



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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November 18, 2025

CBCA 8378-FEMA

In the Matter of FRIENDSHIP MANOR, INC.

Jeff Condit, Development Director of Friendship Manor, Rock Island, IL, appearing for Applicant.

Ramoncito J. deBorja and Alecia Frye, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **KULLBERG**, **ZISCHKAU**, and **VOLK**.

**KULLBERG**, Board Judge, writing for the Panel.

Applicant, Friendship Manor, Inc. (FMI), is a private nonprofit (PNP) facility and continuing care retirement community located in the state of Illinois that provides different levels of care in an open campus, including assisted living, assisted living memory care, and skilled nursing. FMI seeks public assistance (PA) in the amount of \$506,940.93 in response to the coronavirus (COVID-19) pandemic for the cost of contract nursing care in its Silver Cross (SC) facility, which provides skilled nursing and long-term care. The Federal Emergency Management Agency (FEMA) denied FMI's request for the cost of hiring contract personnel to replace FMI employees who were unable to work. FMI contends that the additional costs incurred were necessary in response to the COVID-19 pandemic, but FEMA argues that FMI failed to establish the eligibility of those costs. For the reasons stated below, the panel finds that FMI is ineligible for its requested PA.

### Background

On March 26, 2020, the President declared an emergency for the state of Illinois regarding COVID-19, which was retroactive to January 20, 2020, and provided PA for various state, local, and tribal efforts and certain PNPs. FEMA Exhibit 1 at 1; Exhibit 4.<sup>1</sup> The declared emergency ended on May 11, 2023. Exhibit 4 at 1. On April 6, 2023, FMI submitted a streamlined project application, number 704603, for PA in the amount of \$601,005.02 for expenses related to COVID-19 that it incurred from July 1 to December 31, 2022.<sup>2</sup> *Id.* FMI's request for PA included the cost of personal protective equipment (PPE), disinfectant supplies, medical equipment to test for and mitigate the threat of COVID-19, force account labor straight-time (FAL-ST) for COVID-19 testing, contract services for medical personnel, and labor costs for security personnel. *Id.* In response to FEMA's request for information (RFI), FMI represented that "[d]uring an [o]utbreak, every resident either has COVID or is 'Suspected' to have it." Exhibit 5 at 4. "Thus, ALL residents are tested and treated as if they had it, or will eventually contract it." *Id.*

On January 19, 2024, FEMA issued a determination memorandum (DM) that approved, in part, FMI's PA request but denied FMI's costs for nursing staff contract services and security personnel (totaling \$533,115.17) because such costs did not meet its eligibility criteria. Exhibit 4 at 1, 4-5. The DM addressed the issue of whether

contract labor services for backfilled medical personnel [are] eligible for reimbursement under FEMA's PA and COVID-19 policies if the personnel being replaced were unavailable to work due to COVID-19 and[/]or COVID exposure and were not actively responding to an emergency, and if the Applicant did not provide sufficient documentation to establish that the work performed by backfill employees was related to COVID-19 eligible [emergency protective measures (EPMs)].

*Id.* at 2-3. In the DM's analysis section, FEMA found that "[a]lthough the Applicant asserts COVID-19 care was included in their claim, they did not include an itemized breakdown or methodology with a specific description of tasks performed [as] required for FEMA [to] validate and calculate the cost of eligible EPM[s]." *Id.* at 4.

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<sup>1</sup> All exhibit record cites are to exhibits FEMA that provided with its response to FMI's request for arbitration, unless otherwise noted.

<sup>2</sup> In its post-hearing submission, FMI refers to the period from July 1 to December 31, 2022, as "FEMA 4."

