



SECTION 5: Monitoring Reviews

Family day care homes, group homes and sponsoring organizations participating in CACFP will be reviewed to monitor compliance with program regulations.

- Materials Needed for a CACFP Monitoring Review
- Terminations & Seriously Deficient Process
- Appeal Procedure

Monitoring of Sponsoring Organizations

The purpose of the Child and Adult Care Food Program (CACFP) monitoring visit is to ensure that the sponsoring organization (SO) is administering the program in accordance with the CACFP regulations.

Records maintained by the SO serve as a basis for verifying compliance with program regulations. The areas which will be reviewed are as follows:

- Enrollment, attendance, and meal count verification, including the internal controls associated with the sponsor's review and verification of claims.
- Meal service compliance, including the sponsor's procedures for review of meal counts, menus, and processed food documentation.
- Eligibility for Tier I reimbursement rates, including verification procedures, income and area documentation, school data, and census data.
- Monitoring and training of family day care home (FDCH) and group home providers.
- Receipt and disbursement of CACFP funds.
- Administrative costs, including cost allocation plans, indirect cost plans, receipts, invoices, and other documentation associated with administrative costs.

SOs with 1-100 FDCHs and group homes will be reviewed at least once every three years. SOs with more than 100 homes will be reviewed at least once every two years. SOs with a history of problems will be visited more frequently. New SOs with five or more homes will be reviewed within the first 90 days of program operations.

Reviews of SOs with more than 100 homes shall include reviews of 5% of the first 1,000 homes and 2½% of all homes in excess of 1,000. Reviews of SOs with 100 or fewer homes shall include reviews of 10% of the homes. Reviews of FDCHs or group homes will be conducted by Department of Health and Senior Services-Community Food and Nutrition Assistance (DHSS-CFNA) unannounced to both the SO and the home. SOs must ensure that their homes are aware of DHSS-CFNA visits and that their cooperation in these visits is a requirement of their agreement with the sponsor. Failure of an FDCH or group home to admit a DHSS-CFNA staff person with proper identification for the purpose of monitoring their food program records will result in the home being classified as seriously deficient.

SOs may be notified in advance of the upcoming monitoring visit. The SO may receive an official letter acknowledging the upcoming visit and a list of records that will be reviewed. Some monitoring visits may be unannounced. For unannounced visits, no advance notification will be given. Listed below are program records required by regulations. All required records must be available to the DHSS-CFNA representative within one hour of the request, making it impermissible for records to be retrieved and provided at a later date and/or time. If records, such as Income Eligibility Forms (IEFs) or enrollment forms, are not provided within the required time, the assumption will be that such records do not exist. Findings and disallowances will be made accordingly.

The following records will be reviewed:

- Documentation to support Tier I eligibility.
- Daily attendance records, meal count records, enrollment data, and menus for selected providers.
- Copies of all applications and supporting documents submitted to DHSS-CFNA.
- Copies of invoices and receipts or other records that document administrative costs.
- Copies of claims for reimbursement submitted to DHSS-CFNA and documentation verifying receipt of the CACFP reimbursement.
- Documentation of training provided to administrative staff and home staff.
- Documentation of monitoring reviews conducted at homes under the sponsor's jurisdiction.
- Records documenting the date and amount of CACFP disbursement to the FDCHs and group homes.

- Records documenting expenditure of advance dollars.
- Agreements between home providers and SOs.
- Audit report for the most recent year.
- Provider files.
- Documentation to support a declaration of serious deficiency of a home provider, correspondence, and on-site follow-up.
- Documentation related to parent audits.
- Documentation and correspondence related to proposals to terminate and proposals to disqualify home providers.
- Documentation supporting terminations and disqualifications.

Monitoring of Family Day Care and Group Homes

All requirements for SOs when monitoring homes can be found in the USDA's Family Day Care Homes Monitor Handbook, A Child and Adult Care Food Program Handbook at [Family Day Care Homes Monitor Handbook | Food and Nutrition Service \(usda.gov\)](#)

Termination of Agreements

A family day care home (FDCH) or group home provider may be terminated by a sponsoring organization (SO) under the following conditions:

Termination of Nonparticipating Providers

Providers must be dropped from SO when they no longer have a license or registration.

A provider who maintains their license but has not participated in the program for three months must be terminated as an inactive provider. The provider must be dropped from the SO if the sponsor is aware that a provider will not be participating for the next three or more months or after three months of nonparticipation in the program.

