

MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF ALABAMA DEPARTMENT OF FINANCE
AND
THE ALABAMA DEPARTMENT OF VETERANS AFFAIRS
FOR THE DISTRIBUTION OF CORONAVIRUS STATE FISCAL RECOVERY
FUNDS

This Memorandum of Agreement (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 State of Alabama Department of Veterans Affairs (hereinafter referred to as "ADVA"). DOF and ADVA may be referred to herein individually as a "party" and collectively as the "parties." This Agreement becomes effective on the approval of the parties and the Governor of the State of Alabama.

I. PURPOSE

The federal American Rescue Plan Act of 2021, Public Law No. 117-2, 135 Stat. 4. ("ARPA") was signed into law on March 11, 2021. The Act amended the federal Social Security Act to add Section 602 to the Social Security Act, and by doing so, created the Coronavirus State Fiscal Recovery Fund (hereinafter referred to as "the State Recovery Fund"). The Act appropriated funds from the State Recovery Fund to the State of Alabama and other states to support their response to the impact of COVID-19 on their communities, residents, and businesses; and to aid in efforts to contain COVID-19. Under Section 602 of the Social Security Act, the State Recovery Fund funds may be used to cover costs obligated on or before December 31, 2024 and incurred by the State on or before December 31, 2026, for four broad purposes:

- A. To respond to the COVID-19 public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits; or for aid to impacted industries;
- B. To respond to workers performing essential work during the COVID-19 public health emergency, by providing premium pay to eligible workers who are performing essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
- C. For the provision of government services to the extent of the reduction in revenue of the State due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and
- D. To make necessary investments in water, sewer, or broadband infrastructure.

The Secretary of the Treasury promulgated initial regulations for purposes of implementing the State Recovery Fund, published in the May 17, 2021, Federal Register, at 86 Fed. Reg. 26786 (the "Interim Final Rule"). The Interim Final Rule clarifies that the State Recovery Fund is intended to build upon and expand the support provided to states and other governments over the last year, including through the Coronavirus Relief Fund ("CRF"). The Interim Final Rule further provides a non-exclusive list of examples of costs that qualify for payment from the State Recovery Fund funds under one of the four broad categories specified in Section 602 of the Social Security Act, as specified above. In response to public comments to the Interim Final Rule, the Secretary of the Treasury promulgated final regulations in the January 27, 2022, Federal Register, at 87 Fed. Reg. 4338 (the "Final Rule"), which took effect on April 1, 2022. For purposes of this Agreement, funds provided by DOF to ADVA must be used consistent with the requirements of the Final Rule.

The State of Alabama was allocated \$2,120,279,417 from the federal State Recovery Fund. Section 2 of Alabama Act No. 2022-1 (the "Act") appropriates up to \$36,796,346 of such funds to DOF to be used to support the delivery of health care and related services to citizens of Alabama related to the coronavirus pandemic, including through assisted living facilities hereinafter referred to as the "Funds"). The Act further provides that the Funds may be delegated through memoranda of agreement with the Alabama Department of Public Health, the Alabama Department of Mental Health, Alabama Department of Rehabilitation Services, or any other state entity of competent jurisdiction, health care association or health care provider.

ADVA submitted a funding request and it is attached hereto as Appendix A and incorporated herein by reference. In sum, ADVA contracts with a healthcare provider to operate its four state veterans' homes in the State. As a result of the COVID-19 pandemic and public health emergency, the contractor has incurred and continues to incur significant operational expenses not contemplated as part of the standard costs of operating a veterans' home. As a result of these increased costs, ADVA's costs of operating the veterans' homes has increased. DOF desires to allocate up to \$5,000,000 from the Funds to ADVA to be utilized for reimbursement of actual costs incurred and projected costs incurred due to the COVID-19 pandemic and public health emergency at its four state veterans' homes. The Funds may not be used for capital expenses, construction, or construction-related expenditures. DOF has concluded that such funding is necessary to continue to respond to and mitigate the COVID-19 pandemic and public health emergency in Alabama and the economic impacts thereof. Further, DOF concludes that funding ADVA for the purposes described herein is an eligible and appropriate use of the Funds under both federal and state law. DOF fully supports ADVA in its effort to support and protect the veterans of Alabama.

II. PARTIES' RESPONSIBILITY

A. ADVA agrees to the following:

1. To utilize the Funds provided under this Agreement to reimburse costs incurred and projected costs to be incurred as a result of the COVID-19 pandemic, exclusive of capital expenses and construction costs, at its four veterans homes;

2. To use the Funds in accordance with Section 602 of the Social Security Act, the Final Rule and other applicable federal and state law, and for the purposes set forth in this Agreement, and for no other purpose; and
3. To provide to the State Finance Director's Office by November 15, 2022, and monthly thereafter on the 15th of every month, a report detailing how the Funds are being utilized and a report of expenditures made since the preceding report, and to further provide interim reports as the State Finance Director's Office may determine necessary;
4. To return any Funds provided by DOF under this Agreement that remain unobligated on December 1, 2024 to DOF by December 15, 2024, and to return any Funds provided under this Agreement that remain unspent as of December 1, 2026 to DOF by December 15, 2026.

