



## For economic and racial justice

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The Honorable Richard J. Durbin  
711 Hart  
Senate Office Building  
Washington, D.C. 20510

March 20, 2020

The Honorable Tammie Duckworth  
524 Hart Building  
Senate Office Building  
Washington, D.C. 20510

Dear Senators Durbin and Duckworth:

Thank you for your leadership on protecting Illinois residents and the nation from the spread of COVID-19. We represent communities likely to experience the harshest health, housing, family, criminal legal, and economic impact from this crisis. Our clients live in predominately disinvested communities, long victim to discriminatory policies and practices that limited their opportunities and well-being even in the best of times. They are simply without the resources to weather this health and economic crisis alone, now and for the long term. There are critical steps that must be taken immediately to ensure the well-being of our most vulnerable and at-risk populations. We stand ready to help our communities and our government in any way we can.

On behalf of the Shriver Center on Poverty Law, we are asking you to support legislation and push for federal agency action immediately to protect vulnerable populations from COVID-19 and the multitude of impacts from the outbreak. We urge your offices to take whatever action is possible to protect all people, including those most vulnerable to the confluence of the public health and economic consequences of this crisis. This nation has a long history of federal action in the time of crisis that excludes and/or severely falls short of meeting the needs of low-income, aging and disabled, Black and Brown, and undocumented communities. Thus, we ask that your offices ensure that these groups are front and center to any relief that is offered, as they will likely face the brunt of this dual crisis:

### *Public Charge Suspension and Federal Protections for Immigrants*

Congress should take all available steps to de-fund and call for the immediate rescission of the Department of Homeland Security (“DHS”) Public Charge Rule. Even prior to the outbreak, DHS conceded that the Rule could lead to increased prevalence of communicable diseases, disenrollment from public programs, and “increased use of emergency rooms as a primary method of health care.”<sup>1</sup>

As the coronavirus sweeps across the United States, immigrants are among the least able to self-isolate and seek the medical care that is essential to protecting their health and slowing the spread of the disease. Due to the Public Charge Rule, uninsured immigrants of all immigration statuses are actively being chilled from seeking any form of medical care or treatment or from

enrolling themselves of their family members from other public benefits, including housing assistance SNAP, WIC, out of fear that seeking help will ruin their chances of getting a green card. They also fear that seeking care will ultimately result in their deportation, should the Department of Justice's proposed deportability on public charge rule move forward. Health care providers, community-based organizations, and researchers have already documented, prior to the outbreak, the Rule's chilling effect on the immigrant community, including those individuals who are not subject to the Public Charge Rule. Attorneys General from 15 states and the District of Columbia recently urged the Administration to stop implementation of the Public Charge Rule, arguing that continued enforcement is reckless and in disregard of public health directives. DHS and U.S. Citizenship and Immigration Services' statements indicate that they will not consider testing, treatment, or preventative care related to COVID-19; these statements are wholly insufficient, as the individuals will still be obligated to submit documentation and explanation as to why those benefits were used, including Medicaid, for USCIS's consideration of whether or not the individual is a public charge. Moreover, use of other health programs such as emergency Medicaid and Medicaid for pregnant women and children is still required to be documented on a mandatory form included in the new green card application--the I-944 "Self Sufficiency" form.

Beyond actively stopping the Public Charge Rule, it is critical that any federal efforts must ensure that all sections of federal legislation that expand health, nutrition, or housing coverage options or eliminate health coverage, nutrition, or housing program barriers for the uninsured, specifically state that they apply to uninsured *regardless of immigration status*. This includes expanding comprehensive coverage options to the uninsured regardless of immigration status to facilitate access to COVID-19 treatment for those who need it. Any notices expanding coverage and eligibility should be distributed widely in multiple mediums and provided in multiple languages.

