

PROJECT PROTECT FOOD SYSTEMS

**THE COLORADO FOOD SYSTEM WORKERS
RAPID RESPONSE TEAM**



**Colorado Coronavirus Crisis
Essential Food System Worker
Policy Response Agenda**

WORKING PAPER - MAY 22, 2020

PROJECT PROTECT FOOD SYSTEMS: The Colorado Food System Workers Rapid Response Team is composed of immigrants, farmers, scholars, activists, unions, and workers across Colorado working to identify, elevate and address the needs of the people who contribute their labor to all parts of the food system. During the COVID-19 pandemic, many groups have mobilized in support of agricultural landowners, farmers and other food producers. Federal relief directed toward the agriculture sector has prioritized the needs of business owners but the specific vulnerabilities and needs of food system workers (FSWs) — both immigrant and non-immigrant — have largely been ignored. Inattention to the plight and the health of food system workers is both unsurprising and deeply problematic. We ignore the well-being of FSWs at our collective peril.

Food system workers have been undervalued, at best, and often exploited. The cruel irony of this disregard was thrown into sharp relief when, as part of pandemic response, workers throughout the food system were deemed “essential.” **The “Essential Worker” designation turns an inconvenient truth into an undeniable one: all people — and all Coloradans — rely upon food system workers to meet their basic needs in times of calm and crisis. Now that our collective dependence on FSWs has been laid bare, it is time to offer them dignity, respect, and support in tangible forms.**

Project Protect Food Systems was organized to ensure that this group of always-essential workers is adequately protected from COVID and appropriately compensated for their labor and for the risks they assume in service to the common good. In the pages that follow, Project Protect Food Systems lays out a **Colorado COVID-Responsive Essential Food System Worker Policy Agenda** (the “COVID FSW Policy Agenda”). This policy agenda aims to address COVID-related risks and exacerbated vulnerabilities faced by essential workers laboring in all sectors of the food system within the state of Colorado, including:

- *Farmworkers* (e.g., field workers, orchard workers, ranch hands, feedlot workers, etc., regardless of legal status or worker classification)
- *Processing workers* (e.g., workers in meat, poultry, dairy, grain, and other food processing facilities)
- *Warehouse & Distribution workers* (e.g., workers in shipping, receiving, distribution, logistics, inclusive of long- and short-distance transport)
- *Retail & Food Service Workers* (e.g., grocery workers, front- and back-of-the-house restaurant and food service workers)
- *Last-Mile Delivery Workers* (e.g., grocery delivery workers, prepared food delivery workers, inclusive of gig workers)

Many of the jobs in the food system pay low wages, offer few benefits, and place workers in close proximity to each other or to the general public. Thus, many FSWs face common COVID-related risks. However, each worker’s ability to safely navigate these risks varies tremendously due to factors including legal and socio-economic status; the nature of their particular job duties; the workplace policies, ethics, and accountability of their particular employer(s); their ability to participate in labor organizations and the strength of collective worker voice; and their level of social inclusion and embeddedness in community.

Because a substantial portion of Colorado’s agricultural sector is involved in the production and processing of beef, the plight of essential meat processing workers has emerged as a matter of particular urgency in the state during COVID. Thus, throughout this agenda, special suggestions have been made to safeguard workers in the meat processing sector (denoted with a ♦ symbol). At the same time, other groups of essential FSWs — especially migrant, seasonal, and undocumented farmworkers — are also in great peril because of coronavirus and pre-existing, intersecting vulnerabilities. Project Protect Food Systems is actively investigating the needs and sources of exposure for this group of workers around the state so that we may update our recommendations to better protect all vulnerable FSWs and the security of our food system.

