



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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December 29, 2025

CBCA 8327-FEMA

In the Matter of BOWLING GREEN-WARREN COUNTY  
COMMUNITY HOSPITAL CORPORATION

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Rebecca J. Otey, John Ebersole, 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 **GOODMAN**, **KULLBERG**, and **NEWSOM**.

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

The applicant, Bowling Green-Warren County Community Hospital Corporation (MCH), seeks public assistance (PA) for costs incurred after the disaster declaration related to the coronavirus disease (COVID-19). Its first request, in the amount of \$1,172,438.53 (grants manager project (GMP) 696719), was for costs incurred during the period from January 9 to July 1, 2022, and its second request, \$5,003,657.77 (GMP 737917), was for costs incurred during the period from July 2, 2022, to May 11, 2023. For both GMPs, MCH seeks PA for forced account labor straight time (FAL-ST) for the cost of registered nurses

(RNs) and other medical staff<sup>1</sup> and the cost of its food service contract. The Federal Emergency Management Agency (FEMA) denied MCH's request for PA for FAL-ST for both GMPs and food service costs for GMP 737917. FEMA determined that MCH had not established eligibility for those costs under its regulations and policy. For the reasons stated below, the panel concludes that MCH is not eligible for the requested PA.

### Background

MCH is a 337-bed private nonprofit (PNP) hospital that provides both inpatient and outpatient medical care. Request for Arbitration (RFA), Exhibit 4 at 1. After the outbreak of the COVID-19 pandemic, the Governor of Kentucky declared a state of emergency. RFA, Exhibit 8. On March 10, 2020, the President declared a national emergency regarding COVID-19. RFA, Exhibits 9, 10.

On February 11, 2022, MCH announced in a nursing memorandum, which was distributed in an email, its new nurse agency program (agency program). FEMA's Response, Exhibit 8 at 1. The stated purpose of the agency program was to "address nursing shortages," and it provided that "RNs who are hired or transfer into this program will receive premium pay when committing to one of the program options." *Id.* The agency program offered three options. *Id.* The first option paid RNs \$45 per hour without benefits and no work commitment. *Id.* The second option paid RNs, without benefits, \$70 per hour for day shifts and \$80 for night shifts for a work commitment of thirteen weeks. *Id.* at 1-2. The third option paid RNs \$55 per hour with benefits and a one-year work commitment. *Id.* at 2. All three options required that nurses be able to "[f]loat[] to [m]ultiple units." *Id.* at 1-2. The announcement also provided that "20% of the MCH Agency positions will be filled internally and 80% will be filled by external candidates." *Id.* at 2. The memorandum made no mention of treating patients with COVID-19.

### GMP 696719

On December 13, 2022, MCH submitted to FEMA its first request for PA, GMP 696719. FEMA's Response, Exhibit 10. FEMA's January 11, 2024, determination memorandum (DM) addressed MCH's request for \$13,846,589.57 in PA, and FEMA denied a portion of that request (\$1,172,438.53) regarding FAL-ST costs for RNs hired under the agency program and food services obtained by contract. FEMA's Response, Exhibit 11 at 1.

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<sup>1</sup> The panel understands that MCH is seeking PA for the cost of FAL-ST for medical personnel who were predominately RNs. For the purpose of brevity, this decision uses the term RNs to include other medical personnel who may not be RNs.

In general, FEMA noted in the DM that eligibility for PA related to COVID-19 was limited to the following:

- The services are specifically related to eligible emergency actions to save lives or protect public health and safety or improved property;
- The costs are for a limited period of time based on the exigency of the circumstances; and
- The Applicant tracks and documents the additional costs.

*Id.* at 3 (citation omitted). FEMA stated in the DM that MCH was ineligible for FAL-ST for RNs because only overtime labor costs were allowed for budgeted employees who performed emergency work and that MCH was not eligible for PA for the increased costs of maintaining usual operations. *Id.* at 4. Finally, in the DM, FEMA denied MCH’s request for additional costs of food service that were obtained by contract because MCH had not shown that such costs were related to emergency services. *Id.*

In a letter dated March 11, 2024, MCH submitted to FEMA its appeal of the DM regarding GMP 696719. RFA, Exhibit 4. MCH contended that “[p]atients with a known COVID-19 diagnosis were cared for by a cohort of nurses, caregivers, and support staff to prevent the risk of cross-contamination within the care teams.” *Id.* at 2. Additionally, MCH contended that such internal and external positions for RNs and other medical personnel were not budgeted. *Id.* With regard to the costs of food services, MCH argued that such costs were eligible “wraparound” costs. *Id.* at 4.

