



STATE OF ARKANSAS
**Department of Finance
and Administration**

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August 5, 2021

Sen. Terry Rice, Co-Chair
Rep. Jeff Wardlaw, Co-Chair
Arkansas Legislative Council
State Capitol Building
Little Rock, AR 72201

Dear Co-Chairs:

This is to inform you that there are items for Legislative Council approval that require your immediate attention. Because of the time-sensitive nature of these items, the Department of Finance and Administration respectfully requests an emergency approval of these items, which have received my approval as Chief Fiscal Officer of the State.

These items are American Rescue Plan Act requests. The first request is required to allow the Arkansas Department of Health to partner with Unity Health to increase hospital bed capacity statewide. The second request is required to allow the Department of Human Services grant funds for hospitals to address the staffing and bed shortages, lost revenue streams, and additional costs of providing COVID-19 treatment. The final request is required to allow the Department of Human Services grant funds for skilled nursing facilities to address significant cost challenges faced by skilled nursing facilities during the pandemic.

I ask that you please institute emergency action procedures for consideration of these matters and sign them out of Committee per Rule 16 of the Rules of the Arkansas Legislative Council.

Sincerely,

A handwritten signature in black ink, appearing to read 'Larry W. Walther', is written over a faint, larger version of the same signature.

Larry W. Walther,
Secretary
Department of Finance and Administration

CC: Senator Jonathan Dismang, Co-Chair
Representative Michelle Gray, Co-Chair
Performance Evaluation and Expenditure Review (PEER) Subcommittee

**AMERICAN RESCUE PLAN ACT OF 2021 PROGRAM APPROPRIATION
AND PERSONNEL AUTHORIZATION REQUEST
SECTION 38 OF ACT 997 OF 2021**

Agency: Department of Human Services Business Area Code: 0710

Program Title: Unreimbursed COVID-19 Costs of Skilled Nursing Facilities

Sponsoring Organization: _____ CFDA #: _____

Effective Date of Authorization: Beginning: 3/3/2021 Ending: 2/28/2023

Purpose of Grant / Reason for addition or change (include attachments as necessary to provide thorough information):
 Kansas' 226 skilled nursing facilities are in severe, unsustainable financial jeopardy from the ongoing extraordinary costs of the COVID-19 pandemic. Previous federal and state COVID-19 support has been exhausted, unreimbursed costs rapidly accumulate, and financial reserves are depleted. Without action, nursing facilities and their thousands of residents and staff face a real risk of multiple closures, with severe disruption in access and continuity of care, loss of availability of essential skilled nursing services, loss of home for residents without family home to go to, major disruptions for individual vulnerable beneficiaries and their families, significant harm to local economies, especially in rural counties, and unavailability of beds to serve COVID-19 and other patients discharged from hospitals. The human impact will be considerable. Virtually all nursing facility residents are low-income, as are many nursing facility support staff. Further, both residents and staff are disproportionately people of color.

American Rescue Plan Act Program Funding

Func. Area: HHS Fund Code: FRP7171 Direct Funding: _____
 Funds Center: _____ Internal Order/WBS Element: _____ Steering Comm. Approved: X

	Program Funding Amount
Regular Salaries	
Extra Help	
Personal Services Matching	
Operating Expenses	
Conference & Travel Expenses	
Professional Fees	
Capital Outlay	
Data Processing	
Grants and Aid (CI: 04)	116,412,000
Other:	
Other:	
Total	\$ 116,412,000

Anticipated Duration of Federal Funds: _____

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DFA IGS State Technology Planning **Date**
 Items requested for information technology must be in compliance with Technology Plans as submitted to DFA IGS State Technology Planning.

Positions to be established: (list each position separately)

Org Unit	Pers Area	Pers SubArea	Cost Center	Position Number	Cmnt Item	Position Title	Class Code	Grade	Line Item Maximum *

State funds will not be used to replace federal funds when such funds expire, unless appropriated by the General Assembly and authorized by the Governor.

