

**North Carolina Department of Health and Human Services
Division of Public Health
Women's & Children's Health Section
Nutrition Services Branch
Special Nutrition Programs**

CHILD AND ADULT CARE FOOD PROGRAM

**ADMINISTRATIVE REVIEWS FOR INSTITUTIONS AND RESPONSIBLE PRINCIPALS
AND RESPONSIBLE INDIVIDUALS
(Please keep for your files)**

ACTIONS SUBJECT TO ADMINISTRATIVE REVIEW

Administrative reviews for institutions participating in the Child and Adult Care Food Program ("CACFP") are governed by 7 C.F.R. § 226.6(k). Title 7 C.F.R. § 226.6(k) provides for an appeal by an institution of the following state agency actions:

1. Denial of a new or renewing institution's application for participation
2. Denial of an application submitted by a sponsoring organization on behalf of a facility
3. Proposed termination of an institution's agreement
4. Proposed disqualification of a responsible principal or responsible individual
5. Suspension of an institution's participation
6. Denial of an institution's application for start-up or expansion payments
7. Denial of a request for an advance payment
8. Recovery of all or part of an advance in excess of the claim for the applicable period
9. Denial of all or part of an Institution's claim for reimbursement (except for late submission under § 226.10(e))
10. Decision by the state agency not to forward to FNS an exception request by the institution for payment of a late claim or request for an upward adjustment to a claim
11. Demand for the remittance of an overpayment
12. Any other state agency action affecting an institution's participation or its claim for reimbursement.

ACTIONS NOT SUBJECT TO ADMINISTRATIVE REVIEW

By federal rule, the state agency is prohibited from offering administrative reviews of the following actions:

1. A decision by FNS to deny an exception request by an institution for payment of a late claim or for an upward adjustment to a claim
2. A determination that an institution is seriously deficient
3. Disqualification of an institution or a responsible principal or responsible individual, and the subsequent placement on the state agency list and the National Disqualified list
4. Termination of a participating institution's agreement, including termination of a participating institution's agreement based on the disqualification of the institution by another state agency or FNS.

ADMINISTRATIVE REVIEW PROCEDURES

1. Provision of Administrative Review Procedures to Institutions and Responsible Principals and Responsible Individuals

The State agency will make administrative review procedures available:

1. Annually to Institutions
2. To Institutions and each responsible principal and responsible individual when the State agency takes any action subject to an administrative review, and
3. Any other time upon request.

2. Notice of Action

The state agency will notify the institution's executive director, chairman of the board of directors, and the responsible principals and responsible individuals of the action being taken or proposed, the basis for the action, and the procedures by which the institution and the responsible principals or responsible individuals may request an administrative review of the action.

3. Time to Request Administrative Review

The institution must request, in writing, an administrative review within **fifteen (15) days** of receipt of the state's notice of action or intended action. The state agency must acknowledge the receipt of the request for an administrative review within 10 days of its receipt of the request.

4. Representation

The institution and the responsible principals and responsible individuals may retain legal counsel, or may be represented by another person.

5. Review of Records

Any information on which the state agency's action was based will be made available to the institution and the responsible principals and responsible individuals for inspection from the date of receipt of the request for an administrative review.

6. Opposition

The institution and the responsible principals and responsible individuals may refute the findings contained in the notice of action in person or by submitting written documentation to the administrative review official. In order to be considered, written documentation must be submitted to the administrative review official not later than 30 days after receipt of the notice of action.

7. Hearing

A hearing must be held by the administrative review official in addition to, or in lieu of, a review of written information only if the institution or the responsible principals and responsible individuals request a hearing in the written request for an administrative review. If the institution's representative or the responsible principals or responsible individuals or their representative, fail to appear at a scheduled hearing, they waive the right to a personal appearance before the administrative review official, unless the administrative review official agrees to reschedule the hearing. A representative of the State agency must be allowed to attend the hearing to respond to the testimony of the Institution and the responsible principals and responsible individuals and the answer questions posed by the administrative review official. If a hearing is requested, the institution, the responsible principals, responsible individuals and state agency will be provided with at least 10 days advance notice of the time and place of the hearing.

