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Project Protect Food Systems' Colorado Coronavirus Crisis Essential Food System Worker Policy Response Agenda

Alexia Brunet Marks

University of Colorado Law School

Hunter Knapp

University of Colorado Law School

Nicole Civita

University of Colorado Law School

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PROJECT PROTECT FOOD SYSTEMS

THE COLORADO FOOD SYSTEM WORKERS
RAPID RESPONSE TEAM



Revised
Colorado Coronavirus Crisis
Essential Food System Worker
Policy Response Agenda

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. Federal relief directed toward the agriculture sector prioritized the needs of business owners, but largely ignored the specific vulnerabilities and needs of Food System Workers. Inattention to the plight and the health of food system workers is unsurprising but deeply problematic. We ignore the well-being of Food System Workers 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 the COVID-19 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 Food System Workers is clear, we must help them protect themselves against the COVID-19 crisis.**

Project Protect Food Systems was organized to ensure that this group of always-essential workers is adequately protected from COVID-19 and appropriately compensated for the risks they assume in service of the common good. In the pages that follow, Project Protect Food Systems lays out a ***Revised Colorado Coronavirus Crisis Essential Food System Worker Policy Response Agenda***.¹ This policy response agenda aims to address ongoing COVID-19-related risks and exacerbated vulnerabilities faced by Food System Workers within the state of Colorado, including:

- Farmworkers (such as field workers, orchard workers, ranch hands, feedlot workers, etc., regardless of legal status or worker classification)
- Processing workers (such as workers in meat, poultry, dairy, grain, and other food processing facilities)
- Warehouse & Distribution workers (such as workers in shipping, receiving, distribution, logistics, inclusive of long- and short-distance transport)

Authorship & Affiliation

This working paper was written by Alexia Brunet Marks, J.D., Ph.D., Hunter Knapp, J.D., and Nicole Civita, J.D., LL.M., with input and support from the members of *Project Protect Food Systems: The Colorado Food System Workers Rapid Response Team*. Although the lead authors are faculty of the University of Colorado Boulder, they prepared this work in their individual capacities. The opinions, suggestions, and conclusions expressed herein belong only to the authors and members of *Project Protect Food Systems*. Those opinions should not be imputed to the authors’ organizations, other project members’ organizations, or to the editors of the Colorado Law Review. This report was not produced at taxpayer expense.

¹ See [Policy Response Agenda](#), PROJECT PROTECT FOOD SYSTEMS (May 22, 2020) (Project Protect Food Systems released the original Colorado Coronavirus Crisis Essential Food System Worker Policy Response Agenda prior to the conclusion of the legislative session. Enacted legislation and Guidance for the Agriculture Industry released by the Colorado Department of Public Health and Environment addressed many agenda items, but as the crisis worsens additional steps need to be taken to protect Essential Food System Workers).

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The Colorado Food System Workers Rapid Response Team

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- Retail & Food Service Workers (such as grocery workers, front- and back-of-the-house restaurant and food service workers)
- Last-Mile Delivery Workers (such as 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 Food System Workers face common COVID-19-related risks. However, each worker's ability to safely navigate these risks varies tremendously due to factors including: legal and socio-economic status; nature of their particular job duties; workplace policies, ethics, and accountability of their particular employer(s); ability to participate in labor organizations; strength of collective bargaining power; and each worker's level of social inclusion in their 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 the COVID-19 pandemic. At the same time, other groups of essential Food System Workers—especially migrant, seasonal, and undocumented farmworkers—are also in great peril because of legal barriers to COVID-19 relief and harsh conditions in the fields. Project Protect Food Systems is actively investigating the needs and sources of exposure for these groups of workers around the state so that we can update our recommendations to better protect all vulnerable Food System Workers and the security of our food system.



