

LOURDES A. LEON GUERRERO
MAGA'HÅGA • GOVERNOR



JOSHUA F. TENORIO
SIGUNDO MAGA'LÅHI • LIEUTENANT GOVERNOR

MEMORANDUM

May 8, 2020

TO: Mr. Lester Carlson, Jr.
Director
BUREAU OF BUDGET & MANAGEMENT RESEARCH

Mr. Edward Birn
Director
DEPARTMENT OF ADMINISTRATION

FROM: LOURDES A. LEON GUERRERO
I Maga'hågan Guåhan
Governor of Guam

Re: Emergency Purchases for Medical Health and Wellness Services

Buenas yan Håfa Adai,

While no cases had yet been confirmed in Guam, on March 14, 2020, I declared a state of emergency to respond to the outbreak of Novel Coronavirus (COVID-19) that had been spreading throughout the continental United States and the rest of the world. In recognition of the emergent conditions that were present, I issued Executive Order No. 2020-03 in which I invoked the statutory authority set out in 10 G.C.A. § 19403(a). Specifically, § 19403(a)(1) allows the Governor to “suspend, the provisions of any regulatory statute prescribing procedures for conducting local business, or the orders, rules and regulations of any government of Guam agency, to the extent that strict compliance with the same would prevent, hinder or delay necessary action (including emergency purchases) by the public health authority to respond to the public health emergency, or increase the health threat to the population.” *See Sedfrey M. Linsangan v. Government of Guam, Linda DeNorcey, Lourdes Leon Guerrero (Acting in their Official Capacity)*, SP0050-20, at 11 (Super. Ct. Guam Apr. 20, 2020) (“The Governor’s emergency powers allow her to suspend the regulations of any government of Guam agency ‘to the extent that strict compliance with the same would prevent, hinder or delay necessary action....’” *citing* 10 G.C.A. § 19403); *see also* Legal Memorandum, Staff Attorney to Chief Justice and Chairman of

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the Judicial Council (Mar. 26, 2020) as included in Judicial Council Meeting Packet for April 16, 2020 meeting and submitted to the Legislature on May 5, 2020 (recognizing Governor's authority to suspend certain provisions of Open Government Law during a public health emergency).

By March 16, 2020, Guam had confirmed three (3) COVID-19 positive cases. I issued Executive Order No. 2020-04, which restricted entry into Guam pursuant to 10 G.C.A. § 3333. This restriction was prompted by a determination made by the Department of Public Health and Social Services (DPHSS) that a significant number of our confirmed positives were linked to travel from the Philippines, which saw a twenty-fold increase in its number of COVID-19 positive cases in the ten (10) day period between March 9 and March 19, 2020. *See In re Travelers from Manila, Philippines on or about March 19, 2020 and Travelers from Manila, Philippines on or about March 20, 2020*, SP0049-20, at 2 (Super. Ct. Guam Apr. 1, 2020). Under her authority pursuant to 10 G.C.A. § 10108 and with my approval, the director of DPHSS, who functions as the public health authority during this emergency period, "enacted a mandatory quarantine at a government facility for all persons arriving on Guam who had traveled from the Philippines." *Id.*, at 4. Among the factors that were considered was the lack of resources necessary to monitor all potentially COVID-19 infected travelers. *Id.*, at 5.

Even under the best circumstances, typical procurement is time-consuming and it was readily apparent that the emergent conditions made it impractical -- and sometimes impossible -- to utilize the normal process for acquiring goods and services. We recognized the immediate need to secure quarantine facilities and I instructed that efforts be made to secure the same. We required facilities sufficient to house what we anticipated may be at least two hundred (200) travelers. Additionally, we required necessary support services for such facilities, including food services, laundry services, and healthcare services.

Pursuant to my instruction and in support of the work that all government of Guam agencies are performing to respond to the COVID-19 outbreak on Guam, agreements were made with several service providers. All of these services have been secured pursuant to the authority to make emergency purchases set forth in 10 G.C.A. § 19403.

The federal government, through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, has directed money to Guam to assist us in our COVID-19 response and recovery efforts. These funds must be used by the Executive Branch for specific, if broadly stated, purposes. Oversight of the use of such funds is given to the federal Inspector General. *See* H.R. 748, the CARES Act, <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf> at 223-24. The funds are within the exclusive management of the Executive Branch. *See Wong v. Camina*, 2 Guam 134, 134, (Dist. Ct. Guam Jan. 24, 1978) (writing that "all grants and appropriations made by the United States to the government of Guam where the grant or appropriation provides one hundred percent (100%) of the funding for a specific project or purpose and which grant or appropriation makes no provision for local legislative control.")

