

Ashley Honeycutt

From: Adam Stumb <adam.stumb@ashecountygov.com>
Sent: Wednesday, October 27, 2021 8:26 AM
To: Ashley Honeycutt
Subject: FW: Ashe Memorial
Attachments: AMH Coronavirus Fiscal Recovery Fund_4830-7311-1806.pdf

Let's include this under the AMH presentation.

From: Brian Yates [<mailto:brian.yates@ashememorial.org>]
Sent: Thursday, October 14, 2021 3:09 PM
To: Adam Stumb <adam.stumb@ashecountygov.com>
Subject: RE: Ashe Memorial

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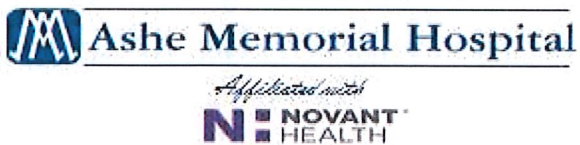
Adam,

Unfortunately, we have also lost 4 more clinical team members since the last time we spoke, so it was great to hear that there was agreement that the ARP supports the use of funds for our stated purpose.

We asked our legal team to provide us an opinion letter specific to our situation. I am happy to share it with you. Please see the attached.

Regards,
Brian

Brian Yates
Chief Executive Officer
Office 336-846-0702
Fax 336-846-0746



From: Adam Stumb <adam.stumb@ashecountygov.com>
Sent: Wednesday, October 06, 2021 11:33 AM
To: Brian Yates <brian.yates@ashememorial.org>
Subject: FW: Ashe Memorial

Brian,

I got a response from Kara Millonzi who is Professor of Public Law and Government at the UNC School of Government. She and the rest of the staff at the School of Government have been helping lead us all through the American Recovery

Plan. Their review of the ARP supports use of the funds for this purpose. The hang up is state law which in her words, she "can't find any clear statutory authority for the county to transfer these funds" (see below).

If I can charge you with a task. Could you run her email by your legal folks? She may still respond with some positive news, but it might benefit the hospital to research this as well.

This is playing out across the state. I also attached a letter that Watauga received regarding a project they are working with Blue Ridge Energy and Skline on. They worked with BR Energies attorney to craft this opinion letter. I think the point to get across is that we're in uncharted waters, and I need to make sure the Board is comfortable with the decision they make.

Thanks for your help.

Adam Stumb, MPA, AICP


Ashe County
County Manager
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From: Millonzi, Kara Anne [<mailto:Millonzi@sog.unc.edu>]
Sent: Wednesday, October 6, 2021 8:57 AM
To: Adam Stumb <adam.stumb@ashecountygov.com>
Cc: Ashley Honeycutt <ashleyhoneycutt@ashecountygov.com>
Subject: Re: Ashe Memorial

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Hi Adam – I agree with you that this type of expenditure is authorized by ARP/CLFRF – with the hospital a subrecipient of the county. The big sticking point is state law. It would be a public purpose under the constitution, but I can't find any clear statutory authority for the county to transfer these funds to a nonprofit hospital. I'm going to keep looking, though, and I'm going to reach out to colleagues who work in public health to see if there is any statute out there that we could use to allow the county to make this transfer. I'll get back to you as soon as I can.

Best,
Kara

From: Adam Stumb <adam.stumb@ashecountygov.com>
Date: Tuesday, October 5, 2021 at 10:28 AM
To: Millonzi, Kara Anne <Millonzi@sog.unc.edu>
Cc: Ashley Honeycutt <ashleyhoneycutt@ashecountygov.com>
Subject: Ashe Memorial

Kara,

I had asked this question during one of the office hours, but I thought an email might offer more detail.

Our hospital, Ashe Memorial, is established as a 501(c)(3). They are served by a local board whose membership is voted on by local shareholders. They have requested ARP funds to offer retaining bonuses to current nursing staff, as they are losing staff to the point where they are in a critical need. They are currently paying travel nurses, at a premium price, to be able to maintain care for patients, most of whom are COVID patients.

Under the ARP guidelines, I think there is broad allowance to do this, either through "support of the public health response" or through "premium pay for essential workers." However, as you point out in your Office Hours, there may not be state authority to do this.

The major question is whether this is a public purpose and whether we have the authority to carry out this type of retention program. I believe this meets a public health need by retaining workers to care for patients at the hospital, therefore being a public purpose. This program would serve residents of the county, both patients and employees, but presumably they do not all live in the county. The other point, or question, is whether the structure of the hospital organization changes how we should think about this.

Any help would be appreciated. I understand that much of this has not been tested in a court of law, and that might be your answer. But, regardless, we value any guidance on how to proceed.

