

Congress of the United States

Washington, DC 20510

November 14, 2019

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 draw your attention to recent Congressional activity regarding a class of supportive living facilities (SLFs) in Illinois that serve 8,000 low-income seniors and individuals with disabilities, and to express our concerns with the continued hostility of the U.S. Department of Agriculture (USDA) toward the Supplemental Nutrition Assistance Program (SNAP) authorization for these community-based living facilities in Illinois.

For more than twenty years, the Illinois's SLF program has been a nationally leading model in promoting affordable, independent-living options for disabled and elderly individuals who otherwise qualify for nursing facility care. Following the passage of a state law that created this class of facilities, Illinois's 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 federal waiver, since 1999 and until very recently, USDA consistently authorized new SLFs and re-authorized existing SLFs across Illinois as SNAP participants, enabling the facilities to serve meals in an innovative and efficient manner by pooling SNAP benefits for meals for eligible low-income disabled and elderly residents who otherwise would face physical difficulty with conventional individual grocery purchases using SNAP. However, it appears that USDA has made a recent preliminary policy determination—based on a rigid interpretation of “institution”—that jeopardizes access to nutrition benefits for this vulnerable population. USDA staff confirmed in a meeting on February 25, 2019 that there were no substantiated allegations of fraud, abuse, or improper payments made to any SLF facilities, which counters your insinuation in a subsequent Congressional hearing.

We have previously urged you—through letters and questions in Congressional hearings—to continue USDA's decades-long practice of authorizing and re-authorizing SLFs as SNAP participants to ensure consistent nutritional support for 8,000 low-income elderly and disabled individuals in Illinois. We believe USDA's limited resources should not be used to deny food to these vulnerable Illinoisans.

To stop USDA's administrative overreach, we secured a provision in the Farm Bill (Sec. 4007 of P.L. 115-334) that ensures an 18-month reprieve for Illinois SLFs from any action to deny or withdraw SNAP authorization. The new statutory language is explicit: *"Nothing in this subsection shall authorize the Secretary to deny any application for continued authorization, any application for authorization, or any request to withdraw the authorization of any such facility, program, or arrangement based on a determination that residents of any such facility or entity are residents of an institution..."*

However, it has come to our attention by the State of Illinois and through a complaint filed in the U.S. District Court for the Central District of Illinois against USDA's Food and Nutrition Service (FNS) that USDA is apparently ignoring the law and failing to act upon applications from SLFs for SNAP authorization. It is our understanding that multiple SLFs may be in this position despite no apparent deficiencies in their applications.

In an April 10, 2019, hearing of the Senate Agriculture Committee, FNS Administrator Lipps publicly committed to working with all stakeholders, including SLF residents, facilities, the State of Illinois, and our Congressional offices, to provide adequate notification prior to taking any action against SLFs (in addition to committing to ensure the continuity of SNAP benefits for these seniors and disabled individuals). We are concerned that USDA's commitment to working collaboratively and in good faith to resolve any issues and preserve access to SNAP benefits for a vulnerable population has not been upheld.

A provision was included in the Senate's FY20 Agriculture appropriations bill to extend the Farm Bill's moratorium under Sec. 4007 on any adverse actions by USDA against SLFs. This provision was necessary to provide a buffer period as we continue to work out a long-term solution given the Department's failure to comply with the law thus far.

For more than twenty years, the SLF program in Illinois has utilized a federally approved model to foster a healthy, empowering environment that delivers community-based services to low-income elderly and disabled individuals. We want this community-based arrangement to continue into the future with approval from USDA. Therefore, we request the following:

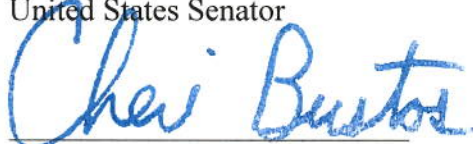
1. Provide a substantive response to the letter sent on June 28, 2017, by the Illinois Department of Human Services to FNS;
2. Process the pending applications submitted from supportive living facilities in Illinois to USDA/FNS for SNAP authorization;
3. Provide a written explanation of how USDA/FNS would be meeting the statutory definition of "food", specifically under clause (3) of 7 U.S.C. 2012(k), if Illinois' SLFs were not authorized as SNAP vendors;
4. Provide our offices with technical assistance or legislative recommendations to clarify the permissibility of facilities such as the SLFs in Illinois to participate as SNAP-authorized vendors while maintaining their current food service model.

Thank you for your attention to this matter. We look forward to your timely response, no later than December 31, 2019.

Sincerely,



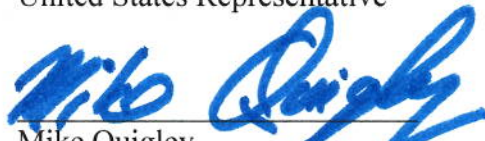
Richard J. Durbin
United States Senator



Cheri Bustos
United States Representative



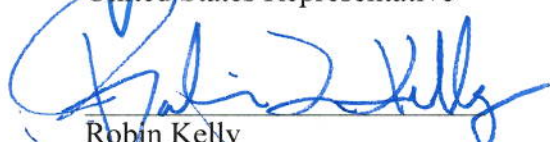
Sean Casten
United States Representative



Mike Quigley
United States Representative



Jan Schakowsky
United States Representative



Robin Kelly
United States Representative



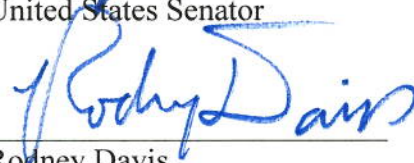
Bradley S. Schneider
United States Representative



Jesús G. "Chuy" García
United States Representative



Tammy Duckworth
United States Senator



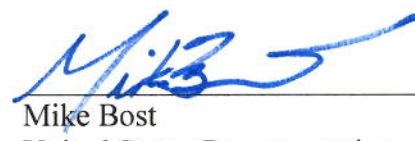
Rodney Davis
United States Representative



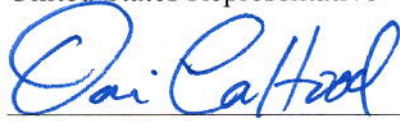
John Shimkus
United States Representative



Adam Kinzinger
United States Representative



Mike Bost
United States Representative



Darin LaHood
United States Representative



Raja Krishnamoorthi
United States Representative



Danny K. Davis
United States Representative