Netsmart during the prior 12-month period prior to the event, giving rise to the claim.
  - 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.

3. The Contract incorporates third-party pass-through terms that include additional non-standard terms, as follows:

a. CareQuality Connection third-party pass-through terms

1) CareQuality may amend the terms at any time and Netsmart is responsible for informing the County within at least 30 days after.

- County Policy 11-06 requires that any changes to the contract be reduced to writing, executed and attached to the original contract and approved by the person(s) authorized to do so on behalf of the contractor and County.
- Potential Impact: The County could be agreeing to new terms without review by anyone, including County Counsel, and without approval of the new terms by the Board.

2) County will not hold CareQuality liable for any damages, losses, liabilities or injuries arising from the CareQuality Connection Terms. In addition, CareQuality's aggregate liability is limited to \$3 million with no exclusion of indemnification obligations, gross negligence, willful misconduct or violation of law (including Health Insurance Portability and Accountability Act).

- 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.

b. Change Healthcare Solutions (CHC) third-party pass-through terms: End User License Agreement

1) County appoints Change Healthcare Solutions (CHC) as its attorney-in-fact for using and submitting transactions to third-party processors and the County agrees to indemnify CHC for all claims, including the reconciliation and adjustment of any claim.

- The County standard contract does not include any indemnification or defense by the County of a contractor.
- Potential Impact: By agreeing to indemnify CHC, 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 CHC without such limitations and the County could be responsible to defend and reimburse CHC for costs, expenses, and damages, which could exceed the total Agreement amount.

2) The County's sole remedy for CHC not transmitting or not accurately transmitting information is credits on subsequent invoices for actual damages incurred for reconstructing or retransmitting data. In addition, CHC's aggregate liability to the County is limited to the price paid to CHC for the particular intellectual property involved during the one year prior to the claim.

- 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.

c. Hyland (Formerly known as Perspective) Pass-Through Terms for Inclusion in Client Contracts

- 1) The County agrees to indemnify Hyland against claims arising from breach of the Hyland agreement by any contractor that does not sign a Hyland Contractor Use Agreement.
  - The County standard contract does not include any indemnification or defense by the County of a contractor.
  - Potential Impact: By agreeing to indemnify CHC, 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 CHC without such limitations and the County could be responsible to defend and reimburse CHC for costs, expenses, and damages, which could exceed the total Agreement amount.
- 2) With respect to the Hyland software, NetSmart and Hyland's liability is limited to the aggregate amounts actually paid by NetSmart to Hyland during the 12-month period prior to the event giving rise to the claim.
  - 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.
- d. InterSystems Pass-Through Provisions and Terms of Sale  
InterSystems governing law and venue is the Commonwealth of Massachusetts.
  - The County standard contract requires California governing law.
  - Potential Impact: The Agreement will be interpreted under Massachusetts law. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on Massachusetts law, which may result in fees that exceed the total Agreement amount.
- e. InterSystems may assign the Agreement without notice to the County and without the County's approval.
  - The County standard contract requires that the County must approve any assignment of the contract.
  - Potential Impact: InterSystems 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 Massachusetts law may permit or restrict a party's right to assign without an express provision in the Agreement.
- 1) InterSystems does not 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,

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copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services.

- Potential Impact: InterSystems is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from InterSystems' 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 InterSystems' 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 Massachusetts law may allow the County to require InterSystems to defend or indemnify it absent an express provision in the Agreement.

2) InterSystems of liability is limited to the portion of the fees received by InterSystems for the software or services that are the subject of the claim.

- 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 Massachusetts law may limit or expand the exclusion of limits to the extent prohibited by applicable law.

The Laboratory Data Management Terms of Use Agreement (TOU) with Laboratory Corporation of American Holdings (LabCorp) is a non-negotiable clickwrap accepted by click-to-accept. The non-standard terms include the following:

1. LabCorp may assign the Agreement without notice to the County and without the County's approval.
  - The County standard contract requires that the County must approve any assignment of the contract.
  - Potential Impact: LabCorp could assign the TOU 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 TOU.
2. The County agrees to indemnify LabCorp from all claims in connection with the establishment, operation, or functioning of the Laboratory Data Management system to the extent proximately caused by the negligence or misconduct of the County.
  - The County standard contract does not include any indemnification or defense by the County of a contractor.
  - Potential Impact: By agreeing to indemnify LabCorp, 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 LabCorp without such limitations and the County could be responsible to defend and reimburse LabCorp for costs, expenses, and damages, which could exceed the total Agreement amount.

This item is being presented to the Board for approval retroactively following DBH's receipt of notification regarding the contract's expiration in March 2024. Due to administrative errors the

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contract expired in July 2024. To address this and prevent future occurrences, the Contracts Development Unit has now been restructured to ensure that the review process is completed in a timely manner.

This item is being presented to the Board at this time, as this is the first date available following the required contractor, operational, fiscal, administrative, and legal reviews. Approval of this item at this time will not impact DBH operations.

**PROCUREMENT**

The Purchasing Department supports this non-competitive procurement of Netsmart due to its success in providing interoperability of BHMIS, and compatibility with other software.

**REVIEW BY OTHERS**

This item has been reviewed by Behavioral Health (Michael Shin, Contracts Manager, 388-0899) on November 22, 2024; County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) December 11, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst) on December 12, 2024; Innovation and Technology Department (Lynn Fyhrlund, Chief Information Officer, 388-5501) on December 12, 2024; Purchasing (Jessica Barajas, Supervising Buyer, 387-2065) on December 12, 2024; Finance (Paul Garcia, Administrative Analyst, 386-8392) on December 19, 2024; and County Finance and Administration (Cheryl Adams, Deputy Executive Officer, 388-0238) on December 19, 2024.

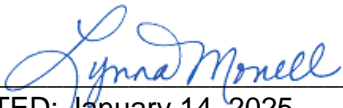
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Record of Action of the Board of Supervisors  
San Bernardino County

**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: January 14, 2025



cc: DBH - Williams w/agree  
Contractor - c/o DBH w/agree  
File - w/agree  
CCM 01/22/2025