



# GETTING TO YES:

## WORKING WITH FEMA TO FUND NON- CONGREGATE SHELTER DURING COVID-19

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NATIONAL LOW INCOME  
HOUSING COALITION

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In March 2020, President Donald Trump announced a nationwide Declaration of Emergency regarding the coronavirus pandemic, making available critical resources from the Federal Emergency Management Agency (FEMA) to help address public health needs in states and localities.

FEMA's Public Assistance (PA) program provides resources to state, territorial, tribal, and local governments and certain types of nonprofit organizations to allow communities to respond quickly to and recover from major disasters or emergencies. Given the lack of structural damage and debris caused by a pandemic, PA Category B: Emergency Protective Measures resources will likely see the most intense use during the current crisis. Under Category B, state and local governments can receive reimbursement for eligible emergency protective measures taken to respond to the COVID-19 pandemic. Emergency protective measures are "activities taken to eliminate or reduce an immediate threat to life, public health or safety, or significant damage to improved public or private property in a cost-effective manner."<sup>1</sup> Such measures include "evacuation and sheltering."

While the agency has approved Major Disaster Declarations for all fifty states and four territories, FEMA has approved no major assistance programs targeting individuals - outside of crisis counseling.

This memorandum outlines the varying scope of assistance available to state governments under Category B for non-congregate sheltering of people experiencing homelessness and other individuals living in congregate settings, such as people with disabilities. The memorandum also provides key information for advocates seeking to maximize FEMA resources in their states.

As more states seek to put in place Category B non-congregate sheltering programs, we hope these examples can guide conversations between advocates, their state government representatives, and FEMA.

## RECOMMENDATIONS

As of this writing, there are seven states which currently have statewide plans for FEMA-reimbursable, non-congregate sheltering of individuals experiencing homelessness and other populations needing space for social isolation. After reviewing the agreements made between these states and FEMA, NLIHC has determined where state and local advocacy can have the greatest impact on the scope of assistance provided by FEMA to address the need for non-congregate shelter.

**Recommendation 1: Urge state public health officials to release guidance explicitly stating that providing non-congregate shelter is needed for all people living in congregate settings, including people experiencing homelessness, as a public health imperative. Defining the public health needs more narrowly would likely result in fewer FEMA resources.**

Housing and homeless service providers should engage state health agencies, including emergency health task forces created to address the COVID-19 pandemic. To ensure the broadest eligibility for FEMA resources, state health agencies must release specific guidance calling for the decongestion of shelters and other congregate settings as a public health imperative, rather than limiting this guidance to a smaller subset of individuals who have contracted or been exposed to the coronavirus.

It is well established that congregate sheltering poses a severe risk to individuals experiencing homelessness and people with disabilities, who are more likely to have pre-existing medical conditions than the general public. The only way to reduce this risk is to move these individuals to safer non-congregate sheltering. Incidences of coronavirus infection within congregate shelters and other congregate settings should be tracked and reported to local health officials to support advocates' claims. The public health order should be as broad as possible - including the entire population of shelter residents or individuals living in other congregate settings, not simply those that have been exposed or tested positive for the coronavirus. As Connecticut's public health order states, public health depends on a full decongestion of shelters, and shelter residents should be considered "high risk" by definition. This

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1. 44 CFR § 206.225(a)(3)

public health guidance makes it easier for state governors to successfully request reimbursement from FEMA for non-congregate shelter for these populations.

FEMA has denied requests for Category B reimbursements where orders to decongest shelters came from non-public health agencies, such as occurred in Vermont. FEMA's guidance on Category B non-congregate sheltering explicitly state that such orders must originate from public health officials and not any other agency. While states are able to reapply, the reapplication process could postpone access to resources, potentially resulting in further COVID-19 spread within the homeless shelter system or in other congregate settings.

**Recommendation 2: Urge clarity on program rules, including rules related to reimbursement eligibility, the use of matching funds, and the duplication of benefits, in any agreement reached between FEMA and state officials.**

Advocates should call for clarity in program eligibility requirements, match requirements, duplication of benefits, and other program rules. Vague guidelines may seem to assist advocates in procuring non-congregate sheltering for their clients by allowing for broad interpretations, but in practice the lack of clarity can cause delays among county and local decision makers who fear they will be unable to secure FEMA reimbursements for the cost of moving people to safety.

