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Serious Deficiency Procedure for Day Care Homes (DCH)

Purpose

To outline the steps of the serious deficiency process for Family Day Care Home Sponsors participating in the Child and Adult Care Food Program (CACFP). A Family Day Care Home Sponsor must determine a provider seriously deficient when they are non-compliant in one or more aspects in its operation of the Program [[7 CFR 226.16 \(1\)](#)]. Providers will be allowed to correct serious Program problems to continue participation in the Program. If providers are unwilling or incapable of correcting serious problems, the provider will be removed from the Program and will not be able to return to the Program until the approval to reapply for participation is granted by the State Agency and/or USDA. Failure by a sponsor of family day care homes to take proper action against a provider that has committed one or more serious deficiencies will result in the State Agency taking action against the sponsor.

Serious Deficiency Determination

CACFP regulations define seriously deficient as the status of a family day care home that has been determined to be non-compliant in one or more aspects in its operation of the Program. The serious deficiency process offers a systematic way for a sponsoring organization to take action allowing the day care home to correct serious Program violations. The resolution will either be the correction of the program and the issuance of a temporary deferment of the serious deficiency, or the institution's termination and disqualification from the Program. If the sponsor of family day care homes determines that a participating provider has committed one or more of the following serious deficiencies, the serious deficiency process must be initiated. Serious deficiency determination may include, but are not limited to, any of the following:

- Submission of false information on the application
- Submission of false claims for reimbursement
- Simultaneous participation under more than one sponsoring organization
- Non-compliance with the Program meal pattern
- Failure to keep required records
- Conduct or conditions that threaten the health or safety of a child(ren) in care or the public health or safety
- Failure to participate in required annual training
- A determination that the day care home has been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity. A lack of business integrity includes fraud, antitrust violations,

embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice or any other activity indicating a lack of business integrity as defined by the state agency or the concealment of such a conviction.

- Any other circumstance related to non-performance under the sponsoring-day care home agreement.
- When the serious deficiency constitutes an imminent threat to the health or safety of children the sponsor must immediately suspend the provider's participation using the suspension procedures in 7 CFR 226.16(1)(1)(4).

Six Steps in the Serious Deficiency Process

There are six steps in the serious deficiency process that must be followed once initiated.

1. Identify the serious deficiencies;
2. Issue a notice of serious deficiency;
3. Receive and assess the institution's written corrective action plan (CAP) for adequacy;
4. Issue a notice of temporary deferral of the serious deficiency if the CAP is approved, or issue a notice of proposed termination and disqualification, including appeal procedures, if the CAP is not adequate (or if not CAP is received);
5. Provide an appeal review (appeal hearing, administrative review), if requested, of the proposed termination and disqualification; and
6. Issue a notice of final termination and disqualification if the appeal is upheld or if the timeframe for requesting an appeal has passed, or issue a notice of temporary deferral if the appeal is overturned.

Serious Deficiency Notification

If the sponsor determines that a provider is seriously deficient, the sponsor must issue a timely Serious Deficiency Notice to the provider. The notice must be sent by certified mail, return receipt, by facsimile or by e-mail address and regular mail. If the notice is undeliverable, it is considered to be received five days after being sent to the addressee's last known mailing address, facsimile number or email address. A copy of the notice must be sent to the State Agency.

The notice must include the following information:

1. Provide a detailed description of each serious deficiency, including the appropriate citations from the CACFP regulations.

2. Provide a clear description of the actions required to fully and permanently correct the serious deficiencies.
3. Provide a definite and appropriate time limit for corrective action, which cannot exceed 30 calendar days.
4. State that failure to fully and permanently correct the serious deficiencies within the allotted time will result in proposing to terminate the provider's CACFP agreement and to disqualify the provider from participating in CACFP.
5. Inform the provider that voluntary termination of its agreement with the sponsor after the receipt of the serious deficiency notice will still result in the provider's termination from the Program and the placement onto the National Disqualified List.
6. Notify the provider that the serious deficiency determination is not subject to appeal.
7. Inform the provider that program payments will be made during the corrective action period, unless one of the findings is imminent threat to health and safety of children, at which time the suspension process must be followed.

