



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 9, 2025

CBCA 8578-FEMA

In the Matter of KAISER FOUNDATION HEALTH PLAN, INCORPORATED

Erin Greten of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Washington, DC; and Charles Schexnaildre of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Baton Rouge, LA, counsel for Applicant.

Robert Larsen, Public Assistance Officer, Eli Owen, Assistant Director, Fan Jia, Program Manager, Tama Harville, Associate Governmental Program Analyst, and Destiny Saechou, Associate Governmental Program Analyst, Office of Emergency Services, Mather, CA, appearing for Grantee; and Carl DeNigris, Michelle Marzahn, Jasmine Jones, and Trevor Morris-Seekins, Governor's Office of Emergency Services, Mather, CA, counsel for Grantee.

Margaret Bushko 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 **GOODMAN**, **SULLIVAN**, and **KANG**.

KANG, Board Judge, writing for the Panel.

Pursuant to the arbitration provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§ 5121–5207 (2018), Kaiser Foundation Health Plan, Incorporated (Kaiser or applicant) seeks to arbitrate the Federal Emergency Management Agency (FEMA)'s denial of its request for public assistance (PA) funding for laundering of medical scrubs during the COVID-19 pandemic. We find that Kaiser is not eligible for PA funding.

Background

On March 22, 2020, the President declared the COVID-19 pandemic an emergency under the Stafford Act for the state of California, which FEMA designated as FEMA DR-4482-CA. <https://www.fema.gov/disaster/4482> (last visited Dec. 8, 2025). The disaster period was January 20, 2020, to May 11, 2023. *Id.* The grantee is the California Office of Emergency Services (Cal OES).

In March 2021, FEMA issued a policy titled Coronavirus (COVID-19) Pandemic: Medical Care Eligible for Public Assistance (Interim) (version 2) (Medical Care Policy). FEMA Response at 2 n.2; FEMA Exhibit 14. This policy superseded prior guidance regarding medical care facilities and “defines the framework, policy details, and requirements for determining the eligibility of medical care work and costs under the PA Program to ensure consistent and appropriate implementation across all COVID-19 emergency and major disaster declarations.” FEMA Exhibit 14 at 1.

The Medical Care Policy distinguishes between a “Primary Medical Care Facility” (primary facility) and a “Temporary Medical Facility” (temporary facility) or “Expanded Medical Facility” (expanded facility). FEMA Exhibit 1 at 3-5, 13-14. A primary facility is “owned and/or operated by an eligible PA Applicant that provides medical care services . . . [and] includes any licensed hospital, outpatient facility, rehabilitation facility, or facility for long-term care.” *Id.* at 13. A temporary facility is “separate from the primary medical care facility that is used to provide medical care services when the primary medical care facility is overwhelmed by the declared event.” *Id.* An expanded facility is “part of the primary medical care facility and refers to an expansion of the primary medical care facility to increase its capacity when the primary medical care facility is overwhelmed by the declared event.” *Id.* at 14.

Relevant here, the Medical Care Policy states that temporary and expanded facilities are eligible for reimbursement of “[o]perating costs including . . . wraparound services.” FEMA Exhibit 1 at 4. Wraparound services are defined as including “linen and laundry services.” *Id.* at 14. The policy does not state that primary facilities are eligible for reimbursement of wraparound services. *See id.* at 3-4, 14.

Kaiser is a private nonprofit (PNP) entity that operates hospital and medical facilities. Applicant Exhibit 1 at 1. Applicant states that “[t]ypically, [Kaiser] staff are responsible for providing and laundering their own scrubs.” Request for Arbitration (RFA) at 3. In response to the COVID-19 pandemic, Kaiser instituted a program “to purchase, launder, and store scrubs for use solely within its medical facilities by physicians and employees providing direct patient care to patients that met criteria, or tested positive, for COVID-19.” *Id.* at 6.

From March 2020 through June 2021, Kaiser contracted with commercial services for the laundering and storage of medical scrubs. *Id.* at 7.

Applicant states that the program was prompted by what it understood was advice from the Occupational Safety and Health Administration and medical researchers that “the spread of the COVID-19 virus was not just occurring via airborne transmission, but also due to surface-based transmission, such as on linens, scrubs, or other surfaces.” RFA at 4. Staff were provided scrubs but were “prohibited from removing the scrubs from the facilities, throwing them away, or wearing them home, and were required to ensure all [applicant]-provided scrubs were returned to designated soiled scrub bins and locations for daily laundering.” *Id.* at 6.