B. DOF agrees to the following:

1. To provide, within fourteen (14) days of the effective date of this Agreement, \$5,000,000 to ADVA from the States Funds appropriated pursuant to Alabama Act 2022-1 for the ADVA programs described herein and for no other purpose; and
2. To make all reports to the federal government required by ARPA.

III. TERMINATION OF AGREEMENT

Except as set forth in this section, this Agreement may be terminated only in a writing signed by each party or representative of each party. 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 ADVA.

IV. 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 Recompilation of the Constitution of Alabama, 1901, as amended by Amendment No. 26.

B. By signing this Agreement, the 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. A 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 Agreement 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 ADVA: this award is provided to ADVA through a grant to the State of Alabama in the amount of \$2,120,279,417 from the United States Treasury via Section 602 of the Social Security Act, as added by Public Law No. 117-2, known as the American Rescue Plan Act of 2021 (“ARPA”), which established the Coronavirus State Fiscal Recovery Fund. This award is provided in accordance with the requirements set forth in ARPA and other applicable federal and state law and policy, and ADVA affirms that all information it has provided to DOF relating to this award is true and accurate. This award does not include research and development. The parties acknowledge and understand that each recipient of the Funds will be evaluated in accordance with Code of Federal Regulations, Title 2, § 200.331-333 for risk of noncompliance with federal statutes, regulations, and the terms and conditions of the award. Further, each recipient’s activities will be monitored as necessary to ensure that the award is used for authorized purposes, in compliance with law, and that award performance goals are achieved. Other monitoring tools may be implemented on the level of risk imposed by the recipient.

E. Code of Federal Regulations, Title 2, § 200.332(f) requires DOF to verify that each recipient that is expected to expend \$750,000 or more in Federal awards during a fiscal year have a single or program-specific audit conducted for that year in accordance with the provisions of Code of Federal Regulations, Title 2, § 200.501. In addition, any non-federal entity (as defined in the Code of Federal Regulations) that receives Funds from ADVA are subject to the Single Audit Act. The parties acknowledge that DOF has provided notice to ADVA of the audit requirements applicable to the award made by this Agreement and ADVA agrees to comply therewith and to notify subrecipients of said requirements.

F. The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement.

V. AMENDMENTS

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

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by those officers, officials duly authorized to execute such agreements on fifth (5th) day of October, 2022.

**State of Alabama
Department of Finance**

Bill Poole 11/7/2022
Bill Poole Date
Director of Finance

**Alabama Department of
Veterans Affairs**

Kent Davis
Kent Davis
Commissioner

APPROVED:

Kay Ivey 11/16/2022
Kay Ivey
Governor of Alabama

APPENDIX A



STATE OF ALABAMA DEPARTMENT OF VETERANS AFFAIRS

P. O. Box 1509
Montgomery, Alabama 36102-1509
Telephone (334) 242-5077
Fax (334) 242-5102



REAR ADMIRAL W. KENT DAVIS, USN. (RET.)
COMMISSIONER

May 5, 2022

Bill Poole
Finance Director, Alabama Department of Finance
P.O. Box 300658
Montgomery, AL 36130-0658

Dear Director Poole:

Alabama Acts No. 2022-1 appropriated \$36,796,346 to support the delivery of health care and related services related to the coronavirus pandemic.

The Alabama Department of Veterans Affairs is requesting funding for increases in the operational costs at our four (4) state veterans homes attributable to the pandemic. This request includes both reimbursement for actual costs and funding for projected costs. I have provided the details of the request and the project in the enclosure.

Please feel free to contact me with any questions. Thank you for your earnest consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Kent Davis".

W. Kent Davis
Rear Admiral, USN (Ret.)
Commissioner

Encl.: Funding Request

WKD/bgg

Summary

The Alabama Department of Veterans Affairs (ADVA) is requesting \$9.8M from the American Rescue Plan Act (ARPA) funds to fund state veterans' homes expenses over and above the standard operational costs as a result of the COVID-19 pandemic which have not otherwise been reimbursed.

Background

ADVA contracts with a healthcare provider to operate its four state veterans' homes. In responding to and mitigating the COVID-19 pandemic, the contractor has incurred and continues to incur significant operational expenses not contemplated as part of the standard costs. Under the contract, these extraordinary expenses have resulted in increased costs to the ADVA.

Extraordinary costs are not unique to this healthcare provider contractor; skilled nursing facilities across the country are experiencing increased costs due to the COVID-19 pandemic. A number of programs have been enacted to assist with this national situation. This includes some direct payments from the federal government. In Alabama, it also includes two separate appropriations to reimburse or otherwise off-set COVID-19 costs to nursing homes. While the state veterans' homes were eligible to receive only a portion of the direct federal payments, Alabama's state veterans' homes have received some funding and reimbursement from the state appropriations as well as additional funding from the US Department of Veterans Affairs.

The requested \$9.8M is to cover the ADVA COVID-19 costs to operate the four (4) state veterans homes. It does not include any costs for which either the ADVA or the contractor have received or expect to receive reimbursement.

ARPA Eligible

This request maintains vital public services, even amid declines in revenue resulting from the crisis, in that it ensures continued availability of affordable, specialized skilled nursing care for Alabama's veterans provided by the state.