North Carolina's situation is a prime example. While the state's guidance seems to imply that all individuals residing at shelters are eligible for reimbursable non-congregate sheltering, FEMA has neglected to clarify the guidelines, and many local officials are refusing to recognize requests to shelter members of the broader population.

**Recommendation 3: Urge governors to request FEMA reimbursements for the entire population identified in the state's public health directive.**

Advocates should work with their governors and state emergency management agencies to ensure requests to FEMA for statewide non-congregate sheltering reimbursement include the entire population identified in the state's public health directives, as described in the first recommendation of this section.

Moreover, advocates should work with elected officials to ensure that the needs of individuals experiencing homelessness and other individuals living in congregate settings, such as people with disabilities, are included in the scope of their disaster planning and that statewide plans are put in place immediately. Even if a state is not expected to reach its peak outbreak for some time - moving individuals out of shelters and other congregate settings and into hotel rooms will help ensure people are protected when an outbreak occurs.

Even outside of a pandemic, the needs of individuals experiencing homelessness, people with disabilities, and other marginalized populations can be sidelined or downplayed by elected officials. Where possible, advocates should be sending emergency managers and state governors detailed information about the needs and vulnerabilities of the state sheltering system and the potential for catastrophic impacts should non-congregate sheltering plans not be put into place.

**Recommendation 4: Urge elected officials to share information about all available resources with organizations working directly with individuals living in congregate settings, including housing and homeless service providers.**

Some states, such as New York or New Jersey, have not made information regarding their non-congregate shelter programs publicly available. It is unclear whether the decision to do so is by design or by oversight, but regardless, states should ensure that housing and homeless service providers can access this important information. Doing so will ensure a uniform response to assist individuals in need and ensure that all eligible expenditures will be reimbursed by FEMA.

# CASE STUDIES

The states shared below have been arranged from those with the broadest non-congregate programs to those with the least. Connecticut and New York have the broadest eligibility for its non-congregate programs, while Ohio has the narrowest eligibility.

## a. Connecticut

*Program Name:* N/A

*Geographic Scope:* Statewide

*Targeted Number of Units:* None Specified

*Current Units:* ~1,000

*Eligibility:* All congregate shelter residents, previous shelter residents who have been exposed or infected, and healthcare workers who have been exposed or infected.

*Documents:* [Request](#) (with attached Public Health Directive), [Response](#)

Connecticut has one of the most expansive eligibility standards of any Category B non-congregate program currently in operation. Instead of limiting eligibility to individuals exposed to coronavirus or with underlying medical conditions, Connecticut's program includes all residents of congregate shelters. This broad eligibility was made possible thanks to the Connecticut's health commissioner's broad public health order, which stated that deconcentrating shelters is a necessary public health measure. That order was used as the basis of Connecticut Governor Ned Lamont's request to FEMA - included as an addendum - to cover this broad population.

Connecticut advocates attribute this success to the close relationships between the state's affordable housing and homeless sectors and Connecticut's state government. Working quickly to secure a broad public health directive ensured that individuals experiencing homelessness were a primary consideration. Connecticut advocates also commended the leadership provided by FEMA Region I - which covers Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont - for being open to utilizing Category B authority in such a manner. It is important to note that this order has been updated after the initial approval to include survivors of domestic violence, showing that FEMA approvals can be expanded after an initial decision.

## b. New York

*Program Name:* N/A

*Geographic Scope:* Unclear

*Targeted Number of Units:* None Specified

*Current Units:* N/A

*Documents:* [Request](#), [Approval](#)

*Eligibility:* Individuals who have tested positive for coronavirus and require non-congregate

sheltering, healthcare workers and first responders who have interacted with coronavirus-positive individuals, and any individual who is or was supported by a congregate-care shelter facility, including individuals experiencing homelessness and domestic violence and elder abuse survivors.

Like Connecticut, eligibility for the non-congregate sheltering program in New York is exceptionally broad. This broad eligibility stems from an initial order by the New York State Department of Health that held that all individuals supported by congregate-care shelters – including individuals experiencing homelessness – should be moved into non-congregate sheltering. The order was included in the New York State Department of Homeland Security and Emergency Services’ (DHSES) request to FEMA.

