

March 20, 2020

Governor Pete Ricketts
P.O. Box 94848
Lincoln, NE 68509

Dear Governor Ricketts;

Thank you for your leadership in protecting Nebraska residents from the spread of COVID-19. We are grateful for the rapid and diligent work of the administration to keep Nebraskans healthy and safe. Collectively, the undersigned organizations represent Nebraska communities that will be hardest hit by the health and economic impacts of this crisis. The Nebraskans that we represent have long experienced significant barriers to opportunity even in the best economic conditions, and during this unprecedented crisis we must act immediately as a state to support them now and in the long-term.

We are writing to request immediate information and urge action from the Nebraska Department of Health and Human Services (DHHS) regarding policy choices and administrative practices that can help Nebraska families in coping with the coronavirus pandemic. It is our hope that during this difficult and uncertain time, Nebraska children and families can take every necessary precaution to keep their family safe and healthy while doing their part to reduce the spread in their communities.

Nonprofits across Nebraska have quickly stepped up to support families and fill gaps in community services, and we want to ensure that our efforts are complemented by a systemic response from the state. Considering recent announcements made by federal agencies regarding flexibilities in programs administered by DHHS, we are requesting additional information and action on the following programs. The Emergency Management Act provides the Governor broad powers to suspend regulatory statute of state agencies during an emergency,ⁱ and we believe that our recommendations would provide significant relief and protection to many vulnerable Nebraskans. We would urge swift action to support Nebraskans during this time as outlined below.

Supplemental Nutrition Assistance Program (SNAP) and Child Nutrition Programs

The disruption of school meals offered at no or reduced cost to low-income children in Nebraska demands an immediate and proactive response that maximizes existing nutrition assistance programs. The U.S. Department of Agriculture (USDA) has released coronavirus-specific information regarding flexibilities within child nutrition programs and the Supplemental Nutrition Assistance Program (SNAP).ⁱⁱ We urge DHHS to consider the following:

- **Streamline certifications and recertifications of applicants and participants in SNAP** to expedite the distribution of benefits to needy families. During this time, it is critical that families can receive assistance in a timely manner, and measures to streamline processes will ease the growing administrative burden on department staff as more families become eligible for benefits. We urge DHHS to increase certification periods to a minimum of 12 months for all households from existing certification periods described in 475 Neb. Admin. Code 4-002.02. We would also urge DHHS to permit self-attestation as a source of verification as described in 475 Neb. Admin. Code 2-003.02 and to waive verification of non-financial eligibility factors altogether, such as medical expenses for elderly participants to provide flexibility to participants who many be unable to access appropriate documentation during this time.

- **Temporarily suspend face-to-face interviews for Quality Control (QC) purposes** to further minimize the spread of the coronavirus. We urge DHHS to notify Food and Nutrition Services (FNS) of its intention to conduct telephone interviews for QC case reviews during this emergency.
- **Provide guidance regarding work requirements and “good cause” exemptions** to ensure that the illness of an individual or household member, temporary reduction of hours or absence of work, or temporary layoff does not prevent families from accessing food assistance. We urge the DHHS to review the current work requirements in 475 Neb. Admin Code 3-001.04 and good cause exemptions in 475 Neb. Admin. Code 3-001.04E2 and clarify how the current requirements interact with the reality of the unfolding coronavirus outbreak.
- **Temporarily suspend fair hearing requirements and adverse actions against participants in the Women, Infants, and Children (WIC) program** to ensure that children and families who are unable to participate in the appeals process due to the pandemic do not lose nutritional assistance. We urge DHHS to suspend time limit requirements for fair hearings in 181 Neb. Admin. Code 4-004, delay the scheduling of fair hearings in 181 Neb. Admin. Code 4-005, and to delay adverse actions against participants who experience a change in eligibility during the crisis.