**Colorado Coronavirus Crisis
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On March 11, 2020, Governor Polis issued Executive Order D 2020 03, “Declaring a Disaster Emergency Due to the Presence of Coronavirus Disease 2019 in Colorado.”¹ That executive order has been amended several times and the most recent extension expires on June 7, 2020.² Colorado law authorizes Governor Polis to exercise various emergency powers after declaring a disaster emergency.³ One important power involves the potential allocation of almost \$500 million from the Disaster Emergency Fund.⁴ Through the original order and the amendments, Governor Polis has activated a total of ninety-two million dollars (\$92,000,000) for COVID-19 response efforts.⁵ Another statutory power enables Governor Polis to “[m]ake provision for the availability and use of temporary emergency housing.”⁶ Another subsection allows Governor Polis to “[c]ontrol ingress to and egress from a disaster area, the movement of persons within the area, and the occupancy of premises therein.”⁷ More generally, the statute provides Governor Polis with broad powers to suspend provisions of regulatory statutes if strict compliance would hinder the emergency response effort and allows the Governor to utilize public property to the extent necessary to cope with the disaster emergency, subject to appropriate compensation.⁸

The various executive powers described above can and should be utilized to facilitate the protection and social (physical) distancing of essential workers on Colorado’s farms and throughout its food system, thereby helping to “[r]educe vulnerability of people and communities of this state to damage, injury, and loss of life and property.”⁹ This working paper sets forth policy recommendations to (A) safeguard workers in their workplaces; (B) protect H-2A workers; (C) dismantle the false choice between income and health; and (D) support the undocumented people who face distinct forms of marginalization as they contribute their essential labor throughout our state’s food system. Colorado boldly enabled decisive executive action to meet the challenges of the pandemic. Now the state government must use the tools available to protect the health and welfare of the people performing essential work throughout Colorado’s agriculture and food sectors.



¹ Colo. Exec. Order No. [2020-003](#) (Mar. 11, 2020).

² Colo. Exec. Order No. [2020-058](#) (May 7, 2020).

³ COLO. REV. STAT. § 24-33.5-704(7) (2018).

⁴ [Memorandum from the Principal Economist](#) of the Legislative Council Staff on TABOR Emergency Provisions to Interested Persons 1 (Mar. 17, 2020).

⁵ Colo. Exec. Order No. [2020-058](#) (May 7, 2020).

⁶ COLO. REV. STAT. § 24-33.5-704(7)(i) (2018).

⁷ COLO. REV. STAT. § 24-33.5-704(7)(g) (2018).

⁸ COLO. REV. STAT. § 24-33.5-704(7)(a), (d) (2018).

⁹ See COLO. REV. STAT. § 24-33.5-702(1)(a) (2018) (describing the purposes and limitations of the emergency powers).

Overview of Essential Food System Worker Policy Responses

Recommendation	Actions Available	Authority	Funding Source
Safeguard Workers in the Workplace	Provide PPE, Mandate Distancing, Whistleblower Protections, Expand Healthcare Access	Article IV, Section 2 of the Colorado Constitution and the relevant portions of the Colorado Disaster Emergency Act, C.R.S. § 24-33.5-701, et seq.	Disaster Emergency Fund
Protect H-2A Workers	Provide Multilingual Safety Information, Increase Oversight of Employers	Article IV, Section 2 of the Colorado Constitution and the relevant portions of the Colorado Disaster Emergency Act, C.R.S. § 24-33.5-701, et seq.	Disaster Emergency Fund
Strengthen Existing Systems to Dismantle False Choices Between Income & Health	Expand paid leave, Expand CO HELP Rules, Expand Medicaid	Article IV, Section 2 of the Colorado Constitution and the relevant portions of the Colorado Disaster Emergency Act, C.R.S. § 24-33.5-701, et seq.	Disaster Emergency Fund
Support Undocumented People	Expand paid leave, provide free testing and treatment, partner with the private sector	Colo. Rev. Stat. §§ 24-76.5-103(3)(a)-(d) (2019).	Public-Private Partnership, Legislation

A. Safeguard workers when they are in the workplace

1. Provide essential workers with necessary Personal Protective Equipment (PPE)

Neither President Trump's Executive Order using the Defense Production Act to manage food supply chain resources during the pandemic¹⁰ nor the subsequent press releases issued by the Department of Agriculture (USDA)¹¹ contain information about coordination between federal agencies to provide PPE or plans to increase coronavirus testing for plant employees and the surrounding communities. Given federal inaction, it is critical for the state to step in and safeguard workers on the job by mandating that all essential food system workers — and especially essential meat processing workers — are outfitted with appropriate PPE by their employers. Such state action will not only support worker safety, it will also reduce the need for plant closures and the resulting bottlenecks.

a. Require face-coverings

National shortages of N-95 respirators or equivalent face-coverings such as N99, N100, or reusable masks/respirator with replaceable N95+ cartridges (collectively, "N-95e-PPE") have necessitated the prioritization of the most effective PPE to health care workers. Under conditions of scarcity, N-95e-PPE should be allocated first to healthcare workers in direct contact with patients. Once supplies of N-95e-PPE exceed the needs of healthcare workers in direct contact with patients, essential food system workers —♦ particularly those in high-capacity processing plants — should be next in line for N-95e-PPE.

