

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

February 8, 2022

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Agreement with Inland Empire Health Plan to Assist in Medi-Cal Enrollment

RECOMMENDATION(S)

Approve **Agreement 22-60** with Inland Empire Health Plan for Professional Services to assist in Medi-Cal Enrollment for a maximum reimbursement of \$468,240, for the period of February 8, 2022 through December 31, 2024.

(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.

Create, Maintain and Grow Jobs and Economic Value in the County.

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

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

Approval of this item with Inland Empire Health Plan (IEHP) will not result in the use of Discretionary General Funding (Net County Cost). The professional service agreement provides a maximum reimbursement revenue of \$468,240 to Arrowhead Regional Medical Center (ARMC) to offset the costs associated with two-full time enrollment workers providing these Medi-Cal enrollment services. Adequate appropriation and revenue have been included in the ARMC 2021-22 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

This Professional Services Agreement will provide ARMC with resources to increase Medi-Cal enrollment services. IEHP will fund two full-time enrollment workers to exclusively complete Medi-Cal applications for uninsured individuals, who meet the criteria to enroll, and who utilize care services at ARMC facilities. Enrollment in Medi-Cal provides individuals with the assurance of healthcare coverage and eliminates financial burdens from seeking healthcare. This agreement provides for the safety, health and social service needs of County residents by increasing the ability to access healthcare coverage in the County.

The Professional Services Agreement is IEHP's standard professional services agreement, negotiated by the parties, with the following non-standard contract terms:

1. Either party may terminate the agreement for convenience with 60 days written notice.
 - The County's standard contract permits either party to terminate the contract for convenience with 30 days written notice.

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- Potential Impact: There is a 60-day notice period for terminations for convenience which ARMC must be mindful of when deciding to terminate the Agreement.
2. The County is required to defend and indemnify IEHP from claims arising out of (1) the performance of services or the omission of any required act of the County under the Agreement, and (2) any property damage, bodily injury, or death arising from the County's conduct.
 - The County's standard contract does not contractually require the County to indemnify the other contracting party for any reason.
 - Potential Impact: To the extent a claim is made against IEHP arising out of the County's performance of services/omissions of any required act, or property damage or bodily injury (including death) resulting from the County's conduct, the County may be responsible for defending and indemnifying IEHP. 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 IEHP without such limitations and the County would be responsible to defend and reimburse IEHP for costs, expenses, and damages, which could exceed the total contract amount.
 3. IEHP is not contractually required to defend or indemnify the County under any circumstance.
 - The County's standard contract has a general indemnity provision that requires the other party to indemnify, defend, and hold the County harmless from third party claims arising out of the acts, errors or omissions of any person.
 - Potential Impact: IEHP is not contractually required to defend or indemnify the County under any circumstance. If the County is sued for any claim, the County will be unable to contractually demand IEHP to defend and indemnify the County, rendering the County potentially solely liable for the costs of defense and damages, which could exceed the total contract amount.
 4. The agreement imposes numerous insurance requirements on the County, including requiring the County to maintain certain types of insurance at specified limits, add IEHP as an additional insured, have the County's self-insured retentions for insurance coverages be approved by IEHP, furnish IEHP with certificates of insurance, have the County's insurance be endorsed to waive subrogation, and have the County's insurance be construed as primary and that IEHP's insurance not be construed as contributory.
 - The County's standard contract does not impose any insurance requirements on the County.
 - Potential Impact: The insurance obligations on the County would ensure that the County will have the insurance coverages required to protect IEHP's interest in the event of a claim. Waiver of subrogation means that the County's insurer, if any, will be unable to file a lawsuit against IEHP. Being added as an additional insured means that IEHP will be able to turn to the County's insurers, if any, directly in the event of a claim.
 5. Other than requiring IEHP to carry appropriate insurance at limits as specified in the agreement, IEHP is not required to comply with any other County insurance standards, including waiver of subrogation and adding the County as an additional insured.

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- The County's standard contract requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department.
 - Potential Impact: No waiver of subrogation may allow IEHP's insurer to bring suit against the County, which could result in expenses that exceed the total contract amount. Not being added as an additional insured to IEHP's insurance policies means that the County would be unable to make a claim to the policy as an insured.
6. The Business Associate Agreement, attached to the Professional Services Agreement, is IEHP's standard Business Associate Agreement, which imposes numerous duties and obligations on the County as a business associate to IEHP, including conducting an investigation and risk assessment following the potential or actual breach of unsecured protected health information (Breach), paying all costs associated with providing legally required notifications following a Breach, and indemnifying IEHP for damages, costs, and penalties associated with a Breach.
- The County's standard Business Associate Agreement generally imposes obligations on the other contracting party to undertake certain tasks with a certain timeframe following a Breach.
 - Potential Impact: In the event of a Breach caused by the County, the County would be responsible for the costs of investigating the breach, conducting a risk assessment, making required notifications, and indemnifying IEHP, which could exceed the contract amount.
7. IEHP disclaims any liability for consequential, indirect, or incidental damages.
- The County's standard contract does not limit the other party's liability for damages.
 - Potential Impact: In the event the County sustains any consequential, indirect, or incidental damages as a result of any IEHP conduct under the agreement, the County may be unable to recover these damages in a claim against IEHP.

ARMC recommends approval of the Professional Services Agreement with IEHP, including the non-standard terms, as the agreement will provide funding to ARMC to increase Medi-Cal enrollment, which in turn helps ensure ARMC is able to obtain reimbursements for the services it provides to County patients. Such reimbursements allow ARMC to operate in a fiscally responsible manner, ensuring that ARMC will be able to continue to offer its services to the community.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, Deputy County Counsel, 387-5455) on January 13, 2022; ARMC Finance (Chen Wu, Finance Budget Officer, 580-3165) on January 18, 2022; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-5423) on January 18, 2022.

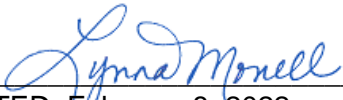
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: February 8, 2022



cc: ARMC- Gilbert w/agree
Contractor- C/O ARMC w/agree
File- w/agree
LA 02/8/2022