As a result, FEMA’s approval of non-congregate sheltering specifically lists individuals experiencing homelessness as eligible for reimbursement. The approval letter from FEMA specifically states that the population approved by the agency is the result of the DHSES inclusion of that population in their original request. That inclusion – stemming from the Department of Health order – permitted FEMA to approve reimbursement for all shelter residents to have non-congregate sheltering.

### **c. North Carolina**

*Program Name:* N/A

*Geographic Scope:* Statewide

*Targeted Number of Units:* None Specified

*Current Units:* N/A

*Eligibility:* Coronavirus positive or exposed individuals in need of quarantine; individuals awaiting test results; asymptomatic “high risk individuals” who are 65+ years old, have certain health conditions, or are otherwise at risk in their current living situation and who require emergency non-congregate sheltering as a social distancing measure.

*Documents:* [Request](#), [Response](#), [Public Health Directive](#), [State Guidance](#), [Extension Approval](#)

North Carolina was one of the first states to get approval for Category B non-congregant sheltering. Having prior experience with FEMA during the ongoing recovery from both Hurricane Florence and Hurricane Matthew, state lawmakers and advocates were able to quickly craft a statewide request in conjunction with the state public health department. North Carolina advocates successfully lobbied for the assistance request by focusing on why congregate sheltering is an inappropriate response to a pandemic. This argument influenced the state government’s program guidance issued for local governments and advocates, which interpreted all shelter residents as meeting the FEMA-approved definition of “high risk individuals.” This guidance also has roots in ongoing hurricane recovery programs placing individuals that became homeless as a result of Hurricane Florence into stable housing. The state received an extension from FEMA on May 7, lasting until June 6.

The guidance was not, however, explicitly included in FEMA’s approval, and the lack of clarity has made things increasingly muddled. Without formal FEMA approval for an expanded definition of “high-risk,” there is a chance FEMA could refuse to reimburse organizations for the costs incurred for arranging and maintaining non-congregate sheltering. Without a more forceful guarantee from the federal government, many localities are not heeding the expanded guidance and are moving only medically high-risk, coronavirus-positive or exposed individuals into non-congregate shelter.

The North Carolina program is designed to be local in its execution. This set-up – similar to the

program in California (see below)- [entrusts](#) the procurement and wrap-around services involved with non-congregate sheltering to local groups. The state receives funds from FEMA and then reimburses local governments and organizations.

#### **d. California**

**Program Name:** Project Roomkey

**Geographic Scope:** Statewide

**Targeted Number of Units:** 15,000

**Current Units:** 10,000+ units

**Eligibility:** Individuals who are medically “high-risk,” individuals who have been exposed to coronavirus, and individuals who have tested positive for coronavirus.

**Documents:** [Response](#); [Extension](#)

Project Roomkey was the first Category B non-congregate sheltering program to be implemented as a response to COVID-19, likely because of the close relationship between FEMA and California’s Office of Emergency Services after working together over the past several wildfire seasons.

Eligibility under Project Roomkey includes individuals experiencing homelessness who are medically “high risk,” individuals who have been exposed to coronavirus, and individuals who have tested positive for the virus. Priority is being given to those in the “high-risk” category as new hotel rooms come online. In areas without large numbers of hotel rooms, alternative forms of non-congregate shelter, such as RVs, have been used.

This narrow definition results from the California Department of Public Health’s [guidance](#) stating that this relatively narrow population of individuals – medically high-risk, coronavirus-exposed, coronavirus-positive individuals – should be provided non-congregate sheltering. The guidance informed California Governor Gavin Newsom’s request to FEMA for statewide non-congregate sheltering approval. Because the request was in concert with guidance provided by public health officials, the request was approved by the FEMA Region IX administrator. Project Roomkey was subsequently extended to May 31 following a request from the California state government, which included documentation of the need for an extension and corresponding directives from the state health department.