Adam Stumb, MPA, AICP

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ERIC W. SPRINGER (1929-2020)

CLARA L. MATTERN (1931-1981)

VIA E-MAIL

October 14, 2021

Brian A. Yates
Chief Executive Officer
Ashe Memorial Hospital
200 Hospital Avenue
Jefferson, NC 28640-9244

Re: Coronavirus Local Fiscal Recovery Funds –
Ashe Memorial Hospital

Dear Brian:

You have informed us that Ashe County (the “County”) has received Coronavirus Local Fiscal Recovery Funds and have asked our opinion as to whether Ashe Memorial Hospital (the “Hospital”) would be eligible to accept Coronavirus Local Fiscal Recovery Funds from the County to fund recruitment and retention bonuses for certain clinical staff positions.

In our opinion, the Department of the Treasury’s Interim Final Rules governing the use of the Coronavirus Local Fiscal Recovery Funds (the “Interim Final Rules”) provide that Coronavirus Local Fiscal Recovery Funds may be used by the County “to respond to the COVID-19 public health emergency and its economic impacts through four categories of eligible uses.” In our opinion, the Interim Final Rules and other guidelines that have been provided by the Department of Treasury permit the County to fund, and the Hospital to accept, the County’s Coronavirus Local Fiscal Recovery Funds for the uses described below.

HOSPITAL'S REQUESTED USE OF CORONAVIRUS LOCAL FISCAL RECOVERY FUNDS

It is our understanding that the COVID-19 pandemic has had a severe negative impact on the Hospital's ability to recruit and retain essential workers. Most notably, the Hospital is in a severe crisis due to the shortage of clinical staff needed to provide direct patient care. Unfortunately, as the number of COVID-19 cases increase, the Hospital is currently experiencing acute increases in hospitalizations as well.

In addition to the personal toll the pandemic has taken on the Hospital's healthcare workers, staffing shortages across the region and country have made it increasingly difficult for the Hospital to retain and recruit essential healthcare workers.

The Hospital has had 72 direct patient care essential workers leave their positions since the start of the COVID-19 pandemic. Of these 72, 34 left their position between January 1, 2021 and August 31, 2021 and 15 have left their positions in the past 90 days. As a small rural hospital, the Hospital cannot continue to sustain these losses and continue to provide the urgent COVID-19 response efforts needed to care for the residents of Ashe County. Unfortunately, these same challenges are seen across the country creating a very competitive landscape for healthcare workers who are needed by the Hospital.

While the Hospital considers all of its healthcare workers to be essential, the Hospital is in critical need of financial assistance in the form of essential worker bonus/premium pay for recruiting and retention purposes of the direct patient care roles: for Emergency Department and inpatient registered nurses and certified nurse assistants, certified and licensed laboratory medical technicians, direct patient care clinical staff for the Hospital's physician practices, and patient care clinical staff in the Hospital's Surgery & Oncology Department. As a rural critical access hospital, the Hospital does not have the funds necessary to fund these patient care needs on its own while also ensuring continued financial viability.

Therefore, the Hospital has requested the County's assistance with retention and recruiting pay for these direct patient care essential workers, that has arisen due to the negative impacts of the pandemic and the Hospital's inability to maintain critical clinical staff and the County is willing to use the Coronavirus Local Fiscal Recovery Funds to assist the Hospital to recruit and continue to employ Emergency Department and inpatient registered nurses, direct patient care certified nurse assistants, and certified and licensed laboratory medical technicians.

All of the requested recruitment and retention bonus payments will be structured so that the Hospital will use the County's Coronavirus Local Fiscal Recovery Funds to pay the eligible employees directly and will require a full-time, 24-month employment commitment to the Hospital from the employee in order to help the Hospital to stabilize and provide service continuity for the residents of Ashe County during the COVID-19 pandemic. No increases in FTEs will result from the Hospital's request, and the Hospital will limit the use of the County's Coronavirus Local Fiscal

Recovery Funds to current full-time team members and/or existing open vacancies in the direct patient care roles described above.

ANALYSIS

The Interim Final Rules state that the Coronavirus Local Fiscal Recovery Funds are to be used by the County “to respond to the COVID-19 public health emergency and its economic impacts through four categories of eligible uses.” The Interim Final Rules then state that the County may use the Coronavirus Local Fiscal Recovery Funds:

- (a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
- (b) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;
- (c) For the provision of government services to the extent of the reduction in revenue 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.

INTERIM FINAL RULE

The following sections of the Interim Final Rules have led us to conclude that the County would be permitted to fund, and the Hospital would be permitted to accept, the County’s Coronavirus Local Fiscal Recovery Funds for the uses described above.

- **Page 6** discusses the need for providing premium pay for essential workers, including staff at hospitals. The rule specifically notes that the “Treasury’s Interim Final Rule emphasizes the need for recipients to prioritize premium pay for lower income workers. Premium pay that would increase a worker’s total pay above 150% of the greater of the state or county average annual wage requires specific justification for how it responds to the needs of these workers.”
 - So, while the statute encourages the funds to be given to workers like hospital staff, it emphasizes the need to compensate lower paid essential workers that “have not received compensation for the heightened risk they have faced.” This would include the eligible employees who provide direct patient care in the positions described above.

