

SEPTEMBER 13, 1999

SUBJECT: Child and Adult Care Food Program (CACFP)
State Agency Maintenance of Lists of Seriously Deficient
Facilities/Individuals

Regional Director
Child Nutrition Programs
All Regions

The purpose of this memorandum is to reiterate the authority and responsibility State agencies have in ensuring that facilities terminated for cause from CACFP by one sponsoring organization do not participate in the Program under another sponsor. This memorandum follows up on our May 3, 1996, memorandum, "Child and Adult Care Food Program (CACFP) Seriously Deficient Providers." In addition, we plan to address this issue in the forthcoming proposed rule on improving management and Program integrity.

Are State agencies permitted to compile lists of child care facilities/individuals which have been terminated for cause?

Yes. State agencies may currently compile such lists, even though these lists are not specifically mentioned in the CACFP regulations. We believe that these lists are an important tool for State agencies to utilize in their management of CACFP.

Although the current regulations at Section 226.6(c) are silent on the subject of sponsors taking agreements with terminated facilities, Section 226.6(m) indicates that State agencies have the authority and the responsibility to promptly investigate complaints or irregularities and to take appropriate action to correct any Program irregularities. In conformance with Section 226.6(m), we believe that State agencies have the responsibility to ensure that child and adult care facilities and individuals which have been terminated for cause do not continue to participate in CACFP with another sponsoring organization. One method for ensuring that this does not occur is maintaining lists of any such facilities/individuals terminated for cause by sponsors or by the State agency.

Why are these lists important?

Sponsoring organizations often have little information concerning the facilities which apply to participate in CACFP, except for information provided by the facilities themselves. A State agency's maintenance of a list of day care home providers and child adult care centers that have been terminated by their sponsors provides sponsors with critical information concerning a facility's prior participation or application to participate, in C.ACFP. Such lists help prevent a facility or individual terminated for cause by one sponsor from reapplying with another sponsor and continuing to participate in CACFP

How would the process work?

State legal counsel should be consulted when States establish the overall process of the seriously deficient facilities list for advice on issues related to due process and equitable treatment. Following are suggestions for how the process could be structured:

- Similar to the list maintained by Food and Nutrition Service of seriously deficient institutions, any child/adult care center or family day care home provider placed on a State agency's seriously deficient facility list would be ineligible to participate in CACFP unless the State agency was later convinced that corrective action had been taken and removed the facility/individual from the list.
- Given the consequences of being placed on a list of seriously deficient facilities. State agencies should ensure that sufficient documentation exists, either at the sponsor or at the State agency, to demonstrate that an individual has committed serious Program violations before being placed on the list. Such irregularities might include, but are not limited to:
 - deliberate misrepresentation of information submitted on an application;
 - continued failure to maintain adequate records to support a claim for reimbursement;
 - submission of false claims for reimbursement; -
 - falsification of fire, health or licensing certifications (where applicable);
 - simultaneous participation under more than one sponsor;
 - conduct which threatens the health or welfare of children/adults in care; and
 - repeated failure to meet routine administrative requirements.
- The State agency should be responsible for making the final determination of which child/adult care facilities should be placed on the list, and the type(s) of corrective action which could result in a facility/individual being removed from the list and permitted to participate in the Program again.

Would establishment of a State-level appeals process be required?

Section 17 of the National School Lunch Act does not provide an appeals process for facilities removed from CACFP. We strongly encourage State agencies to consult their own State legal counsel for advice on establishing an appeals process for facilities which have committed serious Program violations and have been placed on the list of seriously deficient facilities.

Conclusion

Please disseminate this memorandum to your State agencies as soon as possible. If you have any questions, please contact Norma Ball or Melissa Rothstein.

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STANLEY C. GARNETT

Director

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