**Administrative Review for a Day Care Home Provider**

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

7 C.F.R. §226.2.-*Termination for Cause* means the termination of a day care home’s Program agreement by the sponsoring organization due to the day care home’s violation of the agreement.

7 C.F.R. §226.2- *Days* means calendar days unless otherwise specified.

When a sponsoring organization proposes to terminate it 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.

**Identifying Serious Deficiencies for Day Care Homes:**

A DCH may be declared seriously deficient if the sponsoring organization finds Program violations or issues of non-compliance with the CACFP requirements at any time during the DCH’s participation. The following are noncompliance issues that rise to the level of a serious deficiency [7 CFR 226.16(l)(2)]:

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

**Notice of Serious Deficiency:**

A notice of Serious Deficiency will be ***(mailed, faxed, emailed, FedEx)*** to the day care home provider. A copy of the Serious Deficiency notice will be sent to the State agency at the same time it is sent to the DCH. 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 CFR §226.2. The DCH may not appeal a Serious Deficiency notice.

The Serious Deficiency notice will include the following:

• The serious deficiencies, including appropriate citations from the CACFP regulations;

• The actions to be taken by the DCH to correct the serious deficiencies;

• The allotted time to correct the serious deficiencies, this must be as soon as possible, but not to exceed 30 days;

• That the serious deficiency determination is not subject to administrative review (appeal);

• That failure to fully and permanently correct the serious deficiencies within the allotted timeframe will result in the issuance of a Notice of Proposed Termination and Disqualification of the DCH’s agreement and disqualification of the DCH; and

• That the DCH’s voluntary termination of its agreement after being notified of the serious deficiency determination will still result in the DCH’s formal termination by the sponsoring organization and placement of the DCH’s and provider’s names on the NDL [7 CFR §226.16(l)(3)].

**Corrective Action Plan:**

A DCH must submit a corrective action plan (CAP) and supporting documentation by the deadline noted in the Serious Deficiency Notice that details the processes implemented to ensure that the serious deficiency(ies) have been fully and permanently corrected. The ***(Sponsoring Organization)*** will evaluate the CAP and determine whether adequate internal controls have been put into place to fully and permanently correct the deficiencies. An acceptable CAP must include the following information:

* Name of the provider(s) associated with the serious deficiency(ies);
* Address of the DCH;

• Date of birth for the provider(s) associated with the serious deficiency(ies); and

• Details of the serious deficiency(ies):

* **What** is/are the serious deficiency(ies) and the procedures that were implemented to address the serious deficiencies?
* **Who** addressed the serious deficiency(ies)? List DCH personnel responsible for this task.
* **When** was the procedure for addressing the serious deficiency(ies) implemented? Provide a timeline for implementing the procedure.
* **Where** is the CAP documentation retained?
* **How** will the provider ensure that the CAP corrects the deficiency and continues to be implemented?

**Unsuccessful Corrective Action Plan of a DCH:**

If a DCH fails to implement timely corrective action to fully and permanently correct the serious deficiency(ies) cited, the *(****sponsoring organization)*** will issue a notice proposing to terminate and disqualify the DCH and include its name on the National Disqualified List (NDL). A notice of Proposed Termination and Proposed Disqualification will be ***(mailed, faxed, emailed, FedEx)*** to the day care home provider. A copy of the Proposed Termination and Proposed Disqualification notice will be sent to the State agency at the same time it is sent to the DCH.

The notice will specify:

• That the sponsoring organization is proposing to terminate the DCH’s agreement and to

 disqualify the DCH from the Program;

• That the DCH may appeal this decision;

• That the DCH may continue to participate and receive Program reimbursement for eligible

 meals served until a requested appeal has concluded;

• That the termination of DCH’s agreement will result in the DCH’s termination for cause and

 the DCH and provider’s disqualification; and

• That if the DCH voluntarily terminates its agreement with the sponsoring organization after

 receiving the Notice of Proposed Termination and Disqualification, it will still be placed on the

 NDL [7 CFR § 226.16(l)(3)(iii)].

