

# Report on Policy and Law Impacting Homelessness Reduction Efforts

Prepared for the City of Chico

By Hope Street Coalition as Part of a Strategic Plan on Homelessness

## Introduction

Chico is struggling with individuals and households living in places not meant for human habitation, often on public spaces. Federal and state policies attempt to address the many facets of homelessness and their attendant impacts but are often limited by focusing primarily on housing policy and the creation of affordable housing. Homelessness is a complex problem that includes issues of mental illness and behavioral health, economic influences, drug addiction, crime, public health, and even environmental quality.

This report will provide a broad overview of federal and state law, regulation, and policy that attempt to address homelessness and that impact the many complex factors contributing to the homelessness crisis. This report recognizes that government policies often work at cross purposes with one another. For example, public policy that seeks to protect the civil rights of the seriously mentally ill increases homelessness by making it difficult to access necessary treatment. The result is individuals living in destitution with few options to obtain appropriate housing or treatment negatively impacting themselves and the communities in which they inhabit.

At the same time, the funding requirements of government programs dictate what can and cannot be done in working to reduce the number of people experiencing homelessness. Federal and state programs require that the provision of housing must not include participation requirements in any programmatic element, including those that would reduce returns to homelessness

Decision makers and the public must become aware of the details of law and regulation so they can develop and adopt strategies that take into account the unintended consequences of these policies and work to overcome them.

## Federal Law and Regulation

### McKinney Vento Homelessness Assistance Act

The McKinney Vento Homelessness Assistance Act provides funding to states, and communities for a range of services including emergency shelter, transitional housing, job training, primary health care, education, and permanent housing. In 2009, the HEARTH Act made significant changes to McKinney Vento consolidating several programs into, for the most part, two programs – the Emergency Solutions Grants (ESG) program and the Continuum of Care (CoC) program.

The ESG Program focuses on the provision of emergency shelter, outreach, homelessness prevention, rapid re-housing assistance, and data support via the Homeless Management Information System (HMIS). As defined in 24 CFR 576.2, ESG grants are provided to metropolitan cities, urban counties, territories, and states through a federal formula. ESG recipients may subgrant ESG fund to local governments and private, nonprofit organizations

ESG recipients are required to consult and engage in coordinating activities with the local Continuum of Care to allocate local funding. In this way, ESG funds are intended to support CoC activities to end homelessness.

The following table shows awards since 2017 for Butte County ESG awards from the California Department of Housing and Community Development

Year	Emergency Shelter	Street Outreach	Homelessness Prevention	Rapid Rehousing	HMIS	Grant Admin / CES	Award Amount
2020	\$4,712,851	\$0	\$0	\$300,000	\$577,695	\$186,400	\$5,776,946
2019	\$23,265	\$0	\$10,225	\$99,000	\$12,100	\$0	\$144,590
2018	\$195,000	\$0	\$0	\$0	\$5,000	\$0	\$200,000
2017	\$0	\$0	\$6,750	\$157,476	\$13,000	\$26,000	\$203,226

<https://www.hcd.ca.gov/grants-funding/active-funding/esg.shtml#awarded>

The CoC program focuses on the creation of permanent supportive housing and the provision of services to end homelessness. The program was created as a means of requiring local collaboration between service and housing providers to provide an array of housing and support tailored to local communities through the decision and priority making of local service providers and stakeholders that make up the Continuum of Care.

The CoC program is the primary means by which homelessness assistance is provided to local communities. While the program was intended to be a collaborative and competitive one, the requirements and regulations which accompany awards are highly restrictive and bias local decision making toward federal preferences.

The general practice for federal and state funding to address homelessness is to award communities based on their responses to annual notices of funding availability (NOFA). These NOFAs contain significant regulatory and application requirements that prove particularly challenging for small to medium sized communities. The NOFA requirements cause local communities to struggle with scarce local resources to meet the threshold requirements and efficiently execute and achieve their program goals.

For example, each Continuum of Care is required to employ a complex and costly data system called Homeless Management Information System (HMIS). While Continuums receive federal funding to support HMIS activities, they are often bare-bones, require additional technical assistance, upgrades, and consulting contracts. The outputs of the HMIS system better serve HUD’s reporting requirements to Congress than providing useful outcome-based decision-making data to the local community.

Frequent NOFA changes, new program priorities, and an inability to forecast future funding for multi-year projects leaves Continuums scrambling to fit their programs to the needs and desires of the federal government. Simply put, micromanagement at the state and federal levels reduces the ability of local entities and programs to effectively adapt these programs to meet local needs.