*Economic Advocacy:*

1. Implement at least 20 paid emergency leave days for any individual not able to engage in employment who has not received full compensation for that employment, including wages or any other form of accrued paid leave, for such a day or was eligible for unemployment compensation for the week in which such day occurs, due to any of the following reasons: (a) the individual has a current diagnosis of COVID-19; (b) The individual is under quarantine (including self-imposed quarantine); (c) The individual is engaged in caregiving for an individual who has a current diagnosis of COVID-19 or is under quarantine (including self-imposed quarantine); or (d) The individual is engaged in caregiving because of the COVID-19 related closing of a school or other care facility or care program and (e) the individual is engaged in caregiving for an aging or disabled person, or other individual unable to provide self-care.
2. Any leave associated with this emergency must be job guaranteed. When an Employer reopens for business and/or restores hours of operation, or an Employee is able to return to work after an illness related to the emergency, being under quarantine, providing caregiving for an individual who is ill, or due to a related school or other care facility or care program closing, the Employer must restore those hours to employees on leave. Upon return from leave, an employee must be restored to his or her original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. An employee's use of leave cannot be counted against the employee under a "no-fault" attendance policy.

Employers are also required to continue group health insurance coverage for an employee on leave under the same terms and conditions as if the employee had not taken leave.

3. Support the proposal from Senators Gillibrand and Murray, and Representative DeLauro, to provide up to 3 months of family leave at 2/3 compensation to either because they are sick with COVID-19 or because they are engaged in caregiving for an aging or disabled person or any other individual unable to provide self-care and/or because of the COVID-19 related closing of a school or other care facility or care program.

4. Support the cash payment program outlined by Senators Bennet, Booker, and Brown that would provide for an initial cash payment of \$2,000 to all adults and children, followed by further quarterly cash payments triggered by continued public health emergency declarations and high unemployment rates. These benefits must be available for everyone, including undocumented people. Receipt of the benefits must be excluded as income or assets for all federal public benefit programs.

5. Allow state Unemployment Insurance systems to cover people who are absent from employment because: (a) The individual has a current diagnosis of COVID-19. (b) The individual is under quarantine (including self-imposed quarantine). (c) The individual is engaged in caregiving for an individual who has a current diagnosis of COVID-19 or is under quarantine (including self-imposed quarantine), (d) The individual is engaged in caregiving because of the COVID-19 related closing of a school or other care facility or care program, for a child or other individual unable to provide self-care. Include situations where the individual's hours are reduced, the individual is on furlough, or the individual is terminated due to the public health emergency, and extend benefits to all workers, even those not currently financially or categorically eligible to receive UI benefits – which includes many gig economy and domestic workers. Pay benefits at a 100% replacement wage.

6. Along with healthcare professionals, business cleaners, facilities cleaners, and domestic workers, including caregivers, housecleaners, and nannies, are on the frontlines of the COVID-19 outbreak. They support some of the most at-risk populations, particularly older people, young children and the range of people with compromised immune systems. As such, they should be provided with masks and other safety equipment, rather than having to worry about where they will get them. They should be offered free testing and treatment for coronavirus. The federal government should distribute prevention materials in the many languages that business and facilities cleaners and domestic workers speak.

7. Allow states to suspend work requirements, sanctions, and time limits for TANF recipients.

8. Support canceling all student loan debt to bring relief to individuals and families across the country.

#### *Housing Advocacy:*

1. Increase resources to the McKinney-Vento Homeless Assistance Grants and Disaster Housing Assistance Program;
2. Create and appropriate funds for an emergency assistance grant that states can use to prevent evictions by providing short-term financial assistance and housing stabilization services;
3. Support an emergency or modified version of the Eviction Crisis Act;

