



United States
Department of
Agriculture

Food and
Nutrition
Service

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SUBJECT: Facility Applications and Agreements
in the Child and Adult Care Food Program (CACFP)

TO: Regional Directors
Special Nutrition Programs
All Regions

State Agency Directors Administering CACFP
All States

In response to a recommendation of the CACFP Paperwork Reduction Work Group, we are issuing this memorandum to re-state previous guidance on facility applications and agreements. It was the sense of the Work Group that, in some cases, State agencies are still requiring facilities and institutions to submit information much more frequently than is necessary or required. This memorandum summarizes the requirements relating to **facility** applications and agreements, and describes the flexibilities available to State agencies in implementing these requirements. Issues related to institution applications and agreements have been addressed in training on the second interim rule, but we also plan to update and reissue that guidance in the near future.

In General: Facility Applications and Agreements in the CACFP

We find that there is some confusion about facility applications and agreements, in part because some think of the application and agreement as a single Program document, as opposed to two distinct documents. Although both an approved application and an agreement are necessary for any family day care home (FDCH) to participate, this memorandum treats the application and agreement separately, to try to avoid such confusion, and to emphasize the distinct purpose of each document.

Applications

Any facility (whether a FDCH or a sponsored center) wishing to participate in the CACFP must first apply to participate. A Program application is designed to capture the information needed by a State agency to determine whether an individual facility is both eligible and capable of participation.

Agreements

Any FDCH wishing to participate in the CACFP must sign an agreement. An agreement is the legal contract that permits the FDCH to participate in CACFP, subject

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to Program requirements. No facility other than a FDCH is required by regulation to enter into an agreement with a sponsoring organization. However, in many cases, sponsors of facilities other than homes will require the facility to enter into an agreement with the sponsor, so that each party's rights and responsibilities are clearly established.

Once a State agency has approved a facility's application, a sponsoring organization can enter into an agreement with that facility, and the facility can be reimbursed for eligible meals served (NOTE: the conditions under which a facility may receive reimbursement for meals served prior to the State agency's approval of its application are detailed in a memorandum issued on May 14, 2001, which is attached to this memorandum). For FDCHs and for many sponsored centers, entering into an agreement is the last step of the approval process. The agreement often incorporates the approved application "by reference", so that the information presented in the application becomes part of the legal agreement between the sponsoring organization and the facility.

Facility Applications

Content of Initial Application to Participate

A facility does not, of course, submit an application directly to the State agency. Instead, it submits its application to participate to a sponsoring organization, which then submits to the State agency "information concerning the eligibility status of child care and adult day care facilities (such as licensing/approval actions)" [See § 226.16(b), introductory paragraph, and § 226.16(b)(3)].

The regulations do not dictate the specific content of the application submitted by the facility to a sponsoring organization, except for the following:

- (for all facilities) documentation of the facility's current licensure or approval [see § 226.2 definitions of adult day care center, child care center, for-profit center, and day care home, § 226.6(d), and § 226.16(b)(3)];
- (for FDCHs) the provider's name, mailing address and date of birth [See § 226.16(b)(8)]; and
- (for adult day care centers, emergency shelters, at-risk snack programs, and outside-school-hours care centers) other information pertaining to the nature of services provided, or to the facility's compliance with applicable health or safety standards or other eligibility criteria (e.g., the area eligibility of an afterschool at-risk snack program, or the nature of services provided at an afterschool at-risk site or an adult day care center).

However, sponsoring organizations will need to capture additional information (e.g., days and hours of care, meals to be served and claimed, etc.), either on a facility's application or by other means approved by the State agency, so that the sponsor can properly perform its monitoring, claims processing, and other regulatory responsibilities. During the application process, the sponsoring organization may also gather additional information relevant to the facility's eligibility during the required pre-approval visit to the facility.

The regulations at § 226.16(b)(2) require a sponsoring organization to submit an application to the State agency for each facility it wishes to sponsor, and sponsors often do this by passing a copy of the facility's entire application to the State agency. However, if they wish, State agencies may also require sponsoring organizations to submit other information, along with the facility application, that will enable the State agency to make a determination of the facility's eligibility. The State agency could also elect to require that documentation—for example, that a FDCH is located in a residential-type facility, or that an at-risk program provides the requisite educational or enrichment activities—be captured on the application.

Frequency of Facility Applications (Renewal Applications)

Since Public Law 108-265 (the Child Nutrition and WIC Reauthorization Act of 2004) amended the National School Lunch Act (NSLA) to require permanent agreements between FDCHs and sponsoring organizations, there has been increased confusion regarding the frequency of facilities' renewal applications. However, the statutory provision requiring permanent agreements with FDCHs did not affect the facility application process, either for FDCHs or for any other type of facility.

