



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor

MANDY COHEN, MD, MPH • Secretary

MARK T. BENTON • Assistant Secretary for Public Health

Division of Public Health

January 20, 2021

Dr. Lily Bouie, Regional Director
USDA, Food & Nutrition Service
Special Nutrition Programs
61 Forsyth Street, Suite 8T36
Atlanta, GA 30303

Dear Dr. Bouie:

In North Carolina, the Child and Adult Care Food Program (CACFP) serves 580 institutions and 2,800 sponsored facilities across North Carolina annually. Given the unique challenges COVID-19 has presented to us all, the North Carolina Department of Health and Human Services (NCDHHS) respectfully requests waivers from 7 CFR §226.16(d)(4)(iii)(A) and (B) which state at least two of the three reviews must be unannounced and requires that at least one unannounced review include an observation of a meal service; 7 CFR §226.6(m)(6) which states the State agency must annually review at least 33.3 percent of all institutions and at least 15 percent of the total number of facility reviews required must be unannounced; and 7 CFR §226.6(m)(6)(i) which states independent centers and Sponsoring Organizations of 1 to 100 facilities must be reviewed at least once every three years and (ii) Sponsoring organizations with more than 100 facilities must be reviewed at least once every two years. These reviews must include reviews of 5 percent of the first 1,000 facilities and 2.5 percent of the facilities in excess of 1,000.

Details of the waiver requests are submitted in the format as required by the USDA and are described herein.

Subject of waiver request: Sponsoring Organization Waiver of Unannounced Requirement for Review and Meal Service Observation, State Agency Waiver of Unannounced Requirement of Facility Reviews, and State Agency Waiver of Annual Compliance Requirement

1. State agency submitting waiver request and responsible State agency staff contact information:

Name of State agency: North Carolina Department of Health and Human Services
State agency staff contact: Mary Anne Burghardt
Mailing address: 1914 Mail Service Center, Raleigh, NC 29699-

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF PUBLIC HEALTH • NUTRITION SERVICES BRANCH

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AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

1914 Telephone number: (919) 707-5783

Email address: maryanne.burghardt@dhhs.nc.gov

State agency staff alternate contact: Cassandra Williams

Mailing address: 1914 Mail Service Center, Raleigh, NC 29699-

1914 Telephone number: (919) 707-5754

Email address: cassandra.williams@dhhs.nc.gov

2. **Region:** Southeast

3. **Eligible service providers participating in waiver and affirmation that they are in good standing:**

Only institutions operating in good standing will be approved to participate in this waiver.

4. **Description of the challenge the State agency is seeking to solve, the goal of the waiver to improved services under the Program, and the expected outcomes if the waiver is granted.**

Sponsoring Organization Unannounced Reviews:

The North Carolina State of Emergency related to the spread of COVID-19 necessitates an additional waiver in order to meet the needs of food-insecure children and adults, institutions participating in the CACFP, State agency staff, and the general public. The NCDHHS respectfully requests a statewide waiver to provide flexibility to the regulatory requirements in 7 CFR §226.16(d)(4)(iii)(A) and (B), which require an unannounced review be conducted as well as an unannounced review including a meal service observation be conducted as part of Sponsor monitoring compliance.

This waiver authority is necessary due to the challenges in conducting a successful unannounced review. Sponsoring Organizations are following the social distancing recommendations required to help prevent the spread of the novel Coronavirus.

Many child and adult care facilities are struggling to adhere to stringent disinfecting routines, fluctuating attendance, and other day-to-day duties. The likelihood of successfully conducting a true unannounced monitoring review virtually is slim, necessitating follow up on the part of the Sponsoring Organization. By granting this waiver request, Sponsoring Organizations would be able to schedule (announce) their monitoring visits with their sponsored facilities, increasing the likelihood of timely completion.

State Agency Unannounced Reviews:

The NCDHHS respectfully requests a statewide waiver to provide flexibility to the regulatory requirements in 7 CFR §226.6(m)(6) which requires that at least

15 percent of the total number of facility reviews required be unannounced. This waiver authority is necessary due to the challenges in conducting a successful unannounced review. The State agency is following the social distancing recommendations required to help prevent the spread of the novel Coronavirus. Many child and adult care facilities are struggling to adhere to stringent disinfecting routines, fluctuating attendance, and other day-to-day duties. The likelihood of successfully conducting a true unannounced monitoring review virtually is slim, necessitating follow up on the part of the State agency. By granting this waiver request, State agency monitoring staff would be able to schedule (announce) their monitoring visits with sponsored facilities, increasing the likelihood of timely completion.