Approved by: Cindy Gillespie 8/4/2021
 Cabinet Secretary/Agency Director Date

[Signature] 8-5-21
 Office of Budget Date

Office of Personnel Mgmt Date

ARKANSAS AMERICAN RESCUE PLAN ACT STEERING COMMITTEE
ARPA Funding Request from the Department of Human Services
Unreimbursed COVID-19 Costs of Skilled Nursing Facilities
August 4, 2021

Arkansas' 226 skilled nursing facilities are in severe, unsustainable financial jeopardy from the ongoing extraordinary costs of the COVID-19 pandemic. Previous federal and state COVID-19 support has been exhausted, unreimbursed costs rapidly accumulate, and financial reserves are depleted. Without action, nursing facilities and their thousands of residents and staff face a real risk of multiple closures, with severe disruption in access and continuity of care, loss of availability of essential skilled nursing services, loss of home for residents without a family home to go to, major disruptions for individual vulnerable beneficiaries and their families, significant harm to local economies, especially in rural counties, and unavailability of beds to serve COVID-19 and other patients discharged from hospitals. The human impact will be considerable. Virtually all nursing facility residents are low-income, as are many nursing facility support staff. Further, both residents and staff are disproportionately people of color.

DHS is working with the Arkansas Health Care Association to fix these and other policies in the Medicaid cost reimbursement manual, as well as update the manual for new state legislation and federal requirements. DHS intends to promulgate a modernized manual this fall. However, this will not be completed fast enough to address the serious situation facing Arkansas nursing facilities as a result of the COVID-19 pandemic.

Before that time, ARPA funds are needed to mitigate some nursing facilities' unreimbursed COVID-19 costs and help sustain access to essential skilled nursing facility services throughout the state. The requested funds are necessary to:

- Respond to the negative impact of the pandemic and help support economic recovery.
- Support specific, ongoing COVID-19 mitigation efforts and expenses of skilled nursing facilities as they serve the most at-risk population.
- Help mitigate the impact of COVID-19 and the ongoing risk it presents to access to skilled nursing care for the state's aged and vulnerable citizens.

Therefore, DHS respectfully requests \$116,412,000 in ARPA funding to immediately address some of the most significant cost challenges faced by Arkansas skilled nursing facilities during the pandemic.

1. Exceptional Costs of Biohazardous Medical Waste and COVID-19 Testing

Problem: To meet practices mandated by CMS, CDC, and OSHA during the pandemic, Arkansas skilled nursing facilities are incurring extremely high costs for a wide range of medical supplies and items. These essential COVID-19 medical expenses are not reimbursed by Medicaid or Medicare or from private pay payments. For example, biohazardous medical waste disposal costs during the pandemic are commonly 50+ times greater than before, are not included in any rate structure, and would greatly exceed payment ceilings and limitations even had they been included. Various other essential COVID-19 costs, such as frequent and repeated COVID-19 testing of thousands of staff and residents, are not contemplated in payment methods. Facilities are required by CMS to conduct routine testing of employees and residents based on changing county positivity rates and outbreak status. Federal data is updated weekly to determine frequency. The majority of tests for residents are covered by other payor sources. Generally, required routine surveillance for asymptomatic employees has not been covered by any payor source. Skilled nursing facilities are covering these costs 100% out-of-pocket, rapidly jeopardizing their ability to remain in operation to serve vulnerable nursing home residents.

Solution: Provide one-time funds to assist skilled nursing facilities in meeting the continued exceptional, unreimbursed costs of two of the notable COVID-19 expenses – biohazardous medical waste disposal and COVID-testing.

Request: Establish a \$40 million fund to cover nursing facilities' unreimbursed costs of biohazard medical waste disposal and COVID-19 testing of staff and residents incurred from March 3, 2021 through February 28, 2022.