- i. All essential food system workers must be provided with face coverings by their employers. These face coverings should be disposable or industrially laundered to promote sanitary reuse. Face-coverings that do not provide N-95 or equivalent levels of filtration may be provided while shortages of N-95e-PPE persist. But when ordinary face coverings are used, numerous additional measures to support distancing, sanitization, and personal protection must also be in place. Face coverings must adequately shield the mouth and nose. In more crowded workplaces, face shields and goggles should also be provided (if not already in routine use.)
- ii. ♦ As soon as it is feasible, all workers who labor on the production floors of meat, poultry, dairy, and other processing plants must be provided with N-95e-PPE, which will provide the level of protection needed to protect workers from inhaling virus particles.

b. Maintain the Integrity & Efficacy of PPE

Employers must be responsible for promoting and maintaining the efficacy and integrity of PPE -- especially when relying primarily on N-95e-PPE to protect workers from the spread of SARS-COV-2. Employers must be required to:

- i. *Supplies permitting:* Provide a new or reconditioned respirator or new filter at the beginning of every shift, supplies permitting;

¹⁰ [Exec. Order on Delegating Authority Under the DPA](#) with Respect to Food Supply Chain Resources During the National Emergency Cause by the Outbreak of COVID-19 (Apr. 28, 2020).

¹¹ [White House](#), *President Donald J. Trump is Taking Action to Ensure the Safety of Our Nation's Food Supply Chain* (Apr. 28, 2020); see [USDA](#), *Secretary Perdue Issues Letters on Meat Packing Expectations* (May 6, 2020) (press release regarding the two letters U.S. Secretary of Agriculture Sonny Perdue sent to Governors and Stakeholders).

- If reuse is necessary given insufficient supply:* Follow the current CDC guidelines for disinfecting and storing respirators;
- ii. Replace respirators if damaged or contaminated;
 - iii. Conduct initial fit-testing;
 - iv. Provide training on proper donning and doffing procedures, as well as safe utilization PPE and handling of potentially contaminated PPE, in languages workers understand; and
 - v. Provide sufficient additional compensated time for hand hygiene and for proper donning and doffing of respirators and other PPE.
- 2. Create mandatory and enforceable regulations to protect essential food system workers from further spread of COVID-19 based on the guidelines released by the Centers for Disease Control & Prevention (CDC) and the Occupational Safety and Health Administration (OSHA) (issued April 26, 2020).¹²**
- a. The Colorado Department of Labor and Employment should issue a temporary emergency regulation (in line with the CDC/OSHA guidelines) that requires employers to:
 - i. Update personnel policies to enable workers to take sick leave without loss of pay or seniority;
 - ii. Adjust frequency and timing of breaks to allow for social distancing during breaks and when moving between areas of the worksite;
 - iii. Provide all safety information in each worker's languages;
 - iv. Stagger scheduling to prevent crowding of ingress/egress portals and other shared spaces;
 - v. Enforce physical distancing: have workers maintain a minimum six feet distance between workers, both in the production floor (or in other active workspaces) and in other parts of the facility;
 - vi. Supply workers with adequate personal protective equipment (described above);
 - vii. Provide hand washing/hand sanitizing facilities and frequent opportunities to use the same.¹³
 - b. **Mandate and enforce the use of physical barriers between workers.** Barriers, such as plexiglass dividers should be installed to reinforce but not substitute for six feet distancing.
 - i. ◆ CDC/OSHA guidelines for processing plants do not contain this recommendation but based on the continued spread of SARS-COV-2 in processing facilities and workers' repeated reports that distancing on the line is impracticable, barriers should be required to provide a much needed additional layer of protection — especially when N-95e-PPE is not widely available. The installation of barriers or partitions to reinforce distancing in processing plants may require the reduction of linespeeds in processing plants. This will decrease throughput relative to pre-COVID rates of production. Nevertheless, it is better for public health and for all food system stakeholders to have processing plants

¹² See [CDC](#), Interim Guidance from CDC and the Occupational Safety and Health Administration (last reviewed: May 12, 2020); see [U.S. Dep't of Labor](#), *U.S. Department of Labor's OSHA and CDC Issue Interim Guidance To Protect Workers in Meatpacking and Processing Industries* (Apr. 26, 2020) (summarizing the guidelines).