**Procedures for Appealing a Proposed Termination and Proposed Disqualification:**

The DCH may appeal the Proposed Termination and Proposed Disqualification. The provider may appeal the Proposed Termination and Proposed Disqualification by sending a request one of the following ways:

1. USPS, Certified Mail ***(Name of Organization, mailing address, city, state, zip code)***

2. Fax ***(Provide fax number)***

3. Email ***(Provide email address)***

The request for an Administrative Review must be received within ***(provide number of days*)** of receipt of the Notice of Proposed Termination and Proposed Disqualification notice. Failure to submit an appeal request within the required timeframe will result in an immediate termination and disqualification.

**Administrative Review Process:**

1. The administrative review procedures will be provided to the DCH [7 CFR § 226.16(l)(4)]:

* Annually
* To a day care home when the sponsoring organization takes any action subject to an administrative review
* Any other time upon request.

2. The ***(Sponsoring Organization)*** will appoint an independent and impartial administrative review official(s) [7 CFR § 226.16(l)(5)(iv)]. The administrative review official will be appointed within ***(provide number of days)*** of the sponsoring organization receiving the request for an appeal. The administrative review official may be an employee or board member of ***(sponsoring organization)***, he/she 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 administrative review official’s determination is based on the information provided by the ***(sponsoring organization)*** and the DCH and on Federal and State laws, regulations, policies and procedures governing the program [7 CFR § 226.16(l)(5)(v)].

3. The administrative review official(s) will be provided with the following:

* DCH Notice of Serious Deficiency
* DCH Notice of Proposed Termination and Proposed Disqualification
* DCH corrective action plan(s) and supporting documentation
* DCH contact information
* 7 CFR 226
* Applicable FNS handbooks
* FNS/State agency policy memos

4. The administrative review official will contact the DCH via ***(letter, telephone)*** to conduct the

administrative review. The administrative review official is not required to hold a hearing [7 CFR § 226.16(l)(5)(iii)].

* Should the administrative review official decide to hold a hearing, the hearing will be conducted within ***(provide the number of days)*** following receipt of the request for an administrative review.
* The administrative review official will have the option of deciding the case upon presentation or taking up to ***(provide the number of days)*** to render a final decision [7 CFR § 226.16(l)(5)(vi)]. A copy of the administrative review official’s final decision in writing will be provided to the DCH provider and ***(sponsoring organization)*** within ***(provide the number of days)*** of its issuance. [7 CFR § 226.16(l)(5)(vi)].

5. The DCH will have the following rights:

* The DCH has the opportunity to appeal a notice of intent to terminate their agreement for cause or a suspension of their participation [7 CFR § 226.16(l)(2)].
* The DCH may retain legal counsel or may be represented by another person [7 CFR § 226.16(l)(5)(ii)].
* The DCH may review the record on which the decision was based and refute the action in writing [7 CFR § 226.16(l)(5)(iii)].

6. The determination made by the administrative review official is the final administrative determination to be afforded the day care home [7 CFR § 226.16(l)(5)(vii)].

7. When the administrative review official upholds the sponsoring organization’s proposed termination and disqualification the ***(sponsoring organization)*** will immediately:

* Notify the DCH that its agreement has been terminated and that the DCH has been disqualified; and
* Provide a copy of the Termination Notice and the mailing address and date of birth for the provider, with the full amount of any determined debt associated with both the DCH provider to the State agency within 10 days of the notification for inclusion on the NDL [7 CFR 266.16(l)(3)(v)].

8. Once on the NDL, the DCH is not eligible to participate in the CACFP in any State as a responsible principal/individual at an institution or as a DCH provider. The DCH provider will remain on the NDL unless it is determined that the serious deficiencies have been corrections, for seven years or until any outstanding debt is repaid, whichever is longer. When both the seven years have elapse and the debt repaid the DCH provider will be removed from the NDL.

**Consequences:**

1. If a DCH voluntarily resigns or withdraws during the appeal process, the State agency and the USDA will place the provider on the NDL for seven years.

2. If a DCH loses their appeal, the DCH will be automatically placed on the NDL for seven years.

3. If a DCH wins their appeal, the DCH will receive a Temporary Deferral Notice from the sponsoring organization.

**Program Payments during the Administrative Review Process:**

If an appeal is requested, the ***(sponsoring organization)*** must continue to pay any valid claims for reimbursement for eligibility meals served until a decision has been rendered unless:

* The DCH provider has been suspended from participation based on health or safety violations

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| **DCH Provider Printed Name:** |  |
| **DCH Provider Signature:** |  |
| **DCH Provider DOB:** |  |
| **Date:** |  |