Kaiser submitted to FEMA a request for PA seeking reimbursement of \$679,669.14 for laundering and storage of medical scrubs. *See* Applicant Exhibit 1 at 1. The request was solely for laundering and storing scrubs and not for their purchase. *Id.* In November 2024, FEMA issued a determination memorandum (DM) finding that Kaiser was not eligible for PA because the laundering services were provided at primary facilities. *Id.* The DM explained that the Medical Care Policy “does not include commercial laundry services for cleaning ‘scrubs,’ nor does it include the storage for the ‘scrubs’ as eligible emergency work for a Primary Medical Facility during the COVID-19 pandemic.” *Id.* at 3. Because the laundering services were not eligible emergency protective measures, they were deemed ineligible increased operating costs. *Id.* at 4.

In January 2025, Kaiser filed a first-level appeal of the DM. FEMA did not issue a decision within 180 days. Due to the lack of a decision, Kaiser withdrew its first-level appeal and sought arbitration before the Board. *See* 42 U.S.C. § 5189a(d)(5)(B) (Applicants may seek arbitration “180 days after the [FEMA] Administrator’s receipt of the appeal if the Administrator has not provided the applicant with a final determination on the appeal.”).

Discussion

The Stafford Act sets forth the Board’s authority to conduct arbitrations. 42 U.S.C. § 5189a(d). In arbitration matters, the panel conducts a de novo review of FEMA eligibility determinations.¹ *Monroe County, Florida*, CBCA 6716-FEMA, 20-1 BCA ¶ 37,688,

¹ Decisions by panels in FEMA arbitrations are not binding precedent for other panels. Rule 613 (48 CFR 6106.613 (2024)) (Arbitration decisions under the Stafford Act are “primarily for the parties, [are] not precedential, and should concisely resolve the dispute.”). We consider the decisions by other panels cited herein to be persuasive authority.

at 182,980. An applicant bears the burden to support its eligibility for PA funds. *City of Hattiesburg, Mississippi*, CBCA 7228-FEMA, 22-1 BCA ¶ 38,029, at 184,685.

FEMA generally does not reimburse an applicant's increased costs of operating a facility that are caused by a declared disaster. Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018) at 42.² Increased operating costs are eligible for PA if: (1) "[t]he services are specifically related to eligible emergency actions to save lives or protect public health and safety;" (2) "[t]he costs are for a limited period of time based on the exigency of the circumstances;" and (3) "[t]he Applicant tracks and documents the additional costs." PAPPG at 60-61.

Kaiser argues that laundering of scrubs is an eligible emergency action. Applicant raises two primary arguments in support of its request: (1) the Medical Care Policy, cited in the DM, does not apply to the request because laundering services should be characterized as disinfection services that are not addressed in the policy; and (2) disinfection services are eligible under other FEMA policies and, therefore, the laundering services are eligible under those policies. We find no merit to either argument.³

I. Kaiser Is Not Eligible for PA Under the Medical Care Policy

FEMA's Medical Care Policy defines the term medical care as follows: "[A]ssistance to support the provision of medical care, including eligible facility, equipment, supplies, staffing, and wraparound services." FEMA Exhibit 1 at 2. The policy states that temporary and expanded facilities are eligible for reimbursement of costs for wraparound services, including laundering services, *id.* at 3-4, 14, but does not state that wraparound services provided in primary facilities are eligible. *See id.*

² This version of the PAPPG applies to disasters declared after August 23, 2017, but before June 1, 2020. PAPPG at vii; PAPPG (June 2020) at 12.

³ Kaiser raises other collateral arguments. Although we do not address them all, we find that none provides a basis to find applicant eligible for PA. FEMA also argues that Kaiser is ineligible for PA because: (1) applicant did not submit sufficient documentation to support its request for PA; and (2) the grantee, Cal OES, did not support applicant's first appeal. Because we find Kaiser ineligible for PA under the PAPPG and FEMA's COVID-19 policies, we need not address these other arguments. Additionally, we have not considered arguments raised after the parties advised, as part of their election of a hearing on the record, that the record was complete.

Kaiser does not dispute that the laundering services were provided at its primary facilities, rather than at temporary or expanded facilities. Applicant further acknowledges that the laundering services were provided at its primary facilities in connection with medical care. Applicant argues, however, that laundering services for scrubs should be considered disinfection services and that the Medical Care Policy does not expressly state that disinfection services are ineligible.

The Medical Care Policy defines wraparound services to include laundering services and does not exclude laundering of scrubs from this definition. Additionally, there is no basis to conclude that the Medical Care Policy treats laundering of scrubs as eligible disinfection services.⁴ In sum, the plain language of the Medical Care Policy applies to the medical care provided at Kaiser's primary facilities and does not provide eligibility for laundering of medical scrubs used at those facilities.