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

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.”² Since that time, the Colorado legislature and agencies under the direction of Governor Polis responded effectively to protect Colorado residents. In the initial Policy Response Agenda released by Project Protect Food Systems on May 22, we called on the Colorado government to: (1) safeguard Food System Workers in the workplace; (2) protect H-2A workers; (3) strengthen existing systems to dismantle false choices between income and health; and (4) support undocumented people.³ The Guidance for the Agriculture Industry released by Colorado Department of Public Health and the Environment (CDPHE) made important strides in the task of safeguarding Food System Workers in the workplace by clearly requiring employers to: provide PPE to employees, increase physical distancing, provide additional housing and dining facilities to allow people exposed to COVID-19 to isolate from others, and communicate certain vital information to employees.⁴ In addition, the state legislature passed important laws that extend paid sick leave rights for *all* employees in Colorado and prohibit employers from discriminating, retaliating, or taking adverse action against any worker who raises concerns about workplace health and safety or voluntarily wears PPE in the workplace.⁵ These actions marked important first steps in combatting the COVID-19 pandemic and resulting economic crisis, but more needs to be done. As Colorado moves past the initial shock of the crisis, long term solutions should be pursued that build upon existing systems of community support. Food System Workers continue to labor on the front lines of the COVID-19 crisis and the Colorado government needs to protect their health and their future.

Governor Polis recently ordered more than \$288 million from the Disaster Emergency Fund be encumbered to be used to respond to the COVID-19 crisis.⁶ Of these funds, more than \$161 million was made available for CDPHE, more than \$23 million was made available to the Department of Public Safety, more than \$1 million was made available to the Governor’s Office of Information and Technology, roughly \$1.7 million was made available to the Colorado Department of Agriculture (CDA), and roughly \$12.8 million was made available to the Colorado Department of Corrections.⁷ These funds are to be used for expenses incurred by the agencies while implementing COVID-19 related policies from March 1 to December 30, 2020.⁸ After these initial designations, roughly \$88 million remains of the funds activated from the Disaster Emergency Fund. Some portion of the funds already allocated to agencies and the remaining millions should be used to support essential Food System Workers enduring the

² Colo. Exec. Order No. [D 2020 003](#), 1 (Mar. 11, 2020).

³ Policy Response Agenda, *supra* note 1.

⁴ [COVID-19: Agricultural Industry Guidance 061920](#), COLO. DEP’T OF PUBLIC HEALTH AND ENV’T (last visited Aug. 17, 2020) [hereinafter CDPHE Guidance].

⁵ COLO. REV. STAT. §§ 8-13.3-401 *et seq.* (2020); COLO. REV. STAT. §§ 8-14.4-101 *et seq.* (2020).

⁶ Colo. Exec. Order No. [D 2020 152](#), 2 (Aug. 4, 2020).

⁷ *Id.*

⁸ *Id.* at 3.

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COVID-19 crisis.

Governor Polis can direct agencies to use these funds to implement the other emergency powers he holds under Colorado law. One such statutory power enables Governor Polis to “[m]ake provision for the availability and use of temporary emergency housing.”⁹ 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.”¹⁰ More generally, the statute provides Governor Polis with the power 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.¹¹ Governor Polis and the Colorado legislature have protected our communities well so far with proactive measures. More executive action and state legislation will be necessary to ensure Colorado’s Food System Workers, and all citizens, remain prepared to overcome the many challenges of the COVID-19 crisis.

The various executive powers described above should be utilized to protect essential workers on Colorado’s farms and throughout its food systems, thereby helping to “[r]educ[e] vulnerability of people and communities of this state to damage, injury, and loss of life and property.”¹² This Revised Policy Response Agenda sets forth recommendations to (A) protect workers in the workplace and (B) protect workers and families outside the workplace. Colorado boldly enabled decisive executive action to meet the challenges of the pandemic. Now the state government must use all available tool to protect the health and welfare of the people performing essential work throughout Colorado’s agriculture and food sectors.



⁹ COLO. REV. STAT. § 24-33.5-704(7)(i) (2020).

¹⁰ § 24-33.5-704(7)(g).

¹¹ § 24-33.5-704(7)(a), (d).

¹² See § 24-33.5-702(1)(a) (describing the purposes and limitations of the emergency powers).

***Overview of Essential Food System Worker Policy Response
Agenda***

A. Protect Workers in the Workplace	B. Protect Workers and Families Outside the Workplace
1. Require posting of COVID-19 safety protections & related guidelines.	1. Empower community healthcare networks.
2. Provide temporary shelter and sanctuary for workers with COVID-19 symptoms.	2. Expand Medicaid access and coverage.
3. Ensure employer-provided housing meets the requirements of the COVID-19 pandemic.	3. Support undocumented people.
4. Implement additional safety inspections and enforcement in essential workplaces.	4. Support children of essential Food System Workers.
5. Ensure Food System Workers can participate fully in forums designed to monitor working conditions in Colorado and recommend policies to protect workers.	5. Support federal legislation to protect families of Food System Workers who make the ultimate sacrifice.