4. Provide resources for the Homeless Prevention and Rapid Rehousing program that was created during the most recent recession and considered to be a model in stabilizing households nationwide;
5. Appropriate funds and direct FEMA to issue housing vouchers that can be used by individuals who are homeless or at risk of losing their housing. This was done after a natural disaster in California hit years ago. The failure to issue emergency housing vouchers during Hurricane Katrina stood out as one of the many failures to appropriately respond to that crisis;
6. Appropriate \$5 billion in Emergency Solutions Grants so that entitlement jurisdictions and their subrecipients can respond locally to the crises by allocating increased resources to low-income and at-risk communities;
7. Provide supplemental rental subsidies to offset rent reductions in all forms of federal rent-subsidized housing, including but not limited to public housing, the Section 8 project-based and tenant-based programs, project-based rental assistance, Rural 515, and Section 202 and 811, so that local housing providers can respond to immediate housing needs in their communities;
8. Ensure a moratorium on evictions (including filing and enforcement) and foreclosures in all forms of federally supported housing, including but not limited to public housing, the Section 8 project-based and tenant based programs, RAD, the Low-Income Housing Tax Credit Program, Sections 202 and 811, Section 236, 221(d)(3), HOME, HOPWA, McKinney-Vento, United States Department of Agriculture (USDA), and for properties owned or insured by Fannie Mae, Freddie Mac, FHA, or VA. The U.S. Department of Housing and Urban Development (HUD) and USDA Rural Development are taking the position that in many cases, especially the Section 8 programs and RD program, it is without the legal authority to take such action on its own, therefore making Congressional action here imperative to protecting the housing and health of millions of federally supported renters in this country<sup>1</sup>;
9. Enact legislation to the extent necessary that would direct federal housing agencies, including HUD, USDA, and the Department of Treasury (DOT), to suspend terminations of rental assistance;
10. Provide supplemental operating or other funds to site-based federally supported housing providers, including local public housing authorities, that can be used for repairs, maintenance, and cleaning to ensure that residents are living in a clean, safe, and sanitary environment;
11. Ensure that current disaster victims' admissions preferences explicitly cover individuals in need of housing assistance as a result of COVID-19, including individuals who were homeless or housing unstable prior to the outbreak.
12. It is imperative that in this time of crisis, federal agencies responsible for this nation's supply of affordable housing act in concert to allow low-income to safely shelter in place without fear of losing their homes. Thus, HUD, USDA, and DOT must be directed to:
  - Order housing providers to suspend any work or community service requirements;

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<sup>1</sup> On March 20, USDA Rural Development announced a 60-day moratorium on single family direct home loan foreclosures and evictions, and issued guidance to owners of Section 514, 515, and 516 housing to comply with state and local laws regarding eviction moratoriums but declined to enter a moratorium for its programs.

- Instruct housing providers that they to use a disaster victim admissions preference in their housing admission policies;
- Create flexible policies for interim recertifications for households experiencing a change in income;
- Ensure housing providers provide information to VAWA victims about their VAWA rights and are offered emergency transfers;
- Create flexible policies to ensure that guests can remain in homes for longer periods of time so that they can shelter in place, without jeopardizing the housing assistance of friends or loved ones;
- Permit extended absences from assisted units without permission or a threat of termination;
- Direct housing providers to work in partnership with tenant councils and tenant associations to ensure that tenants know what steps are being taken to ensure their safety and housing stability;
- Direct local public housing authorities or entities administering tenant-based voucher programs to expedite tenant-based voucher porting requests and internal moves of Housing Choice Voucher households;
- Authorize local public housing authorities to extend Housing Choice Voucher search times; and
- Direct HUD’s Office of Fair Housing and Equal Opportunity to provide information on civil rights laws and to investigate any claims of discrimination based upon an unlawful stereotype or perception of who may carry or transmit COVID-19.

*Family Advocacy*

1. Support efforts to provide flexibility to states in how they use the Child Care and Development Block Grant funding in their efforts to support families.
2. Aid efforts to provide emergency funding to the Early Childhood system so that childcare centers can remain available for families.
3. Support efforts to provide additional funding to Head Start and Early Head Start Programs.
4. Include early childhood providers (private, non-profit, license-exempt, family) in any financial relief packages that are passed.
5. Temporarily suspend the mandate on States in the Adoption and Safe Families Act (“ASFA”) to file a Termination of Parental Rights (“TPR”) petition for any child that has remained in a foster placement for 15 of the previous 22 months (“15/22 mandate”). With efforts underway by agencies, governments, and the general public to comply with CDC guidelines, it is unreasonable to enforce this strict timeline on parents seeking reunification with their children and almost impossible for states to comply when access to the courts, programs, services, and requirements related to reunification remain closed or inaccessible for the foreseeable future. This temporary suspension should under no circumstances be used as reason to expedite the filing of a TPR petition.
6. Ensure that the COVID-19 is explicitly deemed a stand-alone “compelling reason” exception to the 15/22 mandate in ASFA.
7. Enforce the “reasonable efforts” provision of the Adoption Assistance and Child Welfare Act of 1980 (“AACWA”) that requires States to facilitate family reunification. Require

that States adequately and appropriately respond to the COVID-19 pandemic in such a way that ensures that parents' constitutional and statutory rights are protected while precautions for public health and safety are observed. Require that DCFS' pandemic-specific responses be explicitly documented.

