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**ADMINISTRATIVE REVIEW PROCESS**

All sponsors of family day care home providers must establish an administrative review process to ensure that the providers have an opportunity to implement corrective action for resolving the serious deficiencies, except when the serious deficiencies involve an imminent threat to the health and safety of children, or the provider has engaged in activities which threaten the public health or safety. This administrative review process must be followed when a provider is issued a Notice of Proposed Termination and Disqualification from the CACFP, giving the provider the option to appeal the proposed termination and disqualification by following the Home Provider Appeal Procedures enclosed with the notice.

As part of establishing the administrative review process, sponsors must designate a qualified person for taking the responsibilities of the administrative review official and it must allow both the provider and the sponsor adequate time to submit documentation of their case to the administrative review official.

### **Requirements for the Administrative Review Official**

The administrative review official must be:

- An impartial and independent person;
- Not involved in the decision to terminate the provider's participation;
- Not involved in the action that is the subject of the administrative review; and
- Not have a direct personal or financial interest in the outcome of the administrative review

### **Administrative review official's role**

The administrative review official's decision must be based on the information provided by the state agency, the institution (sponsor), and responsible principles and individuals (RPIs) (providers), and federal and state laws, regulations, policies, and procedures governing the CACFP [7 CFR 226.6(k)(5)(viii)].

With emphasis, the administrative review official must:

- Assess the state agency's or sponsor's action to propose termination;
- Determine whether the actions taken by the state agency, institution, RPIs, and providers followed the Federal regulations, policies, and procedures governing the CACFP; and
- Base their decisions on the information presented by the state agency, the institution, RPIs, or providers and federal and state laws, regulations, policies and procedures.

The authority of the administrative review official does not include:

- Interpreting the intent or expanding the meaning of federal regulations;
- Validating the serious deficiency determination;
- Verifying whether corrective actions submitted by RPIs fully and permanently corrects Program violations; and
- Establishing settlements of demands for overpayments

Sponsors and providers must be permitted to contact the administrative review official directly, pursuant to the regulations if they so desire.

The administrative review official's determination "is the final administrative determination to be afforded the institution, RPIs, or providers", per 7 CFR 226.6(k)(5)(x) and 226.6(l)(5)(vii).

### **State Agency (DPI)**

The DPI is ultimately responsible for ensuring administrative review officials abide by the procedures set forth in 7 CFR 226.6(k)(5), as listed above.

### **USDA FNS (Food and Nutrition Services) Audits**

If USDA FNS identifies that administrative review officials are not basing their decisions on federal and state laws, regulations, policies, and procedures, and not applying them to the facts of CACFP cases, FNS may take one or more of the following actions as appropriate per 7 CFR 235.11(b) and 3016.43:

- Temporarily withhold cash payments pending correction of the deficiency by the state agency. The state agency must continue to make Program payments to CACFP participants during this administrative action;
- Disallow all or part of the cost of the activity or action not in compliance and return these funds to FNS;
- Wholly or partly suspend or terminate the award for the state agency's Program;
- Withhold further awards for the Program; or
- Take other remedies that may be legally available.

### **Providing Guidance to Administrative Review Officials**

DPI and the sponsors must provide CACFP training to the administrative review officials responsible for CACFP cases. Some ways that DPI and the sponsors can provide training to administrative review officials are:

- Provide copies of the training materials issued by DPI, including the [State Agency Guidance Memorandums](#) for FDCH sponsors.
- Offer to train on a quarterly, semi-annual, or annual basis, i.e. by in-person trainings or webinars.
- Review concerns raised by the administrative review officials that relate to their decisions issued on CACFP cases for strengthening DPI's and the sponsor's ability to effectively administer the CACFP.

### **SERIOUS DEFICIENCY PROCESS**

Sponsors should have a written policy which includes detail on the specific staff personnel within its organization who will have the authority to issue the required written notices relating to the serious deficiency process.

#### **Written Correspondence**

Definition of "Notice":

All written correspondence to the provider that relate to the [Serious Deficiency Process](#) must be sent by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or email. If the notice is undeliverable, it is considered as received by the provider five days after being sent to the addressee's last known mailing address, facsimile number or email address. Any timeframes associated with the given notice start with the earliest form of transmission. (7 CFR 226.2)

- DPI advises sending notices by certified mail/return receipt for getting proof of the delivery.
- DPI must be copied on all sponsor's written correspondence with the provider sent during the serious deficiency process.

#### **DPI's Serious Deficiency Template letters**

Sponsors must use DPI's template letters for all formal correspondence sent to the provider during the serious deficiency process. They include the proper regulatory citations and have been approved by DPI's legal department.

Sponsors must add the name and address of the relevant sponsor contact person and the appropriate regulatory citation(s) for the specified serious deficiency(ies).