A. Protect workers in the workplace

1. Require posting of COVID-19 safety protections & related guidelines.

Sharing up-to-date, authoritative information about COVID-19 best-practices is an essential part of combatting the pandemic.¹³ Colorado Public Health Order 20–28 requires employers to “post signage for employees and customers on good hygiene.”¹⁴ Although the CDPHE guidance requires the document to be in a language understood by the workers, the agency merely *suggests* that employers post the guidance at all.¹⁵ This oversight needs to be remedied to ensure employers provide employees with vital information. The Colorado legislature correctly recognized the importance of posting requirements when expanding paid sick leave and creating whistleblower protections for employees.¹⁶ In this uncertain environment all employers should be required to post all relevant state-imposed guidelines, rules, policies, and practices that have been implemented in Colorado as a result of the COVID-19 pandemic.

Food System Workers, and all employees, need to receive the guidance and support necessary to maximize compliance with the health and safety guidelines designed to protect all Colorado residents. This principle holds especially true for employers of H-2A workers who may reach the United States without a clear idea of the extent of the crisis.¹⁷ Governor Polis should issue an additional Public Health Order requiring that businesses post all relevant COVID-19 guidance issued by CDPHE and other relevant agencies in languages understood by the workers.¹⁸ Since not all migrant workers are literate or proficient in their first language, agencies within the Colorado government need to lead by providing accessible materials in multiple languages that go beyond the bare guidance documents. Employee rights and protections must be communicated with visual cues and graphics to aid understanding. Moreover, Governor Polis should use the stature of his office to elevate awareness of the needs of Food System Workers during the COVID-19 pandemic. In May, Governor Polis launched Spanish-language Twitter and Facebook pages to help communicate vital information to Spanish-speaking Coloradans.¹⁹ These outlets provide excellent ways to communicate to Food System Worker communities, but Governor Polis needs to start using them to communicate essential information regarding the guidance for the agriculture industry and other employee rights.

¹³ See [COVID-19 Resources](#), NAT’L CTR. FOR FARMWORKER HEALTH (last visited Aug. 17, 2020) (providing a model of resources which have been translated into Spanish & indigenous languages).

¹⁴ Colo. Public Health Order No. 20-28(II)(I)(1)(d).

¹⁵ CDPHE Guidance, *supra* note 4.

¹⁶ See COLO. REV. STAT. § 8-13.3-408 (2020) (paid sick leave posting requirements); *see also* COLO. REV. STAT. § 8-14.4-103(1) (2020) (whistleblower protection posting requirement).

¹⁷ H-2A workers receive temporary labor certification and permission to enter the country to perform certain agricultural jobs. [H-2A Temporary Agricultural Workers](#), U.S. CITIZENSHIP AND IMMIGRATION SERVICES (last visited Aug. 17, 2020).

¹⁸ *Cf.*, e.g., CDPHE Guidance, *supra* note 4 (providing the guidance in seven languages common among the Colorado workforce: English, Spanish, Arabic, Somali, Nepali, Simplified Chinese, and Tiếng Việt).

¹⁹ Morgan Gray, [Polis launches new Spanish-language Facebook and Twitter Pages](#), THE GAZETTE (May 12, 2020).

2. Provide temporary shelter and sanctuary for workers with COVID-19 symptoms.

Public resources need to be utilized to provide shelter for essential workers forced to quarantine while living in employer-provided housing.²⁰ The guidance for the agriculture industry issued by CDPHE requires employers to provide additional housing accommodations for “any worker who becomes sick and/or has been in close contact with a confirmed COVID-19 case, to allow adequate isolation/quarantine from coworkers in shared housing,” and it requires that “[i]ndividuals who experience symptoms of COVID-19 are to have access to facilities that allow them to isolate from asymptomatic individuals, including separate sleeping quarters, bathrooms, and kitchens.”²¹ That requirement can help stem the spread of COVID-19, but it also places a burden on employers that could compromise their business. Some portion of the hundreds of millions of dollars released by Governor Polis from the Disaster Emergency Fund should be used to rent hotel rooms and purchase additional mobile housing units to facilitate employer compliance with this requirement. Under Colorado law, some people are excluded from public benefits based on immigration status, however an important exception allows all people living in Colorado to receive “[s]hort-term, non-cash, in-kind emergency disaster relief,” such as access to emergency shelter.²² The people of Colorado rely on essential Food System Workers to tend and harvest the food that fuels the state. When the COVID-19 crisis struck, these workers did not have the option to work from home to protect themselves and their families. Therefore, it is the responsibility of all Colorado residents to safeguard the health of Food System Workers, regardless of socioeconomic or immigration status.