8. Issue federal policy guidance, compelling judges to make specific, written findings in child welfare proceedings regarding DCFS' "reasonable efforts" specifically as it relates to the COVID-19 pandemic. Establishing a clear record of DCFS' efforts and responses to the pandemic will help ensure accountability and will help protect parents' constitutional and statutory rights, including appeal rights.
9. Suspend ASFA's 15/22 mandate particularly for parents who are incarcerated and similarly suspend any other penalties on these parents related to efforts and progress towards reunification. Parents who are incarcerated face additional layers of marginalization in the COVID-19 pandemic given court and program closures, the shutdown of access to many services within prison and jail facilities, and the overall limitations on these parents' individual liberties that come with incarceration.
10. Enforce and monitor the implementation of the Family First Prevention Services Act's requirement that States reduce the use of congregate care for children in foster placements. In the reduction and elimination of congregate care, ensure that States prioritize family reunification and returning children home. Congregate care settings place children and youth at increased risk of contracting COVID-19 where they are unable to follow CDC guidelines and precautions.
11. Increase the maximum reimbursement allowance and streamline the process for receipt of federal reimbursement for counsel for parents in child welfare proceedings through Title IV-E of the Social Security Act. Even during this time of crisis, parent advocates must maintain the ability to zealously advocate for their clients and their clients' families. The Federal Government should provide relief from administrative burdens so that parent advocates can channel their efforts and limited resources towards their area of expertise, legal advocacy.

### *Justice Advocacy*

1. Reduce jail, prison, and detention center populations before an outbreak occurs. Use all available powers, including but not limited to executive clemency, commutations, furlough, compassionate release, parole, and release on recognizance, to release people from jails, prisons, and detention centers. And where possible, create new emergency mechanisms to reduce incarcerated populations.
2. Assist people released from prisons, jails, and detention centers with transitional plans that ensure they receive adequate medical care.
3. Instruct parole boards to expedite release of those who have been granted parole and expedite new parole hearings.
4. Stop all new arrests and detentions of anyone who does not pose risk to public safety to a reasonably identifiable person. This includes but is not limited to people being held on immigration bonds, immigration detainer holds, or detainer holds for technical violations of parole or probation—regardless of the underlying offense.
5. Rely on ankle monitors only as an alternative to detention after a determination has been made that the person poses an articulable risk to public safety. Individuals that are on

ankle monitors must be given liberal movement to provide for themselves and their families without fear of incarceration.

6. Remove the threat of incarceration for people who are already under community supervision so that they may travel and access medical care, stay isolated when necessary, and take care of themselves and their families:
  - Eliminate requirements for in-person check-ins with probation, pretrial services, parole, and/or ICE to prevent the spread of disease.
  - Eliminate restrictions on movement for people under the surveillance of ankle shackles to allow access to medical care, family and loved ones who may need care or support.
7. Ensure that correctional facilities are following the CDC recommendations in hopes that both correctional staff and those in custody don't contract COVID-19. Provide soap (free of charge to incarcerated people), CDC-recommended hand sanitizer, AND medical care (waiving co-pays for incarcerated people). Ensure that correctional facilities are being thoroughly cleaned and sanitized regularly and that facilities are provided with the necessary supplies.
8. Do not use extended solitary confinement as a substitute for providing people in prison or detention facilities who are exposed to or contract COVID-19 with proper medical care.
9. Ensure that incarcerated people have access to their families and lawyers through regular communications channels, including but not limited to free phone calls (confidential phone calls and videoconferencing with attorneys), email, video conferencing, and postage mail.
10. Release to the public and to incarcerated people all plans and procedures in place to address COVID-19 within federal prisons and detention centers.