We would also urge that the state maximize new administrative flexibilities offered in the federal Families First Coronavirus Response Act (HR 2601), recently signed by President Trump earlier this week. We urge DHHS to consider the following:

- **Immediately develop a state plan to provide emergency Electronic Benefit Transfer (EBT) allotments to families who would receive free or reduced-price school meals if not for school closures** to strengthen food assistance to needy families. The Nebraska Department of Education (NDE) has already started the process of seeking waivers to for serving summer food service programs in school sites and congregate meal requirements. With new authority under the Families First Coronavirus Response Act, we urge you to immediately submit a plan to the USDA as is authorized in Sec. 1101(b) of HR 2601.
- **Maximize benefit allotments to SNAP recipients** to leverage additional federal funds in support of low-income Nebraska families during the crisis. We urge DHHS to submit a COVID-19 Response Waiver as is authorized in Sec. 2302(a)(1) of HR 2601 to provide temporary benefits to SNAP households at the maximum monthly allotment for the duration of this emergency and to waive current benefit calculation requirements currently provided in 475 Neb. Admin. Code 4-001.
- **Temporarily suspend requirements for applicants and participants to be physically present for certification of participation in the WIC program** to ensure that children and families can remain safely at home without losing nutritional assistance. We urge DHHS to request such a waiver from the USDA as is authorized in Sec. 2203(a)(2) of HR 2601.

Aid to Dependent Children (ADC)

ADC, Nebraska’s cash assistance and work support program, provides basic assistance to some of the lowest income families in Nebraska. These families receive a relatively small level of support every month and are typically required to engage in work activities or face sanctions. In a time when we are asked to engage in social distancing and employment is challenging to maintain there are several actions that should be taken.

- **Provide lump-sum increases in ADC assistance to allow families to purchase food and other needed supplies.** Families participating in ADC receive a small grant every month, \$468 per month for a family of three. These families would benefit from additional support to address

additional food, cleaning, medical and other costs during the coronavirus crisis. A one-time lump sum payment could be made to these families from the TANF reserve, which would be permitted under state statute (Neb. Rev. Stat. Sec. 43-512 limits “monthly assistance” to 55% of the Standard of Need).

- **Temporarily suspend work requirements and sanctions for failing to complete work requirements.** Under state statute, most individuals must engage in work activities for a set amount of time per week, unless they are exempt or lack the “capacity to work.” In the present environment participants should not be expected to engage in work activities as normal. The administration could interpret state statute to allow individuals to either be exempt or lack the capacity to work during the duration of a national or state coronavirus emergency. Failing this, “good cause” for being unable to meet work requirements should be liberally provided to ADC participants to prevent unnecessary exposure in the workplace and sanctions for failing to meet work requirements.

Medicaid and the Children’s Health Insurance Program (CHIP)

Medicaid and the Children’s Health Insurance Program (CHIP) protects the health of low-income Nebraska children and families, including nearly one-third of all Nebraska children. During this emergency, and as more Nebraskans become eligible for public health insurance, we urge the department to consider steps to minimize loss of health insurance coverage and proactively reduce administrative burdens for DHHS staff. The U.S. Centers for Medicare & Medicaid Services (CMS) has released coronavirus-specific information for state Medicaid and CHIP agencies,ⁱⁱⁱ in addition to existing guidance to states in responding to public health crises and natural disasters.^{iv} We would urge the department to consider the following:

- **Immediately expand Medicaid to adults at 138% of the federal poverty level (FPL).** Health insurance coverage plays a significant role in ensuring those that become ill with the coronavirus can quickly access needed treatment, through a primary care provider or through more significant interventions for those that need them. Without Medicaid expansion our health care system is missing a critical tool to combat the spread and toll of this illness in our communities. Under federal rules, Nebraska can amend its state plan with an earlier effective date and immediately begin enrollment, covering people that have medical bills retroactively for 90 days. We urge the Department to take this action and begin enrollment immediately.
- **Cease redeterminations during the public emergency** to reduce the administrative burden on DHHS during the crisis and ensure continuity of coverage. We anticipate significant increases in Medicaid and CHIP eligibility for the foreseeable future and a suspension of redetermination of eligibility for current enrollees would help Nebraska comply with federal maintenance of effort requirements.
- **Immediately enroll applicants who are eligible based on information provided and obtain verification after enrollment** to further reduce administrative workload while ensuring that Nebraskans newly eligible for Medicaid can receive necessary health care immediately.
- **Extend presumptive eligibility determinations to additional populations** to expedite care for individuals who come to the attention of healthcare providers during this public health crisis.
- **Temporarily suspend fair hearing requirements and adverse actions for participants** as required by 477 Neb. Admin. Code 10-001 to ensure that families who are unable to participate in the appeals process due to quarantine measures do not experience a disruption in coverage.
- **Temporarily delay acting on changes in circumstances that affect eligibility and cease periodic income checks** to ensure that temporary changes in circumstances as a result of the coronavirus outbreak do not result in a loss of coverage.