II. Kaiser Is Not Eligible for PA Under Other FEMA Policies

Kaiser argues that laundering of scrubs should be regarded as an eligible disinfection service under other FEMA COVID-19 policies and PA appeal decisions. In particular, Kaiser contends FEMA's Coronavirus (COVID-19) Pandemic: Safe Opening and Operation Work Eligible for Public Assistance (Interim) (O&O Policy) states that disinfection services are eligible for PA and that this policy establishes eligibility for laundering of scrubs beyond any limitations within the Medical Care Policy.

The O&O Policy states that FEMA was authorized by the President's January 21, 2021, "Memorandum to Extend Federal Support to Governors' Use of the National Guard to Respond to COVID-19 and to Increase Reimbursement and Other Assistance Provided to States" to "provide funding to all PA Applicants for the safe opening and operation of eligible facilities" such as "funding for the provision of personal protective equipment and disinfecting services and supplies." FEMA Exhibit 6 at 1. The O&O Policy does not address laundering services or define laundering as disinfection. The policy states that disinfection work should be "consistent with current PAPPG and public health guidance as it relates to disinfection recommendations," such as Centers for Disease Control and Prevention (CDC) guidance. *Id.* at 4 n.16 (link to CDC guidance). The CDC guidance also does not address laundering services or define laundering as disinfection. *See* CDC Guidance, <https://www.cdc.gov/coronavirus/2019-ncov/community/clean-disinfect/index.html> (last visited Dec. 8, 2025). Instead, the CDC guidance refers to disinfection in

⁴ The only reference to disinfection services in the Medical Care Policy concerned facilities and equipment used for vaccinations. FEMA Exhibit 1 at 6.

the following contexts: “surfaces touched,” “touched surfaces or objects,” “surface disinfection,” and “contaminated environmental surfaces.” *Id.*

FEMA provided a declaration from a program analyst who states that the O&O Policy was intended to address supplies and equipment required for disinfection of facility surfaces and was not intended to apply to laundering of garments such as scrubs. FEMA Exhibit 11 at 2. The analyst further notes that subsequent guidance issued by FEMA regarding disinfection addressed specific examples, such as air disinfection, which demonstrates that the O&O Policy was not intended to be a broad statement of eligibility for any type of disinfection. *Id.* at 2-3. FEMA’s characterization of the O&O Policy is consistent with the terms of the policy discussed above.

Kaiser contends that the O&O Policy’s references to disinfection of surfaces supports the scrub laundering program because laundering is a method of cleaning and disinfection that prevents the spread of COVID-19 through potentially affected garments.⁵ In support of this interpretation, applicant cites FEMA’s second-level appeal decision in *Prisma Health*, GMP 711619/PW 252 (July 1, 2025), which notes that, in the first-level appeal decision, FEMA had found that applicant eligible for PA in connection with “the purchase of multi-surface disinfection wipes.” Applicant Exhibit 40 at 2.

Technically speaking, all three-dimensional objects, including medical scrubs, have surfaces. The O&O Policy, however, refers to surfaces within a facility that require disinfection, rather than the disinfection of any object. The finding in *Prisma Health* that disinfection wipes are eligible is consistent with FEMA’s representation that the O&O Policy addressed disinfection of surfaces in the facility; applicant does not demonstrate that the purchase of disinfection wipes for the use on facility surfaces is analogous to laundering of scrubs. Moreover, applicant does not demonstrate that the O&O Policy’s guidance regarding disinfection of surfaces negates or obviates the Medical Care Policy’s specific provisions that only temporary and expanded medical facilities are eligible for PA for laundering services. Read together, the Medical Care Policy’s provisions regarding eligibility for laundering services, along with the context-specific eligibility for disinfection of surfaces in the O&O

⁵ Kaiser also cites two additional FEMA documents for support of its argument: (1) the Coronavirus (COVID-19) Pandemic: Eligible Emergency Protective Measures fact sheet, which states that FEMA may provide PA for “Disinfection of eligible public facilities,” Applicant Exhibit 26 at 2; and (2) the Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance (Interim) policy, which refers to the same CDC policies addressed in the O&O Policy. Applicant Exhibit 27 at 4. Neither the fact sheet nor the policy establish that laundering of scrubs constitutes eligible disinfectant services.

Policy, show that Kaiser is not eligible for PA for laundering of scrubs at its primary facilities.

Decision

The request for PA funds is denied.

Jonathan L. Kang
JONATHAN L. KANG
Board Judge

Allan H. Goodman
ALLAN H. GOODMAN
Board Judge

Marian E. Sullivan
MARIAN E. SULLIVAN
Board Judge