

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

January 24, 2023

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Agreement with Ability Network Inc. for Medicare Claims and Billing Management

RECOMMENDATION(S)

Approve a Services **Agreement No. 23-46** with Ability Network Inc., including non-standard terms, for secure exchange server access to Medicare and Medicaid services in the amount of \$83,955, for the contract period of 60 months beginning February 1, 2023 through January 31, 2028, automatically renewing each year until terminated by the County or Ability Network Inc. (Presenter: William L. Gilbert, Director, 580-6150)

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 Discretionary General Funding (Net County Cost). The total cost of \$83,955 is funded by State Medi-Cal, Federal Medicare, private insurances, and other departmental revenue. Funding sources may change in the future pending any legislative activity related to the repeal and/or replacement of the Affordable Care Act. Adequate appropriation and revenue have been included in the Arrowhead Regional Medical Center (ARMC) 2022-23 budget and will be included in future recommended budgets. The breakdown of costs are as follows:

License/Equipment	Annual Recurring Cost	5-Year Total
Multi-Facility Charge	\$4,066	\$20,330
Secure Exchange Server with IVANS NOW	\$12,725	\$63,625
Total	\$16,791	\$83,955

BACKGROUND INFORMATION

The agreement with Ability Network Inc. (Ability) will ensure that ARMC is compliant with Centers for Medicare & Medicaid Services (CMS) regarding license maintenance. Ability licenses allow for the use of Medicare National Provider Identifier (NPI) numbers and provides access to the Medicare Direct Data Entry, Ability Ivan's Now server.

The Ability Ivan's Now server transmits claims directly to Medicare. The Patient Accounts Department has been using the Ability Ivan's Now server for over 10 years in conjunction with Medicare NPI numbers to bill ARMC facility claims.. It offers nation-wide access to all Medicare Enterprise Data Centers and Medicare Administrative Contractors (MAC). This server gives the billing office real-time connectivity for checking claim status and appending errored claims. This

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is a necessary tool for the Medicare team and ensures proper and accelerated reimbursement. The server ultimately streamlines the administrative operational workflow. Without access to use the Ability Ivan's Now server or NPI numbers, ARMC would experience a delay in net reimbursement, loss in revenue if timely filing of claims is exceeded, and additional expense to reinstate access/use.

The Services Agreement (Agreement) is Ability'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 certain terms to County standards, Ability would not agree to other County standard terms. The non-standard and missing terms include the following:

1. Governing law is the State of Minnesota.
 - The County standard contract requires California governing law.
 - Potential Impact: The Agreement will be interpreted under Minnesota law. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on Minnesota law, which may result in fees that exceed the total Agreement amount.
2. Ability may assign the Agreement without notice to the County and without the County's approval to an affiliate or in conjunction with a merger, reorganization, consolidation, change of control or sale of all or substantially all of its assets.
 - In the County standard contract the County must approve any assignment of the contract.
 - Potential Impact: Ability 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 would 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 Minnesota law may permit or restrict a party's right to assign without an express provision in the Agreement.
3. There is no provision in the Agreement addressing each party's responsibility for paying attorneys' fees.
 - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: County Counsel cannot advise on, whether and to what extent, Minnesota law may affect a party's requirement to pay the prevailing party's attorneys' fees and costs in a legal action where no specific provision is provided in the Agreement.
4. The County is required to defend, indemnify, and hold harmless Ability and its third-party licensors from and against all claims arising from the County's unauthorized use of the services, including any improper disclosure of protected health information.
 - The County standard contract does not include any indemnification or defense by the County of a Contractor.
 - Potential Impact: By agreeing to indemnify Ability and its third-party licensors, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or

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expense limited could be brought against Ability and its third-party licensors without such limitations and the County would be responsible to defend and reimburse Ability and its third-party licensors for costs, expenses, and damages, which could exceed the total Agreement amount. County Counsel cannot advise on, whether and to what extent, Minnesota law may limit or expand this Agreement term.

5. The Agreement does not include certain standard County insurance requirements, including not naming the County as an additional insured and no waiver of subrogation.
 - The County standard contract requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department.
 - Potential Impact: Not being an additional named insured on certain policies would prevent the County from making a claim against those policies. No waiver of subrogation may allow Ability's insurer to sue the County, which could result in expenses that exceed the total Agreement amount.

