

March 13, 2020

The Honorable Richard Shelby
United States Senate
304 Russell Senate Office Building
Washington, DC 20510

The Honorable Patrick Leahy
United States Senate
437 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Shelby and Ranking Member Leahy:

We write to urge swift action to provide additional regulatory flexibilities within the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) – the nation’s leading public health nutrition program for pregnant and postpartum women, infants, and children up to the age of five. In light of the continued spread of COVID-19, additional flexibilities are necessary to ensure continued nutrition support and services for WIC participants in the midst of this public health emergency. Your action is essential to ensuring the health and wellbeing of many women, infants, and children in the United States.

The signatory organizations are dedicated to ensuring healthy pregnancies and positive growth and development for infants and young children. The National WIC Association is the non-profit membership organization for more than 12,000 WIC service providers. The American Academy of Pediatrics represents 67,000 primary care pediatricians, pediatric medical subspecialists, and surgical specialists who are committed to the attainment of optimal physical, mental, and social health and well-being for all infants, children, adolescents, and young adults. The American College of Obstetricians and Gynecologists represents over 60,000 physicians and other clinicians dedicated to the advancement of women’s health care.

Each of our organizations recognizes the urgency of providing clarity and flexibility to WIC providers to support ongoing nutrition and breastfeeding support throughout the response to COVID-19. As more cases are confirmed and social distancing is encouraged by the government and public health community, an increasing number of participants will experience challenges in accessing WIC’s services. **To best provide the flexibility necessary to meet the needs of WIC participants, we write in strong support of the WIC-related provisions in the House package and urge the inclusion of similar language in the final legislation.**

Most urgently, WIC requires additional regulatory flexibilities to conduct remote certifications. Under existing law, WIC’s physical presence requirement (42 U.S.C. § 1786(d)(3)(C)) establishes that participants – including infants and children – must be present at the WIC clinic in order to complete certification and be eligible for benefits. The physical presence requirement is an important provision that helps establish an interpersonal connection and trust between WIC staff and participants. However, with increasing anxiety and fear among all families, the requirement for physical presence will likely present a significant barrier to accessing critical WIC services. Expected clinic closures will challenge families to find accessible clinics, also creating barriers to certifying new participants and retaining current participants.

Local agencies currently have statutory authority to waive the physical presence requirement in limited situations – all of which are only for certified children who have a parent completing the appointment in-person. Additional discretion for local agencies is necessary to permit remote certifications –for confirmed individuals with COVID-19, for extended family members who are

eligible for WIC, and to promote social distancing and prevent exposure. Where possible, agencies should be encouraged to utilize real-time video technologies to connect with applicants – but this should not be required given access and equity concerns.

We recommend additional waiver authority to relax regulatory requirements and provide relief to service providers, retailers, and other stakeholders throughout the COVID-19 response. Broad waiver authority limited to the public health emergency context could also resolve the following concerns:

- **Certification and Re-Certification:** Current regulations permit short-term (30 days) extensions of certification periods for breastfeeding women, infants, and children. There are no provisions that permit automatic rollover of certified participants into new categories, which can delay issuance of new food packages to meet changing dietary needs. This is most pronounced for pregnant women who have shifted to one of the postpartum categories and for infants who have aged in to the child certification period. We urge Congress to review the presumptive eligibility provisions for pregnant women (42 U.S.C. § 1786(d)(3)(B)) to streamline remote certification options for certified participants who are shifting into a new category.
- **Benefit Issuance and Redemption:** State agencies currently have flexibility to issue up to three months of benefits for a certified participant. Congress or USDA should clarify whether state agencies have the authority to issue additional months of benefits within a certification period to ensure consistent access to nutritious foods. This may be especially critical for the states with offline electronic-benefit transfer systems – specifically Arkansas, Louisiana, New Mexico, Ohio, Texas, and Wyoming. Where possible, state and local agencies should leverage online platforms, telephones, and other strategies to provide nutrition education and breastfeeding services remotely to participants.

Participants may also face challenges procuring supplemental foods due to stocking shortages, illness, or concern about exposure. State agencies should be granted the authority to extend the last date of use for issued benefits beyond 30 days, permitting rollover of unredeemed benefits for a limited time period.

With respect to stocking shortages, we urge USDA to immediately issue guidance to clarify existing flexibilities regarding compliance and monitoring of authorized WIC vendors. USDA should develop best practices for state agencies to engage vendor and retail stakeholders, clarifying that state agencies may redefine minimum stocking requirements and delay monitoring visits and compliance buys. At this time, we do not believe a specific waiver of the federal minimum stocking requirements is a necessary step to ensure continued access to authorized WIC vendors.

- **Alternative Food Delivery Systems:** Nearly all state agencies have retail food delivery models, with the majority relying on electronic benefit transfer systems. Under current regulations, state agencies also have authority to establish home delivery or direct distribution models. State agencies do not have the authority under current regulations to permit redemption of WIC foods through online platforms, as redemption must be conducted in the presence of a cashier. Congress should permit waiver of the cashier/signature requirement and provide additional support to state agencies should alternative food delivery systems need to be scaled up in a relatively short time period.

- **Remote Clinic Operations:** In affected communities, state or local agencies may require clinic staff to work from home to ensure their own safety and reduce exposure. Additional waiver authority may be necessary to address the logistical challenges of remote clinic operations, including relief from the separation-of-duties provisions. Guidance and dissemination of best practices would be critical to ensure adequate protections for participant data, especially if remote clinic operations necessitate the use of individual telephones or computers.

In light of the public health risks posed by COVID-19, we urge Congress to act swiftly to ensure continued access to healthy foods, nutrition services, and breastfeeding support. As communities promote social distancing and face a higher number of confirmed cases, flexibility and clarity will be key to properly serving WIC families in a rapidly changing environment. We look forward to collaborating with your offices to do right by WIC providers and the families that they serve.

Sincerely,

National WIC Association (NWA)
American Academy of Pediatrics (AAP)
American College of Obstetricians and Gynecologists (ACOG)

cc: The Honorable Mitch McConnell
The Honorable Charles Schumer
The Honorable Pat Roberts
The Honorable Debbie Stabenow
The Honorable John Hoeven
The Honorable Jeff Merkley