3. Ensure employer-provided housing meets the requirements of the COVID-19 pandemic.

Prior to the pandemic, employer provided housing for H-2A beneficiaries and other essential Food System Workers only needed to meet minimal spacing requirements that are insufficient to allow physical distancing of employees.²³ CDPHE guidance recommends doubling the distance provided for in OSHA standards in order to comply with physical distancing requirements expected for workplaces,²⁴ but absent an inspection regime employers are unlikely to change their practices. Subject to certain exceptions, Colorado employers that provide housing for migrant workers must have a Certificate of Occupancy that can be obtained by passing a pre-occupancy inspection conducted through one of seven Colorado Department of Labor “Significant” Workforce

²⁰ See COLO. REV. STAT. § 24-33.5-704(7)(i) (2020) (giving the governor the power to “[m]ake provision for the availability and use of temporary emergency housing”).

²¹ CDPHE Guidance, *supra* note 4.

²² COLO. REV. STAT. § 24-76.5-103(3)(c) (2020).

²³ See 29 C.F.R. 1910.142(a) (requiring sites to provide only 50 square-feet of space per occupant and three-to-four feet of space between beds); *see also* 20 C.F.R. 654.404 *et. seq.* (allowing housing completed or under construction prior to April 3, 1980 to comply with standards providing less protection promulgated by the Employment and Training Administration).

²⁴ CDPHE Guidance, *supra* note 4.

Centers.²⁵ If a pre-occupancy inspection is requested within 45 days of employee arrival but the Workforce Center fails to complete the inspection, employers may still admit residents.²⁶ When the COVID-19 crisis struck Colorado in March many of these inspections may have been requested only to go unfulfilled, thereby enabling the exception. More importantly even buildings that received a Certificate of Occupancy likely do not comply with the heightened standards set for in the CDPHE guidance. CDPHE should use some portion of the \$112 million allocated from the Disaster Emergency Fund to hire and train public health inspectors to ensure Colorado’s agriculture businesses provide their employees with sufficient room to live and breathe. Although CDPHE took steps to protect the health of employees in the agriculture sector, those precautions will be irrelevant if Food System Workers are forced to live in unsafe conditions while performing essential work.

4. Implement additional safety inspections and enforcement in essential workplaces.

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.”²⁷ In furtherance of that duty, CDPHE has the power to “establish, maintain, and enforce isolation and quarantine” and to “abate nuisances when necessary for the purpose of eliminating sources of epidemic and communicable diseases affecting public health.”²⁸ As of the release of this Policy Response Agenda, at least 290 employees at the JBS Greeley Plant already tested positive for COVID-19, and six of the employees tragically lost their lives.²⁹ Illnesses at the JBS Greeley Plant were determined to reach the level of an “outbreak” on April 3 and the outbreak shows no signs of subsiding.³⁰ Meanwhile, CDPHE continues to investigate dozens of “active outbreaks” at businesses across the state that employ Food System Workers.³¹ While some businesses and communities have demonstrated the ability to respond to outbreaks and contain them, the outbreaks at workplaces like JBS Greeley require intervention by CDPHE.

Recognizing that employers are adapting to the presence of a novel pathogen and evolving scientific understanding of transmission risk dynamics, a collaborative rather than punitive approach to enforcement could be used on the first inspection. Thereafter, to the extent possible, CDPHE should establish fines at a level sufficient to encourage compliance and deter malfeasance. Fines collected could go into a fund to offset the costs of enforcement or of covering other essential worker protections. If fines are insufficient,

²⁵ *Migrant Farmworker Housing Management Guide*, COLO. DEP’T OF LABOR AND EMPLOYMENT, 8, 19 (revised June 2013) (last visited Aug. 17, 2020).

