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TO: Sponsors of Day Care Homes

FROM: Danielle Quigley, Director *Danielle Quigley*
Child and Adult Care Food

SUBJECT: Serious Deficiency Process for Day Care Home Providers

I. Purpose and Scope

This memorandum provides guidance on the stages of the serious deficiency process, including when suspension of payment is allowed. Guidance is also provided on how sponsors can request removal of a provider from the National Disqualified List (NDL). Sponsoring organizations should update their policies and procedures to reflect this memorandum.

II. Background

The serious deficiency process was established to ensure compliance with Child and Adult Food Care Program (CACFP) regulations. Day care home (DCH) providers that are determined to be non-compliant in one or more areas of Program operations may be considered seriously deficient. DCH sponsors have the right to terminate DCH providers that are found to be seriously deficient and do not take corrective action to address the deficiencies.

III. Serious Deficiency Process

A. Determination

The sponsor should assign one staff person to be responsible for making serious deficiency determinations, including issuing the notice of serious deficiency and other related correspondence. At each stage of the serious deficiency process, the sponsoring organization is required to provide a copy of the correspondence sent to the provider to the NYS CACFP.

A sponsor must determine if the level of non-compliance by the DCH provider is considered seriously deficient based on the frequency and severity of the problem. One occurrence is not usually considered a serious deficiency. For example, a DCH provider would not be named seriously deficient for not having meal counts for one day.

However not having meal counts for two weeks could be considered a serious deficiency.

Sponsoring organizations must identify if the problems are caused by errors on the part of the provider that could be easily addressed by training or technical assistance, or if the problems are related to intentional noncompliance or indifference to regulations. Whether a serious deficiency or a less serious problem, the sponsor must ensure that all providers come into full program compliance as promptly as possible.

Although the regulations do not define a time frame, CACFP recommends that the notice be issued within 30 days of the time that the serious deficiency has been identified. The exception to this is if the DCH is cited for serious health or safety violations, then the seriously deficient process must be initiated within 24 hours.

B. Notification

Once a sponsor identifies that a provider is seriously deficient, the sponsor must send a notice of the serious deficiency by regular mail, private mail delivery or e-mail to the provider which identifies all the serious deficiencies as noted in 7 Code of Federal Regulations (7 CFR) §226.16(l). The notice should also include:

- The actions to be taken to correct the serious deficiency
- The time allotted to correct the serious deficiency
- That the serious deficiency determination is not appealable
- That failure to correct the serious deficiency within the allotted time will result in issuance of a notice of proposed termination and disqualification
- That voluntary withdrawal by the provider, after being notified of the serious deficiency, will still result in issuance of the notice of termination and disqualification if corrective action is not taken.

C. Corrective Action

1. The provider must take corrective action within a reasonable time frame, not to exceed 30 days. The corrective action plan (CAP) must include the procedures that will be implemented to fully and permanently correct the serious deficiency, the timeframe for implementing the procedures and the location where the Program records will be kept. Additional documentation should be submitted to support the CAP. It is not sufficient for the provider to just state that the problem will not happen again.

If the CAP is acceptable, the sponsor then notifies the DCH that it has temporarily deferred its determination of serious deficiency. The corrective action taken must be permanent. If it is not, the serious deficiency process will be reinstated starting with the notice of proposed termination and disqualification.

2. If the provider does not respond or fails to take acceptable corrective action, then the sponsor will issue the notice of proposed termination and disqualification.

D. Notice of Proposal to Disqualify and Terminate

The notice must:

- Inform the day care provider that the sponsor is proposing to terminate the DCH provider's agreement and to disqualify the provider from CACFP.
- Inform the DCH provider of their right to appeal the proposed disqualification and termination by requesting an administrative review. Should the provider appeal, they

may continue to participate and receive reimbursement for eligible meals served until the appeal process is concluded.

E. Appeal Procedures for Day Care Home Providers

1. Each sponsoring organization must develop appeal procedures. The administrative review official must be independent and impartial. The individual may be an employee or board member of the sponsoring organization, however he or she must not be involved in the action that is subject to appeal or have any personal interest in the outcome.
2. The provider may represent themselves or retain legal counsel. The provider must be allowed to review the records on which the sponsor's decision was based and may submit written documentation as part of the appeal. The sponsor is not required to hold an in-person hearing.
3. The administrative review official's decision must be based only on the information provided by the sponsoring organization and/or the provider, and on the regulations, policies or procedures governing CACFP.
4. The decision must be issued in a timely manner according to the sponsor's appeal procedures. The decision made by the review official is the final administrative determination.

F. Notice of Disqualification and Termination

If the provider does not appeal or if the review official upholds the sponsoring organization's proposed termination and disqualification, then the provider will be notified that their agreement has been terminated and they are disqualified.

G. Suspension and Serious Deficiency Process

1. If the licensing agency determines that there is an imminent threat to the health or safety of the children at DCH, then the sponsoring organization must initiate the serious deficiency process and suspend the DCH provider's participation in CACFP. The sponsor must notify the DCH provider in writing of the serious deficiency determination, that they have been suspended from Program participation, and that the sponsoring organization is proposing to terminate the DCH provider's agreement. There is no opportunity to correct a serious deficiency based on imminent threat or safety reasons however, the provider may present documentation as part of an appeal that the problems have been corrected.
2. The suspension notice must list the serious deficiencies and also state that: 1) the DCH may appeal only the proposed termination, 2) all payments are suspended until the appeal is concluded, 3) if the proposed termination and disqualification are overturned by the review official, the DCH may claim reimbursement for eligible meals served during the suspension and 4) termination from the program will result in the placement of the DCH provider on the National Disqualified List (NDL).
3. The provider may appeal and present documentation that the problems have been corrected. If the review official decides in their favor, the serious deficiency is temporarily deferred, and the suspension is withdrawn.
4. If the DCH provider does not appeal, then the agreement is terminated, and the provider is disqualified after the time to appeal expires. If the DCH provider appeals and loses the

appeal, they are terminated and disqualified immediately. A notice of termination and disqualification is issued to the provider with a copy sent to CACFP.

IV. National Disqualified List

1. A DCH provider that has been disqualified will be added to the NDL and remain on the list for seven years unless there is a debt owed. A provider that has failed to repay debt, will remain on the NDL until the debt has been paid.
2. A DCH provider may request removal prior to the seven years by submitting an explanation of the actions that have been taken to fully and permanently correct the serious deficiency. If the sponsoring organization determines that the corrective action plan is acceptable, they would forward it to NYS CACFP along with a statement requesting the removal of the individual from the NDL. If NYS CACFP concurs, the request is sent to USDA for approval.

If you have any questions, please call CACFP at 1-800-942-3858, ext. 3.