Termination of Agreement for Convenience

A SO may terminate a home for convenience at any time. Reasons for terminating a home for convenience include:

- Geographical location of provider (distance is cost-prohibitive for monitoring).
- The SO is overextended administratively and needs to reduce the size of its program.

Under no circumstances may a home be terminated for convenience by an SO to avoid problems or potential serious deficiencies. In all cases, a SO must provide reasonable and plausible justification for terminating a home for convenience. If it is determined by the Department of Health and Senior Services – Community Food and Nutrition Assistance (DHSS-CFNA) that a home has been terminated for convenience to avoid problems or serious deficiencies, the SO will be declared seriously deficient in their management of the Child and Adult Care Food Program (CACFP). SOs must notify DHSS-CFNA in writing within 15 days of terminating a home for convenience. The written notification must also include the justification for terminating the home for convenience.

A home terminated for convenience shall be provided a list of potential SOs by the initial SO. The home may sign up with another SO with no penalty.

If a SO terminates a home provider because of location, the SO must also terminate all the other home providers enrolled under their sponsorship that are also located in a ten-mile radius of that home. A provider may not be singled out and terminated because of location if there are other providers in the same area.

Termination of Agreement for Cause (Seriously Deficient/Disqualification)

An SO may terminate a home provider for cause under the following circumstances, as outlined in 7CFR§226.16(l). In all cases, the SO must have documentation to support the action taken.

To terminate an agreement for cause, a sponsor must first declare the home seriously deficient and follow the established Serious Deficiency Process.

When the serious deficiency constitutes an imminent threat to the health or safety of children, the sponsor must **immediately** suspend the provider's participation.

Suspension, Proposed Termination, and Disqualification Due to Imminent Threat

The family day care home (FDCH) or group home provider's main priority is to protect the health and safety of children in care. If the sponsoring organization (SO) determines that there is an imminent threat to the health or safety of participants in an FDCH/group home or that the home has engaged in activities that threaten the public health or safety, the SO must immediately notify the appropriate state or local licensing and health authorities, the SA FDCH Manager, and take action that is consistent with the recommendations and requirements of those authorities.

If state or local health or state child care licensing officials have cited an FDCH or group home for serious health or safety violations, the SO must immediately suspend the home's CACFP participation prior to any formal action to revoke the home's licensure or approval and notify the SA FDCH Manager.

The SO must notify the home that its participation has been suspended, that the home has been determined seriously deficient, and that the SO proposes to terminate the home's agreement for cause. For more detailed information on the Suspension Process, please see "USDA Serious Deficiency, Suspension, & Appeals for State Agencies and Sponsoring Organizations CACFP Program Handbook" and "USDA Family Day Care Homes Monitor Handbook."

The SO must provide a copy of the notice for approval by the State Agency (SA) FDCH Manager as soon as possible before sending the notice to the FDCH. At the same time the notice is issued to the home, the SO must provide a copy of the suspension letter to the SA FDCH Manager. A copy of the SO's appeal procedures must be included with the notice of suspension.

The notice must:

- Specify the serious deficiency(ies) found and the home's opportunity to appeal for an administrative review of the proposed termination in accordance with 7CFR§226.6(l).
- State that participation (including all program payments) will remain suspended until the administrative review is concluded.
- Inform the home that if the administrative review official overturns the suspension, the home may claim reimbursement for eligible meals served during the suspension, provided appropriate records have been maintained.
- Inform the home that termination of the home's agreement will result in the placement of the home, the provider, and the responsible principals and responsible individuals on the NDL.
- State that if the home seeks to voluntarily terminate its agreement after receiving the proposed termination notice, the home will still be terminated for cause and disqualified.

The SO must immediately terminate the home's agreement and disqualify the home when the administrative review official upholds the SO's proposed termination or when the home's request for an administrative review expires.

An SO is prohibited from making any program payments to a home that has been suspended until any administrative review of the proposed termination is completed. If the suspended

home prevails in the administrative review of the proposed termination, the SO must reimburse the home for eligible meals served during the suspension period, if proper records are maintained during the suspension period.