¹³ See [U.S. Dep't of Labor](#), *supra* note 12 (instructing employers to “[p]lace handwashing stations or hand sanitizers with at least 60% alcohol in multiple locations to encourage hand hygiene. If possible, choose hand sanitizer stations that are touch-free.”).

operational, if slower, than to have them shuttered intermittently as outbreaks occur.

- c. **Strongly recommend small & consistent grouping for crews within larger facilities.** Establish small and consistent groupings of work crews as a best practice inside of larger facilities, when offering employer-provided transport, or when employers house workers. Small groupings support workers' ability to distance from each other. Consistent groupings facilitate contact-tracing and make preventative isolation less disruptive to overall operations. For example, when workers consistently labor in the same small groups and one or more begins exhibiting symptoms of COVID-19 (or receives a diagnosis of the same), that work group can be placed on leave, their workspace can be sanitized, and another crew can come in to cover shifts, reducing the need for extended full facility closures.
 - d. **Provide temporary shelter and sanctuary for workers with COVID-19 symptoms, regardless of immigration status.¹⁴** Many essential food system workers, particularly in the farm and processing sectors, live in crowded and/or multigenerational households where physical distancing and self-isolation from fellow residents is impractical. To reduce household transmission and community spread, Colorado should set up care and isolation shelters for essential FSWs who have test-confirmed or suspected COVID-19. These facilities should provide sanctuary protections — no workers who avail themselves of this service should be turned over to federal immigration authorities. Establishment of such facilities will also benefit employers by helping to reduce the spread in employer-provided housing and among workforces.
3. **Protect workers from retaliation for making COVID-19 related reports or complaints.** Strong, anti-retaliation protections must be in place to ensure that workers who feel ill, or who are suffering from COVID-19, can remain at home, in quarantine for the full period of time recommended by the CDC, until it is safe to return to work. Workers must be encouraged to report any symptoms of illness, or of COVID-19, while at work, as well as any other safety and health hazards, and not suffer any negative consequences. To this end, the state could establish a reporting line or essential worker ombudsman, providing a neutral third party to gather COVID-19 related reports or complaints. ♦ Given repeated media and union reports of meat processing workers who fear or have been threatened with retaliation for raising concerns about workplace safety during the pandemic, independent reporting mechanisms and strong retaliation protections may enable greater transparency and quicker remedial action in processing facilities, helping to keep such facilities operational.
 4. **Implement or increase worker safety inspections and enforcement in essential workplaces —**
♦ especially in large meat processing facilities, prioritizing those with a history of COVID or other infectious disease outbreaks or worker complaints.¹⁵ Consider a collaborative rather than punitive approach to enforcement on the first inspection, but to the extent possible, establish fines at a level sufficient to encourage compliance and deter malfeasance. Assess such fines aggressively if violations are found on second and subsequent announced or unannounced inspections. Fines collected could go

¹⁴ See COLO. REV. STAT. § 24-33.5-704(7)(i) (2018) (giving the governor the power to “[m]ake provision for the availability and use of temporary emergency housing”).

¹⁵ See Colo. Rev. Stat. § 25-1.5-102(1)(b)(I) (2018) (providing the Colorado Department of Public Health and Environment has the duty and power “[t]o investigate and monitor the spread of disease that is considered part of an emergency epidemic as defined in section 24-33.5-703(4) to determine the extent of environmental contamination resulting from the emergency epidemic, and to rapidly provide epidemiological and environmental information to the governor's expert emergency epidemic response committee, created in section 24-33.5-704.5”).

into a fund to offset the costs of enforcement or of covering other essential worker protections.