The program has a heavy local emphasis on city and county officials taking the lead in identifying participants and setting up hotel rooms for non-congregate sheltering. In [LA County](#), for example, both city and county homeless assistance agencies identified, placed, and – along with local homeless service providers – are staffing the hotels. At the state level, agencies have focused on outreach to corporate hotel chains (such as Motel 6) and the tracking of funds. The emphasis on local decision-making and implementation has created challenges in jurisdictions that are not as attentive to the needs of individuals experiencing homelessness. In Orange County, a Superior Court indicated it would grant a temporary restraining order blocking the county from using the program at a Laguna Hills hotel.

California requested and received a renewal from FEMA Region IX for Project Roomkey for the month of April. This request was made by the state emergency management agency and included documentation from state public health officials reinforcing the need for extending the reimbursement period. The state did not request an expansion of the population eligible for

reimbursement, however, and FEMA Region IX reiterated that no new eligibility parameters were being approved.

#### **e. Massachusetts**

*Program Name:* N/A

*Geographic Scope:* Statewide

*Targeted Number of Units:* N/A

*Eligibility:* Individuals who have been exposed or positive for COVID-19, individuals that are high risk, individuals that work as first responders, medical workers, nursing facility workers and 24/7 congregate care workers.

*Current Units:* N/A

*Documents:* [Response](#)

Massachusetts originally received approval for non-congregate sheltering reimbursement on March 27, 2020. The applicable population is narrow encompassing only those individuals who are exposed to or tested positive for COVID-19, first-responders and medical staff likely to be exposed to COVID-19, and high-risk individuals. While the eligible population of first responders and medical workers specifically include those working with others in need of 24/7 congregate care, the individuals living in such congregate settings are not eligible for sheltering reimbursement outright.

The initial Massachusetts approval of March 27, 2020 has been extended to May 31, 2020 after the state requested an extension. This request included documentation of the need from a state public health official and a detailed justification. The state will be able to apply for an additional extension at that time.

#### **f. Minnesota**

*Program Name:* N/A

*Geographic Scope:* Statewide

*Targeted Number of Units:* None Specified (although 1,650 were cited in FEMA request)

*Current Units:* Unknown

*Eligibility:* Individuals who have been exposed or have tested positive for COVID-19, individuals that are high risk.

*Documents:* [Request](#), [Response](#)

Minnesota was recently approved for Category B non-congregate sheltering reimbursement statewide. While the initial request makes a strong case against the use of congregate sheltering, the state limited its request only to those narrow populations cited in New Jersey and California. The FEMA response does make clear that the population could be expanded should the state or local public health official issue additional direction or guidance widening the target population for non-congregate sheltering.

There does not appear to have been a release of separate guidance from the Minnesota



Department of Health regarding the population that needs non-congregate sheltering. Instead, Minnesota Governor Tim Walz cited the internal discussions of COVID-19, as well as the initial public health emergency declaration, as justification for requesting reimbursement for the non-congregant sheltering of the individuals described above. Unlike Connecticut, the limited scope of the guidance used and the subsequently gubernatorial request resulted in narrow eligibility.

## **g. New Jersey**

*Program Name:* N/A

*Geographic Scope:* Statewide

*Targeted Number of Units:* None Specified

*Current Units:* N/A

*Eligibility:* Shelter residents and families that are symptomatic or have tested positive for COVID-19 or are high risk, and other groups that may need assistance as the state continues to respond to the COVID-19 pandemic.

*Documents:* [Request](#), [Response](#)

New Jersey was approved for non-congregate sheltering reimbursement on April 11. Like Connecticut, New Jersey's geographic position close to New York City - an epicenter of the outbreak - has strained much of the state's resources. It is important to note that New Jersey's program is being facilitated by the New Jersey State Police Public Assistance division, which could lead to issues given pre-existing lapses of trust between law enforcement and people of color and other marginalized populations who are disproportionately reflected among people experiencing homelessness.

Detailed information on this program is scarce. However, [press releases](#) from New Jersey Governor Phil Murphy have placed equal emphasis on the use of the program to allow medical personnel and first responders to safely socially isolate if COVID-19 exposed, positive, or symptomatic. Although advocates have had difficulty accessing the initial request sent by Governor Murphy to FEMA, it likely coincides with New Jersey's initial public health order requiring that individuals who are high-risk, COVID-19 exposed, or COVID-19 positive maintain social distancing from others.