6. Ability's maximum liability to the County is limited to the amounts payable pursuant to Ability's applicable insurance policies.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: To the extent that Ability carries no insurance for the type of claim, Ability's maximum liability would be \$0. 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, Minnesota law may limit or expand the exclusion of limits to the extent prohibited by applicable law.

7. Payment terms are as set forth in each order with late payment interest of 1.5% per month. The current order form sets payment at Net 45 days.
 - County standard payment terms are Net 60 days with no interest or late payment penalties.
 - Potential Impact: County standard processing time is 60 days or more. Failing to pay within the period set forth in an order will result in a material breach of the Agreement, which would allow Ability to terminate the Agreement and seek other legal remedies, including charging the County interest at a rate of 1.5% per month, which would exceed the Agreement amount.

8. The term of the contract is initially for 60 months, thereafter automatically renewing for successive 12 month terms.
 - County Policy 11-06SP does not permit indefinite term or automatically renewing contracts unless approved by the Board of Supervisors.
 - Potential Impact: There is no end term to the Agreement and the County is indefinitely bound to the terms and conditions of the contract until the County gives notice of non-renewal no less than 60 days prior to the end of the current term.

9. There is no termination for convenience without penalty. The service term can only be canceled after the initial service term expires. The initial service term is 60 months. If the County attempts to terminate the Agreement for any reason other than non-appropriation

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of funding due to sequestration, or if Ability terminates the Agreement based on the County's breach, the County is liable for payment of the remaining balance of payments through the end of the Agreement period. The total Agreement amount is non-cancelable and non-refundable.

- The County standard contract gives the County the right to terminate the Contract, for any reason, with a 30 day written notice of termination without any obligation other than to pay amounts for services rendered and expenses reasonably incurred prior to the effective date of termination.
- Potential Impact: Upon termination by the County for any reason other than non-appropriation of funding due to sequestration or upon termination by Ability based on the County's breach, the County is required to pay the total Agreement amount in full, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.

10. There is no stated venue in the Agreement.

- The County standard contract requires the venue for disputes be the Superior Court of California, County of San Bernardino, San Bernardino District.
- Potential Impact: Ability has locations in Minneapolis, Minnesota; Boston Massachusetts; and Tampa, Florida. In addition, the Agreement sets governing law as the State of Minnesota. Having no express venue in the Agreement means that venue at any of these locations could be applied for disputes arising under this Agreement, which may result in additional expenses that exceed the amount of the Agreement.

ARMC recommends approval of the Agreement (formerly one-year agreements executed by Purchasing, and done since 2015) with Ability, including non-standard terms as it will provide ARMC extended service terms and remain compliant with CMS regulations. Compliance will be achieved by maintaining proper licenses to use Medicare NPI numbers for facility billing and continuous use of the Ability Ivan's Now server, both of which are needed for billing claims and recognizing timely net revenue from Medicare.

PROCUREMENT

The Purchasing Department continues to support this non-competitive procurement as the service provides a direct secure connection to Medicare Direct Data Entry (DDE) for this region, and interfaces with the Epic workflow process. Research conducted for this service found that one vendor does provide similar services, however, the vendor does not provide the direct secure connection to the Medicare DDE, nor does the service interface with the Epic system. ARMC's Information Technology and billing staff are highly familiar with the application server, and no additional training is required for renewal. Switching servers would result in increased training costs, additional system implementation costs, and increased information technology support costs.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on December 1, 2022; Purchasing (Ariel Gill, Buyer, 777-0722) on December 12, 2022; Risk Management (Victor Tordesillas, Director, 386-8623) on January 12, 2023; ARMC Finance (Chen Wu, Finance Budget Officer, 580-3165) on January 4, 2023; Finance (Jenny Yang, Administrative Analyst, 387-4884) on January 4, 2023; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on January 4, 2023.

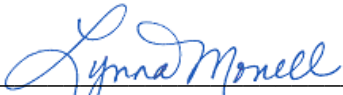
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Record of Action of the Board of Supervisors
San Bernardino County

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 24, 2023



cc: ARMC- Gilbert w/agree
 Contractor- C/O ARMC w/agree
 File- w/agree
LA 01/30/2023