FDCH/Group Home Serious Deficiency Process

A family day care home (FDCH) or group home provider may be classified as Seriously Deficient (SD) according to Federal Regulation 7 CFR 226.16(l)(2) if one or more of the following situations exist:

1. Submission of false information on the application;
2. Submission of false claims for reimbursement;
3. Simultaneous participation under more than one sponsoring organization (SO);
4. Non-compliance with the Program meal pattern;
5. Failure to keep required records;
6. Conduct or conditions that threaten the health or safety of a child(ren) in care, or the public health or safety;
7. 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;
8. Failure to participate in training; or
9. Any other circumstance related to non-performance under the sponsoring organization-day care home agreement, as specified by the SO or the State agency.

This list should not be considered all-inclusive. In addition, a provider may be classified as seriously deficient status if they have a record of continued non-compliance with established policies and procedures. For more detailed information on the Seriously Deficiency Process, please see “USDA Serious Deficiency, Suspension, & Appeals for State Agencies and Sponsoring Organizations CACFP Program Handbook” and “USDA Family Day Care Homes Monitor Handbook.”

A home may be declared seriously deficient if the SO finds program violations or issues of non-compliance with CACFP requirements during the home’s participation. Serious deficiencies that are not permanently corrected will result in the proposed termination and disqualification of the home.

If the SO determines that a day care home has committed one or more of the serious deficiencies listed above, consultation must be made with the State Agency (SA) Family Day Care Home (FDCH) Manager. The decision to make the seriously deficient determination will be based on a history of problems, failure to correct problems, or general poor recordkeeping. If the provider is deemed seriously deficient, the serious deficiency classification is effective on the date the monitoring review occurred.

Once declared seriously deficient and the SA FDCH Manager has approved, the SO must initiate the serious deficiency process. Serious deficiencies should be resolved within 90 days unless long-term changes are required with the CAP.

The Six Steps in the Serious Deficiency Process

1. Identify the serious deficiencies.

2. Issue a notice of serious deficiency.
3. Receive and assess the home's written Corrective Action Plan (CAP).
4. Issue a notice of temporary deferral of the serious deficiency if the CAP is adequate, or issue a notice of proposed termination and disqualification, including appeal procedures, if the CAP is not adequate (or if no CAP is received).
5. If requested, hold an appeal of the proposed termination and disqualification.
6. If termination is upheld, issue a notice of final termination and disqualification, or if termination is overturned, issue a notice of temporary deferral.

All serious deficiency, CAP, temporary deferral, and final termination letters must be approved by SA before mailing to the provider. Prototypes for these letters can be found in Section 10 of this manual. The SA will forward the letters to the USDA. All seriously deficient letters must be sent to the home by registered receipt mail and regular mail. In addition, the letter can also be emailed to the home.

As noted in the steps, once the serious deficiency(ies) is identified, the SO must notify the home that it has been found to be seriously deficient. The SO must also provide a copy of the notice of serious deficiency for approval by the SA FDCH Manager within approximately 14 days of determining that the home was found to be seriously deficient. Within five days after receiving SA approval, the SO will send the notice of serious deficiency letter to the home. At the same time the notice is issued to the home, the SO must provide a copy of the serious deficiency letter to the SA FDCH Manager and Program Coordinator.

The notice must specify:

- The serious deficiency(ies).
- The actions to be taken by the home to correct the serious deficiency(ies).
- The time allotted to correct the serious deficiency(ies) (as soon as possible, but not to exceed three weeks).
- That the serious deficiency determination is not subject to administrative review.
- That failure to correct the serious deficiency(ies) fully and permanently within the allotted time will result in the proposed termination of the home's agreement and the proposed disqualification of the home, the provider, and other responsible principals and individuals.
- That the home's voluntary termination of its agreement after having been notified that it is seriously deficient will still result in the home's formal termination by the SO and placement of the home, the provider, and its responsible principals and responsible individuals on the National Disqualified List (NDL).

Examples of Findings & Required Actions in SD Letters

The following are some examples of findings and related required actions that can be used in SD letters. The wording that should be changed for each specific finding has been **bolded**.

Finding

Meal count records were not available for the monitoring review (**or specific dates**).

Required Action:

Meals that are not supported with meal count records may not be claimed. Meals must be recorded during the time of meal service and the documentation must be maintained on file. Provide a written statement indicating procedures the home provider will implement to prevent this finding in future participation.

Finding

The **lunch meal** was served outside the approved time. The **lunch meal** should have been served no later than **11:45 a.m.** and ended no later than **12:30 p.m.**

Required Action:

Ensure all meals are served within the approved meal times. Meals served outside the approved time may not be claimed. Provide a written statement indicating procedures the home provider will implement to prevent this finding in future participation.

