

**TO:** House Committee on Human Services and  
House Committee on Health Care

**FROM:** Jessica Radbord, Staff Attorney  
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**SUBJECT:** SFY22 Emergency Housing Program Proposal and Draft Budget  
Language

**DATE:** May 6, 2021

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Dear Chair Pugh, Chair Lippert, and Members of the Committees:

Vermont has led the nation in maintaining low COVID-19 infection rates and deaths, and a critical component of our success is attributable to Vermont's provision of comprehensive housing protections to the most vulnerable Vermonters, including non-congregate shelter through the General Assistance ("GA") motel program to all Vermonters experiencing homelessness. In many areas around the country, the coronavirus spread rapidly among people experiencing homelessness. In Boston, for instance, 36% of shelter residents tested positive for COVID in one study. Here in Vermont, conversely, we had almost no cases. Because of the risk presented by the spread of the virus, there was the political will, funding (including a 100% FEMA cost-share reimbursement), and capacity (due to vacant motels) to get Vermonters experiencing homelessness out of congregate shelters and off the streets, and into motel rooms.

As the state of emergency winds down, the will to keep the program operating without categorical eligibility and time limits has waned and motel rooms are no longer so readily available. In its budget language, the House asked the Department for Children and Families to bring together a working group to create a proposal on how to continue to meet the needs of the most vulnerable Vermonters experiencing homelessness within the limits of the number of motel rooms and funding resources made available for that purpose. I was pleased to serve on the working group along with Michael Redmond of the Upper Valley Haven and Affordable Housing Coalition; Kara Casey of the Vermont Network to End Domestic Violence and Coalition to End Homelessness; Margaret Bozik of Champlain Housing Trust and the Chittenden County Homeless Alliance, Tom Donahue of BROCC and Paul Dragon of CVOEO representing the Community Action agencies, Josh Davis of Groundworks Collaborative, and Rita Markley of COTS, along with members of the Administration. With a few exceptions, our working group came to consensus on the proposal presented by the Department.<sup>1</sup> That consensus position relied

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<sup>1</sup> Available at <https://legislature.vermont.gov/Documents/2022/WorkGroups/House%20Appropriations/FY%202022%20State%20Budget/H.439%20-%20FY%202022%20Budget%20->

on some critical assumptions on the part of all members of the working group – assumptions which have been challenged in recent days. And with the passage of time, as the implementation date of the proposed rule changes loom before us, the harsh realities we are likely to face are becoming more and more apparent.

This memo is submitted solely on behalf of Vermont Legal Aid, not all of the service providers on the working group. The memo will cover three topics: (1) the parts of the proposal that Vermont Legal Aid opposes; (2) the working group’s core assumption that as GA residents ran out of time in the motels, 600 new permanently affordable housing units would be coming online, just for them; and (3) to share my very real fears of what will happen to our homeless neighbors as these new rules take effect, looking specifically to June 1, July 1, and September 22<sup>nd</sup> of 2021.

- I. *Vermont Legal Aid recommends recognition of an entitlement for eligible GA program participants and elimination of the 90-day bar on eligibility for “causing one’s own loss of housing.”*

In the proposed budget language under section (a), the following statement is made: “The assistance provided under this section is not an entitlement...” This assertion contradicts the statutory language for the GA program. Section 2103(a) of Title 33 provides that so long as there are appropriations available, the Department “shall furnish” GA benefits to eligible persons pursuant to the program rules. In other words, it operates as an entitlement for those who meet eligibility criteria – so long as the program has not run out of money. To be consistent with that statutory language, and because rights matter, the language in the budget bill should be revised. Specifically, subsection (a) need state no more than this: “The Department for Children and Families shall furnish emergency housing to eligible individuals and families in accordance with program rules waived or varied under Act 6, Section 1, of 2021, subject to available appropriations.” Or, “Funds appropriated to the Agency of Human Services in the General Assistance program in fiscal year 2022 shall be used to furnish emergency housing to eligible individuals and families in accordance with program rules waived or varied under Act 6, Section 1, of 2021.” This is also more consistent with budget language in prior years.<sup>2</sup>

It is important to note, however, that regardless of appropriations, there is an argument that the Department has a duty to ensure that all children and vulnerable adults are afforded basic shelter, consistent with its Title 33 obligations under Chapter 49, related to child welfare, and Chapter 69, protection of vulnerable adults.

