

**SECOND MEMORANDUM OF UNDERSTANDING BETWEEN  
THE STATE OF ALABAMA DEPARTMENT OF FINANCE AND  
THE ALABAMA NURSING HOME ASSOCIATION EDUCATION FOUNDATION  
FOR THE DISTRIBUTION OF CARES ACT CORONAVIRUS RELIEF FUNDS**

This Second Memorandum of Understanding (the "Agreement") is made by and between the State of Alabama Department of Finance, at 600 Dexter Avenue, Montgomery, Alabama 36130, hereinafter referred to as "DOF" and the and the Alabama Nursing Home Association Education Foundation, an Alabama nonprofit corporation (that is qualified as a public charity under Section 501(c)(3), Section 509(a), and Section 170(c)(2) of the Internal Revenue Code of 1986, as amended), at 4156 Carmichael Road, Montgomery Alabama 36106, hereinafter referred to as the "Foundation." DOF and the Foundation are hereinafter collectively referred to as the "parties." This Agreement becomes effective upon approval of the parties and the Governor.

**1. PURPOSE AND SCOPE**

(a) The federal Coronavirus Aid, Relief, and Economic Security Act, hereinafter referred to as the "CARES Act," established the Coronavirus Relief Fund, hereinafter referred to as "CRF." The CARES Act appropriated \$150,000,000,000 to the CRF to make payments to State, local, and tribal governments for the purposes enumerated in the CARES Act, namely to respond to and mitigate the coronavirus pandemic. The State of Alabama received approximately \$1,900,000,000 from the CRF. CRF funds may only be used to cover costs that 1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); 2) were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and 3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

(b) Alabama Act 2020-199 divided the State of Alabama's share of CRF funds into ten categories and charged DOF with the responsibility of administering the funds on behalf of the people of Alabama. One such category provides, "Up to \$250,000,000 to be used to support the delivery of health care and related services to citizens of Alabama related to the coronavirus pandemic." DOF desires to utilize CRF funds to establish a grant program for the benefit of Alabama's nursing homes. Specifically, DOF will provide up to \$50,000,000 (fifty million dollars) to the Foundation for the benefit of all of Alabama's qualifying nursing homes for the purpose of responding to or mitigating the COVID-19 public health emergency, hereinafter the "COVID-19 Public Health Emergency." DOF desires to partner with the Foundation to create and implement this program as the Foundation possesses information necessary to facilitate the application by nursing homes for CRF funds and the distribution of CRF funds to qualifying nursing homes.

(c) The Program Detail in Appendix A, attached hereto and made a part hereof, describes the procedure and guidelines for a nursing facility to follow in applying for CRF funds to use to meet qualifying costs related to responding to and or mitigating the COVID-19 Public Health Emergency as it relates to nursing homes. Among the tenants will be a certification by the applying nursing home that (i) the submitted request is for the purpose of the nursing home's responding to or mitigating the COVID-19 Public Health Emergency; (ii) the received CRF funds will be applied solely for the stated purpose; and (iii) the requested funds will not duplicate other emergency funds

available to that nursing facility. The request also will be accompanied by documentation supporting the request (such as invoices, purchase orders, summary payroll records, or evidence of insufficient revenue for the nursing home to be able to meet the COVID-19 Public Health Emergency). It is understood by all parties that the Foundation will rely solely upon the certification and supporting documentation submitted by qualified nursing homes, without further inquiry, in administering the CRF funds allocated for this use.

(d) As this program has been presented to DOF by the Foundation, DOF has concluded that it is necessary to respond to and mitigate the coronavirus pandemic in Alabama. Further, DOF concludes that funding this project using the State's CRF funds is an appropriate use of these funds under both federal and state law. DOF fully supports the Foundation in its efforts to support and protect the citizens of Alabama.

(e) This Second Agreement is in addition to that certain Memorandum of Understanding by and between the DOF and Foundation related to reimbursement for COVID-19 testing, as approved by Governor as of July 7, 2020.

## 2. PARTIES' RESPONSIBILITIES

(a) The Foundation agrees to the following:

(i) To develop and implement its grant program as described herein;

(ii) To administer the funds provided to it by this Agreement fairly and impartially on behalf of all nursing homes in Alabama based on need or other applicable criteria, regardless of membership in the Foundation;

(iii) To provide to the State Finance Director's Office, on the fifteenth of every month, beginning September 15, 2020 until conclusion of the program by either completion or termination, a report detailing the progress made on the project and a list of expenditures for the project for the preceding month, including the amount, date of payment, and recipient of the funds;

(iv) To use the funds provided by DOF under this Agreement in accordance with federal and state law and for the purposes set forth in this Agreement and for no other purpose; and

(v) To return any funds provided by DOF under this Agreement that are unspent by December 15, 2020.

(b) DOF agrees to the following:

(i) To provide \$50,000,000 to the Foundation from the State's CRF funds as described herein to fund the Foundation's grant program and for no other purpose.

## 3. TERMINATION OF AGREEMENT



Except as set forth in this section, this agreement may be terminated only by a writing signed by each party or representatives of each party. If the Foundation determines that it will not pursue this project for whatever reason, it may terminate this agreement upon written notice to the State Finance Director and upon return of any unspent funds. If DOF concludes, after a reasonable investigation and in its sole discretion as administrator of the funds, that the funds provided hereunder have been used in a manner inconsistent with federal or state law, DOF may terminate this agreement immediately upon written notice to the Foundation.

