

STATE OF NORTH CAROLINA  
OFFICE OF THE GOVERNOR

ROY COOPER  
GOVERNOR

March 18, 2020

The Honorable Donald J. Trump  
President of the United States  
The White House  
1600 Pennsylvania Avenue, SW  
Washington, DC 20500

Dear President Trump:

Thank you for your ongoing communication and your administration's support of North Carolina and states across the country as we respond to the COVID-19 pandemic. There continues to be more that must be done in order to keep people safe and healthy as this process unfolds through the weeks and months ahead.

On March 10, 2020, I signed Executive Order No. 116 declaring a State of Emergency in North Carolina to coordinate our response and protective actions to prevent the spread of COVID-19. On March 13, 2020, you declared a national state of emergency due to the spread of the COVID-19 virus. On March 15, 2020, I signed Executive Order No. 117 ordering the closure of all public schools in the State of North Carolina and limiting the gathering of more than 100 people. On March 17, 2020, I signed Executive Order No. 118 ordering the closure of bars and restaurants in North Carolina.

As of March 18, 2020, there are 63 confirmed cases of COVID-19 in North Carolina. To prepare for wider impacts to the health and well-being of North Carolinians, we have taken steps to address potential food insecurity and access to health care.

### **Food Security**

The spread of the COVID-19 virus has resulted in numerous retailers in counties across the state reducing hours of operation or temporarily ceasing business for several weeks. The widespread panic surrounding COVID-19 has caused many retailers to experience extreme shortage of goods for purchase. Providers are reporting that dairy products, grain products, fresh proteins, and fresh fruits and vegetables are in short supply in area grocery stores. These shortages have impacted North Carolinians' ability to purchase food for home preparation. Unfortunately, food supply chains may also have limited supply as demand of certain items increases.

Many families are dependent upon meals at schools and care facilities for their primary source of nourishment. Institution closures threaten the health and well-being of our most vulnerable people when access to nutritious, appealing meals is lost.

In an effort to ensure the people of North Carolina, including our child and youth population, have adequate access to food during this time of crisis, we are requesting the following waivers from the federal government, and my administration has been in constant contact with federal agencies around these items in recent days.

**Supplemental Nutrition Assistance Program (North Carolina Food and Nutrition Services)**

- 1) North Carolina submitted a waiver request on March 16, 2020, to allow hot foods and hot food products prepared for immediate consumption to be considered "eligible foods" as long as they are purchased in FNS-authorized retail food stores for the entire State. Currently, Section 3(k)(1) of the Food and Nutrition Act of 2008 excludes hot foods from the definition of "food." Prompt approval of this waiver is critical to support our response efforts in the State.
- 2) The Families First Coronavirus Response Act (H.R. 6201) (the Act) includes two provisions that will have an important impact on supporting families engaged in our Food and Nutrition Services program.
  - a. Section 1101 of the Act provides a supplemental benefit to all families with at least one eligible child. Should the Act become effective North Carolina is requesting a determination that the implementation of this Section applies to all eligible children and their families regardless of whether their school system makes school meals available by other means during the period of school closure.
  - b. Section 2301 of the Act provides flexibility for low-income jobless individuals, including the time limits an Able-Bodied Adults With Dependents (ABAWD) can receive Supplemental Nutrition Assistance Program (SNAP) benefits to 3 months in any 36-month period, unless the individual meets the ABAWD work requirement or is otherwise exempt. Should the Act not become effective, North Carolina is requesting a waiver of the time limits for all ABAWDs.
- 3) Current FNS policy requires a Presidential Disaster Declaration for Individual Assistance in coordination with the Federal Emergency Management Agency. North Carolina is requesting a waiver of the requirement for an Individual Assistance declaration and allow North Carolina the flexibility to initiate a Disaster SNAP program, as well as flexibility in the administration of a DSNAP program that is aligned with COVID-19 guidelines to prevent exposure, for all 100 Counties.

**Child Nutrition Programs**

- 1) North Carolina requests a waiver from 7 C.F.R. § 226.19(b)(6)(iii) which requires institutions participating in the Child and Adult Care Food Program to serve meals to children in a congregate setting, thereby allowing flexibility in administration of the program to ensure children have access to meals in non-congregated settings or to take meals off-site. This waiver request also applies to the general definition of a "meal" under

7 C.F.R. § 226.2 which requires food to be “served to enrolled participants at an institution, child care facility or adult day care facility and which meets the nutritional requirements set forth in this part. However, children participating in at-risk afterschool care centers, emergency shelters, or outside-schools-hours care centers do not have to be enrolled.”