By letter dated March 14, 2024, FMI appealed FEMA's DM but sought only review of FEMA's denial of PA in the amount \$506,940.93 for the cost of medical staffing and indicated that it did not seek review of the denial of its request for additional security service costs. Exhibit 7 at 1, 3. FMI explained that "[b]ecause Friendship Manor, Inc. is not a hospital, nor do we bill or keep records like a hospital, we have no ability to provide an exact number of minutes spent with each COVID-19 patient by each individual contracted medical staff (AKA nurse or nurse aide)." *Id.* at 4. FMI concluded that it was **"always in COVID-19 Care mode for all 184 days, whereupon every duty performed by all contracted medical staff was/is a FEMA-eligible EPM."** *Id.* at 5. FEMA denied FMI's appeal, by letter dated January 21, 2025, and noted that FMI "ha[d] not demonstrated [that] the claimed contract labor costs are directly tied to the performance of eligible work." Exhibit 10 at 1. FMI then filed its request for arbitration with the Board.

On May 28, 2025, the panel conducted a hearing in this matter. After the hearing, the panel issued an order that directed applicant to provide the following:

- (1) information as to the daily rates of COVID-19 infection at the applicant's facility during the period at issue in this matter;
- (2) information as to the applicant's incurred costs for contract nursing staff for the year before the declaration of the COVID-19 disaster;
- (3) an affidavit from a nursing supervisor as to the percentage of time nurses spent doing routine nursing as opposed to the percentage of time performing treatment related to COVID-19;
- (4) all contract invoices for nursing services at the applicant's facility for the period from July 1, 2022, through December 31, 2022; and
- (5) all contract labor summaries for the same period.

Order (May 29, 2025) at 2. The applicant submitted its brief with additional documents, and FEMA submitted its response.<sup>3</sup>

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<sup>3</sup> FMI made reference to another request for PA for the period from January 1, to May 11, 2023, which it refers to as FEMA 5. Applicant's Post-Hearing Brief at 4. FEMA objects to FMI discussing another request for PA that has not been presented in a request for arbitration. FEMA's Post-Hearing Brief at 4. The panel concurs with FEMA and does not address FEMA 5 in this decision.

In its post-hearing brief, FMI contended that “the State of Illinois viewed a single case of COVID among staff or residents as EVERY resident having COVID.” Applicant’s Post-Hearing Brief at 1. FMI explained that “our contracted nurse claim is only for contracted nurses in [SC] which is our skilled nursing unit or long-term care unit (facility).” *Id.* The SC facility had an average occupancy of seventy-three residents and a total of ninety-four beds. Attachment 1 at 1.<sup>4</sup> The amount of FMI’s request for PA, \$506,940.93, equaled the total billings from A-1 Medical Staffing (A-1). Attachment 10.

FMI provided records of COVID-19 infections during FEMA 4 for SC residents, SC staff, assisted living (AL) residents, AL staff, New Friendship Assisted Memory Care (NIF) residents, and NIF staff. Applicant’s Post-Hearing Brief at 5. The total number of days during FEMA 4 in which one or more of the residents or staff for those three facilities, SC, NIF, and AL, were infected with COVID-19 totaled 165. *Id.* In another part of its submission, FMI claimed that “[f]or 128 out of the 184 days of FEMA 4 . . . we had **at least one COVID positive resident or staff each day.**” *Id.* at 1. Additionally, FMI stated that “[f]or 141 of 184 days of FEMA 4, we self-reported ‘high numbers of COVID positive cases.’” *Id.*

FMI submitted additional information about its costs for contract nursing during the year before the COVID-19 pandemic. For the period from March 17 to December 31, 2019, FMI’s cost for contract nursing totaled \$238,594.29, and its cost for contract nursing from January 1 to March 16, 2020, totaled \$1737.80. Attachment 4. FMI stated that its average daily cost for contract nursing during that one-year period, from March 17, 2019, to March 16, 2020, was \$656.65. *Id.* FMI’s average daily cost for contract nursing during FEMA 4 was \$2755.11. *Id.*