#### 4. MISCELLANEOUS PROVISIONS

(a) The terms and commitments contained herein shall not constitute a debt of the State of Alabama, which is prohibited by Section 213 of the Official Compilation of the Constitution of Alabama, 1901, as amended by Amendment No. 26.

(b) By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

(c) In the event of any dispute between the parties, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail, and the dispute involves the payment of money, the sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama. For any and all other disputes arising under the terms of this contract which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center for Dispute Resolution of the Alabama State Bar.

(d) In order to comply with federal notice requirements relating to the administration of grants and other federal assistance funds, DOF provides the following information to the Foundation: This subaward is provided to the Foundation through a grant to the State of Alabama in the amount of \$1,901,262,000 from the U.S. Treasury via Section 601(a)(1) of the Social Security Act (42 U.S.C. 301 et seq.), known as the Coronavirus Relief Fund, as created by Section 5001 of the CARES Act, Pub. L. No. 116-136 (March 27, 2020) under Federal Award Identification Number SLT0002 and SLT0223, CFDA #21.019 Coronavirus Relief Fund for the period March 1, 2020 to December 30, 2020. This subaward is provided in accordance with the requirements set forth in the CARES Act and other applicable federal and state law and policy, and the Foundation affirms that all information it has provided to DOF relating to this subaward is true and accurate. This subaward does not include research and development. The parties acknowledge and understand that each subrecipient of CRF funds will be evaluated in accordance with Code of Federal Regulations, Title 2, § 200.331(b) for risk of noncompliance with federal statutes, regulations, and the terms and conditions of the subaward. Further, each subrecipients' activities will be monitored as necessary to ensure that the subaward is used for authorized

purposes, in compliance with law, and that subaward performance goals are achieved. Other monitoring tools may be implemented depending on the level of risk posed by the subrecipient.

## 5. AMENDMENT

This Agreement may be amended only by a writing signed by each party or representatives of each party.

In witness whereof, the parties hereto have caused this Agreement to be executed by those officers, officials, and persons thereunto duly authorized.

State of Alabama  
Department of Finance



Digitally signed by Kelly  
Butler  
Date: 2020.08.05 12:18:32  
-05'00'

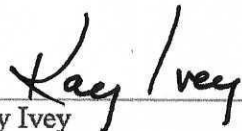
Kelly Butler  
Finance Director

Alabama Nursing Home Association  
Education Foundation



R. Frank Brown, Jr.  
Chairman

APPROVED:



Kay Ivey  
Governor of Alabama

Date: 8-5-2020



NURSING FACILITY  
CORONAVIRUS RELIEF FUNDS  
PROGRAM DETAILS  
APPENDIX A

**A. Background:** This is to supplement that certain Second Memorandum of Understanding, hereinafter "MOU" by and between the State of Alabama Department of Finance, hereinafter "DOF," and the Alabama Nursing Home Education Foundation, hereinafter the "Foundation," related to requests by nursing homes for Coronavirus Relief Funds, hereinafter "CRF," to address the COVID-19 public health emergency, under which the Foundation would administer the CRF requests from nursing homes. Due to the unpredictable nature of the effect of COVID-19 pandemic as it relates to nursing homes, the information in this Appendix is subject to change.

**B. Status and Facts:**

1. Since March 2020 through August 3, 2020, over 212 of the 231 Alabama nursing homes, located in all 67-counties have had at least one COVID-19 diagnosed patient or employee.
2. A nursing facility may migrate back and forth between being COVID free and having one or more COVID cases.
3. As presented previously, the average incremental increase in cost to care for a COVID patient is approximately \$914 per day and the average incremental cost to a nursing facility for COVID prevention is approximately \$63 per day.
4. Mitigates are:
  - a) \$20 per day for Medicaid patients (60% are Medicaid);
  - b) Medicare Part A additure \$100 per day for COVID diagnoses patients who are covered under Medicare Part A for nursing home care;
  - c) Department of Health and Human Services Provider Relief Funds provided to qualified nursing homes that vary based on 2018 revenue and a supplemental funding that was based on licensed bed size. On average, a nursing home would have received between \$500,000 and \$1,000,000 of these funds; and
  - d) CRF available to nursing homes by the State for COVID-19 testing through the program administered by the Foundation and described in that certain Memorandum of Understanding, approved by the Governor as of July 7, 2020.
5. **Cost to Administer:** The Foundation has engaged a third party accounting firm to administer the program, and anticipates the fee range for the third party accounting firm to process claims to be between \$200,000 and \$300,000 through 2020. This will be subject to the scope of the requests. Other than these costs, the Foundation is not allocating any of its overhead to this project.

**C. Process:** Nursing Homes seeking CRF for qualifying purposes, will file an application for, not more than monthly, through the Foundation's secure portal. The submittal must contain the following:

1. Amount of the request.
2. A certification subject to the laws of perjury averring that (i) the submitted request is for the purpose of the nursing home to respond to or mitigate the COVID-19 public health emergency, hereinafter the "COVID-19 Public Health Emergency, (ii) the received CRFs will be applied solely for the stated purpose, and (iii) the requested funds will not duplicate other emergency funds available to that nursing facility."
3. Documentation supporting the request (such as copies of invoices, purchase orders, summary payroll records, and/or evidence of insufficient revenue for the nursing home to be able to meet the COVID-19 Public Health Emergency).

It is understood by all parties that the Foundation will to rely solely upon the certification and supporting documentation, without further inquiry, in administering the CRFs allocated for this use.