



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 15, 2026

CBCA 8783-FEMA

In the Matter of KAISER FOUNDATION HOSPITALS

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Carl DeNigris, Assistant Chief Counsel, Jasmine Jones, Senior Counsel, and Trevor Morris-Seekins, Counsel, California Office of Emergency Services, Mather, CA, counsel for Grantee; and Robert Larsen, Eli Owen, Fan Jia, Tama Harville, and Destiny Saechou, California Office of Emergency Services, Mather, CA, appearing for Grantee.

Sarah Ahmadia and Emanuel Rier Soto, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **KULLBERG**, **SULLIVAN**, and **KANG**.

SULLIVAN, Board Judge, writing for the Panel.

Kaiser Foundation Hospitals (KFH) seeks to arbitrate the denial by the Federal Emergency Management Agency (FEMA) of its request for public assistance (PA) funds for costs it incurred complying with several reporting requirements during the COVID-19 pandemic. Because the reporting activity does not qualify as an eligible emergency protective measure (EPM), we deny the request for PA funds.

Background

KFH, a private nonprofit (PNP), seeks to recover \$17,882,604.68 in costs that it incurred, between February 2021 and May 2023, reporting COVID-19 patient data to federal and California authorities.¹ Request for Arbitration (RFA) at 1, 10, 17. FEMA denied KFH's requests for PA funds, finding that KFH failed to demonstrate that the work performed was related to eligible EPMs under relevant COVID-19 policies. RFA, Exhibit 6 at 3. FEMA, instead, viewed KFH costs as increased operating costs attributable to the "COVID-19 environment." *Id.*; see FEMA Exhibit 11 at 4.

KFH appealed FEMA's determinations.² FEMA Exhibits 3, 4. FEMA denied both appeals in a single decision, finding, in part, that the costs were ineligible increased operating costs. RFA, Exhibit 5, First Appeal Analysis at 4. FEMA disagreed that the data was used for planning, monitoring, and resource allocation and found that, although the information may have been used to operate emergency operations centers (EOCs), the work was not eligible because KFH did not operate an EOC. *Id.* at 3. FEMA further determined that KFH was required to collect, not disseminate, public information. *Id.* Additionally, FEMA noted that the Medical Care Policy only allowed information technology (IT) costs to be reimbursed for vaccinations, which was narrower in scope than some of the data that KFH was collecting. *Id.*

KFH submitted its request for arbitration in January 2026 and requested that the arbitration be decided on the written record.

Discussion

Pursuant to the Stafford Act, FEMA is authorized to provide PA funding for EPMs, which constitute "work or services essential to saving lives and protecting and preserving property or public health and safety." 42 U.S.C. § 5170b(a)(3) (2024); see Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018) at 42-43. In the PAPPG, FEMA provides

¹ KFH submitted two requests for PA funds, one for reporting costs incurred between February 2021 and July 2022 and the other for costs incurred between July 2022 and May 2023. RFA, Exhibit 6 at 1; FEMA Exhibit 11 at 1.

² The California Office of Emergency Services (CalOES) recommended that FEMA deny the appeals. FEMA Exhibit 3 at 2; FEMA Exhibit 4 at 3. Although representatives of CalOES filed notices of appearance and the panel's scheduling orders permitted CalOES to provide a response to the RFA and FEMA's response, CalOES did not make any further submissions in this arbitration.

a non-exhaustive list of eligible EPMs, which includes the “[d]issemination of information to the public to provide warnings and guidance about health and safety hazards using various strategies, such as flyers, public service announcements, or newspaper campaigns.” PAPPG at 58.

The parties urge the panel to consider two FEMA COVID-19 policies in its analysis. The first policy is FEMA Policy (FP) 104-21-0004, Coronavirus (COVID-19) Pandemic: Medical Care Eligible for Public Assistance (Interim) (version 3) (Medical Care Policy). FEMA Exhibit 1. In the policy, FEMA identified the eligible medical expenses that a hospital such as KFH may recover for treating patients during the COVID-19 pandemic. *Id.* The policy identified three eligible categories of work: (1) costs related to medical care in a primary medical care facility; (2) costs related to temporary or expanded medical facilities; and (3) costs associated with the distribution and administration of COVID-19 vaccines. *Id.* at 3-7. Costs for information technology (IT) equipment and systems may be eligible “when reasonable and necessary, for patient registration and tracking, vaccine-related inventory management, and/or analytics and reporting needs.” *Id.* at 7. FEMA also stated that “[c]ommunications to disseminate public information regarding vaccinations” could be eligible. *Id.* The types of eligible communications costs included “translation and interpretation services” and “work and costs associated with setting up and operating a call center or website.” *Id.*

