



The Biden-Harris Administration Should Strengthen Our Key Safety Net Programs to Protect the Most Vulnerable

Transition Memo for the Biden-Harris Administration

Community Legal Services provides free legal assistance to low income Philadelphians. Our Health and Independence Unit helps families, seniors, and individuals who are struggling to receive the federal benefits they need to put food on their table, pay their bills, and get health care, including long term supports and services. Our clients include survivors of domestic violence, low wage and unemployed workers, people with disabilities, parents caring for young children, and seniors.

Our nation's safety net programs have been under attack for the last four years and urgently need strengthening. The pandemic has exacerbated the need for these programs, while exposing inequities and inadequacies, which disproportionately harm communities of color. We are excited about working with the Biden-Harris administration, and urge you to consider these three basic principles for all programs:

Focus on the needs of the lowest income families and seniors. Families in deep poverty have been the least likely to get any additional assistance during the pandemic—and they are struggling to feed their families, to access the medical care they need, and to meet basic needs.

Invite immigrants back. The Trump administration's attacks on immigrants, and in particular its public charge regulations, led to great confusion in immigrant communities and led many *eligible* families to decline SNAP and Medicaid, including for their citizen children, even though the public charge rules did not apply to them. The Biden administration should prioritize reassuring these families and welcome them back onto benefits programs for which they are eligible.

Streamline eligibility. The application process for benefits is too frequently still handled as it was decades ago, with paper applications – often separate for each program – and paper “verification” of eligibility. The Biden administration should prioritize cross-program eligibility (e.g., some SNAP recipients may be automatically eligible for Medicaid), use of electronic data sources to verify eligibility, and application simplification wherever possible.

Our highest priority recommendations concerning USDA and DHHS are below.



USDA

The Supplemental Nutrition Assistance Program (SNAP, formerly food stamps) is the nation's first line of defense against hunger. The Trump administration attempted to slash SNAP participation and cut benefits – actions that must be reversed. The Biden administration should:

- 1. Immediately reverse the Trump Administration decision to deny SNAP Emergency Allotments to the neediest Americans during the pandemic.** In Section 2302 of FFCRA, Congress authorized emergency allotments to address SNAP households' needs during the pandemic. Unfortunately, USDA interpreted the law inappropriately and only brought SNAP households up to the regular maximum benefits for their household, rather than authorizing benefits to help all SNAP households. As a result, the most -poor (who already receive the maximum benefit) now receive NO additional funds to address what are obviously serious pandemic needs. Community Legal Services, with co-counsel Morgan Lewis, successfully sued USDA (*Gilliam v. USDA* (E.D. PA)) and obtained a preliminary injunction in federal court in September 2020. The judge found USDA's interpretation "contrary to law." The Third Circuit Court of Appeals declined to stay the injunction. USDA has not corrected its policy. Worse, USDA has threatened Pennsylvania with recoupment of the court-ordered emergency allotments if USDA eventually prevails in this litigation, without any authority to do so. With this threat in mind, Pennsylvania has been reluctant to issue the SNAP benefits. The Biden administration should:
 - i. Inform Pennsylvania that USDA will not seek reimbursement of benefits issued pursuant to the preliminary injunction;
 - ii. Settle the *Gilliam v. USDA* lawsuit immediately by dropping opposition to the injunction; and
 - iii. Issue new guidance that would immediately authorize all states to seek and obtain emergency allotments for the poorest SNAP recipients.
- 2. Boost the SNAP benefit for all households during the economic decline and beyond.** SNAP benefits are woefully inadequate. Academic studies support the testimony of our clients that the maximum SNAP benefit cannot provide a healthy diet in today's world. During the Great Recession, Congress boosted SNAP benefits by 15% for the duration of the economic decline. This both helped families and seniors and boosted the economy, as SNAP benefits are spent promptly and locally. We are joining the Center on Budget and Policy Priorities, FRAC, Feeding America and other anti-hunger groups across the country in urging a 15% increase during the current economic downturn.
- 3. Abandon (or if necessary, take steps to rescind) regulatory proposals to cut SNAP.** The Trump Administration proposed three sets of regulations, each of which would have devastating effects on Pennsylvania's SNAP recipients. Each should be abandoned, or, if the Trump administration rushes to finalize them before the Biden inauguration, rescinded. They are:



- i. Broad-based categorical eligibility. This proposed rule change would limit state flexibility to increase the gross income limit for SNAP eligibility and to alter or eliminate the asset test for eligibility, thereby trapping people in poverty and creating a harmful “benefits cliff.”
- ii. Standard Utility Allowance: This proposed rule would limit state flexibility in calculating a standard utility cost for SNAP recipients, overturning decades of precedent. The proposal would cause 19 percent of SNAP households nationwide to receive lower SNAP monthly benefits, would disproportionately harm elderly people and people with disabilities, and would cause a national net cut to SNAP benefits amounting to \$4.5 billion over five years.
- iii. Able-bodied adults without dependents: This finalized rule has been blocked by a nationwide injunction. The Biden administration should decline to appeal the injunction. The affected people are among the most vulnerable, typically with no income and unable to work because of health, transportation, education, language, or criminal record barriers.

DHHS

1. **Ensure that Temporary Assistance for Needy Families (TANF) cash assistance program is robust and available to help the lowest income families.** The TANF program has dwindled since it was created in the “welfare reform” of 1996 so it no longer provides a safety net for the poorest families. In 1996, 68 families received TANF for every 100 families in poverty nationwide; in 2018, only 22 families received TANF for every 100 families in poverty. In Pennsylvania, the caseload has declined over 80%, while the maximum grant amount for a family of three -- \$403 a month -- has remained unchanged since 1990. This program is desperately needed, but wholly inadequate. A prime reason for the caseload decline and lack of a grant increase is the block grant structure, which encourages states to spend TANF block grant dollars on more politically popular programs, such as child care assistance. We urge the Biden administration to strengthen TANF so that families facing crises such as homelessness, domestic violence, or illness can receive the income they need to stabilize and move ahead. States should be required to spend a certain share of their block grants on cash assistance and other ways that directly benefit families.
2. **Preserve the moratorium on Medicaid terminations and reductions during the public health emergency.** The moratorium on Medicaid cut-offs Congress adopted as part of the Families First Coronavirus Response Act has been critical for CLS’s clients during the pandemic. During this time when County Assistance Offices are closed, the assurance that our clients will not lose Medicaid for being unable to navigate the paperwork involved has prevented countless health emergencies. The Biden administration should preserve this moratorium until the public health emergency has ended. Furthermore, when the moratorium eventually ends, Medicaid beneficiaries should have a new opportunity to establish their continued eligibility prior to any cut-off. An individual’s situation may have changed during the course of the pandemic, and states should not be permitted to terminate benefits based on outdated information.



- 3. Require and ensure adequate staffing in nursing facilities.** More than 100 studies over the past 25 years have found that adequate nurse and nursing assistant staffing levels are essential to the provision of quality care in nursing facilities. A landmark 2001 report issued by the Department of Health and Human Services (HHS) identified minimum staffing thresholds beneath which the quality of care is compromised. The report recommended a daily minimum number of 4.1 total nursing hours, and stated that staffing levels below this minimum placed residents at risk. Most states require and nursing facilities staff at far lower levels. In Pennsylvania, for example, nursing facilities are only required to provide 2.7 hours of total nursing care per resident per day. The need to ensure adequate staffing in nursing homes has been dramatically underscored by the COVID-19 pandemic: recent studies have shown a link between higher staffing levels and lower numbers of COVID-19 cases and deaths in nursing facilities. Li, Y. “COVID-19 Information and Deaths Among Connecticut Nursing Home Residents: Facility Correlates”, *Journal of the American Geriatrics Society* (June 18, 2020). The Biden administration should amend regulations to require nursing facilities to provide staffing at the 4.1 hours per resident per day standard urged by the 2001 HHS study.
- 4. Expand Access to Home and Community Based Services:** Older adults and people with disabilities overwhelmingly desire to live in their own homes, rather than nursing facilities, and home and community based services are less expensive to fund than institutional care. As we have seen this year, facility care also carries a much greater risk of infection and death from COVID-19. Current policies, however, continue to prioritize the availability of institutional care. For example, elderly and disabled Pennsylvanians faced with an immediate need for long term services and supports must navigate arduous eligibility determination processes before they can receive care, while they can enter nursing facilities immediately and apply for Medicaid after admission. In our practice, we have noted that the wait times for eligibility decisions are impractically long for the immediate need of this population, forcing many into nursing homes. Beyond these obstacles, an individual may only qualify for home and community based care if there are available slots in their state's HCBS waiver program, while Medicaid nursing home coverage is an entitlement. This bias should be reversed by allowing rapid or presumptive eligibility determinations and expanding HCBS programs so that older adults and people with disabilities can receive services in their preferred community integrated setting.

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