²⁶ *Id.* at 30.

²⁷ COLO. REV. STAT. § 25-1.5-102(1)(b)(I) (2020).

²⁸ § 25-1.5-102(1)(d).

²⁹ *Outbreak Data*, CDPHE (last updated Aug. 12, 2020); see also Leah Douglas, *Mapping COVID-19 outbreaks in the food system*, THE FERN (last visited Jul. 31, 2020) (recording the numbers at the JBS facility in Greeley as 316 cases and 6 deaths).

³⁰ *Outbreak Data*, CDPHE (last updated Aug. 12, 2020).

³¹ *Id.*

CDPHE should impose rigid isolation and quarantine requirements on the businesses that effectively compel temporary closure until the outbreak has been contained, the facility has been sanitized, and the personnel have been quarantined for long enough to rule out silent-carrier status.

5. Ensure Food System Workers can participate fully in forums designed to monitor working conditions in Colorado and recommend policies to protect workers.

Systemic racism resulted in the exclusion of many Food System Workers from critical labor protections like the right to collectively bargain or earn a minimum wage.³² This legacy recently affected protections for workers in Colorado through the exclusion of the agriculture industry from Colorado Overtime and Minimum Pay Standards Order #36.³³ To prevent further injustices, Colorado should ensure that Food System Workers have a genuine seat at the table in advising on policy reforms. Currently, there are no state boards or commissions with a focus on Food System Workers, agricultural labor, or migrant and seasonal workers. Moreover, even bodies with relevant mandates are not structured in ways that either make space for or mandate the participation of Food System Workers or worker advocates. For example, the Colorado Food Systems Advisory Council—created by the Colorado legislature to make recommendations regarding promotion of healthy food access, economic opportunities for agricultural producers and food-related businesses, and local and regional food system capacity—has designated seats to ensure that the council is made up of stakeholders with diverse interests.³⁴ Conspicuously, none of the seats on the Council was reserved for a worker advocate and no such person has ever served on the Council.³⁵ Similarly, reviewing the biographical statements of the current members of the Colorado Agriculture Commission indicates that workers are not represented on that important body either.³⁶ As a result, worker interests are rarely prioritized while those of business owners and operators are consistently emphasized.

The muting of worker voices in important state policy making and advisory spaces is also maintained because participation on public boards and commissions is a purely volunteer-oriented endeavor.³⁷ As described above, many, if not most, Food System Workers are economically fragile. In the cruelest of ironies, they routinely struggle to put

³² See Juan F. Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 27 OHIO ST. L.J. 95, 104–26 (2011) (linking the exclusion of agricultural workers from federal protections created during the New Deal era, such as the Fair Labor Standards Act and the National Labor Relations Act, to the racist intentions of Southern Democrats to preserve the plantation-era South).

³³ COLO. DEP'T OF LABOR AND EMP'T, 7 CCR 1103-1, [Colorado Overtime and Minimum Pay Standards Order](#) (2020) (became effective on July 15, 2020).

³⁴ COLO. REV. STAT. § 23-31-1102(2) (2020).

³⁵ *Id.*

³⁶ [Ag Commission](#), COLO. DEP'T OF AGRIC. (last visited Aug. 17, 2020).

³⁷ See COLO. REV. STAT. § 23-31-1102(8) (stating that members of the Council serve without compensation); see also § 35-1-2015(2) (stating that members of the Agricultural Commission serve without compensation).

food on their own tables.³⁸ This dynamic means that Food System Workers simply cannot afford to dedicate their time to serving an unpaid position on a Board or Commission. Meanwhile, large agriculture businesses do have the means to participate and advocacy for their interests dominates most conversations. To ensure Food System Workers can participate equitably, the Colorado legislature should remove any barriers to compensating low-income individuals for service on boards and commissions, or appropriate money to create a compensated position responsible for representing the interests of Food System Workers in policy reform discussions at the state level.