5. **Issue an Emergency Order guaranteeing that all costs associated with diagnosis and treatment for confirmed and suspected COVID-19 in essential FSWs will be covered by the state.¹⁶**
 - a. In the absence of a cohesive federal COVID infection and antibody testing strategy, Colorado should stand up its own robust testing program and support essential employers — and in particular, ♦ processing facilities — in securing access to diagnostic testing for symptomatic workers and potentially exposed co-workers. (Until testing capacity scales up, ambient temperature screening may be worth piloting in large facilities.)
 - b. Additionally, the state should immediately convene a working group of essential employers to develop a plan for routine rapid screening of all essential workers, prioritizing those who have contact with COVID-infected persons and highly COVID-vulnerable populations. ♦ The next group that should be prioritized for such screening is essential processing workers (including all who labor in the plants from management through third shift cleaners and inclusive of inspectors). Note: Given the high potential for false negatives with currently available testing technologies, rapid testing and screening of asymptomatic persons should be offered in addition to, not as a substitute for PPE, distancing, and other recommended measures.

B. Specific Considerations for H-2A Workers

1. **Require posting of COVID-19 safety protections & related guidelines.** State imposed guidelines, rules, policies, and practices that have been implemented in Colorado as a result of COVID-19 should be made available to and posted by and for employers who are bringing foreign nationals into the state. Employers of H-2A workers should receive guidance and the support necessary to ensure their compliance with the health and safety guidelines in the fields and the packing sheds to keep their workers safe. They should be made aware of their obligations to ensure workers receive proper medical treatment and testing, if necessary, if exhibiting symptoms of COVID-19. (Resources prepared by the National Center for Farmworker Health, many of which have been translated into Spanish & indigenous languages provide an excellent model: <http://www.ncfh.org/covid-19.html>)
2. **Increase transparency of recruitment information related to COVID-19.** Temporary workers recruited to work in critical industries such as agriculture may not be aware of the severity of the COVID-19 epidemic in the state. Such information should be made available to workers before they sign their contracts. Employers who recruit farm workers to work in Colorado should be required to provide their employees with information and education in their native language on procedures to avoid COVID-19 infection and contact information for a local clinic or health department, in addition to Colorado specific guidelines and requirements implemented as a result of the COVID-19 pandemic.
3. **Bring Employer-provided housing up to pre-existing requirements & enable distancing of ill or exposed workers.** For many farm workers in Colorado, including H-2A workers and many dairy workers, their housing is connected to their employment. Employers who recruit workers (including H2A workers) should be required to modify the housing provided to include adequate space for social distancing, sufficient cleaning and sanitizing products, and hand and body soap and hand sanitizer. Given that

¹⁶ See [Memorandum from the Principal Economist](#), *supra* note 4 (describing the lack of statutory guidance regarding the expenditure of the emergency reserve).

existing housing regulations for farm labor camps and H-2A housing sites do not meet the State of Colorado and the Center for Disease Control and Prevention (CDC) guidance for the COVID-19 pandemic, employers should make available additional accommodations for workers with symptoms and for workers with presumptive or diagnosed COVID-19. (See recommendation A(2)(d) for a state-supported solution to this issue.) Where employers are unable to modify housing to support adequate distancing, state supported provision of temporary shelters for H-2A and other workers may need to be explored.

