

Congress of the United States

Washington, DC 20510

November 18, 2020

The Honorable Sonny Perdue
Secretary
U.S. Department of Agriculture
1400 Independence Ave, S.W.
Washington, D.C. 20250

Dear Secretary Perdue:

We write to express concerns regarding the availability of Supplemental Nutrition Assistance Program (SNAP) benefits for a group of supportive living facilities (SLFs) in Illinois that serve low-income seniors and individuals with disabilities, and to express our significant concerns with the ongoing efforts by the U.S. Department of Agriculture (USDA) that jeopardize this community-based arrangement in Illinois. We urge you to use all appropriate administrative flexibilities to postpone looming action that would terminate SNAP benefits for 8,000 vulnerable seniors in the middle of the COVID-19 pandemic.

For more than twenty years, the Illinois SLF program has been a nation-leading model in promoting affordable, independent-living options for disabled and elderly individuals who otherwise qualify for nursing home care. Following the passage of a state law that created this class of facilities, the Illinois SLF model received federal approval in 1997 for a Medicaid Home and Community Based Services (HCBS) waiver under Section 1915(c) of the Social Security Act. This Medicaid waiver enables these vulnerable individuals to receive personal care and health services in an independent and community environment. While the state law requires SLFs to provide three meals per day, which is documented in the federal waiver, Medicaid is not used to pay for food or room and board.

Based on that Medicaid waiver, since 1999 and until very recently, USDA routinely authorized new SLFs and re-authorized existing SLFs across Illinois as SNAP retailers. This enabled the innovative facilities to serve meals in an efficient manner by pooling SNAP benefits for meals for eligible low-income disabled and elderly residents who otherwise would face physical difficulty with conventional grocery purchases using SNAP. However, it appears that USDA has recently decided—based on a rigid and outdated interpretation of “institution”—to oppose this arrangement and jeopardize access to nutrition benefits for this vulnerable population.

To stop USDA’s administrative overreach, the 2018 Farm Bill (Sec. 4007 of P.L. 115-334) prohibited your Department from denying or withdrawing SNAP authorization for these Illinois SLFs, and tasked USDA with conducting a study on the use of SNAP benefits under this arrangement. That report was due to Congress in June 2020. Additionally, the final FY20 omnibus appropriations bill (Sec. 784 of P.L. 116-94) extended the Farm Bill’s moratorium on any de-authorizing actions by USDA against SLFs to December 31, 2020, in order to create a buffer period following the issuance of its Farm Bill report.

USDA was four months late in issuing its report, which was transmitted to Congress in late October 2020. Despite verbal and written commitments, including in testimony provided to Senator Durbin in a Senate Agriculture Committee hearing on April 10, 2019, USDA failed to adequately or directly notify our offices or the Illinois agencies overseeing this program.

Despite prior insinuations made by USDA, the report found no fraud, abuse, or improper use of SNAP funds by these Illinois facilities, with the executive summary document stating, “SNAP benefits have been properly used on behalf of participating households.”

The report indicates that Medicaid has advised similar facilities in other states to consider the Illinois approach as a recommended example on how to use SNAP funds. The report also concluded that the 8,000 individuals served by Illinois SLFs are extremely vulnerable—typically low-income seniors or persons with disabilities on Medicare, Medicaid, and Supplemental Security Income (SSI) who use SNAP to cover their food costs since they are prohibited from doing so with Medicaid and SSI is “often insufficient to cover food costs.” The report also acknowledged that this arrangement accounts for 0.04 percent of national SNAP participants and 0.02 percent of SNAP redemptions, accounting for less than \$7.5 million in Illinois. It is antithetical to USDA’s critical nutrition mission of increasing food security and reducing hunger to use the Department’s limited resources to deny food to these vulnerable Illinoisans.

Nonetheless, USDA concluded that on December 31, 2020 it intends to expel both the Illinois SLFs and their 8,000 low-income seniors and persons with disabilities from SNAP participation. The stated basis for USDA’s changing policy—following 20 years of support for this model—is an inconsistency and ambiguity between Illinois State law, Medicaid’s definitions, and SNAP definitions. Despite USDA not having a statutory definition for “institution”—which is the basis for this decision—USDA has determined that Illinois SLFs qualify as such, despite acknowledging that the stated purpose of Illinois’ Medicaid waiver, which enables this arrangement, is “to avoid institutionalization” within nursing home settings. As the report conceded, “health policy has moved toward deinstitutionalization ... SSI and Medicaid have evolved with this movement, while SNAP has continued to adhere to interpretations dated to 1977.”

Most importantly, it remains unclear why USDA is deciding to decertify 8,000 individuals from SNAP, since they are clearly eligible themselves to qualify for SNAP participation. Further, USDA committed in testimony on April 10, 2019 before the Senate Agriculture Committee that no matter what happened at the end of the moratorium, USDA would “ensure the continuity of SNAP benefits for these 8,000 seniors themselves.”

It is unacceptable to leave 8,000 seniors vulnerable especially during the holiday season and in the middle of the worst public health crisis in a century. We respectfully request that USDA explore every possible grace period, enforcement discretion, or waiver to prevent this catastrophic outcome on January 1, 2021, which may include existing statutory and regulatory flexibilities under the Food and Nutrition Act, flexibilities on “issuance methods” under Section 2203(a)(2) of the Families First Coronavirus Response Act (P.L. 116-127), or authorities provided by the Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136). Such flexibility is warranted due to the acute risk facing these vulnerable Illinoisans due to the COVID-19 pandemic, the lack of readily available housing and nutrition alternatives, and given

that USDA reported it has not performed an impact analysis related to this administrative action. We believe that the strains posed by the COVID-19 pandemic on USDA in issuing the report also lend themselves to providing needed flexibility in how the Department applies its determination.

We stand ready to work collaboratively and in good faith to resolve this issue and preserve access to SNAP benefits for vulnerable populations. We respectfully request that USDA continue to support this federally approved model that fosters a healthy, safe, empowering environment that delivers community-based services to low-income elderly and disabled individuals in Illinois.

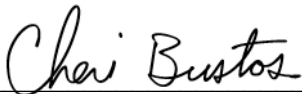
Sincerely,



Richard J. Durbin
United States Senator



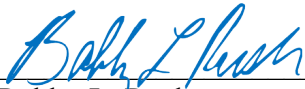
Tammy Duckworth
United States Senator



Cheri Bustos
United States Representative



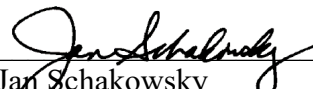
Rodney Davis
United States Representative



Bobby L. Rush
United States Representative



John Shimkus ^{M.C.}
United States Representative



Jan Schakowsky
United States Representative



Darin LaHood
United States Representative




Lauren Underwood
United States Representative




Adam Kinzinger
United States Representative

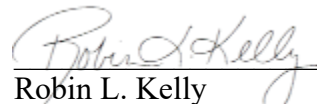



Danny K. Davis
United States Representative

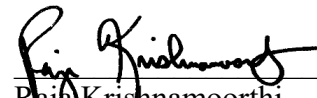



Mike Bost
United States Representative


Bradley S. Schneider
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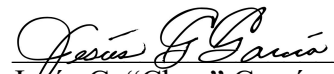

Robin L. Kelly
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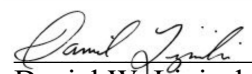

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Cc: Brandon Lipps, Deputy Under Secretary, Food, Nutrition and Consumer Services, USDA