

TO: House Committee on Human Services & House Committee on General, Housing, and Military Affairs

FROM: Jessica Radbord, Staff Attorney
802-383-2208
jradbord@vtlegalaid.org

SUBJECT: General Assistance Emergency Housing Program

DATE: October 18, 2021

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

Vermont successfully protected our neighbors experiencing homelessness from suffering high rates of COVID-19 infection, and a critical component of our success is attributable to Vermont's provision of non-congregate shelter through the General Assistance ("GA") motel program to all Vermonters experiencing homelessness until June 1, 2021. Since that time, program eligibility has narrowed, including implementation of a durational limit of 84 days for all households other than families with children and people with disabilities that significantly impair activities of daily living. Simultaneously, COVID-19 infection rates have risen, and another statewide emergency has become clearer: an unprecedented crisis in the rental housing market. Fortunately, funding for the GA emergency housing program is not an issue, thanks to a 100% FEMA cost-share for noncongregate shelter¹ and the Legislature's commitment of \$36 million of Emergency Rental Assistance² to operate the program for this fiscal year. Because of the ongoing public health emergency and the crisis in the emergency rental housing market, on behalf of our clients, Vermont Legal Aid is advocating for five things: (1) elimination of the durational time limit on GA emergency housing; (2) increased investment for permanent affordable housing; (3) a redoubling of our efforts to provide appropriate services for people experiencing homelessness; (4) development and implementation of rules in accordance with basic due process standards; and (5) consideration of who is being left out.

I. Vermont Legal Aid recommends modification of the Emergency Housing Program Rules' Durational Time Limit

In Section E.321(b) of Act 74, the Legislature indicated that the eligibility criteria outlined in the Department's GA emergency housing program proposal would remain in effect "unless there is a need to expand eligibility in response to a public health emergency or other emergency." We are

¹ See Presidential Documents, Memorandum of August 17, 2021, "Maximizing Assistance to Respond to COVID-19," 86 FR 46759, Aug. 20, 2021 (providing that states are eligible to request a FEMA 100% federal cost shall for all work eligible under Public Assistance Category B of the Stafford Act, 42 U.S.C. §§ 5121 *et seq.*, which includes noncongregate shelter).

² See Act No. 74 (2021), Sec. G.400(b)(2).

currently facing both a public health emergency, and an emergency in the rental housing market, so modification of program rules to eliminate the durational time limit is necessary.

The public health emergency presented by COVID-19 is still with us. A nationwide public health emergency, declared by the United States Department of Health & Human Services, is in effect.³ Here in Vermont, in consultation with the Agency of Human Services, Vermont Emergency Management sent a letter to FEMA on September 9, 2021, indicating that noncongregate shelter for individuals and families experiencing homelessness is “necessary in this Public Health Emergency to save lives, to protect public health, and to ensure public safety, as well as to lessen or avert the threat of a healthcare catastrophe.”⁴ In that letter, VEM notes that “Vermont continues to explore many options to address housing Vermont’s vulnerable populations,” but that “the best available course of action is to utilize existing programs in place, namely the ‘motel voucher’ emergency housing program.” When the Administration has so recently advised FEMA that noncongregate shelter in motels is the best available course of action and is needed to protect public health and save lives, it is wholly arbitrary and capricious for the Department to refuse to modify the program rules to allow vulnerable Vermonters to remain sheltered.

We are also facing another kind of emergency – an unprecedented crisis in the rental housing market. Anecdotal reports demonstrate the breadth of the problem:

- VSHA recently reported that only 50% of families with Housing Choice Vouchers have been able to secure a rental unit, they are seeing significant increases in rents, and many landlords who have participate in the voucher program for years are opting to sell their rental units, further limiting the availability of affordable rental housing in Vermont.
- A landlord that owns a large number of rental units reported that they have gone from seeing few out-of-state applicants for available apartments to 60% out-of-state applicants.
- Several landlords reported seeing a significant increase in applications from students due to increased enrollments.
- Tenants report receiving notice of dramatic rent increases, and some landlords have reported that they have been able to increase rents up to \$800 per month due to high demand.
- In one county, case managers for people experiencing and at risk of homelessness in reported that they have only placed one tenant in a private market rental unit in the last two months.

Although rental assistance is available for GA motel residents, that rental assistance is of no use if no rental unit is available. It has become clear over the last few months that there is a crisis of historic proportions occurring in the rental housing market in Vermont, and it will not be resolved within just a few months. The program rules should be modified to eliminate the durational limit on emergency housing benefits.

³ See “Renewal of Determination That A Public Health Emergency Exists,” available at <https://www.phe.gov/emergency/news/healthactions/phe/Pages/COVID-19July2021.aspx>.