### *Health Advocacy*

1. Congress must act quickly to expand access to affordable treatment, in addition to testing. They must invest in the Medicaid program, which is the program most able to scale quickly to meet the public health crisis. They must also ensure that the federal Marketplace operates in the most expansive way possible to allow the uninsured to enroll in healthcare coverage immediately by creating a special enrollment period (SEP) to maximize enrollment of uninsured people as many state marketplaces are now doing.
2. Congress must increase the health care workforce as soon as possible through all available strategies including federal grants, Medicaid and Medicare and make sure healthcare workers are protected against getting sick by using federal authority to require private companies to produce medical supplies that are in dire need.
3. The Trump administration must immediately rescind the many rules and regulations they have imposed in the last 3 years that undermine our nation's safety net, including:
  - Medicaid block grants and work reporting requirements, which cause people to lose coverage.
  - Proposed regulations that restrict state financing of Medicaid, which will force states to cut billions of dollars from the program including most relevantly, barring the administration from finalizing the proposed "Medicaid Fiscal Accountability" rule (known as MFAR) which will erase all of the gains from the proposed increase in federal matching rate and subvert the purpose of increasing funding to the states.

4. Congress should continue to push expanded proactive policies moving forward from the emergency relief including:
  - Boosting the federal matching rate increase for Medicaid from 6.2 to 10 percent;
  - Increasing the federal matching rate to 100 percent for states that choose to close the Medicaid coverage gap - for a minimum of three years;
  - Creating a special enrollment period (SEP) for the Federal Marketplace and increase subsidies for the purchase of coverage in the Marketplace. This should be coupled with the elimination of cost-sharing for COVID-19-related testing and treatment (a step recently taken in Massachusetts). Congress could couple this with reinsurance to address any adverse selection problem.
  - Taking specific action to protect people from medical debt now by requiring health care providers that receive federal emergency funding to provide uninsured patients free COVID-19 testing and treatment. Second, any COVID-19-related medical debt accrued from February 1, 2020 until 60 days following the lifting of the state of emergency should be subject to consumer protections including, but not limited to: a one-year prohibition on collection activity; a one-year prohibition on credit reporting; an extension of state and federal health insurance appeal deadlines; a prohibition on balance or "surprise" billing; a prohibition of any extraordinary collection actions as listed at 26 CFR 1.501r; and a prohibition of interest or collection fees related to these debts.
  - Require plans regulated by ERISA to fully cover COVID testing and treatment.
  - Require non-ACA-compliant plans (including, but not limited to, short-term-limited duration plans, association health plans, transitional plans) to fully cover COVID-19 testing and treatment with no cost-sharing.
  - Pass the [Corona Virus Relief for Seniors and People with Disabilities](#), including its HCBS grants to support Direct Support Professional (DSP) and Home Health Workforce and to support aging adults and people with disabilities in their homes and communities.
  - Pass the Ensuring Direct Access to Direct Support Professionals Act (S. 3220/H.R. 5443).
  - Make the Money Follows the Person (MFP) program permanent.

All emergency efforts must remain in compliance with disability rights law such as Section 504 and the ADA, including the creation of any new forms, services, or pathways of communication. Those protections have not gone away in the current crisis. Also, discrimination must be prohibited according to other civil rights laws, including Section 1557 of the ACA which prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in health programs or activities.

For all these recommendations, ensure that all state and local outreach and information is provided in multiple formats and venues and in the top ten languages spoken. Any emergency action must also make special considerations for highly vulnerable populations, including incarcerated persons and individuals subject to electronic monitoring or supervision, persons with disabilities, victims of domestic violence and child abuse, individuals who are homeless, and undocumented communities who may be afraid to seek assistance. These groups must receive direct and specialized outreach. We remain ready to help you and the nation during these trying times, including its most vulnerable. Please let us know if you have any questions.



Sincerely,

A handwritten signature in black ink that reads "Katherine E. Walz". The signature is written in a cursive, flowing style with a long, sweeping tail on the final letter.

Kate Walz  
Vice President of Advocacy