Finding

During the lunch meal observation, the participants were served inadequate amounts of milk. The CACFP meal pattern requirement for milk at lunch is four ounces for children 1-2 years of age, six ounces for participants ages 3-5, and one cup or eight ounces of milk for participants 6 years old and older. Based on these requirements, the meal served on the day of review did not meet the minimum requirements.

Required Action:

Serve a full four to eight ounces of milk to participants based on their ages. Review the meal pattern requirements and purchase larger cups to ensure participants are receiving adequate quantities of milk. Provide a written statement indicating procedures the home provider will implement to prevent this finding in future participation.

Finding

The home provider failed to have the required CACFP records available for the **sponsoring organization or state agency** at the time of review. All accounts and records pertaining to the program shall be made available, upon request, to representatives of the **sponsoring organization or state agency** for review (7 CFR 226.10). Records must be made available within an hour of arrival.

Required Action:

All records to support the claim must be retained for a period of three years after the date of submission of the final claim for the fiscal year to which they pertain. If a review finding has not been resolved, the records shall be retained beyond the end of the three-year period as long as may be required for the resolution of the issues. All accounts and records pertaining to the program shall be made available, upon request, to the **sponsoring organization or state agency** representative(s) within an hour of arrival. Provide a written statement indicating procedures the home provider will implement to prevent this finding in future participation.

Finding

Menus for the month of **Month Year** were reviewed. Meals did not always contain all of the required meal components as outlined in the meal pattern for the CACFP in 7 CFR 226.20. The following meals were noted as having missing or non-creditable components:

Date	Meal	Menu	Missing/Non-Creditable Component
9/29/24	Snack	Jello Milk	Jello is not creditable.
9/30/24	Lunch	Ham Green Beans Potato Milk	Missing grain component.
9/25/24	Breakfast	Cinnamon Roll Apple Slices Milk	Cinnamon roll is a grain-based dessert which is not creditable.
9/22/24	Breakfast	Frosted Flakes Banana Milk	Frosted Flakes do not meet the CACFP requirement of having no more than six grams of sugar per one dry ounce.
9/12/24	Snack	Peach Yogurt Graham Crackers	Yogurt served did not meet the CACFP requirement of having no more than 23 grams of sugar per six ounces.

Meals that do not provide all of the required meal components may not be claimed for reimbursement. As a result of this finding, a total of ___ meals were disallowed.

Required Action:

Revise menus to include all required meal components. Review CACFP Meal Patterns to ensure all meals that will be claimed for reimbursement contain all required meal components. Submit the corrected menu with the Corrective Action Plan (CAP).

In response to the serious deficiency notice, a home provider must submit a CAP within three weeks that details the processes implemented to ensure that the serious deficiencies have been fully and permanently corrected.

Home providers who receive a notice of a serious deficiency have the right to appeal the findings leading to the serious deficiency rating but **not** the serious deficiency notice.

If the home provider voluntarily terminates its CACFP contract after receiving the serious deficiency notice, the SO, in consultation with the SA FDCH Manager, must terminate and disqualify the home from future CACFP participation.

If the home provider closes and terminates its CACFP contract prior to receiving the serious deficiency notice, the serious deficiency is still effective, and the process must be carried through.

Serious Deficiency Process

Corrective Action Plan (CAP) and Temporary Deferrals

In response to the serious deficiency notice, the family day care home (FDCH) or group home provider must submit a CAP within three weeks that details the processes implemented to ensure that the serious deficiencies have been fully and permanently corrected. If more time is requested, note that all CAPs must be completed within 30 days.

A CAP must clearly address the identified problems and outline the steps the provider will take to correct the deficiency fully and permanently. That is, the corrective action must address the following questions:

- **What will be done to correct the problem?**
- **Who will be responsible for making sure the deficiency is corrected?**
- **How frequently will this be done – daily, weekly, monthly, etc.?**
- **When will this be done?**
- **How will the provider ensure that the CAP permanently corrects the deficiency and continues to be implemented (written procedures, training, etc.)?**

The CAP is a home's response to the sponsoring organization's (SO's) requirement that serious deficiencies be corrected. The response will generally include details of and documentation that the corrections have already been made. This might include copies of income eligibility forms, enrollment rosters, menus, Child Nutrition Labels or manufacturers' product analysis sheets or recipes, attendance records, meal count forms, etc. If the CAP and supporting documentation is acceptable, the sponsoring organization can approve it.