Alternatively, the Colorado legislature should establish a board or commission to report on the working conditions and welfare of farmworkers in Colorado constituted of workers, their advocates, and employers with a demonstrated commitment to and track record of fair labor practices and appropriate funding to pay appointees for their efforts. Ideally, this body would issue periodic reports regarding challenges and needs faced by Food System Workers. The commission should also have an annual opportunity to convene and meet with appropriate leaders at CDPHE, Colorado Department of Labor and Employment, the Colorado Department of Agriculture, and the Governor's Office. In the absence of a full board or commission, a Food System Worker Ombudsman position should be created to advocate for worker rights.³⁹ The COVID-19 crisis highlighted the importance of the essential Food System Workers, while simultaneously precipitating policy changes designed to protect their welfare. Unfortunately, the voices of Food Systems Workers rarely contribute to the crafting of those policies. All Coloradans will benefit from the more equitable and resilient food system that will result from ending the exclusion of workers from the policy-making process.

B. Protect workers and families outside the workplace

1. Empower community healthcare networks.

The COVID-19 crisis has exposed systemic patterns of racism that afflict the healthcare system in the United States. According to the Centers for Disease Control and Prevention (CDC), five factors contribute to disproportionately high negative effects of COVID-19 experienced by “racial and ethnic minority groups.”⁴⁰ These factors are: higher likelihood of being an essential worker; crowded housing conditions; educational, income, and wealth gaps; lack of healthcare access and utilization; and outright discrimination.⁴¹ In addition, the highly heterogeneous group of farmworkers faces additional challenges in accessing healthcare due to language barriers, literacy barriers, and lack of knowledge of available services. Empowering members of Food System Worker communities that

³⁸ Mark Deka, [The Geography of Farmworker Health in Colorado: An Examination of Disease Clusters and Healthcare Accessibility](#), J. OF AGROMEDICINE 1–2 (2020).

³⁹ See [Long-Term Care Ombudsman](#), COLO. DEP'T OF HUMAN SERVS. (last visited Aug. 17, 2020) (describing a similar position for an advocate for residents of adult long-term care facilities).

⁴⁰ [Health Equity Considerations & Racial & Ethnic Minority Groups](#), CDC (last updated Jul. 24, 2020).

⁴¹ *Id.*

traditionally provide healthcare information can help address the final two factors that contribute to the severe impact of the COVID-19 crisis on Colorado’s minority communities.

Project Protect Food Systems partnered with FrontLine Farming, Colorado Legal Services Migrant Farmworker Division, and Cultivando to propose a Promotora Network of skilled and respected Latinx community members who work within their community to bring resources, advocacy, and needed services. The model uses full-time promotoras, along with a network of neighborhood organizers and community response team members, to provide culturally competent healthcare information and support to communities historically neglected by the healthcare establishment. The Promotora Network can help mitigate the spread of disease in Food System Worker communities in a low-cost, flexible manner that meets the needs of the COVID-19 crisis. Governor Polis and the Colorado legislature should appropriate funding to support the Promotora Network in 2021 and beyond.

2. Expand Medicaid access and coverage.

Earlier this year, Governor Polis extended the Special Enrollment Period for individual health insurance while acknowledging, “[a]s this pandemic continues, we know that having health insurance will be critical.”⁴² Unfortunately, access to health insurance can be a major challenge for Food System Workers. The realities of a modern farm also place farmworkers at a higher risk for health problems caused by chemical exposure, traumatic injuries, and infectious diseases.⁴³ Governor Polis can take several steps to minimize the health impact of this crisis by modifying state residency requirements, expanding access to Emergency Medicaid, and increasing the scope of coverage. Many migrant farmworkers cannot access Medicaid due to state-residency requirements. So, they adopt a “wait and see” attitude that allows infectious diseases like COVID-19 to spread.⁴⁴ States like Wisconsin and Texas use models that allow migrant farmworkers to work out-of-state for a period of up to six months while continuing their state-based coverage or automatically extending enrollment to anyone with an out-of-state enrollment card.⁴⁵ Solutions like these can help protect all Coloradans as migrant farmworkers travel to Colorado from other parts of the country to perform essential work. Another important component of a comprehensive healthcare system requires making Emergency Medicaid accessible when needed. Access can be expanded by developing a simplified paper application for affected areas that is available in multiple languages, exempting enrollees from premiums, extending application processing times, temporarily delaying acting on changes in circumstances affecting eligibility, automatic enrollment for people who lose

⁴² [COVID-19 Special Enrollment Period for Health Insurance Extended to April 30](#), COLO. DEP’T OF REGULATORY AGENCIES (Apr. 2, 2020).