Here is a list of requirements within the federal CoC NOFA that are particularly challenging for local communities:

Policy	Citation	Impact
Definition of Homelessness	24 CFR 578.3; 578.7; 578.79	HUD defines homelessness to disincentivize the creation of transitional housing in favor of permanent supportive housing.
Consistency of consolidated plan and	24 CFR 578.27	The application process is expensive, complicated, and time consuming. It requires coordination with

requirement for coordination		multiple agencies and levels of government often at the expense of addressing immediate needs.
Low Barrier	24 CFR 578.75	Federal policy prohibits programs from requiring any kind of service or intervention, including substance abuse treatment, employment training, or life skills training.
Limitation of Use	24 CFR 578.89	Federal policy for CoC programs bias funding against non-chronic populations such as intact families or those who do not meet the definition of chronically homeless.
Prioritization on Process	Notice of Funding Availability	To apply for funding, CoCs are required to measure processes and outputs instead of outcomes and program progress.
Complexity of PSH		Much work is required to qualify for SSDI, a critical funding component for PSH. The unsheltered population is often the most disabled and the most resistant to services and housing. Because of the complexity to qualify, beds often go unused, go to less qualified households, or include significant delays in being filled.

More information on HUD’s homelessness assistance programs can be found at [www.hudexchange.info](http://www.hudexchange.info)

**Fair Housing Act**

The Fair Housing Act passed in 1968 was designed to protect those who were traditionally discriminated against by housing agencies because of their race, gender, religion, familial status, and disability. HUD homelessness assistance programs rely on the Fair Housing Act to provide equity in housing those experiencing homelessness through lease-based rental units. By requiring leases, HUD implements the Fair Housing Act as a major policy in addressing homelessness. One significant distinction between the CoC program, which provides permanent supportive housing, and the Emergency Solutions Grants, which provides shelter, is the requirement for leases or, in some cases, indefinite rental assistance in CoC supported housing. Landlords familiar with the Fair Housing Act are disincentivized from providing housing to individuals and families referred by Continuums of Care because they know that they put their businesses at significant risks for losses by participating in the programs. That is why many larger jurisdictions provide landlord assistance, mitigation against losses, and inflated rents to house those referred through homelessness assistance programs.

**The Americans with Disabilities Act**

The Americans with Disabilities Act (ADA) of 1990 is a civil rights law that prohibits discrimination based on disability. Permanent supportive housing is reserved for those experiencing homelessness with a disability or families with an adult or child member with a disability. Chronic homelessness combined with substance use disorder qualifies individuals experiencing homelessness as disabled and qualifies them for Social Security Disability Income benefits (SSDI). SAMHSA, the Substance Abuse and Mental Health Services Administration, administers a federal program called SSI/SSDI Outreach, Access, and Recovery (SOAR), which seeks to qualify those experiencing or at risk of becoming homeless and have a serious mental illness, medical impairment, and/or co-occurring substance use disorder.

## Medicaid

Federal Medicaid law and regulation provide for health coverage for low-income people. Federal Medicaid funds reimburse health care providers and states and counties for qualified services, including behavioral health and mental illness treatment. Medicaid (named Medi-CAL in California) contains numerous arcane and complex provisions that regulate the reimbursement of services. Because of the complexity of Medi-Cal, fewer services and less treatment is available to meet the needs of the seriously mentally ill and chronically addicted. Without this treatment, many individuals suffering with illness are left to fend for themselves unhoused on the streets.

## Institutes of Mental Diseases Exclusion

A regulatory provision of Medicaid prohibits reimbursement for care received in mental health institutions if the hospital has more than 16 psychiatric beds. The Institutions for Mental Diseases (IMD) Exclusion is an institutional barrier to treatment for the indigent, such as the unhoused mentally ill.

Institution for mental diseases (IMD) means a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases, including medical attention, nursing care and related services. (42 CFR § 435.1010 )

Because of the IMD Exclusion, appropriate treatment facilities and psychiatric capacity is rationed and people living with untreated serious mental illnesses and substance use disorders end up in jails, prisons, or living on the street. This costs local, state, and federal governments significant amounts of money in paying for limited stabilization and primary mental health care that often leads to repeat visits to emergency departments as illness are unmanaged because of the lack of long-term facilities.

The IMD Exclusion has accelerated the shortage of psychiatric beds by giving states an economic incentive to close psychiatric hospitals. There has been a decrease of more than 97% across the nation in the number of psychiatric beds since the mid-20<sup>th</sup> century.

Here is the most recent bed count for Butte County's Behavioral Health facilities.