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Services have been, and continue to be, provided to the government of Guam and are appropriate expenditures under the April 22, 2020 Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments issued by the United States Department of Treasury, which specifically allows that eligible expenditures include “public health expenses such as...[e]xpenses for quarantining individuals.” Additionally, the Guidance provides a non-exclusive list of eligible expenditures, including: establishing temporary medical facilities, emergency medical response expenses, and costs for food delivery, among others.

I, therefore, instruct compensation contemplated in the attached agreements and invoices shall be paid, subject to any necessary reconciliation. Where services continue to be provided, I instruct that future invoices be paid in accordance with any applicable terms and conditions of such agreements.

In accordance with Executive Order No. 2020-13, all agreements and invoices involving the services covered by this memorandum shall be posted on the website of the Office of the Governor. A copy of this memorandum shall also be posted. These expenditures shall be subject to review and shall be included in monthly reporting to the Legislature.

Si Yu'os Ma'ase'.

SO ORDERED:



LOURDES A. LEON GUERRERO
Maga'hāgan Guāhan
Governor of Guam

cc via email: *Sigundo Maga'lāhen Guāhan*
Linda DeNorcey, Director, Department of Public Health & Social Services
Charles Esteves, Administrator, Guam Homeland Security/Office of Civil Defense



www.hspguam.com

HEALTH SERVICES OF THE PACIFIC

809 Chalan Pasaheru Unit 2, Tamuning, GU 96913
P.O. Box 8838 Tamuning, GU 96931
Tel: 671.647.5355 Fax: 671.647.5358

Circular 20-37

April 24, 2020

Linda Unpingco DeNorcey
Director
Department of Public Health & Social Services
590 S. Marine Corp Drive
Tamuning, Guam 96913

SUBJECT: Memorandum Of Agreement Guam DPHSS and HSP

Dear Ms. Unpingco-DeNorcey,

Please see attached Memorandum of Agreement and scope of work regarding under the Covid19 pandemic for your review and signature. Once approved and signed, after signature, DPHSS may (1) contact HSP for pick up for delivery to Governor's office, or (2) send the contract to Governor's office for signature.

Should you have any questions, please do not hesitate to contact me at 647-5355 ext 232, or email me at l.mesa@hspguam.com

Regards,

Lisa A. Mesa
Administrator

MEMORANDUM OF AGREEMENT

BETWEEN

GUAM DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES

AND

GURUSAMY, INC. dba HEALTH SERVICES OF THE PACIFIC

This binding Memorandum of Agreement (“MOA”) is made, effective March 18, 2020 (the “Effective Date”), by and between the Guam Department of Public Health and Social Services (“DPHSS”) and Gurusamy, Inc. dba Health Services of the Pacific (“HSP”) (collectively, the “Parties”).

RECITALS

WHEREAS, on March 14, 2020, due to the public health threat presented by the rapid spread of a Novel Corona Virus (“COVID-19”), the Governor of Guam issued Executive Order No. 2020-03 which declared a State of Emergency in Guam and designated DPHSS as the Primary Public Health Authority to exercise all powers enumerated in Chapter 19 of Title 10 of the Guam Code Annotated, through its Director and with the approval of the Governor of Guam; and

WHEREAS, pursuant to the Centers for Disease and Control Prevention (“CDC”): Infection Control Guidance, rapid isolation of persons with suspected or confirmed COVID-19 is necessary. Health care facilities must ensure policies and practices are in place to minimize exposures to respiratory pathogens including the virus that causes COVID-19; and

WHEREAS, on March 18, 2020, due to developments concerning the COVID-19 pandemic, HSP, a private home health care and hospice agency certified by the Center for Medicare and Medicaid Service (“CMS”), was retained to provide clinical surveillance of inbound travelers held under quarantine at isolations sites designated by the Governor of Guam; and

WHEREAS, on March 24, 2020, the Governor of Guam issued Executive Order No. 2020-06 which created the Covid-19 Unified Response Effort (“Cure”) Action Team and in accordance with the provision of Section 19502, Article 6, Chapter 19, of Title 10 of Guam Code Annotated, provided the Chief Medical Advisor with the authority to direct health care facilities throughout Guam to provide any and all service necessary to respond to the COVID-19 pandemic; and