⁴³ Malea Hetrick, [Medicaid and Migrant Farmworkers: Why the State Residency Requirement Presents a Significant Access Barrier and What States Should Do about It](#), 25 HEALTH MATRIX 437, 447 (2015).

⁴⁴ *Id.* at 474.

⁴⁵ *Id.* at 461–64.

their jobs, and many other enhancements.⁴⁶ Many essential Food System Workers rely on Emergency Medicaid for healthcare coverage due to economic and geographic realities. The Colorado government needs to ensure the system functions effectively to meet the needs of the COVID-19 crisis.

3. Support undocumented people.

Shortly after the onset of the COVID-19 pandemic, California began a program to provide direct cash payments to people ineligible for federal stimulus checks and unemployment benefits due to immigration status.⁴⁷ California's ambitious effort was not without detractors, but Governor Newsom's administration took action because it understood the importance of leveraging state resources in support of undocumented people while the federal government continues to restrict access to programs critical safety net programs like SNAP, CHIP and Medicaid.⁴⁸ Excluding undocumented people from these programs leads to underutilization of the health care system which makes them more vulnerable to infectious diseases and imperils the health of the general public.⁴⁹ The problems inherent in excluding undocumented people from benefits are compounded when the burden falls on already-strained rural healthcare, social service, and charitable institutions. To make matters worse, when Congress attempted to relieve the economic pain of the COVID-19 crisis they disgracefully excluded undocumented people from emergency-relief payments under the CARES Act.⁵⁰ A 2017 Pew Research study estimated Colorado's undocumented immigrant population to be 180,000.⁵¹ With such a large number of people relegated to the margins of society and unable to receive other forms of aid, there are 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, while the Colorado government extends paid sick leave, free emergency medical services related to COVID-19, and other permissible benefits to undocumented people.⁵² 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

⁴⁶ See Samantha Artiga et al., [How Can Medicaid Enhance State Capacity to Respond to COVID-19?](#), KAISER FAMILY FOUND. (Mar. 17, 2020) (providing strategies state governments can use to expand Medicaid access).

⁴⁷ Harmeet Kaur, [California is Now Offering Support to Undocumented Immigrants in the First Relief Fund of Its Kind](#), CNN (May 18, 2020).

⁴⁸ See generally Kathleen R. Page et al., *Undocumented U.S. Immigrants and Covid-19*, 62 N. ENGL. J. MED. 382 (2020).

⁴⁹ Karen Hacker et al., *Barriers to Health Care for Undocumented Immigrants: a Literature Review*, 8 RISK MGMT. AND HEALTHCARE POLICY 175, 176 (2015).

⁵⁰ I.R.C. § 6428(d)(1) (2020) (currently available at [Pub. L. No. 116-136, 134 Stat. 281, 335](#)).

⁵¹ See Jeffrey S. Passel & D'Vera Cohn, [Mexicans Decline to Less Than Half the U.S. Unauthorized Immigrant Population for the First Time](#), PEW RESEARCH CTR. (Jun. 12, 2019).

⁵² Conor McCormick-Cavanagh, [COVID-19: New Fund Helping Undocumented Coloradans Weather Pandemic](#), WESTWORD (Apr. 28, 2020).

applies for state or local public benefits or for federal public benefits.”⁵³ Under the verification law, 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.⁵⁴ 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.⁵⁵ Colorado law reiterates these exceptions in the codification of the state-level prohibition.⁵⁶ Another exception permits Colorado to pass a law affirmatively providing eligibility for a specific benefit despite the inability to establish lawful presence.⁵⁷ The Colorado legislature should act to remove this harmful restriction on access to state benefits. In the meantime, programs administered by Colorado agencies should tailor benefits to qualify for the various exceptions.

Although the Colorado verification law creates obstacles, a public-private partnership can provide 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 provides essential support 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. When Colorado does take action to ensure the security of undocumented people, special care should be taken to prevent public benefits from impacting a noncitizen’s ability to complete the permanent residency and naturalization processes in the future. That distinction then needs to be communicated clearly to the community, so they take full advantage of any programs.

4. Support children of Food System Workers.

The COVID-19 crisis extends far beyond the workplace and affects all aspects of social and family life. In recognition of this hard truth, when the Colorado legislature recently acted to provide paid sick leave to accommodate workers suspected or confirmed to have

⁵³ COLO. REV. STAT. § 24-76.5-103(7) (2020).

