

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE STATE OF ALABAMA DEPARTMENT OF FINANCE  
AND  
THE ALABAMA NURSING HOME ASSOCIATION EDUCATION FOUNDATION  
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 Alabama Nursing Home Association Education Foundation, an Alabama nonprofit corporation (qualified as a public charity under section 501(c)(3), Section 509(a), and Section 170(c) 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 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 incurred by the State on or before December 31, 2024, for one of 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 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”) which are in effect until March 31, 2022. Subsequently, the Secretary of the Treasury promulgated updated regulations in the January 27, 2022 , Federal Register, at 87 Fed. Reg. 4338 (the “Final Rule”). The Final Rule takes effect on April 1, 2022.

The Interim Final Rule and Final Rule clarify 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 and Final Rule further provide 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.

The State of Alabama was allocated \$2,120,279,417 from the State Recovery Fund. Alabama Act No. 2022-1 appropriates \$80,000,000 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 pandemic by and through reimbursement of eligible expenses. The Act further provides that such funds may be delegated through memoranda of agreement to the Alabama Hospital Association and the Alabama Nursing Home Association. Such funds may generally only be used to cover costs for qualifying purposes as described herein that are or were incurred during the period from March 11, 2021, to December 31, 2021 (sometimes referred to as the “Applicable Period”).

The DOF desires to allocate up to \$40,000,000 to Alabama nursing homes to establish a reimbursement program for the benefit of Alabama’s nursing homes (the “Funds”). Specifically, DOF will provide The Funds to the Foundation to be distributed on a reimbursement basis to and for the benefit of all Alabama qualifying nursing homes for the purpose of responding to or mitigating the COVID-19 pandemic and public health emergency and the economic impact thereof. DOF desires to collaborate with the Foundation to create and implement this program, as the Foundation possesses information necessary to facilitate the application by nursing homes for Funds and the distribution of Funds for qualifying uses.

The “Nursing Home COVID-19 Recovery Fund Program” (the “Program”) is more thoroughly detailed in Appendix A, attached hereto and incorporated herein by reference, which describes the procedure and guidelines for nursing homes to follow in applying for Funds related to costs incurred by each nursing home that is eligible under Section 602 of the Social Security Act and the Interim Final Rule.<sup>1</sup> The Foundation will ensure a fair and equitable distribution of Funds through the Program among all nursing homes, urban and rural, and regardless of whether such nursing homes are members of the Alabama Nursing Home Association. Among the central tenets of the Program will be a certification by the applying nursing home that: (i) the submitted request is for an eligible cost, expense, or purpose under Section 602 of the Social Security Act and the Interim Final Rule incurred by the nursing home between March 11, 2021 and December 31, 2021; (ii) the received Funds will be applied solely for the stated purpose; (iii) the requested Funds will not duplicate any other funds, including funds received from the federal government

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<sup>1</sup> The parties agree that the Final Rule will not apply to use of these funds because the Applicable Period, as defined herein, does not extend to April 1, 2022 or beyond. In addition to being governed by applicable federal and state law, the expenditures anticipated to be made under this Agreement will be governed by the Interim Final Rule and not the Final Rule.

(including, but not limited to ARPA and Coronavirus Relief Funds), Medicaid, Medicare, or private insurance; and (iv) the applying nursing home shall be responsible for any recoupment, overpayment, or other return of Funds to the extent of any determination that such Funds were not applied for an eligible purpose under Section 602 of the Social Security Act, the Interim Final Rule, or the terms of this Agreement or the Program. Each nursing home's request will also be accompanied by the documentation to support such request (including, without limitation, invoices, purchase orders, worksheets, or such other evidence as may be appropriate to support the request for Funds). It is understood by the parties that, except as otherwise provided in this Agreement, the Foundation will rely solely upon the certification and supporting documentation submitted by qualified nursing homes, without further inquiry, in administering the Funds allocated for this use.

The Parties agree and acknowledge that in making distributions to a nursing home, the Foundation is relying solely on attestations from the respective requesting nursing home and the invoices, worksheets, or other documentation submitted therewith (the "Attestation"). The Foundation is neither assuming responsibility for any distribution made based on the Attestation, nor is DOF holding the Foundation responsible for any such distribution, provided the Foundation has received the appropriate attestation and has processed the application for funding in accordance with its procedures.

Notwithstanding any other provision of this Agreement, the Parties acknowledge and agree that the Foundation is a "Subrecipient" as that term is defined in Code of Federal Regulations, Title 2, § 200.1. As such, Foundation is responsible for complying with all federal requirements for Subrecipients, including the Single Audit Act and Code of Federal Regulations, Title 2, Part 200, subpart F regarding audit requirements.

This Program has been presented to DOF by the Foundation, and DOF has concluded that implementation of the Program 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 this project using the Funds is an appropriate use of these Funds under both federal and state law. DOF fully supports the Foundation in its effort to support and protect the citizens of Alabama.