8. Administrative Review Official

The administrative review official will be independent and impartial. The administrative review official will not have been involved in the action that is the subject of the administrative review or have a direct personal or financial interest in the outcome of the administrative review. The Institution and responsible principals and responsible individuals will be permitted to contact the administrative review official directly if they so desire.

9. Basis for Decision

The administrative review official must make a determination based solely on the information provided by the State agency, the Institution, and the responsible principals and responsible individuals and based on the Federal and State laws, regulations, policies, and procedures governing the Program

10. Time for Issuing a Decision

The institution's executive director and chairman of the board, the responsible principals, responsible individuals and the state agency will be informed of the outcome of the administrative review within 60 days of the state agency's receipt of the request for an administrative review.

11. Final Decision

The determination made by the administrative review official is the final administrative determination to be afforded the institution and the responsible principals and responsible individuals.

12. Record of Result to Administrative Reviews

The State agency will maintain searchable records of all administrative reviews and their disposition.

COMBINED ADMINISTRATIVE REVIEWS FOR RESPONSIBLE PRINCIPALS AND RESPONSIBLE INDIVIDUALS

The administrative review of the proposed disqualification of the responsible principals and responsible individuals will be conducted as part of the administrative review of the application denial, proposed termination, and/or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. At the administrative review official's discretion, separate administrative reviews may be held if the institution does not request an administrative review or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.

ABBREVIATED ADMINISTRATIVE REVIEW

The state agency must limit the administrative review to a review of written submissions concerning the accuracy of the state agency's determination if the application was denied or the state agency proposes to terminate the institution's agreement due to the following reasons:

1. The information submitted on the application was false.
2. The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the National Disqualified list.
3. The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program.
4. The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities has been convicted of any activity that indicates a lack of business integrity.

EFFECT OF STATE AGENCY ACTION

The state agency's action will remain in effect during the administrative review.

1. Overpayment demand

During the period of the administrative review, action to collect or offset the overpayment will not be taken. However, interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review will be assessed, unless the administrative review official overturns the state agency's action.

2. Recovery of advances

During the administrative review, the state agency will continue to make efforts to recover advances in excess of the claim for reimbursement for the applicable period. The recovery may be through a demand for full payment or an adjustment of subsequent payments.

PROGRAM PAYMENTS

1. New Institutions

Program payments for eligible meals served or allowable administrative expenses will not be made to new institutions until the state agency has approved the institution's application and the institution and state agency have signed the Program agreement.

2. Renewing Institutions

If the renewing institution's agreement expires before the end of the time allotted for corrective actions, and/or the conclusion of any administrative review requested by the renewing institution, the agreement with the renewing institution will be extended and valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred will be paid. These actions will be taken either until the serious deficiency(ies) is corrected or until the institution's agreement is terminated, including the period of any administrative review.

3. Participating Institutions

Valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred will be paid until the serious deficiency(ies) is corrected, or the institution's agreement is terminated, including the period of any administrative review.

4. **Suspended Institutions**

Public Health or Safety

Claims from a suspended institution due to public health or safety will not be paid for any claims for reimbursement for eligible meals served and allowable administrative costs unless the institution prevails in the administrative review of the proposed termination. If the suspended institution prevails in the administrative review of the proposed termination, the State agency will pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

False or Fraudulent Claims

Claims from a suspended institution due to submission of false or fraudulent claim(s) will not be paid for any claims for reimbursement for eligible meals served and allowable administrative costs unless the institution prevails in the administrative review of the proposed termination. However, if the institution suspended for the submission of false or fraudulent claims is a sponsoring organization, the State agency will ensure that sponsored facilities continue to receive reimbursement for eligible meals served during the suspension period. If the suspended institution prevails in the administrative review of the proposed termination, the State agency will pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

REQUEST FOR AN ADMINISTRATIVE REVIEW

An institution wishing to request an administrative review must file a written request with the state agency within **fifteen (15) days** of receiving the state agency's notice of action or intended action. The request must specify:

1. The state agency action for which an administrative review is requested.
2. The name, address and phone number of the contact person handling the administrative review for the institution.