## **h. Virginia**

*Program Name:* N/A

*Geographic Scope:* Statewide

*Targeted Number of Units:* 2,000 both reimbursable and non-reimbursable

*Current Units:* N/A

*Eligibility:* Individuals experiencing homelessness that have tested positive or been exposed to COVID-19 and individuals that need social distancing as a precautionary measures, as determined by public health officials, particularly for high-risk groups such as people over 65 years old or with underlying health conditions.

*Documents:* [Response](#) (page 5-6)



Virginia was approved for non-congregate sheltering reimbursement earlier in the month of April. The FEMA Region III administrator response does not include any description of how to increase the target population beyond those listed above if necessary. The state did create an emergency fund to cover individuals not eligible for non-congregate shelter cost-reimbursement, however it is unclear how many hotel rooms have been utilized by eligible and noneligible individuals. The FEMA region III administrator served as the Individual Assistance Branch Director during Hurricane Maria response.

## **i. Utah**

**Program Name:** N/A

**Geographic Scope:** Statewide

**Targeted Number of Units:** N/A

**Current Units:** N/A

**Eligibility:** Individuals that tested positive for or been exposed to COVID-19 that do not require hospitalization but need isolation or quarantine, and high-risk individuals such as those over the age of 65 or with certain underlying health conditions.

**Documents:** [Approval](#), [Extension](#)

Utah was approved by FEMA Region VII for non-congregate sheltering reimbursement in April 2020. The eligible populations again include individuals unable to safely isolate who test positive for COVID-19, individuals that may have been exposed to COVID-19, and individuals who are at high risk. Based on what was provided in the FEMA approval letter, Utah had asked for a larger population to be made eligible for reimbursement under the program, but FEMA approved eligibility for only the above populations. The approval was made based on the request, the state's stay at home order, and supporting documentation from the Utah Department of Health. The initial approval lasted until May 6, and it was then subsequently extended to June 7, leaving open the possibility of additional extension requests.

## **j. Colorado**

**Program Name:** N/A

**Geographic Scope:** Statewide

**Targeted Number of Units:** N/A

**Current Units:** N/A

**Eligibility:** Individuals that tested positive for or been exposed to COVID-19 that do not require hospitalization but need isolation or quarantine, and high-risk individuals such as those over the age of 65 or with certain underlying health conditions.

**Documents:** [Approval](#)

Colorado was approved for state-wide non-congregate shelter reimbursement on April 9. This agreement only covers individuals unable to socially isolate that have tested positive or were exposed to COVID-19, as well as medically high-risk individuals. Just as in many other states,

the FEMA approval explicitly restricted reimbursement to sheltering only for those within this population. The approval was based upon a March 25 order by the Colorado Department of Health. That order specifically highlighted the need for individuals experiencing homelessness to comply with social distancing requirements, but it did not request that jurisdictions make non-congregate sheltering available. Nonetheless - the order does allow for non-congregate reimbursement among a narrow population.

## PUBLIC ASSISTANCE TIMELINES

Below is a table of dates reflecting the expirations of assistance and public health orders for each of the states described above. States may be able to extend the period of reimbursement eligibility by sending a request to FEMA with attached documentation showing why such measures continue to be needed. Such a request was successfully completed by California - extending their reimbursement period for one month. These extensions are opportunities for states to request a broader population be made eligible for reimbursement than was initially approved by FEMA.

State	FEMA Approval Date	FEMA Approval Expiration	Health Directive Date	Health Directive Expiration
Connecticut	March 29, 2020	June, 2020	March 10, 2020	September 9, 2020
New York	April 13, 2020	May 10, 2020	April 5, 2020	September 7, 2020
North Carolina	April 6, 2020	May 6, 2020	March 31, 2020	
California	March 27, 2020	May 31, 2020		
Massachusetts	March 27, 2020	May 31, 2020		
Minnesota	April 11, 2020	May 11, 2020	March 27, 2020	May 4, 2020
New Jersey	April 6, 2020	May 10, 2020	April 6, 2020	
Virginia	April 03, 2020	April 30, 2020		
Utah	April 08, 2020	June 07, 2020		
Colorado	April 09, 2020	May 07, 2020	March 25, 2020	