

November 2, 2020

The Honorable Andrew M. Cuomo  
Governor of New York State  
NYS State Capitol Building  
Albany, NY 12224

Dear Governor Cuomo:

We write in support of S8247A and its Assembly companion measure, which passed both chambers in late July. The measure codifies the Supplemental Nutrition Assistance Program (SNAP) online purchasing pilot program, and is an important step in ensuring that very low-income New Yorkers have safe access to purchasing groceries during the pandemic. We urge you to sign the measure into law.

We note objections regarding the measure from Office of Temporary and Disability Assistance (OTDA), stressing lack of authority and inability to implement the pilot program due to exclusive federal authority on SNAP programs. As long standing legal subject matter experts on the SNAP program, we underscore that the bill language does not seek to authorize the SNAP online purchasing program, and should not be a basis on which to deny enacting the proposed law.

We agree with OTDA that the authority to authorize online purchasing lies with the Food and Nutrition Service of the United States Department of Agriculture (FNS), not with either the State of New York or the Office of Temporary and Disability Assistance. The bill therefore, does not call upon OTDA to authorize such a program. Instead, the bill directs OTDA to do the following:

- seek necessary federal approval for all grocery retailers who want to participate in SNAP online purchasing; and
- develop a state plan to maximize online purchasing options available throughout the state. The plan has to be reviewed periodically and updates provided to the

governor and legislature about how OTDA is looking to expand fresh food purchasing options;

- seek any waivers from FNS that would be necessary to carry out the plan, pursuant to federal law and regulation.

We also agree with OTDA's assertion that SNAP online retailers can and do work directly with FNS for authorization to participate in the online purchasing program. However, the existing collaboration does not alter the other two provisions in the bill directing OTDA to maximize online purchasing options throughout the state.

Separate from the issue of retailer authorization, the bill directs OTDA to look for ways to expand and maximize food buying options available online to New Yorkers and, where the steps might require a waiver to enact such an expansion, to apply for such waiver from FNS. OTDA is not strictly constrained by the actions that FNS does or does not take, nor is the agency penalized should FNS fail to act on a waiver or approve it. Simply, the bill directs OTDA to work on making food purchasing more technologically accessible in New York at a time when this is a critical health issue, including the devastation brought on by the Covid-19 pandemic.

For example, OTDA could look at a range of expansion options as other states have done. In the state of Pennsylvania, SNAP approved retailers have made remote shopping available to SNAP recipients who use the store's shopping application and select to pick up their groceries. When the SNAP recipient arrives to pick up the grocery purchase, they may use their standard electronic benefits card curbside — through a wireless points of sale that is linked to the store's network. Because SNAP benefits cannot be used to authorize delivery charges, this type of modification would be one way to expand online options in New York without relying only on the federal government to approve new retailers who may not have the required infrastructure to alter their card scanning.

Another helpful way to expand online grocery access is for OTDA to provide information on its webpages and in its informational materials about store participation in the SNAP online purchasing program, and limitations that may apply. Providing such information would be helpful to hundreds of thousands of food insecure New Yorkers, particularly for elderly persons or those with underlying medical concerns who need to limit their exposure to others.

As legal advocates who have spent decades working to reduce food insecurity, often in collaboration with OTDA's leadership, we are certain the agency is well-positioned in making a meaningful impact in the lives of very low-income New Yorkers.

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