TOP TEN EMERGING SNAP ISSUES
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1. Improving interfaces between SNAP and new health care coverage subsidies.
   - The Patient Protection and Affordable Care Act (ACA or “Health Care Reform”) relies on a combination of Medicaid expansion and subsidies administered through insurance exchanges to assist low- and moderate-income people in obtaining affordable coverage.
   - Although the U.S. Supreme Court has given states the option to decline to expand Medicaid, the financial incentives to do so (making it essentially cost-free in the first three years) have led many to take the expansion and others to work out contingency plans in case their political leadership opts in later.
   - A significant number of people covered by the Medicaid expansions, and some obtaining health care subsidies through the exchanges, will be eligible for SNAP. Their applications for those benefits may be their only contact with the social welfare system. Enrolling them in SNAP through Medicaid and those exchanges may therefore provide a vital outreach opportunity.
   - Conversely, many of those eligible for the Medicaid expansion or for insurance subsidies may already be on SNAP. HHS has given states broad latitude to use SNAP enrollment to provide low-income people with health care subsidies. http://www.medicaid.gov/Federal-Policy-Guidance/Downloads/SHO-13-003.pdf

2. Holding states responsible for compliance with federal SNAP rules in modernized eligibility determination systems.
   - Traditionally, SNAP advocates focused on their clients’ individual eligibility workers and those workers’ immediate supervisors.
   - In some modernized SNAP systems, no particular eligibility worker is assigned to any household. In others, the assigned eligibility worker performs only a subset of the functions vital to determining and maintaining eligibility.
   - In modernized systems, states often do not provide individual workers’ or supervisors’ numbers but instead refer all callers to central hotlines, which may be clogged or which may be staffed by persons with insufficient information.
   - Most SNAP rules impose obligations on the state agency, not on individual eligibility workers.
   - If centralized hotlines cannot provide advocates access, they must
   - Advocates should become aware of the default settings in states’ automated systems as those often result in misrepresentations in households’ records (e.g., about when an application was submitted or whether verification was received).
   - Advocates should seek information about backlogs in verification received but not yet associated with households’ case records.
   - The failure to make a record in a system should not be considered a business record (and hence admissible despite being hearsay) because no one person is responsible for making those entries or even for assigning someone to do so.
   - Where the state makes major systemic changes, advocates should advocate with the state and USDA for close monitoring under section 11(a)(4) of the Food and
Nutrition Act of 2008 (7 U.S.C. § 2020(a)(4)), which was added by the 2008 Farm Bill.

- Where systemic problems exist, advocates should press the state to correct those problems systemically under section 11(b) of the Food and Nutrition Act of 2008 (7 U.S.C. § 2020(b)).
- Where major systemic problems resulted in overissuances, advocates should press USDA to apply section 13(b)(5) of the Food and Nutrition Act of 2008 (7 U.S.C. § 2022(b)(5)), which was added by the 2008 Farm Bill. This section can eliminate households’ liability for claims that are the state’s fault.

3. State systems’ lack of accessibility to people with disabilities violates the Americans with Disabilities Act (ADA).

- Households have rights under the ADA, section 504 of the Rehabilitation Act, and specific provisions of the SNAP statute and regulations.
- To be protected under the ADA and section 504, 7 C.F.R. § 15b.3 provides that one can be:
  - A person with a disability
  - A person with a history or record of disability
  - A person regarded by others as having a disability
- Should consider many different kinds of disabilities:
  - Mobility
  - Visual
  - Auditory
  - Manual
  - Psychiatric
  - Developmental
- The ADA and section 504 require procedural steps, including notice (7 C.F.R. § 15b.7) and designation of individuals to oversee compliance (7 C.F.R. § 15b.6)
- Standards for automated systems’ accessibility to persons with disabilities have been developed by national disability advocacy groups – see also 7 C.F.R § 15e.160
- Some specific provisions of SNAP rules explicitly protect persons with disabilities:
  - Right to accessible interview – 7 C.F.R. § 273.2(e)
  - Exemption from work registration and student rules
  - Right to authorized representatives to assist with any part of the process 7 C.F.R. § 273.2(m)
- Some general provisions of SNAP rules have the effect of protecting persons with disabilities:
  - Obligation to assist in getting verification – 7 C.F.R. § 273.2(f)(4) and (5)
  - Prohibition on denying people who merely fail to cooperate – 7 C.F.R. § 273.2(d)(1)
Both section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act apply to SNAP. These statutes prohibit discrimination against persons with current disabilities as well as discrimination against persons who have had disabilities in the past, those whom others perceive to be disabled, and some persons who are family members of persons with disabilities. See, e.g., 29 U.S.C. § 794; 42 U.S.C. § 12131 et seq.; 7 C.F.R. Part 15b; 29 C.F.R. § 35.130(g).