Corrective Action Plan

A sponsor may allow the provider a maximum of 30 calendar days to submit a Corrective Action Plan. However, in most situations, providers can implement permanent corrective action in less time.

Acceptable corrective action plans should include the following information:

- Name of the provider associated with serious deficiencies
- Address of the provider
- Details of the serious deficiencies
 - What are the serious deficiencies and the procedures that were implemented to address the serious deficiencies
 - Who will be responsible for correcting the serious deficiencies
 - When was the procedure implemented and how often will it be occur
 - Where will the documentation for the serious deficiency corrections be maintained
- Additional supporting documentation to support the corrective action has occurred.

If the provider corrects the serious deficiency findings within the allotted time and to the sponsor's satisfaction, the sponsor must send a notice accepting corrective action, Notice of Temporary Deferral of Serious Deficiency to the provider. The notice must be sent by certified mail, return receipt, by facsimile or by e-mail address and regular mail.

If the notice is undeliverable, it is considered to be received five days after being sent to the addressee's last known mailing address, facsimile number or email address. A copy of the SD notice must be sent to the State Agency.

The notice must include the following information:

1. Notify the provider that the sponsor has temporarily deferred its serious deficiency determination.
2. Remind the provider that the corrective action must be permanent.
3. If the corrective action is not permanently corrected, the sponsor will immediately issue a notice of proposed termination and disqualification. If it is found in any subsequent review that any of these serious deficiencies have not been fully and permanently corrected, the sponsor will immediately propose to terminate and disqualify without any further opportunity for corrective action.

Repeat Serious Deficiency Findings

As a guide to assist in determining when to declare a serious deficiency if repeat findings occur, follow these general rules:

- 30 months or 8 monitoring visits must pass with no reoccurrence of the serious deficiency findings. If at any time during the 30 months or 8 monitoring visits the same serious deficiency findings reoccur, it would be considered a repeat finding and the sponsor would issue a notice of Propose Termination and Disqualification to the provider.
- After 30 months or 8 monitoring visits, if the same serious deficiency findings reoccur, a new serious deficiency would have to be declared.

Proposed Termination and Disqualification Notice

If a provider fails to permanently correct the serious deficiencies in the time allotted for corrective action or if the serious deficiencies reoccur after the Notice of Temporarily Deferral of Serious Deficiency, the sponsor must issue a Notice of Propose Termination and Disqualification to the provider. The notice must be sent by certified mail, return receipt, by facsimile or by e-mail address and regular mail. If the notice is undeliverable, it is considered to be received five days after being sent to the addressee's last known mailing address, facsimile number or email address. A copy of the notice must be sent to the State Agency.

The notice must include the following information:

1. Detail each serious deficiency and the reasons why the corrective action was inadequate.
2. Offer the provider the opportunity to appeal the Proposed Termination and Disqualification and provide appeal procedures.

1. Notify the provider that the termination of the provider's CACFP agreement will result in termination for cause and disqualification from CACFP.
2. Notify the provider that voluntary termination of the provider's CACFP agreement after the receipt of the Proposed Termination and Disqualification will result in the provider being placed on the National Disqualified List (NDL).
3. Identify the effective dates of termination and disqualification (the effective date for the termination and disqualification must be after the deadline for requesting an appeal).
4. Identify the amount of CACFP reimbursement that is owed by the provider and state the provider will remain on the National CACFP Disqualified List beyond seven years until the debt is repaid.
5. Notify the provider that they may continue to participate and receive CACFP reimbursement for eligible meals served through the appeal deadline or, if an administrative review is requested, until the hearing official issues a decision.