Facility Type	Bed Count
<b>BCDBH PHF Total</b>	<b>16</b>
<b>Board and Care Total</b>	<b>103</b>
<b>Coordinated Entry System Total</b>	<b>46</b>
<b>Crisis Residential Total</b>	<b>10</b>
<b>Room and Board Total</b>	<b>107</b>
<b>Substance Use Disorder Total</b>	<b>203</b>
<b>Transitional Age Youth Total</b>	<b>19</b>
<b>Grand Total</b>	<b>504</b>

## Federal Grant Programs Related to COVID-19

In response to COVID-19, the federal government provided billions of dollars in assistance to states, urban cities and counties, and other levels of government to assist communities in responding to the pandemic among homeless populations. In particular, the CARES Act provide funding for emergency shelters, hotel and motel vouchers, essential services including childcare, employment assistance, legal services, and mental health and addiction abuse treatment services, and homelessness prevention

assistance, including rental assistance for those at risk of eviction. This funding was all one time and intended to assist communities respond by increasing social distancing in congregate shelters, housing the unhoused to prevent the transmission or spread of COVID-19, and keeping people housed.

These programs included significant waivers of certain federal regulations, such as the match requirement for ESG funding, and attempted to facilitate states and regions to pass through funding to localities. Unfortunately, programmatic inefficiencies resulted in delays in funding reaching programs and eligible recipients.

### **Martin v Boise**

Martin V Boise is a 2018 decision by the U.S. Court of Appeals for the Ninth Circuit in response to a 2009 lawsuit against the city of Boise, Idaho regarding the city's anti-camping ordinance. The ruling establishes certain limits on what municipalities can enforce and regulate with respect to public spaces.

A number of issues were unsettled in the ruling, such as whether it is legal to set limits on which public properties and during what hours camping or sleeping is prohibited. According to Cole, Evangelis, and Hamburger, “under *Martin*, a majority of a municipality’s ordinances regulating the use of city streets, sidewalks, and other public areas remain fully constitutional and enforceable-particularly those imposing time, manner, and place restrictions.” Cole, Evangelis, Hamburger, *Breaking the Legal Paralysis: Combatting California’s Homeless Crisis After Martin v. City of Boise*, California Real Property Journal, Vol 39, No. 2, 2021.

## **California Law and Regulation**

### **SB 1380**

SB 1380 was signed into law in 2016. That bill created the California Homeless Coordinating and Financing Council and requiring that all state funding for homelessness assistance programs follow a Housing First low barrier approach by July 1, 2019. All state funds for homelessness, therefore, prohibit the requirement of any type of participation in programming, sobriety, or treatment as a condition of state funding. The approach strongly supports the creation of permanent supportive housing, as opposed to the creation of shelters.

### **Housing Assistance Programs**

#### **The Homeless Emergency Aid Program (HEAP)**

HEAP was a one-time \$500 million block grant program created in 2018 to provide direct assistance to Continuums of Care (CoCs) and large cities to address the homelessness crisis throughout the state. Butte County CoC was awarded \$4.2 million in one-time funds.

#### **Homelessness Housing Assistance and Prevention Program (HHAP)**

HHAP is a funding program that has, so far, provided three rounds of support for Continuums of Care. The Homeless Coordinating and Financing Council (HCFC) is responsible for administering the Homeless Emergency Aid Program (HEAP),

### **Project RoomKey / Homekey**

Projects Roomkey and Homekey are efforts to convert existing buildings into permanent or interim housing. Roomkey started as a means to house people experiencing homelessness in hotels and motels as a means of reducing the spread of COVID-19. Homekey provides grant funding to cities, counties, and other public entities to acquire and develop hotels, motels, single-family homes, and multi-family units into permanent housing for people experiencing homelessness.

## **Care for the Indigent**

### **Welfare and Institutions Code § 17000**

Under the state of California's Welfare and Institutions Code § 17000, California counties have a duty to assist the indigent. Section 17000 reads "Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions."

Under this state law, counties are identified as the entities responsible for providing general assistance benefits necessary for basic survival. The Code specifies that Counties must provide an appropriate allowance for each of the necessities of life, including food, clothing, shelter, and medical care.

## **Mental Health**

### **Lanterman-Petris-Short Act**

The Lanterman-Petris-Short (LPS) Act was signed into law in 1967 to assist people with mental illness by establishing certain due process rights for involuntary mental health commitment and public guardianship. The Act set a high and often arbitrary threshold of "gravely disabled" to act on a need for conservatorship.

In 2019, the California State Auditor found that many people who are conserved end up with limited treatment options and the lack of psychiatric capacity often leave the seriously mentally ill unhoused. The auditor also found that people released from 5150 involuntary holds rarely get follow up treatment and that often a lack of treatment options influences how emergency department pursue conservatorships.