- Failure to make a reasonable accommodation for persons with disabilities is defined as discrimination. SNAP offices should have procedures for identifying persons needing accommodation and have compliance officers appointed to ensure that the office is providing necessary accommodations and otherwise avoiding even inadvertent discrimination.
- A reduction, denial or termination of SNAP as a result of failure to comply with the program’s requirements could be improper if the SNAP office failed to offer a reasonable accommodation that could have allowed a disabled applicant or recipient to comply. For example, it would be improper for a SNAP office to deny an application for SNAP based on failure to appear for an interview if the applicant needed para-transit services to reach the SNAP office and the interview was scheduled at an hour of the morning when para-transit had not yet begun to operate. In such a case, the SNAP office should offer an accommodation in the form of an appointment at a time when appropriate transportation is available, a telephone or out-of-office interview, or the opportunity to have an authorized representative participate in the interview in place of the applicant.
- A wide range of problems and requirements in SNAP may affect persons with disabilities and require creative advocacy to develop effective accommodations.
- Federal regulations not only require a state to allow a household to apply for SNAP the first time it contacts a welfare office, they require the state to encourage the household to apply. "State agencies shall encourage households to file an application form the same day the household or its representative contacts the SNAP office in person or by telephone and expresses an interest in obtaining food assistance or expresses concerns which indicate food insecurity." 7 C.F.R. § 273.2(c)(2)(i). Although it may sometimes be difficult to determine whether or not an eligibility worker actually prevented a household from applying (since many households are fairly easily discouraged), it usually will be clear in problematic situations that the household was not encouraged to do so. See also Harley v. Lyng, 653 F. Supp. 266, 276 (E.D. Pa. 1986).
- The Food and Nutrition Act also requires states to "provide timely, accurate, and fair service to applicants for, and participants in, the supplemental nutrition assistance program.” 7 U.S.C. § 2020(e)(2)(B)(i) and (iii). This allows challenges to a range of unfair practices not specifically addressed in the regulations.

4. Problems with telephone interviews: households being denied for not having an interview when they received no timely notice of the interview or when the local phone system too overburdened to get through for interview.
   - The state must schedule the interview with the household. 7 C.F.R. § 273.2(e)(1).
   - Failing to accept calls, or to call the recipient, is a violation of that scheduling.
   - Before the state can deny the household, it must notify household that missed interview. 7 C.F.R. § 273.2(h)(1)(i)(D).
• See below on requirements of timely notice.

5. Problems with face-to-face interviews: state refusing to give the household a face-to-face interview on demand or delegating interview to private entities.

• “Regardless of any approved waivers, the State agency must grant a face-to-face interview to any household which requests one.” 7 C.F.R. § 273.2(e)(2).
• Offices not conducted in the certification office must be conducted in a “mutually acceptable location.” 7 C.F.R. § 273.2(e)(1).
• Interviews at the household’s residence, which arguably is what a telephone interview is, must be scheduled in advance with the household. 7 C.F.R. § 273.2(e)(1).
• Several states (FL, IL, MI, PA) have waivers for non-profits to do the interview.
• Waivers generally do not provide different standards for those interviews: must explore and resolve issues in applications. 7 C.F.R. § 273.2(e)(1).
• Waivers generally do not excuse the state from the notice requirements for interviews.
• Household may refuse to be interviewed by non-public employees under the protections of the confidentiality regulations. 7 C.F.R. § 272.1(c).
• Private organizations conducting interviews are bound to make and retain full records of the interviews. 7 C.F.R. §§ 272.1(e) and (f), 273.2(f)(6).

6. State fails to comply with the time standards for issuing expedited SNAP benefits.

• State must screen households to determine eligibility for expedited issuance. 7 C.F.R. § 273.2(i)(2).
• Household may not be required to complete more than name, address, and signature on application form. 7 U.S.C. § 2020(e)(2)(B).
• Households are entitled to expedited service if any of three conditions are true (7 U.S.C. § 2020(e)(9); 7 C.F.R. § 273.2(i)):
  — The household’s gross income for the month is less than $150 and its liquid resources are no more than $100.
  — The household’s rent or mortgage and utility costs (including the standard utility allowance, if applicable) exceed the sum of its gross monthly income and liquid resources.
  — The household is composed of destitute farm workers (as defined by the regulations, generally meaning farm workers who are between jobs) with liquid resources of no more than $100.
• Studies conducted for USDA have found that at least one-third of SNAP applicants generally qualify for expedited issuance even when one accounts for the 1996 welfare law’s narrowing of the criteria upon which expedited service is awarded. See, e.g., Susan Bartlett, Nancy R. Burstein, and Elsie C. Pan, Evaluation of Expedited Service in the Food Stamp Program at 12-16, 36-37 (June 1995).
• SNAP offices are required to screen all applicants for possible eligibility for expedited service; households need not request expedited treatment. 7 C.F.R. § 273.2(i)(2); Harley v. Lyng, 653 F. Supp. 266, 276 (E.D. Pa. 1986).
• Households eligible for expedited issuance should receive SNAP benefits within seven calendar days and are required to verify only their identity prior to receiving benefits. 7 U.S.C. § 2020(e)(9); 7 C.F.R. § 273.2(i)(4)(i).
SNAP offices’ compliance with the requirements of expedited issuance has varied over the years. This merits on-going monitoring and prompt communication with the SNAP office’s management if expedited processing appears not to be implemented properly.