By letter dated November 18, 2024, FEMA forwarded to MCH its appeal analysis regarding its DM for GMP 696719. FEMA’s Response, Exhibit 12 at 1. In that appeal analysis, FEMA determined that MCH had not shown that its increased costs for RNs, which totaled \$1,145,579.24, were related to specific COVID-19 emergency services. *Id.* at 3.<sup>2</sup> Additionally, FEMA determined that MCH was not eligible to receive FAL-ST for RNs because they were permanent budgeted employees. *Id.* at 5-6. In the case of MCH’s request for PA for food service costs, in the amount of \$26,859.30, FEMA remanded that portion of MCH’s request to its regional branch for further eligibility review. *Id.* at 6.

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<sup>2</sup> For exhibits that include more than one document with separately numbered pages, such as FEMA’s Exhibit 12, the .pdf page number is cited.

GMP 737917

On November 7, 2023, MCH submitted its second request for PA for GMP 737917. FEMA's Response, Exhibit 10. FEMA's DM, which was dated July 1, 2024, granted, in part, MCH's request for PA, which totaled \$18,803,157.78, for costs incurred from July 2, 2022, to May 11, 2023. FEMA's Response, Exhibit 9 at 1. FEMA denied MCH's request for FAL-ST, which totaled \$4,959,013.63, for RNs. *Id.* at 4. FEMA noted in the DM that MCH had implemented the agency program after the disaster declaration date for COVID-19 and that MCH's payment of FAL-ST for RNs, who were budgeted employees, was not an eligible cost. *Id.* Finally, FEMA denied MCH's request for PA for contract labor for food service in the amount of \$44,644.14 because MCH had not shown that such costs were related to COVID-19 emergency measures. *Id.* at 5.

On August 29, 2024, MCH submitted its appeal of FEMA's DM, which partially denied its request for PA regarding GMP 737917. RFA, Exhibit 6. In a January 14, 2025, letter, FEMA denied MCH's appeal. FEMA's Response, Exhibit 13 at 1. FEMA determined that MCH had not shown that its labor costs in the amount of \$4,959,013.63 met the criteria set forth in FEMA policy for work responding to COVID-19 and that MCH's request for food service costs in the amount of \$44,644.14 was not an eligible wraparound service. *Id.*

Request for Arbitration

On January 17, 2025, MCH requested arbitration at the Board regarding GMPs 696719 and 737917. FEMA filed its response to MCH's request for arbitration, and the parties requested a hearing on the written record. After receipt of the parties' record submissions, the panel directed oral arguments in this matter that sought, in pertinent part, from the parties "[f]urther explanation as to how the panel can quantify the applicant's costs for additional work performed by RNs and other medical staff for care specifically related to COVID-19." Order at 2 (July 18, 2025). The panel heard oral arguments on August 6, 2025.

Subsequent to the oral arguments, the parties supplemented the record. In its post-hearing brief, which was dated August 20, 2025, MCH responded to the panel's inquiry as to the distinction between costs incurred for medical professionals treating patients with an actual or suspected diagnosis of COVID-19 as opposed to treating patients without COVID-19. MCH argued that the time nurses spend with patients "can be quantified using Nursing Activities Scores (NAS)." Applicant's Post-Hearing Brief at 2. Additionally, MCH represented that "[m]ultiple studies performed in 2020 and 2021 using NAS have confirmed that COVID-19 patients, on average, required over four hours of additional treatment per shift when compared to non-COVID-19 patients." *Id.* at 2 (footnote omitted). In comparing budgeted and actual costs incurred, MCH argued that the difference between its actual costs

and budgeted costs was minimal before the COVID-19 outbreak but that its “actual labor costs outpaced budgeted labor costs by 8.43% . . . in [fiscal year (FY)] 2022 and 6.56% . . . in FY2023.” *Id.* at 4.