C. Dismantle the false choice between income & health

1. **Provide access to COVID Paid Time Off/Paid Sick Leave.** Many essential FSWs lack paid time off (PTO). Moreover, some employers who instituted emergency policies to provide PTO during the pandemic have already allowed such benefits to expire. To protect essential FSWs, public health, and the security of the Colorado food system, the state must mandate or provide special COVID PTO or paid sick leave which workers can use in each of the following circumstances:
 - a. Employee is subject to a Federal, State, or local quarantine/isolation order related to COVID-19.
 - b. Employee has been advised by a health care provider to self-quarantine due to COVID-19 concerns.
 - c. Employee has COVID-19 symptoms and is seeking medical diagnosis from a health care provider.
 - d. Employee is caring for an individual who is subject to a quarantine/isolation order.
 - e. Employee is caring for their child whose School/Place of Care has been closed due to COVID-19.
 - f. Employee has symptoms later recognized by the government as COVID-19 symptoms.
 - g. Preventative self-quarantine after close contact with a COVID-positive person in the workplace;
 - h. COVID-19 is suspected, and this suspicion is ratified via healthcare provider or employer-provided telemedicine screening. *Note:* Paid leave may be provided prior to diagnosis or ratification, especially if an employee is in queue to access care.
2. **Issue new state regulations to overcome the gaps in federal sick and family leave legislation.** The Families First Coronavirus Response Act (FFCA)¹⁷ provides Federal Paid Sick Leave for reasons (a)-(g) above, and Paid Family Leave for reason (e) above. The FFCA requires employers to offer up to 2 weeks paid sick leave starting on April 2, 2020 through the end of 2020. Both federal programs contain a small business exemption in the case that the family leave is taken to care for children because school/daycare is closed, and no coverage for firms with over > 500 employees.
 - a. **Issue an Executive Order that requires paid sick leave for workers of firms > 500 employees** similar to the order issued in California to address the exempted coverage for firms > 500 employees.¹⁸
 - b. **Issue an Executive Order that narrows the small business exemption to 10 employees or less.** If the employee asks for sick leave or family leave due to caring for children because school/daycare is closed, the employer may decline the leave if the employer has less than 50 employees and can show that providing leave will “jeopardize the viability of their business” for

¹⁷ [U.S. Dep’t of Labor, Wage & Hour Div.](#), Families First Coronavirus Response Act: Employee Paid Leave Rights (last accessed: May 18, 2020).

¹⁸ See Cal. Exec. Order [N-51-20](#) (Apr. 16, 2020) (providing two weeks of paid sick leave to certain food sector workers if they are subject to a quarantine or isolation order or medical directive and excluded from the FFCA).

one of three specific reasons.¹⁹

3. **Amend the Colorado HELP rules to cover farmworkers.** While the Colorado HELP Rules²⁰ ensure that many FSWs whose work directly impacts consumers receive paid sick days for COVID-19 testing and related illness, the HELP Rules do not cover farmworkers. This does a great disservice to farmworkers, producers, and potentially to Colorado's agricultural economy and food supply. The Colorado HELP rules should be amended to cover all farmworkers in the state.
4. **Provide farm workers with access to health insurance.** Many farm workers do not have health insurance, including all of the thousands of H-2A workers who will arrive in Colorado healthy but who will be at risk for contracting COVID-19 during their employment over the next eight months. Domestic farm workers have limited access to health insurance and report little use of health services. 53% of crop workers have no health insurance.

D. Protect those who are most vulnerable & who have suffered the greatest losses

1. **Support undocumented people.** Recently, California began a program to provide direct cash payments to people ineligible for federal stimulus checks and unemployment benefits due to immigration status.²¹ That ambitious effort faces criticism, but supporting undocumented people with state resources is essential because the federal government continues to restrict access to programs like SNAP, CHIP and Medicaid.²² Such restrictions have the effect of increasing the vulnerability of some of the most vulnerable people among us — an outcome that is antithetical to the promotion of public health. A 2017 Pew Research study estimated Colorado's undocumented immigrant population to be 180,000.²³ With such a large number of people on the absolute margins of society and unable to receive other forms of aid, there are both urgent moral and practical, public health reasons to take action.

The public-private partnership model employed by California could be adapted to Colorado's circumstances if private groups like the Undocumented Workers Fund continue to provide direct cash payments,²⁴ while the Colorado government extends paid sick leave, free emergency medical services related to COVID-19, and other permissible benefits to undocumented people.

¹⁹ The three reasons are: (1) Providing the requested leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity. (2) The absence of the employee requesting leave would entail a substantial risk to the financial health or operational capabilities of the business because of their specialized skills, knowledge of the business, or responsibilities. (3) There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the Employee requesting leave, and these labor or services are needed for the small business to operate at a minimal capacity.

²⁰ [Colorado Health Emergency Leave with Pay Rules](#), 7 CCR § 1103-10 (adopted and effective on March 11, 2020, then amended March 26, 2020 and April 3, 2020).

²¹ [Harmeet Kaur](#), *California is now offering support to undocumented immigrants in the first relief fund of its kind*, CNN (May 18, 2020).