As noted in the Emergency Housing Program proposal, Vermont Legal Aid also opposes the bar on eligibility for emergency housing for 90 days for any applicant who “caused their own loss of housing.” This opposition is largely informed by practice where we have found it creates unacceptable adverse effects, particularly on children and people with disabilities. I have personally had the experience of having a child look me in the eye and beg me to help his family because he did not want to sleep outside again. That child did nothing wrong. I met with a mom and infant who were in a tent last summer after being denied under the COVID-era version of this rule. A baby needs to be able to take a bath and be in a safe and warm space, not in a tent in the rain. This rule is bad policy. Further, it stands on legally questionable footing. There is at least one fair hearing decision that supports the assertion that children have a right to GA

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[%20Administration%20Responses/W~Department%20for%20Children%20and%20Families~Emergency%20Housing%20Program%20-%20SFY22~4-27-2021.pdf](#)

<sup>2</sup> See, e.g., Act No. 154, Sec. E.321 (2020); Act No. 72, Sec. E.321 (2019)

regardless of their parent’s alleged fault for losing their housing.<sup>3</sup> In that case, the Human Services Board said: “visiting the sins of the parents upon their children” is a “punitive result.”<sup>4</sup> The HSB’s position was that “there cannot be many more compelling societal interest than for homeless children to have safe and suitable temporary shelter.”<sup>5</sup> I agree. Or imagine a disabled senior on insulin who gets evicted for smoking in their non-smoking apartment. Under this proposal, that senior would be in a tent or their car for 90 days, or until they end up in the hospital because they were not able to keep their insulin at the right temperature. I urge you to reject the 90 day bar on eligibility, at least for families with children and vulnerable adults. It is unlikely that such a change would make anything more than a negligible difference in the overall program budget and capacity.<sup>6</sup>

*II. Rapid development of permanently affordable housing for people experiencing homelessness is critical to the working group’s proposal.*

The rapid development of permanently affordable housing for GA motel residents factored heavily into the creation of the working group’s proposal. I urge immediate and significant investment in development of permanently affordable housing for the homeless, as outlined in the Administration’s ARPA Plan and as supported by the housing recovery working group.

Although families with children and people with disabilities that significantly impair their activities of daily living will be eligible for assistance without a time limit under the proposed program rules, for the remainder of the eligible population, only 84 days of assistance is authorized. The 2020 HOP annual report showed that on average, before the pandemic, households were homeless for four months before they were able to access stable housing, and only 52% exited into permanent housing.<sup>7</sup> The length of time needed to find a unit in today’s even-tighter market is longer. There are not enough apartments for rent to meet the need we confront right now. A recent article in VT Digger noted that in December 2020, the vacancy rate in Chittenden County was just 1.1%.<sup>8</sup> A case manager in Lamoille reported to me earlier this year that there was not one single rental unit below fair market rent in all of Lamoille County. Rental subsidies are useless if there is no place to rent.

When apartments do appear on the private market, they tend to go quickly, and are most likely to get leased out to people who can pay immediately, people who don’t have rental subsidies, and who don’t have a negative or non-existent rental history. Last Thursday, the GA working group reviewed statistics from the Balance of State Homeless Continuum of Care “coordinated entry” needs assessments of homeless households, and the data was shocking. Here is a sample:

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3 See Fair Hearing No. 8883 (1988), available at <https://outside.vermont.gov/agency/AHSHSB/Orders/Documents/PRIOR%20YEARS/FH-7720%20to%20FH-9994/FH-8883%20Order.pdf>. The case references a report, Homelessness in Vermont (1986), which urged development of affordable, low-barrier housing, of a variety of different models. The report is available upon request from me, or it can be obtained from the State Archives.

4 F.H. No. 8883, at p. 8.

5 *Id.* at p. 11.

6 If families with children and vulnerable adults were to be excluded from the rule, the language could be changed to state: “DCF will not house a client in a hotel/motel if they caused their own loss of housing within the past 3 months, unless: (1) the client left for health or safety reasons; (2) the household includes a child or children under the age of 18, or who are 18 or 19 attending secondary education full time or an equivalent level of vocational or technical training and who are included a part of the household; or (3) the household includes a person with a disability that significantly impairs activities of daily living...”

7 Available at <https://dcf.vermont.gov/sites/dcf/files/OEO/Docs/HOP-AR-2020.pdf>, at p. 15.

8 *Burlington’s tightening housing market has renters scrambling* (May 3, 2021), available at <https://vtdigger.org/2021/05/03/burlingtons-tightening-housing-market-has-renters-scrambling/>.

- 26% reported never being named on a lease – ever.
- 38% were homeless before the age of 25.
- 48% have chronic medical conditions that are disabling.
- 53% reported having been to the emergency room at least once in the last year.
- 22% said they had absolutely no income whatsoever in the last 12 months – earned or unearned.