State Agency Annual Compliance Requirements:

The NCDHHS respectfully requests a statewide waiver to provide flexibility to the regulatory requirements in 7 CFR §226.6(m)(6), which require the State agency to conduct 33.3 percent of all institutions as part of its annual regulatory compliance. 7CFR §226.6(m)(6)(i) and (ii) which states independent centers and Sponsoring Organizations of 1 to 100 facilities must be reviewed at least once every three years and (ii) Sponsoring organizations with more than 100 facilities must be reviewed at least once every two years. These reviews must include reviews of 5 percent of the first 1,000 facilities and 2.5 percent of the facilities in excess of 1,000.

This waiver authority is necessary due to the impact COVID-19 has had on child and adult care provision across North Carolina, as well as the State agency's participation in a number of nationwide waivers and flexibilities. The State agency would like to prioritize its Federal Fiscal Year (FFY) 2021 compliance reviews as follows: 1) institutions found to be seriously deficient in FFY 2020; 2) institutions utilizing COVID-19 waivers already on the 2021 compliance schedule; 3) newly approved institutions; 4) institutions not found to be seriously deficient but high risk in FFY 2020, our risk analysis tool identifies deficiencies of the compliance review, if four or more areas of compliance findings are identified the review is escalated to our Risk Mitigation Team as high risk ; and 5) Sponsoring Organizations scheduled to be reviewed in FFY 2021.

The State agency has developed a FFY2021 monitoring schedule using prior year compliance review logs with a total of 222 reviews assigned. Per 7 CFR §226.6(m)(i)(ii), institutions with 1-100 facilities are reviewed at least once every three years, institutions with more than 100 facilities are reviewed at least once every two years. The prioritized reviews listed above will be conducted first with the remaining scheduled reviews to follow. There is a total of 175 prioritized compliance reviews.

By prioritizing compliance reviews rather than meeting a certain percentage, the State agency can focus its limited resources on institutions who present program integrity concerns or are considered high risk.

5. Specific Program requirements to be waived (include statutory and regulatory citations).

Sponsoring Organization Unannounced Reviews:

The NCDHHS proposes a waiver of regulations in 7 CFR §226.16(d)(4)(iii)(A) and (B), which require at least two of the three reviews be unannounced as well as the requirement for an unannounced meal service observation as part of monitoring compliance. If approved, the waiver will allow the NCDHHS to approve CACFP Sponsoring Organizations in good standing to conduct announced monitoring reviews with the required meal service observation. All other CACFP requirements would apply.

State Agency Unannounced Reviews:

The NCDHHS proposes a waiver of regulations in 7 CFR §226.6(m)(6), which requires that at least 15 percent of the total number of facility reviews required be unannounced. If approved, the waiver will allow the NCDHHS State agency staff the ability to conduct announced desk reviews with the required meal service observation. All other CACFP requirements would apply.

State Agency Annual Compliance Requirements:

The NCDHHS proposes a waiver of regulations in 7 CFR §226.6(m)(6)(i) and (ii), which require the State agency to conduct 33.3 percent of all institutions as part of its annual regulatory compliance. 7 CFR §226.6 (m)(6)(i) which states that independent centers and Sponsoring Organizations of 1 to 100 facilities must be reviewed at least once every three years and (ii) Sponsoring organizations with more than 100 facilities must be reviewed at least once every two years. These reviews must include reviews of 5 percent of the first 1,000 facilities and 2.5 percent of the facilities in excess of 1,000.

If approved, the waiver will allow the NCDHHS staff to conduct reviews of institutions that present the most risk to program integrity and/or the State agency rather than focusing on a certain number. All other CACFP requirements would apply.

6. Detailed description of alternative procedures and anticipated impact on Program operations, including technology, State systems, and monitoring:

Sponsoring Organization Unannounced Reviews:

In lieu of Sponsoring Organizations conducting two unannounced reviews, one of which includes observation of a meal service, Sponsors would contact the sponsored facility via phone first and let them know that a desk review will be conducted and what will be expected. The Sponsor will email the appropriate *Record Request Checklist* (see attached) to the facility based on facility type. The *Record Request Checklist* will also indicate if a meal service observation will be conducted. If the review requires a meal service observation, the facility will be informed of the date and the meal service that will be observed. Sponsoring Organizations are strongly encouraged to conduct meal service observations for facilities with non-congregate feeding/parental pick-up waivers in place to ensure the integrity of those programs. If the facility is utilizing the Nationwide Waiver to Allow Meal Service Time Flexibility in the National School Lunch Program, School Breakfast Program, and Child and Adult Care Food Program (COVID-19; Child Nutrition Response #34), alternate mealtimes must be communicated to the Sponsoring Organization.