According to the Hospital Association of Southern California, approximately 1,000 individuals are on a 5150 hold in an emergency department on any given day. California hospitals see more than 1 million individuals with a behavioral health diagnosis in their emergency departments annually.

The state's Office of Statewide Health Planning and Development estimates that 65 percent of emergency department visits for individuals with a behavioral health diagnosis do not result in an inpatient stay. There is currently no consistent statewide policy for holds, leaving a patchwork system for California's 58 counties to interpret on their own. The lack of consistent application of the LPS Act and the lack of psychiatric capacity puts patients and the public at risk leaving many people in need of treatment unhoused and vulnerable.

## **MHSA**

The MHSA was designed to improve California's behavioral health system by increasing taxes on individuals with personal income more than \$1 million per year. The "millionaire's tax" ballot proposition generates \$2.4 billion annually for mental health services. counties with a funding stream to address serious mental illness treatment, however, many factors have contributed to reduce the impact of

the program. In 2016, Gov. Brown allowed funding under California’s Mental Health Services Act to be diverted into funding permanent supportive housing.

### **State Mental Health Realignment**

California transferred certain administrative and financial control regarding mental health policy from the state to the counties in 1991 and 2011. These reforms provide, essentially, block-grants to counties for mental health services. Under opt-in provisions of realignment, each county operates separately from other publicly funded health care services. According to the California HealthCare Foundation, “the patchwork nature of interrelated categorical funding sources and the decentralization of responsibilities complicates” the ability to provide mental health services and improve health outcomes.

### **Crime**

#### **Prop 47 and 57**

Proposition 47, The Safe Neighborhoods and Schools Act, attempted to reduce prison overcrowding by redefining certain crimes and decriminalized drug possession from a felony to a misdemeanor and increased the threshold for felony theft. Prop 47 has been criticized for removing law enforcement’s ability to make arrests and, therefore, the court’s ability to order drug rehabilitation programs.

Proposition 57, the Parole for Non-Violent Criminals Initiative, provided for early release of nonviolent felons. Prop 57 has been criticized for releasing former prisoners into the community without sufficient reintegration. Props 47 and 57 contribute to the inability of law enforcement to deal effectively with criminals, substance abusers, and the mentally ill.

### **Charitable Feeding Operations**

In 2019, AB 2178 was signed into law to define how charitable feeding organizations can safely distribute whole, uncut produce, or prepackaged, non-potentially hazardous foods to the needy. The bill provides counties the authority to permit a “limited service charitable feeding operation” (LSCFO) as a nonprofit charitable organization. The Act provides food service to a consumer solely for providing charity limits the distribution of food to protect the safety of individuals and the community.

### **Housing**

Housing law and policy impact the development of housing, particularly affordable housing. California, has a long history of enacting legislation that produce unintended consequences of higher costs for housing development and, therefore, less supply. Here are some general categories of policy challenges that create obstacles to developing more housing:

*Fiscal Disincentives to Housing* - Proposition 13 caps property taxes causing local governments to become more reliant on alternative revenue sources. Vacant land is potentially much more valuable as a large retailer than as a multifamily residential development.

*Increased Costs to Build* – Building in California is more expensive because of the price of land, labor, lumber, and state mandates requiring special materials such as low-e windows, solar panels, and low-flow toilets.

*Cumbersome and Costly Process for Development* - The process by which a piece of land is approved for new construction can be incredibly costly cumbersome, time-consuming and risky. The four major process issues are:

- **Multiple Layers of Government Review:** Housing projects must go through multiple government agencies, such as planning departments, health departments, fire departments, building departments, and receive city council approval. “By-right” development is gaining momentum to reduce approval times and costs.
- **NIMBYism:** The multiple layers of review provide ample time for opposition to developments to form. Residents of neighborhoods are often concerned with the potential for new developments to change the nature of their neighborhoods.
- **CEQA:** The California Environmental Quality Act requires significant review of environmental impacts. CEQA is often abused to prevent new developments. The California Legislative Analyst’s Office reports that CEQA delays projects on average by two and a half years.
- **Local Growth Controls:** Many cities and counties have policies that explicitly limit the number of new homes built or limit the density of new developments.

## **Conclusion**

Addressing the challenge of homelessness must be viewed as more than an issue of housing. It must recognize the impacts of federal and state law on mental and behavioral health, crime, funding restrictions, and policy working at cross purposes and with significant unintended consequences. This review provides a starting point to consider potential strategies to address homelessness and the important and necessary components of a strategic plan.



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