²² [Kathleen R. Page, et. al.](#), *Undocumented U.S. Immigrants and Covid-19*, New England Journal of Medicine (May 21, 2020).

²³ See Jeffrey S. Passel and D'Vera Cohn, Mexicans decline to less than half the U.S. unauthorized immigrant population for the first time, Pew Research Center (Jun. 12, 2019), <https://www.pewresearch.org/fact-tank/2019/06/12/us-unauthorized-immigrant-population-2017/> (providing estimates of unauthorized immigrant population for each state).

²⁴ [Conor McCormick-Cavanagh](#), *COVID-19: New Fund Helping Undocumented Coloradans Weather Pandemic*, Westword (Apr. 28, 2020).

Colorado law requires the state to “verify the lawful presence in the United States of each natural person eighteen years of age or older who applies for state or local public benefits or for federal public benefits.”²⁵ Under the statute the term “federal public benefits” is defined by 8 U.S.C. § 1611, which encompasses almost all benefits provided by a federal agency or by federally appropriated funds.²⁶ The term “state and local benefits” is expansive, but contains important exceptions for immediate emergency medical assistance, short-term, non-cash, in-kind emergency disaster relief, public health assistance for immunizations and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease, and some other non-cash services.²⁷ Colorado law reiterates these exceptions in the codification of the state-level prohibition.²⁸ Another exception permits Colorado to pass a law affirmatively providing eligibility for a specific benefit despite the inability to establish lawful presence.²⁹

Although Colorado faces obstacles, a public-private partnership provides an important way to protect undocumented workers throughout the state. Cash payments from charitable foundations can go a long way toward supporting the economic security of Colorado’s undocumented people at an uncertain time and the Colorado government can provide the resources necessary to protect the health of the communities in which undocumented people live, work, contribute and pay taxes. Such a partnership supports the undocumented workers who make substantial contributions to our state’s economy and food system while also better positioning workers to act in ways that promote public health during the pandemic.

- 2. Support families of essential FSWs during this crisis.** The healthcare workers, public employees, and other essential workers across all industries, including the food and agriculture sector, put their lives on the line every day they are required to leave their homes during the pandemic to perform services society depends upon. Paid sick leave to accommodate workers suspected or confirmed to have COVID-19 should be supplemented with paid family leave to care for affected family members.
- 3. Support essential workers & their families when they make the ultimate sacrifice.** Finally, If an essential worker loses their life or becomes disabled in a way that jeopardizes their livelihood due to COVID-19, the government should step in to ensure the worker and the workers; family does not fall into poverty. Members of the U.S. Congress recently put forward several proposals to establish a compensation fund for essential workers who become ill or die as a result of COVID-19.³⁰ One such proposal would authorize appropriated funds as needed for 5 years to support essential workers by “providing critical financial assistance to help with medical costs, loss of employment, loss of business, replacement services, and burial costs.”³¹ Although Colorado simply does not have the financial resources to establish such a fund independently, state leaders and Colorado’s federal delegation should vigorously support efforts to establish the fund at the federal level.

²⁵ Colo. Rev. Stat. § 24-76.5-103(7) (2019).

²⁶ 8 U.S.C. § 1611(c) (1998). The federal statute carries a similar prohibition on the receipt of federal public benefits by people without lawful presence to the one outlined in the Colorado statute. 8 U.S.C. § 1611(a) (1998). The federal law provides exceptions for immediate emergency medical assistance, “[s]hort-term, non-cash, in-kind emergency disaster relief, [p]ublic health assistance for immunizations... and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease,” and some other non-cash services. 8 U.S.C. § 1611(b) (1998).

²⁷ 8 U.S.C. §§ 1621(b)(1)-(4) (1998).

²⁸ Colo. Rev. Stat. §§ 24-76.5-103(3)(a)-(d) (2019).

²⁹ 8 U.S.C. 1621(d) (1998).

³⁰ H.R. 6955, 116th Cong. (2nd. Sess. 2020); S. 3755, 116th Cong. (2nd. Sess. 2020).

³¹ [Tim Kaine, Kaine Introduces Bill to Create COVID-19 Victim Compensation Fund for Essential Workers](#) (May 19, 2020).



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Authorship & Affiliation

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