The original request for an administrative review must be mailed to:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

If you file a petition with the Office of Administrative Hearings, you must also serve a copy of the petition on:

General Counsel
Department of Health and Human Services
Office of Legal Affairs
2001 Mail Service Center
Raleigh, NC 27699-2001

REQUEST FOR AN ADMINISTRATIVE REVIEW OF PROPOSED SUSPENSIONS

If the State agency determines that an institution has knowingly submitted a false or fraudulent claim, the State agency may initiate action to suspend the institution's participation and must initiate action to terminate the institution's agreement and initiate action to disqualify the institution and the responsible principals and responsible individuals.

If the State agency decides to propose to suspend an institution's participation due to the institution's submission of a false or fraudulent claim, the State agency will notify the institution's executive director and chairman of the board of directors that the State agency intends to suspend the institution's participation (including all Program payments) unless the institution requests a review of the proposed suspension. The notice will:

- Identify the responsible principals and responsible individuals and will be sent to those persons;
- Specify that the State agency is proposing to suspend the institution's participation;
- Specify that the proposed suspension is based on the institution's submission of a false or fraudulent claim, as described in the serious deficiency notice;
- Specify the effective date of the suspension (which may be no earlier than 10 days after the institution receives the suspension notice);

- Specify the name, address and telephone number of the suspension review official who will conduct the suspension review; and
- Specify that if the institution wishes to have a suspension review, it must request a review and submit to the suspension review official written documentation opposing the proposed suspension within 10 days of the institution's receipt of the notice.

If the state agency proposes to suspend the institution due to submission of false or fraudulent claims, the institution must request a review and submit to the suspension review official written documentation opposing the proposed suspension within **ten (10) days** of the institution's receipt of the notice.

The request must be sent to:

Becky Sellers-Reeves, Suspension Review Official
4104 Juniper Court
Raleigh, NC 27612

If you file a petition with the Office of Administrative Hearings, you must also serve a copy of the petition on:

General Counsel
Department of Health and Human Services
Office of Legal Affairs
2001 Mail Service Center
Raleigh, NC 27699-2001

The request must specify:

1. The state agency action for which an administrative review is requested.
2. The name, address and phone number of the contact person handling the administrative review for the institution.

SUSPENSION REVIEW

If the institution requests a review of the State agency's proposed suspension of participation, the suspension review must be heard by a suspension review official who must:

- Be an independent and impartial person other than, and not accountable to, any person involved in the decision to initiate suspension proceedings;
- Immediately notify the State agency that the institution has contested the proposed suspension and must obtain from the State agency its notice of proposed suspension of participation, along with all supporting documentation; and
- Render a decision on suspension of participation within 10 days of the deadline for receiving the institution's documentation opposing the proposed suspension.

SUSPENSION REVIEW DECISION

If the suspension review official determines that the State agency's proposed suspension is not appropriate, the State agency is prohibited from suspending participation. If the suspension review official determines, based on a preponderance of the evidence, that the State agency's action was appropriate, the State agency must suspend the institution's participation (including all Program payments), effective on the date of the suspension review decision. The State agency will notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the institution's participation has been suspended.

The notice will specify:

- That the State agency is suspending the institution's participation (including Program payments);
- The effective date of the suspension (the date of the suspension review decision);
- The procedures for seeking an administrative review of the suspension; and
- That if the administrative review official overturns the suspension, the institution may claim reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

PROGRAM PAYMENTS

The State agency is prohibited from paying any claims for reimbursement submitted by a suspended institution. If the institution suspended for the submission of false or fraudulent claims is a sponsoring organization, the State agency will ensure that the sponsored facilities continue to receive reimbursement for eligible meals served during the suspension period.

If the suspended institution prevails in the administrative review of the proposed termination, the State agency will pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

MAXIMUM TIME FOR SUSPENSION

Under no circumstances may the suspension of participation remain in effect for more than 120 days following the suspension review decision.