⁵⁴ *Id.*; 8 U.S.C. § 1611(c) (2020). 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. 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(a)–(b).

⁵⁵ 8 U.S.C. § 1621(b)(1)–(4).

⁵⁶ COLO. REV. STAT. § 24-76.5-103(3)(a)–(d).

⁵⁷ 8 U.S.C. § 1621(d).

COVID-19, they also allowed paid leave to be used to care for affected family members.⁵⁸ This includes circumstances where the school or daycare center of an employee's child has been closed due to the COVID-19 crisis.⁵⁹ However, the law provides a maximum of 48 hours (only six full work days) of leave per year which would not be nearly enough to sustain a family through a quarantine period for an illness suspected to remain contagious for between 10 and 20 days.⁶⁰ To the credit of the Colorado legislature, it created those benefits at a time when optimism surrounding school reopenings remained. However, we are currently coming to understand that many children throughout the state will not be able to physically attend school on a consistent basis, if at all. Children will already suffer setbacks to their education and social development due to COVID-19. Forcing parents to choose between the economic and educational needs of their children will create further trauma that the Colorado government can prevent. The paid sick leave should be supplemented with childcare support payments for Food System Workers who are healthy enough to work but have children who are unable to return to school full-time. These payments can be used by families to support existing community networks of childcare that have always been essential to Food System Workers working long, demanding hours.

Alternatively, the Colorado government could collaborate with NGOs to develop and fund programs like the Promotora Network which empower these existing community networks and provide resources to expand. The Governor's Office and the Colorado legislature need to approach education and childcare solutions with special consideration for the needs of rural and low-income families that do not have equal access to modern necessities like computers and internet access. As Denver Public Schools moved to online-only learning, parents formed "pods" and parents plan to take turns support the remote learning of a group of similar aged children in their homes.⁶¹ This format could help alleviate some negative aspects of school closures, but also carries the potential for vast economic disparities in terms of availability and quality. In line with the model of the Promotora Network, the Colorado government could fund and support a network of community-based educators that could deliver culturally competent guidance, mentorship, and social-emotional support to students navigating remote learning. This could smooth the transition to a different educational environment to the benefit of schoolchildren, their families, and teachers, especially if the school-promotoras were able to act as a communication conduit between families and public education institutions. A centralized training system for the school-promotoras would help eliminate the racial and economic disparities in education that will emerge due to the COVID-19 crisis.

⁵⁸ COLO. REV. STAT. § 8-13.3-401 *et. seq.* (2020).

⁵⁹ § 8-13.3-404(1)(d)(II).

⁶⁰ [Coronavirus Disease Healthcare Workers FAQ](#), CDC (last updated Aug. 4, 2020).

⁶¹ Nelson Garcia, [Parents Look to Form 'Learning Pods' to Deal with Remote Learning](#), 9NEWS (Jul. 21, 2020).

5. Support federal legislation to protect families of Food System Workers who make the ultimate sacrifice.

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 when they leave their homes during the pandemic to perform services society depends upon. Despite designating the meatpacking sector as critical infrastructure, the joint guidance issued by OSHA and the CDC, and cited in President Trump’s executive order, only requires plants to make “good faith” efforts to protect workers.⁶² Unsurprisingly, the results have been dire. Outside the healthcare sector, Cargill Meat Solutions and the Greeley beef plant have been the sites of Colorado’s largest outbreaks that have killed the most employees.⁶³ If families of employees are prevented from suing or are otherwise unable to succeed in civil litigation against employers shielded from liability, a fund needs to be established to compensate them for their loss.

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’s 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-19.⁶⁴ One such proposal would authorize appropriated funds as needed for five 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.”⁶⁵ 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.

⁶² [Interim Guidance for Meat & Poultry Processors](#), CDC (last updated Jul. 9, 2020).

⁶³ [Outbreak Data](#), CDPHE (last updated Aug. 12, 2020).

⁶⁴ H.R. 6955, 116th Cong. (2nd. Sess. 2020); S. 3755, 116th Cong. (2nd. Sess. 2020).

⁶⁵ [Kaine Introduces Bill to Create COVID-19 Victim Compensation Fund for Essential Workers](#), KAINE.SENATE.GOV (May 19, 2020).