Some households in the motels are just low-income. They need a rental subsidy and a lot of good luck to find an apartment. But for many of the people in the motels, with limited or no rental history, little to no stable income, or serious health issues, renting in the private market is going to be profoundly challenging. There is just too much competition for the limited number of units available. I see limited prospects outside of affordable housing providers for many of the GA motel residents, and the affordable housing providers rarely have openings in their current stock.

I understand that there may be concerns regarding the Administration’s proposed investment of \$90 million to create 600 units of permanently affordable housing restricted to people experiencing homelessness. An affordable housing developer is better situated to assess the feasibility of development at a cost of \$150,000 per unit. But the prospect of falling short of 600 units does not justify holding back funding now. No proposal to create permanent housing for the people in the motels should be turned down due to lack of funds at this critical time. As to the wisdom of setting aside ARPA funds for this purpose, as of yesterday, the Treasury had yet to release guidance detailing eligible uses for the Coronavirus State and Local Recovery Fund, so there is no way to be absolutely certain that it will be authorized. For that reason, it may be the best policy to fund development with a combination of general fund and ARPA, with a readiness to be flexible in replacing general funds with ARPA if such spending is later authorized. Either way, there is an immediate need for that housing to be developed, using whatever funding is available. Similarly, it’s my understanding that developers can act more quickly without leveraging tax credits and without financing, so I encourage legislators to authorize the use of whatever funding can get development started the fastest. Lastly, while creating housing that segregates people with a history of homelessness is not ideal, in this moment, we face a crisis with a looming loss of motel space and hundreds of people with nowhere to go. For that reason, it is essential to target housing that can be developed quickly to households in GA motels. With appropriate services and supports, tenants with a history of homelessness can be successful and the properties can be safe.

The households in the GA motels need an exit strategy. My clients in motels have been feeling awfully hopeless, for an awfully long time. They know time is running out, and there’s simply nowhere to go. Rapid development of housing for people experiencing homelessness is a critical and immediate need, and we cannot delay. Massive investment (\$90 million) in permanently affordable housing for people experiencing homelessness is needed now.

*III. The proposal reflects a significant improvement to the program, but many Vermonters will nonetheless be left without basic shelter.*

Finally, I offer a grim dose of reality. There are three important dates to keep in mind in the proposal: June 1, when the eligibility rules kick in for new applicants; July 1, when some current GA residents will become ineligible; and September 22, when many of the current residents’ 84 days of eligibility under the new rules will lapse.

- June 1. I have a client who received a notice to quit for no cause because her landlord wants to sell her rental home. She works, but her pay is just above minimum wage, so her options are limited. But the reality is that there are almost no listings for apartments whatsoever, and she's scared to death that she won't find a new place in time. On June 1, people like my client who are getting evicted for no cause or due to a sale of the property will not qualify for GA unless they meet one of the "vulnerable" eligibility criteria. It is awfully hard to get a new home, or keep your job, if a person ends up living in their car.
- July 1. I have worked with youth who came out of foster care who, in spite of being "able-bodied" enough to work, had experienced such trauma that they could barely look anyone in the eye, and had such anxiety that it was hard for them to be around other people. They don't have a documented disability. As of June 1, under our new program rules, those homeless youth may find themselves ineligible for GA, furthering the trauma they have experienced in their short lives.
- September 22. The households granted under the new "vulnerable" eligibility criteria (other than families with children and people with disabilities that significantly impair activities of daily living) will be terminated from the program, even if they have no place to go. I have a very real fear that, with or without \$90 million to create permanently affordable housing for the homeless, 600 units will not be ready for occupancy by September 22. We will see hundreds of people with disabilities, seniors, domestic violence survivors, and pregnant women being exited from motels on the same day, with nowhere to go.

Pandemic or not, I wish housing would always be seen as necessary for health and basic human dignity, and that significant investments in affordable housing and shelter would always be made to keep up with the need. I wish that program rules would be designed with nothing more than public health and safety in mind. As a Legal Aid attorney, I see housing and shelter as a basic human right. That's not what we have in this proposal. That is not the assignment our working group was given. I believe the proposal reflects our working group's best effort to get to a consensus on the task assigned, based on the assumptions we had at the time.

When you really get to know the folks in the motels, when you really listen to a person's story, it's awfully hard to place blame or to turn your back on their predicament. These people are our neighbors, they matter, and their health and safety matter. I hope that by November of 2021, when our working group presents its final recommendations for fiscal year 2023 and beyond, we will be proposing a system that better meets the needs of people experiencing homelessness in our communities.

I hope you will consider supporting the changes to the proposal suggested in this memo, and supporting investment of \$90 million in rapid housing development for people experiencing homelessness. Thank you.

Sincerely,

/s/

Jessica Radbord, Esq.

Vermont Legal Aid, Inc.