[DPI's Serious Deficiency Template letters](#)

#### **Serious Deficiency Procedures for Home Providers**

This document lists the USDA regulatory citations for each of the potential serious deficiencies for home providers, found under 7 CFR 226.16(l)(2), and guidance on which template letters to use when issuing correspondence for different scenarios and steps taken within the serious deficiency process.

[Serious Deficiency Procedures for Home Providers](#)

#### **Family Day Care Home Appeal Procedures**

This document must be included with the *Notice of Proposed Termination and Disqualification* letters. The sponsor must add the name of the relevant staff person to be contacted.

[Family Day Care Home Appeal Procedures](#)

**If your agency intends to develop its own procedures and/or template letters, submit them to the DPI for review and approval.**

### **Determining Serious Deficiencies and Issuing a *Declaration of Serious Deficiency Letter***

Sponsors have the authority to determine when a violation rises to the level of a serious deficiency. In making this determination, the sponsor should consider the following aspects:

- The severity of the problem
- The degree of responsibility attributable to the provider
- The provider's history of participation in the CACFP
- The nature of the requirements relating to the problem
- The degree to which the problem impacts Program integrity

Once a sponsor has identified the serious deficiency(ies), the sponsor must issue the written notice of serious deficiency in a timely manner. The written notice of serious deficiency declaration must specify the actions leading up to serious deficiencies, identify the specific serious deficiencies and their regulatory citations, and require the provider to submit a written corrective action plan. A declaration of serious deficiency is not an appealable action.

#### **Submission of false claims for reimbursement [7 CFR 226.16(l)(2)(ii)]**

The provider's actions leading up to this serious deficiency should be thoroughly documented to show the objective evidence of the provider submitting false claims.

- The only acceptable corrective action to this serious deficiency is for the provider to demonstrate that the sponsor has made an administrative error, has confused two providers with similar or identical names, and/or received inaccurate information from the parents contacted through the household contact process.
- If the provider is unable to demonstrate that any of these errors have occurred, then the Sponsor must issue the *Notice of Proposed Termination and Disqualification*, deny any invalid part of the provider's submitted claim(s), and require repayment (if the submitted claim(s) have already been paid).

### **Corrective Action**

#### **Provider's Rights to Submit Corrective Action**

Except in cases of imminent threat to the health and safety of children in care or the public safety, the provider must be given an opportunity to correct the cause(s) of the serious deficiency.

- The provider's written corrective action plan must be on file and approved by the sponsor within 30 days of the date of the *Declaration of Serious Deficiency* notice.

If the provider does not correct the serious deficiency(ies) to the sponsor's satisfaction within this allotted timeframe, a *Notice of Proposed Termination and Disqualification* must be sent to the provider.

#### **Requirements for the Provider's Corrective Action Plan (CAP)**

Providers are required to submit corrective actions taken to fully and permanently correct each serious deficiency to the sponsor [7 CFR 226.16(k)(3)(F)(ii)]. If the sponsor determines that the corrective actions fully and permanently correct each serious deficiency, then the sponsor must temporarily defer the provider's serious deficiency determination.

The CAP must include the provider's official documentation demonstrating that the serious deficiencies have been fully and permanently corrected. The sponsor must rely on the submission of this information to determine whether the provider has internal controls in place to ensure accountability.

**The CAP must include the following information**

- The provider's full name, address, and date of birth;
- Each serious deficiency and the procedures to be implemented to correct the issue;
- The timeframe for implementation of the procedures to correct the issue;
- The location where records will be kept associated with correcting the issue; and
- Supporting documentation: this may include copies of income eligibility forms, enrollment forms, enrollment rosters, training documentation, menus, Child Nutrition labels or manufacturers' product analysis sheets or recipes, attendance records, meal count forms, itemized food receipts, etc.

**Verification of Provider's Proposed Correction Action Plan**

As a best practice even though it is not required, the sponsor **should** conduct an unannounced visit prior to approval of the provider's submitted corrective action plan. The purpose of this unannounced visit would be to verify the proposed corrective action plan and determine if it is adequate or not.

**Continuation of Program Payments during the Serious Deficiency Process**

Sponsors must continue issuing Program payments for the provider's submitted claims that are supported by appropriate records, pending the outcome of the administrative review.

**Suspension of Payments**

A provider's Program payments may only be suspended when the Sponsor determines there is an imminent threat to the health and safety of the children at the day care home or the public health and safety.

**Denial of Invalid Claims**

Sponsors must not pay any claim or portion of a claim that the sponsor believes to be invalid.

***Submitted Invalid Claims – Not yet Processed for Payment by DPI***

If the provider has submitted a claim for which the sponsor has determined to be partially invalid and the sponsor has not yet submitted the provider's partially invalid claim to DPI for payment, the sponsor should return the claim to the provider. When returning the invalid claim to the provider, the sponsor should include an explanation of the claim error(s) and/or discrepancies and instruct the provider to submit the corrected claim to the sponsor by its established deadline for ensuring that the sponsor can submit the provider's corrected claim to DPI for payment by the 60-calendar day deadline.

