



**North Carolina Department of Health and Human Services
Division of Public Health**

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Sent Via Email

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CACFP 14-06

TO: Sponsoring Organizations of Day Care Homes

FROM: Arnette Cowan, MS, RD, LDN
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SUBJECT: Child and Adult Care Food Program Guidance on the Serious Deficiency Process and Acceptable Corrective Action Plans, National Disqualified List Procedures and Debt Collection

The purpose of this memorandum is to provide guidance on the regulatory serious deficiency, termination, and disqualification processes for the Child and Adult Care Food Program (CACFP). By providing this guidance, our objective is to assist sponsoring organizations in ensuring uniformity and program integrity throughout the CACFP. To achieve this objective, this memorandum will:

- Review the serious deficiency process;
- Clarify Food and Nutrition Service (FNS) expectations for acceptable corrective action plans (CAP);
- Review the termination and disqualification process;
- Provide guidance on what is required for submissions to the National Disqualified List (NDL);
- Provide guidance on what is needed to request removal from the NDL; and
- Provide clarification on the collection of debts, including interest.

This memo is intended to assist sponsoring organizations to come into compliance with CACFP requirements by stressing that the initiation of the serious deficiency process is the first step in successfully addressing a provider's non-compliance with one or more aspects of its operation of the Program. Proper implementation of the serious deficiency process includes development of a CAP. This allows the provider to continue Program participation and to receive technical assistance from the sponsoring organization. It is critical to the integrity of the Program and the effectiveness of the serious deficiency process and the NDL that these procedures are consistently applied.

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The Serious Deficiency Process

During fiscal years (FY) 2010 and 2011, the CACFP Targeted Management Evaluation (TME) process, as well as investigations associated with Office of Inspector General (OIG) hotline complaints, disclosed a pattern of regulatory non-compliance with the serious deficiency process. It has been revealed that, often when areas of non-compliance rise to the level of serious deficiency, many sponsoring organizations are working with providers to achieve compliance outside of the regulatory serious deficiency process. Once a provider is declared seriously deficient, the following procedures must be followed:

- The sponsoring organization must notify the day care home that it has been determined to be seriously deficient. The serious deficiency notice must identify all serious deficiencies (as defined in 7 CFR §226.16(1)(2) for providers). The notice must also specify:
 - Actions to be taken to correct the serious deficiencies;
 - The time allotted to correct the serious deficiencies;
 - That the serious deficiency determination is not appealable;
 - That failure to fully and permanently correct the serious deficiencies within the allotted time will result in issuance of a Notice of Proposed Termination and Disqualification and;
 - That voluntary termination of the agreement after being determined seriously deficient will result in issuance of a Notice of Termination and Disqualification and placement on the National Disqualified List.
- The name(s) of the provider and/or Responsible Principals or Individuals (RPIs) will be placed on the State agency's list (noting the basis for the serious deficiency determination);
- In response to the serious deficiency notice, the provider must submit a CAP that details the internal controls implemented to ensure that the serious deficiencies are fully and permanently corrected. A successful CAP includes:
 - Name(s) of the provider and other RPIs associated with the serious deficiencies;
 - Location of the provider;
 - Dates of birth for all RPIs or the provider associated with the serious deficiencies;
 - Policies and procedures or other official documentation which ensures the serious deficiencies have been fully and permanently corrected. (See more details on CAP guidance in the next section.)
- Family day care home sponsoring organizations must provide the serious deficiency notice and supporting documentation to the State agency (7 CFR §226.16(1)(3)(i)).

If the CAP is acceptable, the serious deficiency determination for the provider is temporarily deferred.

If a timely CAP is not submitted, or no CAP is submitted, a Notice of Proposed Termination and Disqualification, with appeal rights, must be sent to the provider and RPIs. If an appeal is filed, and the action taken by the sponsoring organization is upheld, the provider and all RPIs will be sent a Notice of Termination and Disqualification and placed on the NDL with the full amount of any determined debt associated with both the institution and/or RPIs.

When a sponsoring organization declares a provider and/or RPI seriously deficient, the Sponsoring Organization must hold the provider and/or RPI accountable for the serious deficiencies and continue the serious deficiency process through its completion. The intent of the CACFP regulations is that a provider

as well as RPIs who were involved in causing or failing to correct the serious deficiencies, will be disqualified and placed on the NDL.

A provider can never be seriously deficient without some improper action by the provider and/or RPIs. A provider and/or RPI are always responsible for the provider's failing to comply with regulatory requirements. If the provider and/or RPI fail to complete corrective action, both the provider and/or RPI will be terminated and placed on the NDL, thus notifying other State agencies that these RPIs are currently ineligible to participate in CACFP as part of a different institution, as institution principals, a sponsored center, or as day care home providers. If this does not occur, the provider and /or RPI responsible for the serious deficiencies in one family day care home may, because they have not been disqualified, simply re-incorporate under a new name and be admitted to participate in the Program in another State.