WHEREAS, DPHSS has engaged HSP to provide services outside of its usual business operations during the pendency of the State of Emergency and therefore, HSP, its officers, employees and agents, in providing services in support of the CURE Action Team COVID-19 response, plan, directive, guidance, or instruction, shall be entitled to immunity under Section 19804(b)(2) of Chapter 19, Title 10, Guam Code Annotated, in connection with its performance under this MOA, which shall be in addition to any other immunity, limitation of liability, right or

remedy to which any entity operating as a government medical facility, or its agents or employees, may be legally entitled; and

NOW, THEREFORE, in consideration of the mutual agreements, covenants, terms, and conditions contained herein, the Parties agree as follows:

I. SCOPE OF SERVICES

HSP will provide clinical surveillance of inbound travelers held under quarantine at isolation sites designated by the Governor of Guam, through DPHSS, in accordance with CDC guidelines as described below.

A. Clinical Staff Duties

- Daily primary and secondary screenings of all persons under quarantine will be conducted between the hours of 9 a.m. and 2 pm. by clinicians. Clinicians may be registered nurses, physical therapists, occupational therapists, or occupational therapist assistants, licensed practical nurses, or certified nurse aides, licensed to practice in Guam.
- Primary screenings will monitor persons under quarantine for signs and symptoms of COVID-19. Secondary screening will take place if a person under quarantine presents COVID-19 symptoms or requires non-COVID-19 related medical care. Basic clinical assessments will take place during secondary screenings to monitor blood pressure, pulse, temperature, respiration, and pulse oximeter.
- Follow up-secondary screenings may be conducted between the hours of 6 p.m. and 9 p.m. by registered nurses, physical therapists, occupational therapists, or licensed practical nurses, licensed to practice in Guam.

B. Provider Duties

- Providers will be available onsite or via telehealth for assessment, medical management, and participation in daily secondary screenings. Providers may be physicians or nurse practitioners, licensed to practice in Guam.
- Providers will provide oversight for all medical issues (whether related to COVID-19 or not) raised by persons under quarantine. Physician oversight will be performed in collaboration with DPHSS (1) to determine required treatment for non-COVID-19 related issues during quarantine and/or referral as may be necessary, and (2) to provide assessments and supporting documentation so that DPHSS may determine clearance and release of persons under quarantine as appropriate.

C. After-Hour and Other Medical Services

- HSP hours of operation for basic clinical surveillance will be between 9 a.m. to 2 p.m., and 6 p.m. to 10 p.m., daily, including weekends.
- HSP agrees to provide after-hours on-call medical and nurse assistance between the hours of 10 p.m. to 8 a.m. On-call services may include clinical triage of persons under quarantine by nursing staff and consult with provider for persons requiring urgent medical care and referral.

D. Records; Confidentiality

- HSP clinical staff will collect, and compile data obtained from daily screenings to include the maintenance of surveillance records and logs, and documentation of all medical issues (whether related to COVID-19 or not) raised by persons under in quarantine for referral as may be necessary. A CDC Person Under Investigation (PUI) form will be initiated for all persons who require secondary screening.
- The Parties agree to comply, and ensure personnel compliance, with the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder (“HIPAA”) and Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”), which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and any regulations promulgated thereunder (collectively, the “HITECH Standards”) with respect to the privacy and security of “protected health information” (as defined by HIPAA) created, transmitted, maintained or received by DPHSS or HSP pursuant to, or in connection with, this MOA.

E. Supplies; Coordination

- Clinical staff will conduct a daily inventory of medical supplies utilized and required and provide a summary narrative of issues for coordination with DPHSS.
- Physicians will daily review and sign off (verbal or in writing) on the summary narrative prepared by clinical staff. Verbal sign off will be documented by clinical staff.

II. BILLING & COLLECTIONS

DPHSS agrees to compensate HSP at the below listed rates, plus overtime for hours worked over 40 in a workweek at a rate not less than time and one-half their regular rates of pay the Fair Labor Standards Act (“FLSA”). Payment will be due thirty (30) days of receipt of monthly invoices submitted by HSP, which will detail the date and type of service, and the location where services were provided.