FEMA asserts that KFH may only receive PA funds for EPMs listed in the Medical Care Policy because that policy specifically applies to medical care facilities and because the work for which KFH seeks PA was necessary for it to continue providing medical care. FEMA Response at 16-17. While the Medical Care Policy applies to PNP organizations that own or operate medical facilities, such as KFH, the policy does not limit the PA that such organizations may receive to those efforts described in the policy. Moreover, the Medical Care Policy also incorporated the requirements of the PAPPG “[e]xcept where specifically stated otherwise” in the policy. FEMA Exhibit 1 at 1. Because there is no statement limiting medical care providers to the eligible work described in that policy, we find that FEMA’s contention is incorrect. However, we need not consider the policy further because KFH acknowledges that the costs it seeks were not related to the provision of medical care. RFA at 29-30; RFA Reply at 27.

The second policy is FP 104-009-19, Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance (Interim) (Eligible Work Policy), in which FEMA establishes eligibility considerations for work and costs and lists the types of eligible work related to COVID-19 response efforts. FEMA Exhibit 2 at 1. The policy stated that “FEMA may provide assistance for the following activities in response to COVID-19-declared events only when necessary to perform otherwise eligible work listed in [section 4] . . . [o]ther work and

costs delineated within COVID-19 policies referenced in [section 4].” *Id.* at 4-5. Section four included, as an eligible EPM, “[c]ommunications to disseminate public information regarding health and safety measures and provide warnings about risks and hazards.” *Id.* at 4. The Eligible Work Policy also incorporates the requirements of the PAPPG. *See* FEMA Exhibit 2 at 1 (“Except where specifically stated otherwise in this policy and other disaster specific COVID-19 policies, assistance is subject to [the] PA Program requirements . . . of the [PAPPG].”).

KFH contends that it is entitled to receive PA funds for its reporting work pursuant to the Eligible Work Policy and the PAPPG because its work was necessary to provide information to local health departments and federal authorities, who, in turn, disseminated information to the public. RFA at 17. KFH points to the provision of the Eligible Work Policy that deems eligible “[o]ther work and costs delineated within COVID-19 policies referenced in [section 4].” RFA Reply at 33 (quoting Eligible Work Policy). However, the only relevant eligible EPM in section four is “[c]ommunications to disseminate public information regarding health and safety measures and provide warning about risks and hazards.” FEMA Exhibit 2 at 4.

FEMA has previously found eligible a video campaign with government officials about COVID-19, printed materials and signage disseminating COVID-19 information within an applicant’s properties, and signs advertising a testing site. FEMA Exhibit 18, Second Appeal Analysis at 3. Similarly, as noted above, FEMA deems eligible in the PAPPG “[d]issemination of information to the public to provide warnings and guidance about health and safety hazards using various strategies, such as flyers, public service announcements, or newspaper campaigns.” PAPPG at 58. Here, however, KFH’s reporting of information is too far removed from dissemination of information by governmental authorities and of a different character than the PAPPG’s examples of eligible dissemination activities. *See* PAPPG at 58; *Dissemination*, Black’s Law Dictionary (12th ed. 2024) (defining “dissemination” as “[t]he act of spreading, diffusing, or dispersing”).

KFH also asserts that, because the reported information was subject to disclosure pursuant to public records laws, the information was available to the public even if it was not disseminated by the governmental bodies. RFA at 20. KFH’s proposed standard would encompass myriad reporting activities that federal and state governments require. We determine that KFH’s reporting efforts—while required by federal and California authorities and subject to public records laws—do not qualify as dissemination of information to the public.

KFH further asserts that FEMA has previously awarded PA funds for similar reporting efforts, citing a FEMA decision in an appeal by Harris County, Texas. RFA at 5 (citing

RFA, Exhibit 1). Harris County sought funding for IT supplies it utilized in responding to COVID-19. Following an appeal, Harris County received funding for data reporting that was part of the operation of an EOC. RFA, Exhibit 1 at 5-6. KFH did not operate an EOC, and KFH does not identify a specific EOC that it supported. Its reporting efforts are too far removed from the operation of an EOC, an eligible EPM.³

Because we do not find KFH's reporting work to be an eligible EPM, we do not reach the arguments regarding whether the costs represent increased operating costs or the adequacy of KFH's cost documentation.

Decision

The request for PA funds is denied.

Marian E. Sullivan

MARIAN E. SULLIVAN
Board Judge

H. Chuck Kullberg

H. CHUCK KULLBERG
Board Judge

Jonathan L. Kang

JONATHAN L. KANG
Board Judge

³ KFH also cites to FEMA press releases regarding funds provided to several states. RFA at 5 (citing RFA, Exhibits 7 and 8). These releases provide very little detail on the eligible work that the states were performing and do not provide support for KFH's contention that its reporting should be considered dissemination of information to the public.