Some State agencies continue to require both institutions and facilities to annually submit complete application renewals (that is, applications which include all of the information required for a first-time applicant to be approved). However, since 1989, when the NSLA was amended to permit State agencies to take applications from institutions on a multi-year basis (provided that all institution and facility licensure was annually confirmed), there has been no compelling reason for State agencies to require a sponsor to resubmit complete renewal applications for each facility each year. In many States, the current status of facility licensure is obtained directly from a State licensing agency, meaning that the State agency does not need to receive that information from the facility (via the sponsor) on a renewal application form. To reiterate, the primary purpose of the facility's initial application is to gather the information necessary for the sponsor and State agency to determine the facility's eligibility and capability. Once that information has been collected in the initial application, or through other means, much of it should not have to be re-submitted on another application unless it changes.

Sponsors, on the other hand, must receive some types of information from their facilities immediately when a change occurs (e.g., changes to the facility's licensing or approval, hours of operation, time of meal service, type of meal service, etc.), so that they can perform their management responsibilities to monitor, and process claims submitted by, facilities. However, it is not necessary to require a facility to submit a complete renewal application, whether annually or on some other cycle, to capture this changed information. In fact, the sponsor's immediate need for the information argues against requiring the resubmission of an application; instead, the State agency or sponsor may require facilities to inform the sponsor of the change as soon as it occurs, and may also require the sponsor to inform the SA of changes, as appropriate.

This gives State agencies considerable latitude in determining how frequently, if at all, a complete renewal application must be submitted by each facility to its sponsor, or whether the facility may simply update any information that has changed since its last application. In addition, the State agency has considerable latitude in determining how much of this revised facility information, if any, must be forwarded by the sponsor to the State agency. For example, a State agency could permit the updating of the renewal of all or part of the application on an exception basis, (i.e., the State agency could limit facilities' annual "renewal" to the submission of any information relating to changes in the facility's meal service). Conversely, the state could require that information about certain types of changes in the facility's meal service be forwarded by the sponsor to the State agency as soon as the sponsor is informed of the change.

Content and Duration of Facility Agreements

The statutory requirements pertaining to facilities' agreements with their sponsors are quite limited. The NSLA authorizes USDA to require State agencies to develop a standardized facility agreement for use by sponsors of FDCH. As stated above, the law also requires sponsors to enter into permanent agreements with FDCHs. The law is silent with regard to the agreements between sponsored centers and their sponsoring organizations.

USDA has implemented these statutory requirements at § 226.18(b) of the regulations. That section requires State agencies to develop a standard agreement between sponsors and FDCH, or to approve any FDCH agreement developed by a sponsor. The regulations further require that the agreement between sponsors and FDCHs be permanent, and that the agreement include a number of specific rights and responsibilities of each party to the agreement. There are no regulatory requirements pertaining to the content or duration of agreements between facilities and sponsors for any type of facility except FDCHs. Again, this provides State agencies with considerable latitude for determining the content and duration of agreements between facilities (other than FDCHs) and sponsors.

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Summary

In summary, facility applications and agreements serve different (albeit complementary) purposes. The initial application to participate submitted by a facility must include enough information for the sponsor and State agency to determine the facility's eligibility and capability. In addition, other information needed by the sponsor to perform critical management functions, such as monitoring and accurate claims payment, must also be submitted, either on the initial application or on some other document submitted at that time. The agreement is a legal document, signed at the end of the application process, which typically incorporates the facility's application "by reference" and which provides the legal basis for reimbursement of eligible meals served by the facility.

The regulations set forth few specific requirements regarding the information to be included in a facility's application, largely allowing State agencies to determine the content. Nor are the frequency and content of facilities' renewal applications addressed in the regulations; they are left to the State agency's discretion. Whatever facility application process the State agency establishes, it must provide the sponsor and the State agency with current information necessary to determine the facility's eligibility, and may also serve as the vehicle for providing the sponsor with the other information necessary to perform critical management functions such as monitoring. While it is necessary for the sponsor to have immediate access to information about some changes to the information submitted on a facility's application, the regulations do not require that information to be captured through the use of a renewal application.

The law requires agreements between FDCHs and sponsors to be permanent, but is silent concerning Program agreements for other types of facilities. The law provides USDA with the authority to require State agencies to develop standard facility agreements, or to approve any other facility agreements developed by sponsors. USDA has implemented these requirements in the Program regulations.

State agencies should direct any questions concerning this memorandum to their FNS, Regional Office.



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Attachment