MCH also provided a declaration from its chief nursing officer (CNO), who stated that, in response to COVID-19, MCH “implemented a Nurse Agency Program (Program) and entered into short-term contracts with Registered Nurses and other licensed staff to provide direct patient care to COVID-19 patients and to ensure our medical facilities maintained adequate capacity to address potential surges in COVID-19.” Applicant’s Supplemental Exhibit 30 ¶2. A February 11, 2022, memorandum “introduc[ed] the program [and] expressly described terms of 13 weeks or one year, reflecting its emergency-only character.” *Id.* ¶ 3. Under that program, “[a]gency staff and internal transfers . . . were assigned to multiple patient care areas to include critical COVID-19 care areas, including ICU, emergency departments, and dedicated COVID units.” *Id.* ¶ 5. “The increased base hourly wage rate Program staff earned reflected the extraordinary burdens of COVID care, including mandatory floating to multiple units.” *Id.* ¶ 7.

In its October 20, 2025, post-hearing brief, FEMA stated that, while it does not dispute the accuracy of nursing workload studies cited by MCH, the NAS studies are not responsive to the panel’s inquiry as “to the ineligibility bases regarding force account labor.” FEMA’s Post-Hearing Brief at 2. FEMA noted that “the articles in which the Applicant relies on evaluate NAS in reference to nursing workloads in . . . unrelated countries—Italy, Belgium, Brazil, and the Netherlands—not work or expenses stemming from [MCH]; or even the United States.” *Id.* at 3. The “Applicant’s Supplement and [CNO] declaration . . . do not demonstrate that the work claimed is directly tied to temporary or unbudgeted employees performing [emergency protective measures (EPMs)].” *Id.* at 5. FEMA argued that MCH established a program that “was not created as a COVID-19 EPM, as it was created to mitigate staffing shortages, generally, regardless of COVID-19.” *Id.* at 6. Finally, FEMA noted that, as of the date of its submission, an MCH website showed its use of the agency program after the declared COVID-19 disaster. *Id.* at 6-7 (citing FEMA’s Response, Exhibit 7 (Feb. 13, 2025)).

### Discussion

This matter presents two issues regarding MCH’s eligibility for PA. The first is whether MCH is eligible for the increased cost of FAL-ST for RNs employed through the agency program, and the second is whether MCH is eligible for the cost of providing food service by contract. The panel addresses, in turn, those two issues.

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 the Applicant’s personnel as a ‘force account.’” PAPPG at 23. Eligibility for “overtime, premium pay, and compensatory time costs [are] based on the Applicant’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. The PAPPG lists budgeted employees as including either of the following: “[p]ermanent employee” or “[s]easonal employee working during normal season of employment.” *Id.*, Figure 11 (Emergency Work Labor Eligibility). Unbudgeted employees include the following: “[e]ssential employee called back from administrative leave;” “[p]ermanent employee funded from external source”; “[t]emporary employee hired to perform eligible work”; or “[s]easonal employee working outside normal season of employment.” *Id.*

In response to the pandemic, FEMA issued the 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.

*Id.* 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. 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. 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 MCH’s agency program was an increased cost that MCH incurred in response to a shortage of nurses and such cost increases are not eligible for PA. A panel of this Board recognized that an applicant is ineligible for PA to cover the increased cost of maintaining operations. *See Tri-County Electric Cooperative, Inc.*, CBCA 7719-FEMA, 23-1 BCA ¶ 38,385, at 186,514 (Applicant was ineligible to receive PA for the increased cost of providing electricity during a disaster.). An applicant does not establish eligibility for PA by “simply paying the escalated cost . . . as directed by certain entities.” *Id.* Here, MCH is similarly paying a premium rate for RNs as required by its agency program. MCH’s stated purpose for implementing the agency program was in response to a shortage of nursing staff. MCH is not eligible to receive PA for such an increased cost.

The panel finds that MCH is ineligible to receive FAL-ST for RNs hired through that program because it was implemented after the declaration of a disaster regarding COVID-19. The PAPPG provides that an applicant is eligible to receive PA for labor costs such as premium pay based on an applicant’s pre-disaster written labor policy. MCH announced the agency program on February 11, 2022, which was almost two years after the declaration of a disaster regarding COVID-19. The record does not show that MCH had any earlier pre-disaster labor policy that would apply in this matter.