## **II. PARTIES' RESPONSIBILITY**

### **A. Foundation agrees to the following:**

1. To develop and implement the "Nursing Home COVID-19 Recovery Fund Program";
2. To administer the Funds provided to it by this Agreement fairly and impartially on behalf of all nursing homes across the state, regardless of Alabama Nursing Home Association membership;
3. To include in the certification filed by each nursing home applying for Funds an acknowledgment that such nursing home has, as required by law, reported to appropriate healthcare officials;

4. To comply with all federal requirements applicable to Subrecipients, including the Single Audit Act and Code of Federal Regulations, Title 2, Part 200, subpart F regarding audit requirements.
5. To provide to the State Finance Director's Office by May 15, 2022, a final report detailing the progress made on the development and implementation of the Program and an itemized list of reimbursement applications received and expenditures for the Program for the period March 11, 2021, through December 31, 2021, and further provide such monthly interim reports as the State Finance Director's Office may determine necessary.
6. To use the Funds provided by DOF under this Agreement in accordance with Section 602 of the Social Security Act, the Interim Final Rule, other federal and state law, and for the purposes set forth in this Agreement, and for no other purpose; and
7. To return any Funds provided by DOF under this Agreement that are unspent as of May 15, 2022, except the Foundation may retain an amount of the Funds it estimates is sufficient to pay for the required single audit(s) under the Single Audit Act.

B. DOF agrees to provide \$40,000,000 to Foundation from the State's Funds appropriated pursuant to Act No. 2022-1 to fund the Program described herein and for no other purpose; and

### **III. FINANCIAL ARRANGEMENTS**

The parties agree that within fourteen (14) days of the effective date of this Agreement, DOF will provide and advance \$40,000,000 to the Foundation under this Agreement to be disbursed to nursing homes for described herein reimbursements. Foundation acknowledges that all Funds provided under this Agreement must be spent or returned to DOF by May 15, 2022, except the Foundation may retain an amount of the Funds it estimates is sufficient to pay for the required single audit(s) under the Single Audit Act. Reimbursements or invoice payments may not occur after that date. Foundation may employ outside accounting, legal, or other consultants to assist with the administration of these Funds; however, such accounting, legal, or other consultants must meet and comply with audit requirements for use of Funds under the Act.

### **IV. 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 Foundation determines that it will not pursue the Program for whatever reason, it may terminate this Agreement upon written notice to the State Finance Director and 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 Foundation.

## V. 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 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. 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 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 Foundation: this subaward is provided to the Foundation 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 subaward is provided in accordance with the requirements set forth in ARPA 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 the 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 subrecipient’s 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 on the level of risk imposed by the subrecipient.

E. Code of Federal Regulations, Title 2, § 200.332(f) requires DOF to verify that each subrecipient 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. The parties acknowledge that DOF has

provided notice to Foundation of the audit requirements applicable to the award made by this Agreement and Foundation agrees to comply therewith.

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.


## VI. AMENDMENTS

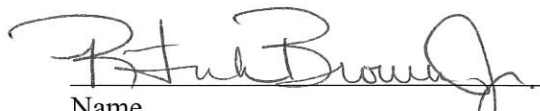
This Agreement may only be amended by a writing signed by each party of representatives of each party.

**IN WITNESS WHEREOF**, the parties hereto have caused this agreement to be executed by those officers, officials duly authorized to execute such agreements.

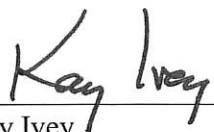
**State of Alabama**  
**Department of Finance**

**Alabama Nursing Home**  
**Education Foundation**

  
\_\_\_\_\_  
Bill Poole  
Director of Finance

  
\_\_\_\_\_  
Name  
Title

**APPROVED:**

  
\_\_\_\_\_  
Kay Ivey  
Governor of Alabama

## APPENDIX A

### Coronavirus State Fiscal Recovery Fund

#### Nursing Home COVID-19 Recovery Fund Program Details

**A. Background:** This is to supplement that certain Memorandum of Agreement (“MOA”) between the State of Alabama Department of Finance (“DOF”) and the Alabama Nursing Home Education Foundation (“Foundation”), the Foundation’s administration of the “Nursing Home COVID-19 Recovery Fund Program” (the “Program”) for purposes of distribution for reimbursement of eligible expenses to Alabama nursing homes of funds allocated to the State of Alabama from the State Fiscal Recovery Fund created under Section 602 of the Social Security Act, as added by the American Rescue Plan Act of 2021, and as allocated by the State of Alabama for use by nursing homes (the “Funds”). Due to the unpredictable nature of the pandemic as it relates to nursing homes, the information in this Appendix is subject to change. Except as otherwise explicitly provided herein, all capitalized or defined terms in this Appendix A shall have the same meaning as set forth in the MOA.