- A. Clinical & Medical Services will be billed at below hourly rate stated below, plus 25% hazard pay and benefits (health insurance, leave, FICA):**

\$150/hour	Physician
\$75/hour	Nurse Practitioner
\$35/hour	Registered Nurse/Physical Therapist/Occupational Therapist/Medical Social Services
\$28/hour	Licensed Practical Nurse/Occupational Therapy Technician
\$20/hour	Nurse Aide/Phlebotomist/Medical Assistant
\$20/hour	Non-Clinical Support Staff
\$0.55/mile	Mileage Reimbursement Rate

Administrative services performed in furtherance of the MOA will be billed at 40% of the monthly total service cost.

B. On-call Coverage (10 p.m. to 8 a.m.)

Registered Nurse: Minimum wage during on-call coverage period; when necessary for the registered nurse to be onsite for surveillance and/or triage, the hourly rates stated above will apply during that time.

Physician: \$150/night

C. Supplies

DPHSS will provide medical supplies required to conduct clinical surveillance to HSP. Additional medical, clinical, incidental, and office supplies utilized by HSP in furtherance of this MOA will be billed to DPHSS per the Center for Medicare and Medicaid Services ("CMS") reimbursement rates.

III. TERM

This term of this MOA shall commence on the Effective Date and shall terminate upon the earlier of (1) the end of the public health emergency, or (2) the need clinical surveillance of inbound travelers held under quarantine at isolations sites has ended as determined by DPHSS. In any instance, this MOA shall not extend beyond three (3) months without written consent from both Parties.

IV. LIABILITY; IMMUNITY; RELEASE AND HOLD HARMLESS; INDEMNIFICATION

HSP, its officers, employees and agents are entering into this MOA to render assistance to the Territory of Guam by providing services in support of the CURE Action Team COVID-19 response, plan, directive, guidance, or instruction, and shall be entitled to immunity under Section 19804(b)(2) of Chapter 19, Title 10, Guam Code Annotated, in connection with its performance under this MOA, which shall be in addition to any other immunity, limitation of liability, right or remedy to which any entity operating as a government medical facility, or its agents or employees, may be legally entitled.

V. NOTICES

All notices and other communications required or permitted to be given hereunder shall be in writing and shall be considered given and delivered when personally delivered to the party or delivered by courier or deposited in the United States mail, postage prepaid, return receipt requested, properly addressed to a party at the address set forth below, or at such other address as such party shall have specified by notice given in accordance herewith:

To DPHSS: Department of Public Health and Social Services
Attn: Director
123 Chalan Kareta
Mangilao, GU 96913

To HSP: Gurusamy, Inc. dba Health Services of the Pacific
Attn: Administrator
809 Chalan Pasaheru Unit 2
Tamuning, Guam 96913

VI. GENERAL PROVISIONS

- A. Patient Referrals. This MOA does not require either DPHSS or HSP to refer patients to the other or enter into any other arrangement for the provision of any item or service offered for which Medicare or Medicaid payments may be made.
- B. Compliance. The Parties will comply with all applicable federal, state and local laws, ordinances, codes and regulations.
- C. Entire Agreement. This MOA constitutes the entire agreement among the Parties and supersedes all previous contracts or agreements between the Parties with respect to the subject matter hereof.
- D. Governing Law. This MOA shall be construed and enforced in accordance with the laws of the U.S. Territory of Guam (without regard to any conflict of law provisions thereof) and applicable Federal law.
- E. Recitals. The recitals stated above are true and accurate and are incorporated herein by this reference.
- F. Severability. Should any provision of this MOA or application thereof be held invalid or unenforceable, the remainder of this MOA shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law unless to do so would defeat the purposes of this MOA.
- G. Amendments. This MOA may be amended only by an instrument in writing signed by a duly authorized officer of each of the Parties, effective as of the date stipulated therein.

H. Captions. Any captions to or headings of the articles, sections, subsections, paragraphs, or subparagraphs of this MOA are solely for the convenience of the Parties, are not a part of this MOA and shall not be used for the interpretation or determination of validity of this MOA or any provision hereof.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement.

**GUAM DEPARTMENT OF PUBLIC
HEALTH & SOCIAL SERVICES**

**GURUSAMY, INC. dba
HEALTH SERVICES OF THE PACIFIC**

**LINDA UNPINGCO DENORCEY, MPH
Director**



**LISA A. MESA
Administrator**

Date: _____

Date: 4-24-2020

APPROVED

**LOURDES A. LEON GUERRERO
Governor of Guam**

Date: _____

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