FMI’s submission included affidavits from four A-1 employees: an account manager (AM), two certified nursing assistants (CNAs), and a licensed practical nurse (LPN). Attachments 5-8. The AM stated that “[t]he estimated average percentage of time per day contracted nursing staff spent on COVID care/nursing/duties is very hard to pinpoint, as I was not present at Friendship Manor during the [July 1 to December 31, 2022] time frame . . . [and,] [i]f I had to hazard a guess, I’d say AT LEAST 50-60% of their time was specifically COVID-related.” Attachment 5 at 1. The first CNA (CNA1) represented that her nursing duties at Friendship Manor, “during the pandemic, were different than typical nursing duties performed Pre-COVID in the following ways: ‘COVID vaccinations, COVID testing was required every week, correct COVID Personal Protective Equipment ([PPE]) had to be worn

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<sup>4</sup> All attachment record cites are to attachments that FMI provided with its post-hearing brief. Page references are to pdf page numbers.

upon entering the building, and at all times while in the building, and any time while doing cares with residents, extra safety precautions, and more cleaning.” Attachment 6. CNA1 represented that eighty percent of her time was spent on “COVID Nursing/Care/Duties.” *Id.* The second CNA (CNA2) stated that “70-80% of my time was devoted to COVID-related care,” as her “[e]stimated average percent of time per day spent on COVID Nursing/Care/Duties.” Attachment 7 at 1. Such care “included symptom monitoring, testing coordination, enforcing isolation protocols, infection control practices, and PPE-related procedures.” *Id.* CNA2 also represented that “90-95% of my work and mental focus were centered around COVID.” *Id.* The LPN’s affidavit stated that “50 to 75% of the time as a contracted nurse was spent on COVID, but I would say at least 75% to 85% of my thoughts were COVID-focused.” Attachment 8. Additionally, the LPN’s affidavit stated that because “we had many ill patients that needed more nursing care, we had to do every 4 hour full assessments on all COVID patients, putting on full PPE for each room and patient, as most rooms were semi-private.” *Id.*

In its response to FMI’s post-hearing submission, FEMA contended that FMI “still fails to provide sufficient documentation to tie its requested labor costs directly to the performance of eligible [EPMs].” FEMA’s Post-Hearing Brief at 2. FEMA acknowledged that while FMI’s “new documentation indicates some *potentially* eligible work, including COVID-19 testing and treatment, the record fails to identify when these EPMs were conducted and for how many hours.” *Id.* at 6-7. Additionally, FEMA argued that “[t]he [a]pplicant is ineligible to receive PA funding for backfilling employees that were absent due to illness or resignation because FEMA policy only allows for reimbursement if the employee, being replaced by a contractor, is absent due to the performance of eligible EPMs.” *Id.* at 5.

Referencing FMI’s post-hearing submission, FEMA noted that FMI’s data for COVID-19 infections among SC’s residents “reveal[ed] that **there was absolutely no COVID residents/patients in three of the six months in the relevant time frame** (July, August[,], and December) . . . [and] [t]he other [three] months (September, October[,], and November), had only nominal rates of COVID-19.” FEMA’s Post-Hearing Brief at 15 (citing Attachment 1). Additionally, FEMA notes that FMI “mistakenly skews the rate of residents’ COVID-19 infection at the SC Unit with the inclusion of these unrelated care units and staff infection.” *Id.* at 9. Work in any unit, “other than the SC Unit, is beyond the scope of this dispute as assisting a senior with daily care needs are routine and not tied to the COVID-19 disaster.” *Id.*

With regard to the affidavits that FMI submitted, FEMA contends that “the record provides no way of distinguishing what, if any, work was related to the treatment of COVID-19 patients and for how long.” FEMA’s Post-Hearing Brief at 11. FEMA noted that

FMI has only provided records of the dates and hours worked by nursing staff, but “[m]erely working during the COVID-19 pandemic is not sufficient for PA funding under FEMA’s *Medical Care Policy*, as this fails to demonstrate *treatment* of COVID-19 patients or suspected patients.” *Id.* at 12.