Cost Estimate: \$40,000,000

Use of Funds: Nursing facilities will use the funds to help maintain operations during the pandemic and mitigate ongoing unreimbursed expenses for biohazardous medical waste disposal and COVID-19 testing.

Procedure:

- Nursing facilities must provide DHS with documentation of unreimbursed incurred expenses for medical waste disposal and COVID-19 testing of staff and residents from March 3, 2021 through February 28, 2022.
- DHS will set budget allocations for four groupings of nursing facilities by number of licensed beds:

Range of Licensed Beds in Nursing Facility	Number of Nursing Facilities in Group
50-69	5
75-95	67
96-119	92
120 or more	62
Total Nursing Facilities	226

- On a rolling basis through a date to be set by DHS, DHS will use the funds to reimburse facilities for these documented COVID-19 expenses. Facilities may request more than their budget allocation if justified by documented expenses.
- Proportionately, any funds remaining will be used to reimburse facilities with documented expenses above their initial allocation. Otherwise, remaining funds will be allocated equally to each facility to assist with other unreimbursed, mandatory COVID-19 costs, including door screeners for staff and visitors, additional laundry costs for residents and staff, required mask fit testing, infection control supplies, supplies required for socially distance dining, and supplies for separate quarantine and isolation units. Any facility who accepts this additional funding must provide documentation that the funds were obligated by December 31, 2022, to DHS no later than February 28, 2023.

2. Assistance with Increased Need for Staff During Pandemic:

Problem: While every segment of the state’s health care system is hit hard by the nursing shortage and large increases in labor costs, nursing facilities are hit especially hard. In contrast to other provider types, federal law is highly prescriptive, with nursing facilities subject to the strictest regulation, complex staffing standards, detailed public reporting, and in-depth inspections. Further, and more importantly, nursing homes are skilled medical facilities. In addition to being residents’ homes, facilities must provide each resident with all the nursing care, therapies, specialized health services, supports, and other services they need based on individualized care plans and physician orders. Sufficient, competent, licensed staff must be available to meet specific requirements and “assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.” 42 C.F.R. § 483.35.

To meet complex, frequently changing COVID-19 specific requirements from the Centers for Disease Control (CDC) and the Centers for Medicare and Medicaid Services (CMS), nursing facilities have had to add more staff – including registered nurses, certified nurse aides, other professionals, screeners, and housekeeping, food service, and laundry personnel – to meet the new CMS, CDC, and OSHA requirements and protect residents, staff, and visiting family. Overtime has increased considerably, and facilities are covering a variety of costs to

maintain high staffing throughout the day. Nursing facilities understand and respect their obligations but need help finding and maintaining necessary staff, meeting the dramatic increase in unreimbursed salary costs, and increasing staffing needed to meet constantly changing federal requirements.

Solution: Provide one-time funds to assist skilled nursing facilities in meeting the increasing staffing needs caused by the continued public health emergency and the constantly changing federal requirements.

Request: Establish a fund so that each qualified skilled nursing facility will receive \$2,000 per occupied licensed bed to assist them with meeting the continued extraordinary staffing needs during the pandemic.

Cost Estimate: \$30,812,000

Use of Funds: Nursing facilities will use the funds to maintain staffing and operations during the pandemic and to address some of the labor-related costs of meeting CMS, CDC, and OSHA requirements.

Procedure:

- DHS will determine and disperse the payments within 30 days of approval of this proposal and the accompanying appropriation transfer as approved by the Arkansas General Assembly.
- Facility payments will be calculated as follows: Facility's total number of licensed beds x facility's average occupancy rate in Q4/SFY 2021 x \$2,000. The Q4 average occupancy rate will be determined using the June 30, 2021 Quality Assurance Fee Report submitted to DHS.
- For example, a nursing home with 75 licensed beds and a 60% occupancy rate would receive a one-time payment of \$90,000 ($75 \times 0.6 = 45 \times \$2,000 = \$90,000$).