- 2) North Carolina requests a waiver for the meal pattern requirements of the Child and Adult Care Food Program (7 C.F.R. § 226.20), Summer Food Service Program (7 C.F.R. § 225.16(d)), and the Seamless Summer Option (USDA policy memo SP-39-2014). Based on information provided by School Food Authorities and Summer Food Service sponsors about actual and potential food shortages, this waiver authority is necessary to allow institutions to provide what they can of the meal pattern requirements (may be missing two or more food components) as necessary to supply a sufficient amount of nourishment to participants.
- 3) Ability to offer meals to all students in economically disadvantaged and vulnerable communities. The Seamless Summer Option (SSO) requires schools with less than 50% of students eligible for free or reduced-price meal benefits to directly target meals to eligible children. This requirement limits the ability of schools to provide meals to students who may live in economically distressed conditions but whose household income and size does not qualify them for meal benefits. The waiver will enable schools to provide meals to any student or to the parent, on behalf of a student who requests meals at a school site that is operating during the period of school closure.
- 4) North Carolina submitted a waiver of regulations in 7 C.F.R. § 226.6(m)(3)(vii) and 7 C.F.R. § 226.16(d)(4)(iii)(B), both of which require on-site meal service observations as part of monitoring compliance. If approved, the waiver will allow the NCDHHS to approve CACFP institutions, in good standing, and State agency staff to conduct desk reviews without the required meal service observation.
- 5) North Carolina submitted a waiver of regulations in 7 C.F.R. § 226.16(h) to require Sponsoring Organizations to disburse reimbursement funds within five days of receipt from the State agency. If approved, the waiver will allow the NCDHHS to approve CACFP institutions, in good standing, the flexibility to extend the required disbursement timeframe from five to fifteen days.

There are several other flexibilities that North Carolina would like to implement in North Carolina around program components such as fluid milk requirements and meal service time requirements. We are awaiting a determination from USDA that states can proceed under the current Emergency Declaration with waiving these requirements.

### **Special Supplemental Nutrition Program for Women, Infants and Children (WIC)**

North Carolina has submitted multiple waivers for the WIC program including but not limited to food package flexibilities, additional extension of certification periods beyond thirty (30) days, uniform food delivery system model, and waiver of the mid-certification assessment. These waivers are critical to ensuring the availability of benefits and ability to redeem benefits with

potential food shortages while also trying to minimize exposure of our program participants to the COVID-19 virus.

### **Access to Health Care**

Medicaid and CHIP provide care to 2.2 million children, pregnant women, parents, people with disabilities, and older North Carolinians – many of which are identified as high-risk populations if they contract COVID-19. Our health care partners have quickly come together to rethink how we deliver care while preventing the spread of the virus.

Critical health care providers are limiting hours to decrease staff and patient exposure. Providers who care for our vulnerable populations in their homes or in facilities are facing unprecedented challenges. Providers of health services in schools now closed need new ways to help our children. Face-to-face interviews for eligibility determination and annual needs assessments must be suspended. Requirements for prior authorization and limits on patient benefits or visits during this time of crisis must be eased. To ensure that we have a robust network of providers in the event of major outbreak and infection, provider enrollment requirements must be streamlined and expedited.

To take steps to ease administrative and contact burden on health care providers and our beneficiaries, we are requesting the following waivers of federal requirements in our Medicaid and CHIP programs. My administration appreciates the communications from the Centers on Medicare and Medicare Services (CMS) and we look forward to continued collaboration.

### **North Carolina Medicaid**

- 1) North Carolina submitted a request for a waiver under Section 1135 of the Social Security Act authority to temporarily streamline certain Medicaid program requirements. Temporary waiver requests include waiving the Critical Access Hospital (CAH) limit of beds to 25 and length of stay 96 hours; waiving certain provider screening and enrollment requirements; waiving certain hospital regulatory requirements, certain Health Insurance Portability and Accountability (HIPAA) requirements, certain Emergency Medical Treatment and Labor Act (EMTALA) requirements, certain reporting, oversight and fair hearing requirements, certain benefit and authorization requirements, and additional flexibilities not outlined in CMS guidance.
- 2) North Carolina submitted a Letter of Concurrence to invoke existing federal authorities to allow displaced beneficiaries maintain enrollment; delay application and renewal processing timeframes; delay acting on certain changes affecting eligibility; accept self-attestation for eligibility criteria including resources and medical expenses; and suspend adverse actions, delay scheduling fair hearings and decisions; and reinstate services or eligibility if discontinued due to displacement.
- 3) North Carolina submitted Appendix K requests to temporarily waive program requirements of our home and community-based services (HCBS) waivers authorized by Section 1915(c) of the Social Security Act. Examples of requirements requested to be waived include modifying person-centered service plan requirements; expanding service settings to

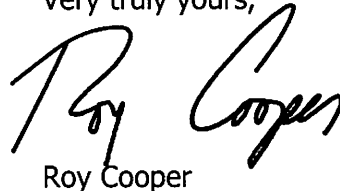
alternative locations, including out of state; waiving certain time and expenditure limits; providing retainer payments for direct care workers; waiving limits on home modifications, face-to-face requirements; extending of level of care redeterminations; and allowing services be provided by relatives.

- 4) North Carolina submitted a Children's Health Insurance Program (CHIP) Disaster State Plan Amendment to waive the required annual enrollment fee, co-payments, and unpaid enrollment fee balances; extend time period for processing applications and redetermination; and waive the prior authorization requirements.

The federal government has already granted North Carolina numerous waivers and declarations, including yesterday's Small Business Administration disaster declaration statewide, and we appreciate those efforts. In the days, weeks, and months ahead we will continue to seek the cooperation of the federal government to help North Carolina respond quickly and nimbly to this crisis.

With kind regards, I am

Very truly yours,

A handwritten signature in black ink that reads "Roy Cooper". The signature is written in a cursive style with a large, stylized "R" and "C".

Roy Cooper

cc: Vice President Mike Pence  
Secretary Sonny Perdue, USDA  
Secretary Alex Azar, HHS  
North Carolina Congressional Delegation