Program Payments

The sponsor must continue to pay the valid portion of any claims until the serious deficiencies are corrected or the agreement is terminated, including the period of an appeal, unless the provider is suspended. No program payments are made during the suspension process. The sponsor is required to deny any invalid claims.

Sponsor's Requirement to Hear Provider Appeals

The State Agency has delegated the responsibility to hear provider administrative reviews (appeals) to Family Day Care Home Sponsors. The sponsor must select and train administrative review officials (hearing officials). Officials must be training annually on program requirements and provide copies of CACFP regulations, guidance, and handbooks.

The hearing official must be independent and impartial. The selected hearing official cannot have been involved in the action that is subject of the administrative review or have a direct personal or financial interest in the outcome of the administrative review. The hearing official must make a determination based on the information provided by the sponsoring organization and the provider on federal and state laws, regulations, policies, and procedures governing the program.

The provider has the ability to appeal the proposed termination and disqualification. An appeal must be requested in writing by a provider no later than 15 days after the date the sponsor's notice of action is received. Upon receipt of a request for a hearing, the sponsor must acknowledge receipt of the request within 10 days. The provider may represent themselves, retain legal counsel, or may be represented by another person.

The provider may refute any findings contained in the notice of action in person or by submitting written documentation to the hearing official. All written documentation from the sponsor and the provider must be provided to the hearing official no later than 30 days after receipt of the notice of action. All documentation must be submitted prior to the hearing.

The provider may request that the appeal consist of only a review of written materials, an in person hearing, or a combination of both. The hearing official must hold a hearing if one is requested by the provider in a written request. If the provider or the provider's representative fail to appear at a scheduled hearing, they waive the right to an in-person hearing, unless the hearing official agrees to reschedule the hearing. A representative of the sponsor will attend the hearing to respond to the testimony of the provider and to answer questions posed by the hearing official. If a hearing is requested, the provider and the sponsor must be provided at least 10 days advance notice of the time and place of the hearing. If a hearing is rescheduled, it must be held in time to render a decision within 60 days of the original request for an appeal. The hearing official must inform the sponsor and the provider of the appeal outcome within 60 days of the sponsor's receipt of the request for an appeal. The determination made by the hearing official is the final administrative decision. The State Agency will not intervene once the provider has been terminated and disqualified unless evidence suggests that the sponsor or hearing official did not follow proper regulatory procedures.

Withdrawal of Proposed Termination and Disqualification after Provider Wins Appeal

If the provider requests an administrative review and the hearing official overturns the sponsor's proposed termination and disqualification, the sponsor must issue a Notice of Withdrawal of Proposed Termination and Disqualification to the provider. The notice must be sent by certified mail, return receipt, by facsimile or by e-mail address and regular mail. If the notice is undeliverable, it is considered to be received five days after being sent to the addressee's last known mailing address, facsimile number or email address. A copy of the notice must be sent to the State Agency.

The provider must still submit corrective action to correct all serious deficiencies after the withdrawal notice. If proper corrective action is submitted, the sponsor will send a Notice of Temporary Deferral of Serious Deficiency to the provider. If proper corrective action is not submitted, the sponsor will send the Notice of Proposed Termination and Disqualification.

Termination of the Agreement

If a provider does not submit a timely request for an appeal, or the hearing official upholds the sponsor's proposed actions, the sponsor must immediately terminate the

provider's agreement to participate in the CACFP and disqualify the provider from future CACFP participation.

If the provider did not request an appeal, the sponsor must issue a Notice of Termination and Disqualification to the provider. The date of termination and disqualification will be the date following the last day for the provider to submit an appeal.

If the provider requested an appeal and the hearing official rules in favor of the sponsor, the sponsor must issue a Notice of Termination and Disqualification. The date of the termination and disqualification will be the date of the hearing official's decision.