3. Temporary Assistance with Unreimbursed Fixed Property Costs:

Problem: The COVID-19 pandemic has triggered automatic, formula-driven cuts to payments of Medicaid's share of nursing facility fixed property costs. Medicaid has an elaborate process to determine its share of reasonable, allowable property costs of each nursing facility. Unfortunately, the methodology includes two outdated caps that in SFY 2021 and SFY 2022 automatically cut Medicaid rates and balloon nursing home unreimbursed costs during the pandemic. While the methodology is outdated and needs updating, the policies never anticipated the dramatic change in nursing home occupancy

caused by the pandemic. DHS is currently working with stakeholders to address this issue, but immediate action is needed to address the negative impact of the PHE.

Nursing homes have no way to cover these underpayments for fixed property costs such as building debt, loan interest, and property insurance. Specifically, a minimum occupancy adjustment drives Medicaid rate cuts for any facility with an overall (all-payer) occupancy below a fixed 80%.

Average occupancy is about 60% statewide, with many facilities below 50% or even 40%. This is an inadvertent cut to Medicaid payments for beds occupied by Medicaid beneficiaries. Rural counties are hardest hit, but all facilities are adversely affected. Meanwhile, the per bed valuation – a construction cost factor used in setting the property cost component of rates – has not been re-based in 21 years.

Solution: Provide one-time funds to assist skilled nursing facilities to meet the demands created by unreimbursed fixed property costs associated with addressing the COVID-19 pandemic.

Request: One-time funding equivalent to 18-months of the Medicaid rate cuts due to total occupancy under 80% and a portion of the per bed value-associated cuts.

Cost Estimate: \$45,600,000

Use of Funds: Skilled nursing facilities will use the funds to continue operations and staffing during the PHE.

Process:

- In September 2021, each nursing facility would receive a lump sum payment based on DHS calculations.
- For each nursing facility, DHS will calculate the difference in facility-specific Medicaid property cost per diems based on (a) a minimum occupancy adjustment of 50% rather than 80%; and (b) a per bed valuation factor of \$70,000 for traditional facilities and somewhat higher for home-style facilities. This is roughly half of an updated average per bed valuation. SFY 2021 property cost rate component will be used for simplicity and consistency since SFY 2022 policies are the same.
- Based on this difference over 18 months and the facility's average Medicaid resident days, DHS will determine a sum for each facility. The 18-month period would be March 3, 2021-August 31, 2022.

Qualifications:

To qualify for any of the above ARPA funding, a nursing facility must:

1. Be a DHS licensed skilled nursing facility and certified to participate in Medicaid (or Medicaid and Medicare). Participating nursing facilities may be privately owned, county or municipal-owned, or state-owned.
2. Timely submit a Medicaid cost report for SFY 2021. A Medicaid cost report for SFY 2022 is also required if any ARPA funds requested or received are attributable to SFY 2022.
3. Have served Medicaid beneficiaries in SFY 2021 and agree to continue accepting and serving Medicaid patients during the public health emergency.
4. Agree to cooperate with any state or federal audit and provide DHS with access to financial records.
5. Attest that these are necessary expenditures to address the problems and needs described in this proposal caused by the public health emergency with respect to COVID-19 and that none of these funds are used to:
 - Duplicate or supplant funding from any other federal or state program. Payments or other reimbursement for direct patient care is not included as funding from a federal or state program; or
 - Pay any increase in management fees to administrative personnel.

The total amount of the reimbursement may not exceed the maximum payment as set forth in this proposal, even if the particular facility incurs costs in excess of the maximum amount determined by the formula. To the extent that expenses are subsequently reimbursed under another federal or state program, funds disbursed from the state's portion of the American Rescue Plan approved by the American Rescue Plan Act Steering Committee and authorized by the Arkansas Legislative Council will be reconciled and recovered.