7. State does not help obtain verification.

- The verification process also must "provide timely, accurate, and fair service to applicants for, and participants in, the supplemental nutrition assistance program." 7 U.S.C. §§ 2020(e)(2)(B)(i). This statutory language provides opportunities to combat the excesses that sometimes occur when eligibility workers focus disproportionately on avoiding errors that might be counted against the state in the SNAP quality control (QC) system.

- SNAP regulations prohibit denying benefits to a household based solely on its failure to cooperate. 7 C.F.R. § 273.2(d)(1). Households can be denied based on a refusal to cooperate, but the SNAP office can only treat a household as having refused to cooperate if the household clearly is able to do what the SNAP office has asked of it and the household has not done so. Where it is unclear whether a household has failed or refused to cooperate, the SNAP office should attempt to provide further assistance to the household until either the household complies or it becomes clear that the household is refusing to do so. Id.; 7 C.F.R. § 273.2(h).

- The Food and Nutrition Act and regulations identify only a limited number of items as mandatory subjects of verification. 7 U.S.C. § 2020(e)(3); 7 C.F.R. § 273.2(f)(1). Whether to verify other matters relevant to eligibility – and, if so, which such matters to verify – is a state option. 7 C.F.R. §§ 273.2(f)(3). States also may require the household to verify any other factor affecting eligibility or benefit levels where a particular household’s statement is questionable. 7 C.F.R. §§ 273.2(f)(2). This discretion regarding what additional items to require households to verify – whether applied to individual households or classes of them – may not be exercised in a discriminatory manner. Id. 7 C.F.R. §§ 273.2(f)(2)(i) and (3)(i).

- Documentary evidence is the primary source of verification. 7 C.F.R. § 273.2(f)(4)(i) and (5)(i). SNAP offices should not insist on any one form of verification if what the household submits is adequate and should not adopt a routine policy of making collateral contacts where the household’s documentary verification is not questionable. Id.

- SNAP offices may proceed to collateral contacts (i.e., conversations with or written statements from third parties such as employers, neighbors, or landlords) where the documents the household has supplied are incomplete or questionable. 7 C.F.R. §§ 273.2(f)(4)(ii) and (5)(ii).

- When making collateral contacts, SNAP offices "should disclose only the information that is absolutely necessary to get the information being sought. State agencies should avoid disclosing that the household has applied for SNAP, nor should they disclose any information supplied by the household, especially information that is protected by § 273.1(c), or suggest that the household is suspected of any wrong doing." 7 C.F.R. § 273.2(f)(4)(ii). SNAP offices should carefully avoid disclosing confidential information or making statements that could discourage or stigmatize a household in the course of making collateral contacts. See Food and Nutrition Service, USDA, The Nutrition Safety Net At Work for
8. Notices of denial lack sufficient information for the household to either come into compliance or challenge denial.

- “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950); accord Dusenbery v. United States, 534 U.S. 161, 168 (2002); Greene v. Lindsey, 456 U.S. 444 (1982).
- A notice is inconsistent with due process of law if it tells claimants that they are ineligible for Medicaid but fails to explain why they were denied as uninsurable applicants, to advise plaintiffs of right to apply as uninsurable persons, or to explain consequences of re-applying after denial. Hamby v. Neel, 368 F.3d 549 (6th Cir. 2004).
- A notice denies due process of law if it fails to explain calculation of SNAP recipients’ income, how that calculation rendered them ineligible, or what are the relevant factors in determining net SNAP income. This denied plaintiffs the effective opportunity to inform the state of relevant deductible expenses. Banks v. Trainor, 525 F.2d 837 (7th Cir. 1975).
- A notice violates due process if it fails to inform public benefits recipients why their benefits were reduced. Without such reasons, recipients tend to assume that action taken by government agency is correct Vargas v. Trainor, 508 F.2d 485, 489-490 (7th Cir. 1974).
- Due process requires clear notice because it reduces the risk that the agency action will rest on “incorrect factual premises or on misapplication of rules.” Ortiz v. Eichler, 794 F.2d 889 (3d Cir. 1986).
- “In essence, our holding requires no more than that [the state] ‘shape up’ before it ‘ships out’ of its federally sponsored program.” This helps claimants plan their affairs. Eder v. Beal, 609 F.2d 695 (3d Cir. 1979).

9. Statewide phone system too overburdened to respond to individualized inquiries.

- Households must receive a telephone number for the certification office on the notice approving its participation in SNAP. 7 C.F.R. § 273.10(g)(1)(i).
- A number that is not answered is not a true telephone number.

10. Mistakes made now will result in accusations of fraud in years to come.

- See separate materials on fraud.