The facility will be informed of available technology that can be utilized in conducting the meal service observation. Such technology includes but is not limited to the following: pictures, Zoom, Skype, GoToMeeting, Microsoft Teams, Duo, Google Hangout, FaceTime, video through cell phones, or any other acceptable platform.

When returning the *Record Request Checklist*, the facility will indicate which technology method will work best for the facility. The facility will be advised to make every effort to not capture any images of a participant during the meal observation. If the sponsor or facility cannot provide visuals without capturing an image with a participant, then the Sponsoring Organization and facility must take steps to safeguard the video or photo to ensure it is not released to anyone other than NCDHHS without the consent of the participant's parent or guardian.

The *Record Request Checklist* items must be submitted to the Sponsor within 48 business hours of the request.

The Sponsor will use the date the monitor completes the desk review as the date of review. Should the facility fail to submit the requested documents listed in the *Record Request Checklist*, the Sponsor will send a second request email to the facility 24 hours from the due date. If the requested records are not received after the second request, if the facility is a day care home, the serious deficiency process will be initiated. If the facility is a sponsored center, the sponsored center will get an additional opportunity to submit the requested records. If the records are not submitted after the third attempt, the sponsored center will be terminated from program participation.

Upon completion of the desk review, a virtual exit conference will be conducted. The exit conference will be scheduled by the Sponsor using any of the following methods: phone conference or virtual meeting (video conference) with the facility over Zoom, Skype, GoToMeeting, or any other video platform. The Sponsor will review the Summary of Findings (if any) with the facility and request a signature and date on the Facility Monitoring Tool. All documents received by the facility will be attached to the Facility Monitoring Tool.

CACFP Sponsoring Organizations may request to participate in the statewide waiver by notifying the NCDHHS of their interest in waiving the requirement to have at least two of the three reviews be unannounced as well as the requirement for an unannounced meal service observation due to the novel Coronavirus. The NCDHHS Special Nutrition Programs Unit would review and approve all requests in writing.

State Agency Unannounced Reviews:

The State agency will send institutions a desk review letter with instructions of all documentation required to conduct the compliance review, indicating documentation submission date. The institution or facility will be informed of available technology that can be utilized in conducting the meal service observation. Such technology includes but is not limited to the following: pictures, Zoom, Skype, GoToMeeting, Microsoft Teams, Google Duo, Google Hangout, FaceTime, video through cell phones, or any other acceptable platform. The institution or facility must include their meal observation selection (Addendum A) in the documentation submission to enable the State agency to complete the required meal service observation. The facility will be advised to make every effort to not capture any images of a participant during the meal observation. If the Sponsor or facility cannot provide visuals without capturing an image with a participant, then the Sponsoring Organization and facility must take steps to safeguard the video or photo to ensure it is not released to anyone other than NCDHHS without the consent of the participant's parent or guardian.

If the requested documentation is not received, the State agency staff will send a 2nd request. If the requested records are not received after the 2nd request, if the facility is a day care home, the State agency will recommend that the Sponsoring Organization begin the serious deficiency process. If the facility is a sponsored center, the sponsored center will get an additional opportunity to submit the requested records. If the records are not submitted after the 3rd attempt, the State agency will recommend that the Sponsoring Organization terminate the sponsored center from program participation. If the meal service documentation is requested for an Independent Center, the State agency will follow the same process as that for sponsored centers, if the records are not submitted after the 3rd attempt, the State agency will begin the serious deficiency process.

If the institution is utilizing the Nationwide Waiver to Allow Meal Service Time Flexibility in the National School Lunch Program, School Breakfast Program, and Child and Adult Care Food Program (COVID-19; Child Nutrition Response #34), alternate mealtimes must be communicated to State agency staff. State agency staff will prioritize virtually monitoring institutions or facilities with non-congregate feeding waivers in place to ensure program integrity.

State Agency Annual Compliance Requirements:

The State agency would like to implement procedures to prioritize compliance reviews during the FFY 2021. The priorities include: 1) institutions found to be seriously deficient in FFY 2020; 2) institutions utilizing COVID-19 waivers already on the 2021 compliance schedule; 3) newly approved institutions; 4) institutions not found to be seriously deficient but high risk in FFY, our risk analysis tool identifies deficiencies of the compliance review, if four or more areas of compliance findings are identified the review is escalated to our Risk Mitigation Team as high risk ; and 5) Sponsoring Organizations scheduled to be reviewed in FFY 2021.

The State agency has developed a FFY2021 monitoring schedule using prior year compliance review logs with a total of 222 reviews assigned. Per 7 CFR §226.6(m)(i)(ii), institutions with 1-100 facilities are reviewed at least once every three years, institutions with more than 100 facilities are reviewed at least once every two years. The prioritized reviews listed above will be conducted first with the remaining scheduled reviews to follow. There is a total of 175 prioritized compliance reviews. All reviews not completed by August 1, 2021 will receive technical and supervisory assistance to facilitate effective program operations. The State agency will maintain documentation of all reviews conducted and maintain documentation of all technical and supervisory assistance conducted.

