

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

June 9, 2020

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Participation Agreement with the National Renal Administrators Association for access to the Health Information Exchange

RECOMMENDATION(S)

1. Approve **Participation Agreement No. 20-361** with the National Renal Administrators Association, Renal Services, Inc. (NRAA) for access to the NRAA Health Information Exchange, for an initial period of one-year, automatically renewing for one-year periods, at an annual cost not to exceed \$7,000, and one-time fee of \$3,000 for software connectivity.
2. Delegate authority to the Arrowhead Regional Medical Center Hospital Director or Hospital Administrator to execute the Participation Agreement with National Renal Administrators Association, Renal Services Exchange, Inc.
3. Direct the Director of Arrowhead Regional Medical Center to transmit the executed Participation Agreement with NRAA to the Clerk of the Board of Supervisors within 30 days of execution.

(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.

FINANCIAL IMPACT

Approval of the Participation Agreement for access to NRAA Health Information Exchange (NRAA HIE) will not result in the use of Discretionary General Funding (Net County Cost). The annual costs of \$7,000 and one-time fee of \$3,000 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. Sufficient appropriation and revenue are included in the Arrowhead Regional Medical Center (ARMC) 2020-21 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

The approval of the agreement with NRAA will improve county government operations by allowing ARMC to securely submit data electronically rather than manually. This will ensure faster data entry for CROWNWeb, which is a web-based data collection system mandated by the Centers of Medicare and Medicaid Services (CMS), which calls for the electronic submission of administrative and clinical data by all Medicare-certified dialysis facilities. This will lead to less time spent on reporting, more accurate electronic data submission, secure encrypted

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transmission that meets HIPAA and privacy rules, and automated updates from CMS on data submission status.

Currently, the Epic system supports sending required information to the NRAA, who sends to CROWNWeb to meet CMS reporting requirements. NRAA member(s) benefit by reducing time spent on data submission, labor savings, quality of data transmitted, and reimbursement of Medicare patients. Designation of authority is required, as the participation agreement with NRAA must be executed through a web-portal. The NRAA Participation Agreement (“Agreement”) is its standard commercial agreement with terms and conditions that differ from the standard County contract. NRAA was unwilling to engage in negotiations of the terms of the Agreement. The non-standard terms include the following:

Term

The term of this Agreement is indefinite until terminated by either party with or without cause.

- The standard County contract term is five years.
- Potential Impact: The term of this Agreement is indefinite, but the County has the ability to terminate the contract with cause or without cause with the appropriate notice period. Thus, there is little potential impact with this indefinite term.

Limitations of Liability

Under the Agreement, NRAA disclaims any liability for any special, indirect, exemplary, incidental, punitive or consequential damages of any kind, and further limits its liability to not exceed the total amount paid by the County to NRAA during the preceding 12 months under the Agreement.

- The County’s standard contract does not include a limitation of liability provision.
- Potential Impact: Claims could exceed the liability cap and the contract amount, leaving the County financially liable for the excess. In addition, the County’s liability under the contract is not similarly limited.

Warranty Limitation

NRAA is providing its services “as-is” and disclaims any warranties. The Agreement also provides that the use of its service and information for patient diagnosis, treatment, or cure is entirely at the risk of the County.

- The County standard contract provides that the vendor fully warrants its services and products.
- Potential Impact: The liability of NRAA is limited by this disclaimer of warranty. ARMC must be mindful and use appropriate professional judgment when making decisions based on information obtained from NRAA’s HIE services because NRAA will bear no liability for any medical decisions made as a result of information (even if the information is inaccurate) from NRAA’s HIE Services.

Payment Terms

Under the Agreement, fees not paid for HIE Services when due will bear interest at the rate of 12% per annum.

- The County standard contract does not provide for any late fees.
- Potential Impact: The County would be subject to late fees at the rate of 12% per annum. ARMC staff must be cognizant of this provision when processing the annual payment for services under this Agreement.

