

Administrative Review Policy and Procedures for Family Day Care Home
Administrative Review Officials

ACTIONS SUBJECT TO ADMINISTRATIVE REVIEW

The sponsoring organization must initiate action to terminate the agreement of a day care home for cause if the sponsoring organization determines the day care home has committed one or more serious deficiencies listed. Serious deficiencies for day care homes are:

1. Submission of false information on the application;
2. Submission of false claims for reimbursement;
3. Simultaneous participation under more than one sponsoring organization;
4. Non-compliance with the Program meal pattern;
5. Failure to keep required records;
6. Conduct or conditions that threaten the health or safety of a child(ren) in care, or the public health or safety;
7. 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;
8. Failure to participate in training; or
9. Any other circumstance related to non-performance under the sponsoring organization-day care home agreement, as specified by the sponsoring organization or the State agency.

ACTIONS NOT SUBJECT TO ADMINISTRATIVE REVIEW

By federal rule, neither the State agency nor the sponsoring organization is required to offer administrative review for reasons other than those listed:

1. When a sponsoring organization proposes to terminate its Program agreement with a day care home for cause, the day care home is provided an opportunity for an administrative review of the proposed termination.
2. The State Agency or sponsoring organization must offer an administrative review to a day care home that appeals a notice of intent to terminate their agreement for cause or a suspension of their participation.

ADMINISTRATIVE REVIEW PROCEDURES

1. Provision of Administrative Review Procedures to Day Care Homes

The administrative review procedures must be provided:

1. Annually to all day care homes;
2. To a day care home when the sponsoring organization takes any action subject to an administrative review
3. Any other time upon request.

PROCEDURES

The sponsoring organization must follow the procedures when a day care home requests an administrative review of any action subject to an administrative review.

1. Uniformity

The same procedures must apply to all day care homes.

2. Representation

The day care home may retain legal counsel, or may be represented by another person.

3. Review of record and opposition

The day care home may review the record on which the decision was based and refute the action in writing. The administrative review official is not required to hold a hearing in person.

4. Administrative review official

The administrative review official must be independent and impartial. This means that, although the administrative review official may be an employee of the State agency or an employee or board member of the sponsoring organization, he/she must 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.

5. Basis for Decision

The administrative review official must make a determination based only on the information provided by the sponsoring organization and by the day care home and on Federal and State laws, regulations, policies, and procedures governing the Program.

6. Time for issuing a decision

The administrative review official must inform the sponsoring organization and the day care home of the administrative review's outcome within the period of time specified in the sponsoring organization's administrative review procedures. This timeframe is an administrative requirement for the sponsoring organization and may not be used as a basis for overturning the termination if a decision is not made within the specified timeframe.

7. Final decision

The determination made by the administrative review official is the final administrative determination to be afforded the day care home.

Administrative Review Appeal Procedures
for Proposed to Termination of Provider Agreement for Cause

Sponsoring Organization shall send the proposal to terminate notice to the provider by certified mail, fax or e-mail. If this notice is undeliverable, it is still considered to be received by the day care home five days after being sent to the addressee's last known mailing address. The notice is considered received as described in the definition of "Notice" 7 C.F.R. §226.2.

_____ has been given Notice of Proposed Termination and
(Name of Provider)

Disqualification for cause and proposed placement on the National Disqualified List.

_____ has the right to request an administrative review.
(Name of Provider)

An administrative review is a process by which an impartial Hearing Officer reviews information provided by the sponsor and by the day care home to determine if the regulated sponsor procedures were followed and were within the Federal and State laws, regulations, policies and procedures governing the Child and Adult Care Food Program.

I. Serious deficiencies for day care homes are:

1. Submission of false information on the application;
2. Submission of false claims for reimbursement;
3. Simultaneous participation under more than one sponsoring organization;
4. Non-compliance with the Program meal pattern;
5. Failure to keep required records;
6. Conduct or conditions that threaten the health or safety of a child(ren) in care, or the public health or safety;

7. 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;
8. Failure to participate in training; or
9. Any other circumstance related to non-performance under the sponsoring organization-day care home agreement, as specified by the sponsoring organization or the State agency.

II. Appeal Procedures:

1. A provider may appeal the Sponsoring Organization's Notice of Proposed Termination and Disqualification in writing. It is recommended that the appeal be sent by certified mail; however, certified mail is not required. An appeal from the provider must be received (or postmarked) within fifteen (15) calendar days of the date of the Notice of Proposed Termination and Disqualification. If you appeal by mail, the appeal is filed as the date of the U.S Postal Service postmark or a U.S. Postal Service certified mail receipt. If there is no U.S. Postal Service postmark, the date of filing will be the date of a postage meter mark on the envelope containing the appeal. If the appeal contains neither a postmark nor a postage meter mark, the date of filing will be the date recorded by the Sponsoring Organization when the appeal is received. Your appeal should be mailed to the following address:

Name of Sponsoring Organization: _____

Address: _____

City: _____ State: _____ Zip Code: _____

OR:

Fax to the following:

Fax Number: () _____

OR:

Email the request to the following:

Email address: _____

- a) All appeals must be accompanied by a copy of the Sponsoring Organizations Notice of Proposed Termination and Disqualification and a copy of any documentation that is relevant to the Notice of Serious Deficiency and Notice of Proposed Termination and Disqualification.
 - b) When the fifteenth (15th) day of the appeal period falls on a weekend (Saturday or Sunday) or holiday, the appeal period is extended to the next business day.
2. Once the appeal has been received, the Sponsoring Organization will respond to the appeal request within 10 calendar days of receipt and make arrangements for the administrative review.
 3. A hearing official(s) will be appointed by the Sponsoring Organization within 10 calendar days of receipt of the appeal request. The hearing official(s) will be independent and impartial. The hearing 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.
 4. The hearing official(s) will be provided with the following documentation within 10 calendar days of the date in which the appeal was received:

- a) A copy of the Notice of Serious Deficiency,
 - b) Notice of Proposed Termination and Disqualification,
 - c) Federal Regulations 7 CFR 226,
 - d) Provider documentation relevant to the Notice Serious Deficiency and Notice of Proposed Termination and Disqualification,
 - e) All applicable Federal and State laws, regulations, policies, and procedures governing the CACFP program
5. The hearing official(s) is not required to hold a hearing; however, within 10 days of reviewing the documentation, the hearing official may contact the provider for clarification or to schedule an administrative review date.
6. The provider will have the following rights:
- a) The day care home may retain legal counsel, or may be represented by another person,
 - b) The day care home may review the record on which the decision was based and refute the action in writing. Review of the record shall mean the provider has the opportunity to refute the proposed termination in writing. The provider submits written information to the Hearing Officer. The Hearing Officer then reviews the written records.
7. The hearing official will make their decision based on the information provided by the sponsoring organization and by the day care home and on Federal and State laws, regulations, policies, and procedures governing the CACFP program.
8. Providers may continue to claim CACFP reimbursement during the appeal process until the final decision of the hearing official.
9. If the sponsoring organization has determined that continued participation in the program would pose an imminent danger to the health or welfare of children, the provider would not be allowed to continue his/her participation and will be so notified.
10. The hearing official will notify the provider, and the sponsoring organization of their decision within 15 days from the date of the review. The report shall contain a summary of the review of the record. The report shall also contain a summary of the arguments made both for and against termination. The Hearing Officer has the