***Submitted Invalid Claims – Processed but not yet Paid by DPI***

- Release the payment for the questionable claim to the provider, identify the invalid parts of the claim, and proceed to recover the payment amount that was issued in error from the invalid claim, from the provider.
- Return the entire payment amount received from DPI for this claim and return the submitted claim to the provider. When returning the invalid claim to the provider, the sponsor should include an explanation of the claim error(s) and/or discrepancies and instruct the provider to submit the corrected claim to the sponsor by its established deadline for ensuring that the sponsor can submit the provider's corrected claim to DPI for payment by the 60 calendar day deadline.

### **Notice of Proposed Termination and Disqualification**

Once the sponsor determines that the serious deficiency provider either did not submit acceptable corrective action or cannot be given the opportunity to submit corrective action (in cases of imminent threat to healthy and safety), the sponsor must issue the serious Deficiency Provider a written notice in which the Sponsor proposes to terminate and disqualify the provider from CACFP participation and explains the reason(s) for this proposed action; the *Notice of Proposed Termination and Disqualification* must include a copy of the *Family Day Care Home Appeal Procedures*.

### **Termination and Disqualification from the CACFP**

Once a provider has been issued the *Notice of Termination and Disqualification*, and therefore terminated “for cause” from the CACFP, their name will be placed on the CACFP National Disqualified List (NDL) maintained by USDA.

**NDL:** While on the NDL, the provider will not be able to participate in the CACFP as a provider in any state. The provider also will not be able to serve as a principal in any CACFP institution or facility. They will remain on the NDL for seven (7) years unless a special exception has been granted by DPI. However, if any debt relating to the serious deficiencies has not been repaid, the provider will remain on the NDL until the debt has been paid.

### **IMPROPER TERMINATION FOR CONVENIENCE**

A sponsor must not terminate a provider “for convenience” when the provider’s termination is actually “for cause”, or when it is based on the provider committing one or more of the eight specified serious deficiencies and/or the provider’s failure to comply with the terms of the agreement with the sponsor.

### **REMOVAL FROM THE NDL**

A provider may be removed from the NDL with the approval of the DPI and USDA prior to the lapse of seven (7) years if it has been determined that the causes of the serious deficiencies that led to the provider’s placement on the NDL have been corrected [7 CFR 226.6(c)(7)(vi)], and the provider owes no debts to the Program.

#### **Required Procedure for Early NDL Removal**

The terminated provider must submit a written request for being removed from the NDL, to the sponsor that issued the termination and disqualification. The provider’s request for their removal from the NDL must include clear and compelling documentation that the cause of the serious deficiencies have been fully and permanently corrected and that the provider is now capable of properly handling all financial and administrative responsibilities for the operation of the CACFP in their day care home.

Upon receiving the provider’s written request for removal from the NDL, the sponsor must evaluate the submitted documentation and render a decision.

If the sponsor determines that the provider’s request is not valid (meaning the cause(s) of the serious deficiency(ies) has(ve) not been properly corrected and/or a debt is still owing to the Program), the sponsor must provide written notification to the provider of the denial of their request; a copy of this letter must be forwarded to DPI.

**The provider will remain on the NDL until seven (7) years have elapsed from the date of termination, or longer, until all outstanding debts to the Program have been repaid.**

## Guidance Memorandum M **Serious Deficiency Requirements (FDCH Sponsors)**

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If the sponsor determines that the terminated provider has properly corrected the cause(s) of the serious deficiency(ies) and they do not owe any debts to the Program, the sponsor must provide written notification of this determination to DPI for recommending that the provider's name be removed from the NDL.

DPI will review the sponsor's written request and render a final decision. If in agreement with the sponsor, DPI will submit a request to USDA for removing the provider's name from the NDL. Upon receiving notification from USDA that the provider's name has been removed from the NDL, the DPI will inform the sponsor, who will in turn inform the provider.

**The provider will then be eligible to participate in the CACFP again.**

(Note: The sponsor that terminated the provider for cause is under no obligation to sponsor the provider again for his/her participation in the CACFP.)

If DPI does not agree with the sponsor's request to remove the provider from the NDL, DPI will provide written notification to the sponsor and the sponsor in turn will inform the provider. The provider's name will remain on the NDL until seven (7) years have elapsed from the date of termination for cause, or longer they still owe debt to the Program.

A provider who has been terminated "for cause" may make one request in a twelve-month period during the seven-year disqualification period to have their name removed from the NDL by following the above procedure.

Refer to [USDA Serious Deficiency, Suspension, & Appeals for State Agencies & Sponsoring Organizations](#) for additional information.