Child Care Subsidy Program

The child care subsidy program ensures that low-income working parents can access quality and affordable child care. During this pandemic, we urge DHHS to consider immediate changes in order to stabilize access to child care in the face of school closures and mandatory reductions in child care class sizes. U.S. Administration for Children and Families (ACF) has released coronavirus-specific information regarding flexibilities^v in administering programs funded by the Child Care and Development Fund (CCDF), in addition existing guidance for emergency situations.^{vi} We urge DHHS to consider the following:

- **Temporarily suspend redetermination for eligibility for child care services** to ensure that temporary changes in family workforce participation, earnings, or other factors related to the COVID-19 outbreak do not impact eligibility. We urge DHHS to adopt policies that will exempt coronavirus-related changes from requirements for a change in status during redetermination as is currently required by 392 Neb. Admin. Code 2-003.04A.
- **Temporarily waive attendance and absence-related policies** to ensure that families and providers are not penalized for coronavirus-related absences. We urge DHHS to consider allowing for payment by enrollment instead of actual attendance as is currently required by 392 Neb. Admin. Code 4-003.01A to encourage families to keep children at home if someone in the household has been exposed to coronavirus, while also protecting providers from unstable revenue during this time.
- **Temporarily waive co-pay requirements for families** to ensure that families impacted by coronavirus-related changes to their work schedules and income can maintain access to child care. We urge DHHS to consider allowing providers to waive the family fees currently required by 392 Neb. Admin. Code 3-009 to minimize disruption to families and strengthen provider availability during this uncertain time.

Child Welfare

Our child welfare system provides critical services and support to ensure that, whenever possible, families can get the support they need to stay together. Children who must be removed from the home and placed in foster care or with relatives and kin should be kept safe, have their needs met, and achieve reunification and permanency in a timely manner. Children and youth who have experienced trauma cannot afford to have their cases languish or lose crucial services that keep them safe and their families whole. To ensure the needs of children and families continue to be met, we encourage DHHS to:

- **Increase foster care payments and support for kin caregivers.** Foster parents and kin caregivers that are providing additional care or must arrange new child care for children during school or child care center closures should see an increase in their monthly financial support and respite care. This is particularly important for families with high-needs kids and those with special education needs.
- **Ensure continuing access to services.** During the current coronavirus emergency, it will remain critically important for courts and the department to work with providers to ensure families continue to access court-ordered or voluntary services, such as visitation and treatment. Working together to provide these services will help prevent delays in reunification and permanency.

Youth Rehabilitation and Treatment Centers (YRTC)

Research by health care experts shows that incarcerated populations are most at risk during a public health crisis. COVID-19 spread quickly in enclosed spaces such as cruise ships and nursing homes and it will spread just as quickly in detention centers, prisons, and jails. Contagious viruses such as COVID-19

spread much faster in detention centers and prisons as incarcerated youth are in close quarters and sometimes in unsanitary conditions. Infection control is a challenge in large congregate and communal settings, and the facility footprint and operations of the Y RTCs are not adequate to contain a contagious virus of this nature. Even as the Office of Juvenile Services has struggled to maintain youth and staff safety this year, COVID-19 presents a new and additional challenge that must be met. We urge DHHS to:

- **Renew the request to courts to halt new admissions to Y RTC until the crisis has passed.** COVID-19 is a public health crisis, and not a safe or appropriate moment to bring new youth into the Y RTC setting.
- **Initiate discharge proceedings for all youth currently committed, and collaborate with Probation, attorneys and courts to create and implement speedy transition plans that provide for youth and community safety.** Plans should ensure discharged youth have a place to live, will have their basic and treatment needs met, and receive immediate and continuing access to medical care and ongoing supports and supervision as necessary.
- **Institute an emergency discharge process for youth who demonstrate COVID-19 symptoms, who have chronic illnesses, such as asthma or diabetes; other serious illnesses; or are otherwise in need of medical care.** The safety risk to youth and staff at the Y RTCs presented by COVID-19 cannot be overstated, and those most at risk cannot wait for a 60-day discharge hearing.
- **Maintain unlimited family contact for youth by electronic and telephonic means until discharge occurs.** Ensuring access to family and support networks through guaranteed and plentiful access to calls is a necessary measure to maintain safety during a time of fear, stress, and emotional strain.

We applaud the tireless work of your office and DHHS in recent weeks to provide information and assistance during this uncertain and difficult time for Nebraskans. These are unprecedented times, and it is important that the above programs can adequately buffer low-income Nebraska families from the lasting economic shocks that are certain to reverberate from our collective response to COVID-19. No one should be denied assistance because they are doing their part to protect their family's health and the health of the public by following federal and state recommendations for social distancing. We must take every step to protect the vulnerable children who are in the care of the state through this crisis. We appreciate your urgent attention to this matter and stand ready to support these recommendations and disseminate information to Nebraska families.

Sincerely,

The Arc of Nebraska
Asian Community & Cultural Center
Big Brothers Big Sisters of Central Nebraska
Coalition for a Strong Nebraska
College Possible
Community Action of Nebraska
Completely KIDS
Disability Rights Nebraska
Heartland Workers Center
Inclusive Communities
inCOMMON Community Development
KVC Nebraska

Nebraskans Against Gun Violence
Nebraska AIDS Project
Nebraska Appleseed
Nebraska Association of Homes and Services for Children
Nebraska Civic Engagement Table
New Life Family Alliance
No More Empty Pots
Nonprofit Association of the Midlands
Planned Parenthood North Central States - Nebraska
Release Inc
RISE
Voices for Children in Nebraska
Women's Fund of Omaha
YWCA of Grand Island

cc:

Dannette Smith, CEO, DHHS
Members of the Health and Human Services Committee of the Nebraska Legislature
Members of the Judiciary Committee of the Nebraska Legislature

ⁱ Neb. Rev. Stat. 81-829.40(6)(a).

ⁱⁱ "FNS Response to COVID-19," U.S. Department of Agriculture, Food and Nutrition Service, March 16, 2020, <https://www.fns.usda.gov/disaster/pandemic/covid-19>.

ⁱⁱⁱ "COVID-19 Frequently Asked Questions (FAQs) for State Medicaid and Children's Health Insurance Program (CHIP) Agencies," U.S. Department of Health and Human Services, Centers for Medicare & Medicaid, March 18, 2020, <https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf>.

^{iv} "Inventory of Medicaid and CHIP Flexibilities and Authorities in the Event of a Disaster," U.S. Department of Health and Human Services, Centers for Medicare & Medicaid, Medicaid and CHIP Coverage Learning Collaborative, August 20, 2018, <https://www.medicaid.gov/state-resource-center/downloads/mac-learning-collaboratives/medicaid-chip-inventory.pdf>.

^v "CCDF Frequently Asked Questions in Response to COVID-19," U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Care, <https://docs.google.com/document/d/1z4mQ9SkGYuh2Ocji6QKuSN4JKs0IFGdp4QuxiTYvA4E/edit>.

^{vi} "Flexibility in Spending CCDF Funds in Response to Federal or State Declared Emergency Situations," U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Care, CCDF-ACF-IM-2017-02, <https://www.acf.hhs.gov/occ/resource/im-2017-02>.