### Discussion

At issue is whether FMI has established eligibility for PA for the cost of contracting for nursing staff in its SC facility. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§ 5121–5207 (2018), sets forth this panel’s authority to conduct arbitrations. *Id.* § 5189a(d). FEMA is statutorily authorized to provide PA “essential to meeting immediate threats to life and property resulting from a major disaster.” *Id.* § 5170b(a). Eligibility for PA funding requires a showing that such work was “required as the result of the emergency or major disaster event.” 44 CFR 206.223(a)(1) (2022).

FEMA’s Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018) states that the Stafford Act “does not authorize FEMA to provide PA funding for all losses or costs resulting from the incident.” PAPPG at 41. “Increased costs of operating a facility or providing a service are generally not eligible, even when directly related to the incident.” *Id.* at 42. In order for an applicant’s costs to be eligible for PA, those costs must be “[d]irectly tied to the performance of eligible work” and “[a]dequately documented.” *Id.* at 21. An applicant documenting such costs “should provide the ‘who, what, when, where, why, and how much’ for each item claimed.” *Id.* at 133.

The PAPPG “refers to an [a]pplicant’s personnel as a ‘force account.’” PAPPG at 23. Eligibility for “overtime, premium pay, and compensatory time costs [are] based on the [a]pplicant’s pre-disaster written labor policy.” *Id.* FEMA has different criteria for reimbursing FAL-ST labor costs depending on whether the employee is budgeted or unbudgeted and whether the employee is performing emergency or permanent work. *Id.* at 23-24. The PAPPG provides the following:

For Permanent Work, both straight-time and overtime labor costs are eligible for both budgeted and unbudgeted employees. For Emergency Work, only overtime labor is eligible for budgeted employees. For unbudgeted employees performing Emergency Work, both straight-time and overtime labor are eligible.

*Id.* at 24 (footnotes omitted). Unbudgeted employees include a “[t]emporary employee hired to perform eligible work.” *Id.* (figure 11). With regard to “backfill employees,” the PAPPG

provides that an applicant “may need to temporarily replace an employee who is responding to the incident.” *Id.* at 24.

In response to the pandemic, FEMA issued Coronavirus (COVID-19) Pandemic: Safe Opening and Operation Work Eligible for Public Assistance, FEMA Policy 104-21-0003, version 2 (Sept. 8, 2021) (O&O Policy), which applied retroactively to the COVID-19 disaster declaration. The O&O Policy provides the following:

FEMA may provide assistance to all eligible PA Applicants, including [state, local, tribal, and territorial governments (SLTTs)] and eligible PNPs, for the following measures implemented to facilitate the safe opening and operation of all eligible facilities in response to COVID-19 declared events:

- i. Purchase and distribution of face masks, including cloth face coverings, and personal protective equipment (PPE).
- ii. Cleaning and disinfection, including the purchase and provision of necessary supplies and equipment in excess of the Applicant’s regularly budgeted costs.
- iii. COVID-19 diagnostic testing.
- iv. Screening and temperature scanning, including, but not limited to, the purchase and distribution of hand-held temperature measuring devices or temperature screening equipment.
- v. Acquisition and installation of temporary physical barriers, such as plexiglass barriers and screens/dividers, and signage to support social distancing, such as floor decals.
- vi. Purchase and storage of PPE and other supplies listed in this section should be based on projected needs for the safe opening and operation of the facility.

O&O Policy at 5 (footnotes omitted).

FEMA also issued Policy 104-21-0004, Coronavirus (COVID-19), Pandemic: Medical Care Eligible for Public Assistance (Interim) (version 2) (Mar. 15, 2021) (COVID-19 Medical Policy) to provide guidance for the eligibility of medical expenses.

Eligible emergency and inpatient care for COVID-19 patients includes, but is not limited to, the following:

- i. Emergency medical transport related to COVID-19;
- ii. Triage and medically necessary tests and diagnosis related to COVID-19;
- iii. Necessary medical treatment of COVID-19 patients; and
- iv. Prescription costs related to COVID-19 treatment.