⁴ See letter from Ben Rose, Recovery and Mitigation Section Chief, Vermont Emergency Management, to Paul F. Ford, Acting Regional Administrator, Federal Emergency Management (Sept. 9, 2021), attached.

II. Additional investment in low-barrier permanent affordable housing is needed.

Vermont committed to a historic level of investment in affordable housing development during the last legislative session, but additional funding is warranted to confront the crisis in the rental housing market.

In addition to increasing investment in affordable housing, Vermont Legal Aid recommends that lawmakers require any affordable housing developed with ARPA funding implement low barriers to access. The participants in the GA emergency housing program often have no or poor credit, no rental history or a negative rental history, and so forth. Housing developed with ARPA funds, unlike many other funding streams for affordable housing, has no mandatory screening criteria. A review of the applicable federal law indicates that Vermont would not be barred from requiring ARPA-funded housing to use the least restrictive eligibility criteria feasible.

III. We need both housing and services to fulfill the promise of Olmstead.

Pursuant to *Olmstead v. L.C.*, 527 U.S. 581 (1999), people with disabilities have a right to live and receive services in the most community-integrated settings appropriate to their wants and needs. To fulfill the promise of *Olmstead*, we must ensure that we have an adequate supply of affordable housing and community support programs for people with disabilities of all forms, including mental health disabilities and substance use disorder.⁵

Josh Davis of Groundworks Collaborative and Paul Dragon of CVOEO have highlighted some of the service needs of participants in the GA emergency housing program. I think it is also important to hear from participants in the GA emergency housing program and people with lived experience of homelessness about what services they need and want, and what barriers they confront as they try to access services.

IV. Rule development and implementation must comply with basic due process standards

The Commissioner of the Department for Children and Families is authorized to establish rules for the emergency housing program, but those rules must be established in accordance with the law. Over the last month, I have appreciated the opportunity to engage in discussions with the Department about the 84-day durational limit on benefits, and I understand that the Department has sought input from some other stakeholders. However, to the best of my knowledge, the Department has offered no notice to program participants or concerned members of the public of an opportunity to submit comments or be heard on this matter. Instead, people with lived experience of homelessness have camped outside the Statehouse as an attempt to communicate their needs, and residents of the motels have appeared on the evening news. The people want to be heard. A program for Vermonters experiencing homelessness should be subject to the same

⁵ See *Vermont 2020: Reforming Vermont's Mental Health System, Report to the Legislature on the Implementation of Act 79* (January 15, 2020), available at https://mentalhealth.vermont.gov/sites/mhnew/files/documents/AboutUs/Leg/2020-ACT_79_REPORT_011520_FINAL_Corrected.pdf; also see Act 82, *An act relating to examining mental health care and care coordination* (2017).

basic procedural protections as any other, including open meetings to discuss the rules, public comment, appropriate legislative review.

In the absence of a change to the rules for the program, Vermont Legal Aid's clients have been left to guess what a "pause" in terminations from GA emergency housing means. Upon information and belief, program participants have not received any written notice advising them of what benefit they are receiving, and what their obligations are. In fact, emergency housing stands alone in that persons found eligible for the program never receive a notice of decision from the Department, unless they specifically request one.

GA program participants, just like recipients of other benefits administered by the Department, should only be subjected to rules that are established in accordance with the law, and offered written notice of eligibility determinations and their rights and obligations.

V. Who is getting left out?

Vermont Legal Aid, on behalf of our clients in the General Assistance emergency housing program, requested modification of the 84-day durational time limit on benefits. We have also asked LCAR to object to that rule. Together with other providers on the General Assistance working group convened by the Legislature, we have asked for benefits to be extended for program participants until the end of the fiscal year. But I often wonder – is that enough?

Vermont Legal Aid believes that every individual should have safe and affordable housing, and when housing is unavailable, safe shelter with dignity in the alternative. During this pandemic, our community has come to understand that housing is health. Is there a greater political will to recognize that everyone should have shelter as a matter of right, without regard to their worthiness or special vulnerabilities? Here are just a few examples of who is ineligible for GA emergency housing:

- Children whose mother was evicted for breach of her lease;
- The unmarried partner of a person in GA emergency housing, even though the motel room costs the same amount whether there is one person in it or two; and
- A low wage worker with a disability who holds down a job for 30 hours per week.

These are the people left outside. The families and individuals who are ineligible under the program rules have not disappeared. Their circumstances are getting worse by the day.

Under Article 4 of the Vermont Constitution, every person within this state "ought to obtain right and justice, freely, and without being obliged to purchase it; completely and without any denial." Is it "right" for anyone to be denied such a basic need as shelter? Is that "justice"?

Thank you for your consideration.