Additionally, the panel finds that MCH’s agency program did not employ temporary unbudgeted staff. As discussed above, an applicant is only eligible to receive PA for the cost of FAL-ST for unbudgeted temporary employees, and the PAPPG defines unbudgeted

employees as including either employees called back from leave, employees paid by an external source, temporary employees hired to perform eligible work, or seasonal employees working outside their season of employment. PAPPG at 24. None of those categories apply to the staff MCH hired under the agency program. Although MCH argues that such employees were temporary, the agency program offered different options for employment for varying lengths of time at different rates of compensation in which employees could “float” among units without any specific mention of emergency work.

Finally, MCH has not established its actual increased cost of care for patients who had COVID-19. MCH acknowledges that it does not have records of actual hours spent providing specific treatment related to COVID-19, but the PAPPG requires that an applicant document its cost for eligible work with a showing of “who, what, when, where, why, and how much.” Instead, MCH has only provided studies from other facilities to show that COVID-19 caused medical staff to work longer shifts. The panel, however, cannot apply such findings to this case and, in doing so, simply assume that either the entirety or some portion of the amount of PA requested by MCH was actually related to the treatment of COVID-19 patients.

The panel does not find the CNO’s declaration to be helpful in establishing eligibility for MCH’s increased costs. The CNO indicated in the declaration that nursing staff hired under the agency program treated both patients with COVID-19 and patients admitted for other reasons. Also, the CNO stated in the declaration that nursing staff were hired for “potential surges” in COVID-19, which suggests that such hiring was not just in response to an emergency but also in preparation for a possible future emergency. At most, MCH has only established that its agency program was another way of recruiting RNs in response to a shortage of nurses and planning for future emergencies.

The panel also finds that MCH is ineligible to receive its request for PA for the cost of contracting for food service for the period from July 2, 2022, to May 11, 2023, which was part of its request under GMP 737917.<sup>3</sup> With regard to providing meals, the PAPPG provides the following:

[p]rovision of meals, including beverages and meal supplies, for employees and volunteers engaged in eligible Emergency Work . . . is eligible provided the individuals are not receiving per diem and the following conditions apply:

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<sup>3</sup> On appeal, FEMA remanded MCH’s request for PA for food services in GMP 696719, and that part of its request is not at issue in this matter. FEMA’s Response at 29 n.146.

- [m]eals are required based on a labor policy or written agreement that meets the requirements of Chapter 2:V.A.1;
- [c]onditions constitute a level of severity that requires employees to work abnormal, extended work hours without a reasonable amount of time to provide for their own meals;
  - or
- [f]ood or water is not reasonably available for employees to purchase.

PAPPG at 63. MCH has not alleged nor does the record show that MCH was required to follow a written agreement or policy regarding food service, and MCH has not shown that its employees were unable to provide their own food or that food and water were not available for employees. Instead, MCH asserts that it contracted for food service “[f]or the continuity of both COVID-19 and non-COVID-19 patient care during a critical staffing shortage.” RFA at 38. In effect, MCH has only shown that it incurred increased costs in order to maintain operations, and, as discussed above, MCH is not eligible for PA for that reason.

MCH also argues that contracting for food services was a wraparound cost. On January 13, 2022, FEMA issued its memorandum, Wraparound Services for COVID-19 at Primary Medical Care Facilities under Title 32 Mission Assignments (memorandum), that allowed for states and territories to use National Guard services for wraparound services, which included “food preparation and delivery.” FEMA’s Response, Exhibit 4 at 1 n.1. Such wraparound services were only available for temporary and expanded medical facilities but not primary care medical facilities. *Id.* at 1. MCH, consequently, is not eligible for wraparound services because it is a primary care facility as opposed to being a temporary or expanded facility. Also, the record lacks any evidence of a National Guard presence at MCH.

### Decision

MCH is ineligible to receive its request for PA.

H. Chuck Kullberg  
H. CHUCK KULLBERG  
Board Judge

*Allan H. Goodman*  
ALLAN H. GOODMAN  
Board Judge

*Elizabeth W. Newsom*  
ELIZABETH W. NEWSOM  
Board Judge