7. Description of any steps the State has taken to address regulatory barriers at the State level:

No state level barriers have been identified.

8. Anticipated challenges State or eligible service providers may face with the waiver implementation:

The NCDHHS does not anticipate this waiver will present any challenges to the State agency or participating institutions. Implementation of these waivers will decrease the challenges faced by the State agency, institutions, and facilities due to exposure concerns and concerns about being found out of compliance by the State agency or FNS. Further, there is a greater chance of successfully completing the reviews by scheduling them. Sponsoring Organizations are encouraged to

conduct follow-up visits on-site if program integrity concerns arise. Additionally, implementation of these waivers will allow the State agency to conduct reviews using innovative technology as well as allow facilities the opportunity to provide feedback as to how to best conduct the review during these challenging times. Implementation of these waivers will also allow the State agency the ability to focus on institutions that are considered high risk.

9. Description of how the waiver will not increase the overall cost of the Program to the Federal Government. If there are anticipated increases, confirm that the costs will be paid from non-Federal funds.

The NCDHHS does not anticipate the waiver will increase the overall cost of the Program to the Federal Government. Compliance reviews have been assigned to staff, the waiver request to continue to conduct the reviews, however instead of the review being unannounced, it is now announced. For this reason, no additional labor hours will be required for the implementation of this waiver.

10. Anticipated waiver implementation date and time period:

Requested Waiver Timeframe:

- Waiver Request Start Date: January 1, 2021 or upon approval of the waiver.
- Waiver Request End Date: September 30, 2021

11. Proposed monitoring and review procedures:

Sponsoring Organization Unannounced Reviews:

The State agency participates in COVID-19: Child Nutrition Response #39, Nationwide Waiver of Onsite Monitoring Requirements for Sponsors in the Child and Adult Care Food Program. Sponsoring Organizations who apply and are approved for the waiver conduct desk reviews. Usual review procedures will resume when the nationwide waiver expires, or the public health crisis subsides.

Should a facility be found to be in noncompliance, if feasible, the Sponsor is encouraged to conduct a follow-up onsite monitoring of the noncompliance areas. Sponsors are encouraged to follow COVID-19 guidelines including but not limited to staying six feet apart and wearing a mask at all times.

If conducting onsite monitoring is not feasible, the facility will be required to submit documentation to validate that program violations have been corrected. The Sponsoring Organization will send a written request to the sponsored facility with a date that the documentation will be due. The Sponsor will send a second request email to the facility 24 hours from the due date, if the documentation was not received by the original due date. If the requested records are not

received after the second request, if the facility is a day care home, the serious deficiency process will be initiated. If the facility is a sponsored center, the sponsored center will get an additional opportunity to submit the requested records. If the records are not submitted after the third attempt, the sponsored center will be terminated from program participation.

State Agency Unannounced Reviews:

The State agency has discontinued onsite compliance reviews at this time to comply with social distancing recommendations. Desk reviews are being conducted. Usual review procedures will resume when the public health crisis subsides. Institutions found to have noncompliance issues related to this waiver will be required to work with the NCDHHS on an individualized corrective action plan and will have follow-up reviews scheduled as needed.

State Agency Annual Compliance Requirements:

The State agency has discontinued onsite compliance reviews at this time to comply with social distancing recommendations. Desk reviews are being conducted. Usual review procedures will resume when the public health crisis subsides. Institutions found to have non-compliance issues related to this waiver will be provided technical assistance and will be required to work with the NCDHHS on an individualized corrective action plan and will be required to submit supporting documentation with the corrective action plan to document the non-compliance has been corrected.

12. Proposed reporting requirements (include type of data and due date(s) to FNS):

NCDHHS complies with the monthly and 90-day reporting requirements for the FNS- 44 reports. Additionally, the State agency is participating in the Mathematica School Meal Operations (SMO) study.

13. Link to or a copy of the public notice informing the public about the proposed waiver [Section 12(l)(1)(A)(ii) of the NSDA]:

The State agency has submitted an update request to our webmaster to post the waiver request on our website, www.nutritionnc.com, as required.

14. Signature and Title of Requesting Official:

Mary Anne Burghardt

Title: Nutrition Services Branch Program Director I
State Director, Special Supplemental Nutrition Program for Women, Infants

and Children (WIC)
State Director, Child and Adult Care Food Program (CACFP)

Requesting official's email address for transmission of
response: maryanne.burghardt@dhhs.nc.gov