**B. Process:** Nursing Homes seeking reimbursement of eligible expenses under the Program will file an application for reimbursement (for the period March 11, 2021 through December 31, 2021 the “Applicable Period”) with the Foundation. The submittal must contain the following:

1. Amount of the request.
2. Certification subject to the laws of perjury averring that: (i) the submitted request is for reimbursement of an eligible cost, expense, or purpose under Section 602 of the Social Security Act and the Interim Final Rule; (ii) the received Funds will be applied solely for the stated purpose; (iii) the requested Funds will not duplicate any other funds, including funds received from the federal government (including, but not limited to ARPA and Coronavirus Relief Funds), Medicaid, Medicare, or private insurance available to that nursing home; and (iv) the applying nursing home shall be responsible for any recoupment, overpayment, or other return of Funds to the extent of any determination that such Funds were not applied for an eligible purpose under Section 602 of the Social Security Act, the Interim Final Rule, or the terms of this Agreement or the Program.
3. Documentation supporting the request (including, without limitation, invoices, purchase orders, or such other evidence as may be appropriate to support the request for Funds).
4. The Foundation will determine the aggregate amount of eligible reimbursement requests submitted for Funds under the Program and will, if necessary, effect a pro rata reimbursement to each qualifying nursing home based on the amount of eligible expenditures submitted by such nursing home.

It is acknowledged and agreed by all parties that, except as otherwise provided in this Agreement, Foundation will rely solely upon the certification and supporting documentation, without further inquiry, in administering the Funds allocated to nursing homes under this agreement.

**C. Eligible Uses:** Expenditures eligible for reimbursement are limited to tangible medical supplies and services necessary to respond to the COVID-19 public health emergency, including, but not limited to the following:

**PHE**

- *COVID-19 Mitigation and Prevention*
  - Worksheet calculated requests – Each requesting nursing home shall accompany its request for Program funding by completing a worksheet for each month during the Applicable Period for which funds are requested which worksheet shall be similar to the worksheet used in respect to the application for funds under the CARES Act, Corona Virus Relief Funds program administered by the Foundation under a Memorandum of Understanding, updated for the Applicable Period [for example, if calculating for May 2021, then the corresponding month will be May 2019], under which the nursing home will complete a worksheet that calculates the average per day patient revenue for the corresponding month of the pre-public health emergency calendar year of 2019 (as inflated by the DRI established by the Alabama Medicaid Agency as of January 1, 2020 and January 2021) and multiply that per patient day amount times the change in patient days for the corresponding month during the Applicable Period [any surplus for any month during the Applicable Period will reduce insufficient revenues during the Applicable Period]. The worksheet calculated patient revenues are net of contractual allowance. In addition, the applying nursing home’s request will be mitigated by deducting from that nursing home’s request for each respective month during the Applicable Period, the sum of (a) the Medicaid add-on (either \$20 per Medicaid patient day paid during the March 11, 2021 through June 30, 2021, and \$25 per day per Medicaid patient day paid during the months of July 1, 2021 through December 31, 2021) booked by that nursing home during that respective month, and (b) the application during the Applicable Period of Provider Relief Funds received by that nursing home from the Health Services and Resource Administration, Department of Health and Human Services (“HRSA”) that were reported to HRSA as applied to the direct costs and/or insufficient revenue permitted to be claimed under the Program during the Applicable period.

Other direct reimbursable costs incurred would include, without limit,

- Increase in direct COVID expenses that would be permitted as allowable expenses on a Medicare or Medicaid cost report (if nursing home does not participate in such programs it is deemed to have filed the same for the purpose of this provision) such as, without limit, direct patient care, cleaning supplies, and medical supplies)
- Vaccination programs
- Medical care related to COVID
- COVID-19 testing
- Contact Tracing
- Support for individuals in isolation or quarantine
- Support for vulnerable populations to access medical or public health services (e.g., telehealth, transportation assistance, care coordination, and other supports)



- Purchases of personal protective equipment (“PPE”)
  - Ventilation improvements (e.g., negative pressure rooms, general ventilation and air circulation improvements to nursing home air handling systems)
  - Enhancement of public health data systems
  - Capital investments to meet pandemic operational needs, such as physical plant improvements to public nursing homes and health clinics (but excluding construction costs)
- *Medical Expenses*
    - Individuals with “long COVID”
    - Near-term and long-term needs for care and services (e.g., monoclonal antibody treatments, ventilator support, oxygen machines and DME, prescription medications used to treat COVID-19, etc.)

**C. Cost to Administer:** The Foundation may engage accounting, legal, consulting, or other firms to assist in the implementation of the program. The Foundation anticipates the fee range for this accounting, legal, and other consulting work to be in the range of \$235,000.00 to \$285,000.00 through 2022, with similar annual expenditures for these services each year thereafter, to the extent necessary. These expenses will be reimbursed to the Foundation from the Funds. In addition, the Foundation will be reimbursed from the Funds for the costs of completing an audit in accordance with the requirements of the Single Audit Act and Code of Federal Regulations, Title 2, part 200, Subpart F.