- **Page 18** states “A broad range of services and programming are needed to contain COVID-19. Mitigation and prevention efforts for COVID-19 include vaccination programs; medical care...” and makes it clear that it is providing a “non-exclusive list of uses that address the effects of the COVID-19 public health emergency....”
- **Page 20** states that the Department of the Treasury recognizes “that responding to the public health and negative economic impacts of the pandemic, including administering the services described above, requires a substantial commitment of State, local, and Tribal government human resources. As a result, the Coronavirus Local Fiscal Recovery Funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, to the extent that their services are devoted to mitigating **or responding to the COVID-19 public health emergency.**”
- **Page 45** states that “Fiscal Recovery Funds payments may be used by recipients to provide premium pay to eligible workers performing essential work during the COVID-19 public health emergency or to provide grants to third-party employers with eligible workers performing essential work. These are workers who have been and continue to be relied on to maintain continuity of operations of essential critical infrastructure sectors, including those who are critical to protecting the health and wellbeing of their communities.”
- **Page 48** states that “In providing premium pay to essential workers or grants to eligible employers, a recipient must consider whether the pay or grant would “respond to” the worker or workers performing essential work. Premium pay or grants provided under this section respond to workers performing essential work if it addresses the heightened risk to workers who must be physically present at a jobsite and, for many of whom, the costs associated with illness were hardest to bear financially. The ARPA recognizes this by defining premium pay to mean an amount up to \$13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed \$25,000 per eligible worker.”
- **Page 50** states the “Treasury encourages recipients to prioritize providing retrospective premium pay where possible, recognizing that many essential workers have not yet received additional compensation for work conducted over the course of many months. Essential workers who have already earned premium pay for essential work performed during the COVID-19 public health emergency remain eligible for additional payments, and an essential worker may receive both retrospective premium pay for prior work as well as prospective premium pay for current or ongoing work.”
- **Page 105** then states that the statute authorizes various levels of government “to transfer amounts paid from the Fiscal Recovery Funds to a number of specified entities. By permitting these transfers, Congress recognized the importance of providing flexibility to governments seeking to achieve the greatest impact with their funds, including by working

with other levels or units of government or private entities to assist recipient governments in carrying out their programs.”

This statement supports the County’s use of the Coronavirus Local Fiscal Recovery Funds to assist the Hospital in the manner described in this letter.

- **Page 106** then makes it clear that “A transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be a subrecipient. Subrecipients are entities that receive a subaward from a recipient to carry out a program or project on behalf of the recipient with the recipient’s Federal award funding.”

Therefore, upon the Hospital’s acceptance of the County’s COVID-19 Recovery Funds, the Hospital will be considered a “subrecipient” and subject to all subrecipient guidelines.

CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS: FREQUENTLY ASKED QUESTIONS

The Department of the Treasury also issued the following FAQs that provide additional assistance to the County’s and the Hospital’s anticipated use of the Coronavirus Local Fiscal Recovery Funds:

- *2.8. May recipients use funds for general economic development or workforce development?*
 - Generally, not. Recipients must demonstrate that funding uses directly address a negative economic impact of the COVID-19 public health emergency, including funds used for economic or workforce development. For example, job training for unemployed workers may be used to address negative economic impacts of the public health emergency and be eligible.
- *2.15. What staff are included in “public safety, public health, health care, human services, and similar employees”? Would this include, for example, 911 operators, morgue staff, medical examiner staff, or EMS staff?*
 - Public health employees would include employees involved in providing medical and other health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions, and other support services essential for patient care (e.g., laboratory technicians, medical examiner or morgue staff)...
- *5.2. What criteria should recipients use in identifying third-party employers to receive grants for the purpose of providing premium pay to essential workers?*

- Any third-party employers of essential workers are eligible. Third-party contractors who employ essential workers in eligible sectors are also eligible for grants to provide premium pay. Selection of third-party employers and contractors who receive grants is at the discretion of recipients.

CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS: QUICK REFERENCE GUIDE

In the Department of the Treasury's Quick Reference Guide for the use of Coronavirus Local Fiscal Recovery Funds, under the heading, "Premium Pay For Essential Workers," the Department of the Treasury lists:

- Provide premium pay to essential workers, both directly and through grants to third-party employers;
- Prioritize low- and moderate-income workers, who face the greatest mismatch between employment-related health risks and compensation;
- Key sectors include healthcare...;
- Must be fully additive to a worker's wage.

CONCLUSION

Based on the foregoing, in our opinion, the Hospital is permitted to accept Coronavirus Local Fiscal Recovery Funds from Ashe County in order to directly compensate the Hospital workers in the positions described above, in the manner described above.

Please do not hesitate to contact me if you would like to discuss this opinion in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry M. Casale" with a date "10/14/21" written at the end.

Henry Casale
hcasale@hortyspringer.com

HC/dsn