COVID-19 Medical Policy at 4. In addition, the following labor costs are eligible:

- i. Overtime for budgeted medical staff providing treatment to COVID-19 patients;
- ii. Straight time and overtime for temporary medical staff providing treatment to COVID-19 patients; and
- iii. Straight time, overtime, and other necessary costs for contract medical staff providing treatment to COVID-19 patients. Work and associated costs must be consistent with the scope of the contract and may include costs for travel, lodging, and per diem for contract medical staff from outside the local commuting area.

*Id.*

The panel finds that FMI has not established eligibility for the cost of contract nursing staff. In its post-hearing order, the panel directed FMI to produce evidence in response to a series of questions, and, in response, FMI established that it had contracted for nursing staff to work in the SC facility to replace nurses who were unable to work. FMI's contracted nursing staff, however, was not "backfilling" as that term is defined in the PAPPG because FMI did not replace nursing staff performing emergency work. FMI contends that the daily occurrences of COVID-19 infections were either 128, 141, or 165 days during FEMA 4, but FMI's records reveal that, during FEMA 4, COVID-19 infections among SC residents occurred only during the months of September, October, and November and none occurred during July, August, or December. Additionally, FMI's record of the daily number of COVID-19 infections among SC residents showed the following: September 12 to 30 (seven to seventeen residents infected); October 1 to 12 (one to eleven residents infected); and October 19 to November 2 (one resident infected). *See* Attachment 1 at 2-3. Accordingly, FMI has only shown one or more COVID-19 infections occurred among SC residents for

forty-six days out of the six-month FEMA 4 period. *Id.* Despite FMI's assertion that COVID-19 infections were frequent during FEMA 4, its record of infections in the SC unit show a lesser frequency.

Although FMI has shown that some SC residents had COVID-19 during FEMA 4, it has not provided the panel with any information as to what amount of time its nursing staff spent treating, testing, or vaccinating residents for COVID-19, and FMI has acknowledged that such information does not exist. FMI has provided affidavits from four A-1 employees, but those statements are too vague to provide the panel with any specifics as to the time spent performing eligible tasks. Also, FMI did not respond to the third paragraph of the panel's May 29, 2025, order that requested an affidavit from a nursing supervisor stating the percentage of time nursing staff spent doing routine nursing as opposed to treatment related to COVID-19. The AM's affidavit acknowledged a lack of personal knowledge about the extent of time that nursing staff spent treating residents infected with COVID-19. The affidavits from the two CNAs and the LPN did not adequately distinguish between routine nursing and specific tasks related to treating COVID-19. In addition, the affidavits did not distinguish between time spent on treatment or preventative measures related to COVID-19 on the days when one or more SC residents were infected as opposed to those days when no SC residents were infected, which were most days during FEMA 4.

FMI contends that the state of Illinois viewed every single case of COVID-19 among its staff or residents as amounting to every resident having COVID-19, but such an argument does not change the requirements for establishing eligibility for PA under the Stafford Act, applicable regulations, the PAPPG, or other FEMA guidance or policies. The Board has no basis under the law simply to conclude that the entire sum that FMI spent for contract nursing staff in the SC facility was an eligible cost in response to COVID-19. Additionally, FMI has disclosed that before the outbreak of COVID-19, from March 17 to December 31, 2019, it spent \$238,594.29 for contract nursing, which suggests that FMI contracted for nursing services for reasons other than in response to a disaster. The panel, consequently, cannot conclude that FMI's request for PA in the amount of \$506,940.93 represents, in full or in part, any measurable amount of costs eligible for PA.

Decision

FMI is ineligible for its requested PA.

*H. Chuck Kullberg*

H. CHUCK KULLBERG

Board Judge

*Jonathan D. Zischkau*

JONATHAN D. ZISCHKAU

Board Judge

*Daniel B. Volk*

DANIEL B. VOLK

Board Judge