Corrective Action Plans Guidance

Providers are required to submit corrective actions taken to fully and permanently correct each serious deficiency to the sponsoring organization (7 CFR §226.16(1)(3)(F)(ii)). If the sponsoring organization determines that the corrective actions fully and permanently correct each serious deficiency, then the sponsoring organization will temporarily defer its serious deficiency determination.

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

- **What** are the serious deficiency(ies) and the procedures that will be implemented to address the serious deficiency(ies)?
- **Who** will address the serious deficiency? List personnel responsible for this task.
- **When** will the procedure for addressing the serious deficiency be implemented? Provide a timeline for implementing the procedure (i.e., will the procedure be done daily, weekly, monthly, or annually, and when will it begin?)
- **Where** will the CAP documentation be retained?
- **How** will the staff and facilities or providers be informed of the new policies and procedures (e.g., Handbook, training, website, etc.)?

Additional **supporting** documentation must be submitted with the CAP. This might include copies of income eligibility forms, enrollment forms, enrollment rosters, staff training documentation, site monitoring reports, menus, Child Nutrition Labels or manufacturers' product analysis sheets or recipes, attendance records, meal count forms, itemized food receipts, etc.

Sample Corrective Action Plan for a Provider

During an administrative review, a sponsoring organization discovers that a day care home provider fails to maintain adequate Program records (i.e., enrollment forms, attendance records, meal counts, menus, etc.). The sponsoring organization sends a notice of serious deficiency to the provider. The provider responds to the serious deficiency notice and indicates that she will comply with CACFP requirements in relation to the maintenance of Program administrative records. The sponsoring organization accepts the letter and temporarily defers the serious deficiency. **This is not an acceptable CAP.**

In this situation, the provider must submit a CAP to the sponsoring organization which includes at a minimum 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 as described in the CAP Guidance section.

The State agency will be evaluating CAP's that are submitted by providers to sponsoring organizations. If a sponsoring organization temporarily defers a serious deficiency based on an unacceptable CAP; than the sponsoring organization may be declared seriously deficient.

Submitting Terminated and Disqualified Institutions/Providers and Individuals to the NDL

All NDL submission request sent to the FNS National Office will be sent by the State agency. NDL submission requests sent to the State Agency must contain all required information as indicated in the "Providers" section below. If a required piece of information is not available, the Sponsoring Organization should include an explanation of why the missing information is unobtainable. Incomplete information which does not have an explanation for the missing data element will be returned to the Sponsoring Organization for completion. The following information is required when submitting day care home providers to be placed on the NDL:

- Name(s) of the provider;
- Address (including city, State and zip code);
- Date of birth;
- Termination date;
- Amount of debt owed, if any;
- Name of the individual's sponsoring organization; and
- Reason/s for the disqualification (if other is checked, an explanation should be included).

Removal from the NDL

Please note that providers and RPIs that fail to repay debts owed under the Program will remain on the NDL until the debt has been paid in full. Once it has been determined by the State that the provider has paid the debt in full (including any interest, if applicable) and documentation is on file, the State may request removal of the provider from the NDL. In addition, the effective date of NDL removals will be the date on which the FNS National Office processes the removal request. The Sponsoring Organization will be notified that the removal has been completed.

Day Care Home Providers

According to 7 CFR §226.6(c)(7)(vi), once included on the NDL, a provider will remain on the list until the FNS National Office in consultation with the state agency determines that the serious deficiency(ies) that led to its placement on the list has(ve) been corrected, or until 7 years have elapsed since its agreement was terminated for cause. However, if the provider has failed to repay debt owed under the Program, the provider will remain on the list until the debt has been repaid.

Even though the CACFP regulations give the States authority to remove providers from the NDL, this does not relinquish FNS' responsibility to hold the States accountable for their decisions in terms of removing providers from the NDL. The FNS Regional Office will review the documentation to ensure State agencies are operating in accordance with CACFP requirements and that documentation supports removal of the provider from the list.

Debt Collection Associated with Terminated and Disqualified Institutions/RPIs/Providers

The Sponsoring Organization must consult with the State agency if it is determined that the debt is uncollectible. Day care home providers will also remain on the NDL until the debt is repaid; however interest is not applied to debts associated with providers.

A sample CAP form has been attached to this policy memo. Please contact your regional consultant if you have questions.

Attachment

cc: SNP Staff