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Applicable Law

The Agreement will be interpreted under Washington law without regard to choice of law principles.

- The County's standard contract provides that the agreement will be interpreted under California law.
- Potential Impact: The Agreement will be interpreted under Washington law, and any questions, issues, or claims arising under this Agreement may require the County to hire and incur fees for outside counsel competent to advise on Washington law.

Arbitration

Under the Agreement, any disputes that remain unresolved after face-to-face negotiations would need to be submitted through binding arbitration in King County, Washington by a single arbitrator, and judgment may be entered in any court with jurisdiction over the parties.

- The County's standard contract does not require arbitration.
- Potential Impact: By agreeing to this term, the County would be waiving the right to a trial by jury in California. Additionally, because the arbitration would occur in Washington, the County would incur additional costs and fees to retain attorneys licensed to practice in the State of Washington.

Attorney's Fees

The prevailing party in arbitration would be entitled to reasonable attorney's fees.

- In the County's standard contract, each party is responsible for its own attorney's fees.
- Potential Impact: The County could potentially be liable for the attorney's fees incurred by NRAA if NRAA prevails in arbitration against the County.

Insurance

The Agreement does not require NRAA to meet the County's insurance standards, including adding the County as an additional insured and waiver of subrogation rights.

- The County has an extensive list of insurance requirements relating to various insurance coverage and limits, and requires vendors to add the County as an insured and waive subrogation rights.
- Potential Impact: The Agreement is silent on any insurance requirements. This means the County has no assurance that NRAA will have the financial support of an insurance company for any claims that may arise under the Agreement, which could result in the County bearing financial responsibility if NRAA is unable to fulfill its obligations. Additionally, to the extent NRAA has the proper insurance coverage, the policy will not provide direct coverage to the County as a named insured. Lastly, without a waiver of subrogation, NRAA's insurers may bring suit against the County.

Indemnification

NRAA limits its obligation to defend, indemnify and hold County harmless to the extent third-party claims arise out of the HIE's infringement of any third-party copyright, trade secret, or patent right.

- The County standard contract indemnity provision requires the vendor to indemnify, defend and hold County harmless from third party claims arising out of the acts, errors or omissions of the vendor.
- Potential Impact: The limitation of indemnification means that claims other than intellectual property rights claims are excluded from NRAA's indemnity obligation.

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ARMC recommends approval of this agreement, including the non-standard terms, as use of NRAA's HIE Services will promote patient care.

PROCUREMENT

This is a non-competitive procurement based on the proprietary nature of the NRAA HIE Software. Currently, for smaller and non-corporate dialysis centers, NRAA HIE has the only application to electronically relay patient dialysis data to CMS. Electronic submission eliminates the need for manual data entry, reduces errors, and reduces labor time and paperwork.

The County Purchasing Department supports the non-competitive justification for this procurement. Per County Policy No. 11-05, all non-competitive contracts for services in excess of \$100,000 or exceeding a three-year term require approval by the Board.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, County Counsel, 387-5455) on May 11, 2020;) Purchasing Department (Jacqueline Ambrose, Lead Buyer, 777-0722) on May 26, 2020; ARMC Finance (Chen Wu, Budget and Finance Officer, 909-580-3165) on May 14, 2020; Finance (Yael Verduzco, Administrative Analyst, 387-5285) on May 20, 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on May 25, 2020.

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Record of Action of the Board of Supervisors
County of San Bernardino

APPROVED (CONSENT CALENDAR)

Moved: Josie Gonzales Seconded: Robert A. Lovingood
Ayes: Robert A. Lovingood, Janice Rutherford, Dawn Rowe, Curt Hagman, Josie Gonzales

Lynna Monell, CLERK OF THE BOARD

BY _____
DATED: June 9, 2020



cc: ARMC- Gilbert w/agree
 Contractor- C/O ARMC w/agree
 File- w/agree
la 06/11/2020