The notice must be sent by certified mail, return receipt, by facsimile or by e-mail address and regular mail. If the notice is undeliverable, it is considered to be received five days after being sent to the addressee's last known mailing address, facsimile number or email address. A copy of the notice must be sent to the State Agency.

The notice must include the following information:

1. Identify the provider's name, address and birth date.
2. Terminate the provider/sponsor agreement for cause.
3. Disqualify the provider from future CACFP participation.
4. Identify the effective date of termination and disqualification.
5. Inform the provider that their name will be on the NDL until seven years after disqualification or until debt owed is repaid.
6. Identify the amount of CACFP reimbursement owed by the provider and state the provider will remain on the NDL beyond seven years until the debt is repaid.
7. The termination of the agreement and placement on the NDL is not appealable.

Suspension for Imminent Threat to Health & Safety

If a provider is cited for serious health or safety violation by state or local health officials, or by a licensing official, the sponsor must immediately suspend the provider's CACFP participation, even before any formal action has been taken to revoke the provider's license. If the sponsor determines that there is imminent threat to the health or safety of participants in the home, or the provider engages in activities that threaten public health or safety, the sponsor must notify state or local licensing officials. For all imminent threat to health or safety issue, the sponsor must issue a combined Notice of Serious Deficiency, Suspension, and Proposed Termination and Disqualification to the provider. The notice must be sent by certified mail, return receipt, by facsimile or by e-mail address and regular mail. If the notice is undeliverable, it is considered to be received five days after being sent to the addressee's last known mailing address,

facsimile number or email address. A copy of the notice must be sent to the State Agency.

The notice must include the following information:

1. Inform the provider that participation in the CACFP has been suspended, that the provider has been determined seriously deficient, and that the sponsor is proposing to termination and disqualification.
2. Specify the serious deficiencies found and the provider's opportunity to appeal the proposed termination and disqualification.
3. Notify the provider that participation and payments will remain suspended until the administrative review is concluded.
4. Inform the provider that if the administrative review official overturns the proposed termination and disqualification, this also overturns suspension, and the provide may claim reimbursement for eligible meals served during suspension.
5. Inform the provider that termination of their CACFP agreement will result in the placement onto the NDL.
6. Inform the provider that if they voluntarily terminate their CACFP agreement after receiving the suspension notice, the provider will be terminated for cause, disqualified, and placed on the NDL.

Placement on the National Disqualified List (NDL)

The sponsor will immediately notify the State Agency to place a provider on the NDL once they have been terminated and disqualified. The State Agency will keep all letters sent between the sponsor and the provider electronically and in the organizations SD letter folder. The State Agency will place the provider on the NDL within five days after receiving the Termination and Disqualification letter. Once provider is placed on the NDL, the State Agency's Serious Deficiency List will be updated.

Removal from the National Disqualified List (NDL)

Terminated and disqualified providers will remain on the NDL for seven years or until any outstanding debt is repaid, whichever is longer. When both the seven years have elapsed and the debt has been repaid, the provider will be removed from the NDL. Providers may submit corrective action, pay off any debts owed (interest included), and submit a request to the sponsor for early removal from the NDL.

The corrective action must include the following information in order for it to be deemed acceptable:

- A detailed explanation of the actions taken by the institution and/or responsible principals to fully and permanently correct the serious deficiencies including the resolution of any debt owed
- Documentation to support the actions taken to fully and permanently correct the serious deficiencies

If the sponsor approves the corrective action submitted, the information will be submitted to the State Agency for approval. If the State Agency approves the corrective action submitted, the information will be submitted to the FNS Regional Office for approval. If the FNS Regional Office approves the corrective action, the information will be submitted to the FNS National Office for approval. The FNS National Office will notify the FNS Regional Office of its decision. The FNS Regional Office will notify the State Agency of the FNS National Office's decision. If the FNS National Office approves the corrective action, the institution and/or responsible principals will be removed from the NDL. If at any time the corrective action is not approved, it will be returned to the institution and responsible principals.