After receiving the CAP from the home provider, the SO will review the CAP within seven days to evaluate it and determine whether adequate internal controls have been put in place to correct the deficiencies fully and permanently.

After the SO reviews the CAP and makes an initial determination of whether to accept it, the SO should provide the CAP, supporting documentation, and their recommendation regarding the CAP to the State Agency (SA) FDCH Manager for consultation.

If the CAP is deemed adequate, a temporary deferral letter will be drafted by the SO within approximately five days and sent to the SA FDCH Manager for approval. This letter must include an assessment of why the provider's CAP is acceptable. The SA FDCH Manager will notify the SO of any needed changes and will let the SO know when to send the temporary deferral letter.

The SO must then send the notice of temporary deferral letter to the home provider [7 CFR §226.16(l)(3)(ii)]. At the same time the notice is issued to the home, the sponsoring organization must provide a copy of the temporary deferral letter to the State agency.

Homes that have had seriously deficient determinations that have been temporarily deferred must be monitored one additional time by the sponsor within the first month after the temporary deferral of the serious deficiency to ensure that the corrective actions have been implemented and that those actions provide adequate internal controls to correct the deficiencies fully and permanently. The monitoring review must be unannounced and unpredictable and must be in addition to the three regular monitoring reviews for the year.

Home providers with serious deficiencies have no more than 90 days from receipt of the Notice of Serious Deficiency to demonstrate "full and permanent" corrections by submitting and fully

implementing an approved corrective action plan unless long-term changes are required with the CAP.

However, if the SO accepts the provider's corrective action, but later determines that the corrective action was not permanent or complete, the sponsoring organization must then contact the State agency to discuss plans to propose to terminate the provider's Program agreement and disqualify the provider according to 7 CFR §226.16(l)(3)(ii).

If timely corrective action is not taken to fully and permanently correct the serious deficiency(ies) cited or a follow-up on-site visit demonstrates that limited or no corrections have been made, the SO will issue a notice proposing to terminate the provider's agreement. A proposal to terminate determination can be appealed.

Serious Deficiency Process -

How to Determine if a CAP is Acceptable

In response to the serious deficiency notice, the Family Day Care Home (FDCH) or group home provider must submit a CAP within three weeks that details the processes implemented to ensure that the serious deficiencies have been fully and permanently corrected. If more time is requested, note that all CAPs must be completed within 30 days. The sponsoring organization (SO) will evaluate the CAP and determine whether adequate internal controls have been put into place to correct the deficiencies fully and permanently. An acceptable CAP must include the following information:

- Name of the provider(s) associated with the serious deficiencies;
 - Address of the FDCH or group home;
 - Date of birth for the provider(s) associated with the serious deficiencies; and
 - Details of the serious deficiencies:
- **What** are the serious deficiencies and the procedures that were implemented to address the serious deficiencies?
 - **Who** addressed the serious deficiencies? List home personnel responsible for this task.
 - **When** was the procedure for addressing the serious deficiencies implemented? Provide a timeline for implementing the procedure (i.e., will the procedure be done daily, weekly, monthly, or annually, and when did implementation of the corrective action plan begin)?
 - **Where** is the CAP documentation retained?
 - **How** will the provider ensure that the CAP corrects the deficiency and continues to be implemented?

The CAP is a home's response to the sponsoring organization's requirement that the Program's serious deficiencies be corrected. The response will generally include details of and documentation that the corrections have already been made. This might include copies of income eligibility forms, enrollment rosters, menus, Child Nutrition Labels or manufacturers' product analysis sheets or recipes, attendance records, meal count forms, etc. If the CAP and supporting documentation is acceptable, the sponsoring organization can approve it.

Child and Adult Care Food Program (CACFP) Family Day Care Home Provider (FDCH)/Group Home Provider (GH) Corrective Action Plan

Please complete and return this form to the Sponsoring Organization. Attach all related documentation.

Name of Sponsoring Organization:

Name of FDCH/GH Provider:

FDCH/GH Provider's Date of Birth:

Finding (as noted in the letter or on the report)	What will be done to correct the problem?	How frequently will this be done: daily, weekly, and/or monthly?	Who is responsible for ensuring the deficiency is corrected?	When will this be done?	How will the provider ensure that the CAP permanently corrects the deficiency and continues to be implemented (written procedures, training, etc.)?

Location where CAP documentation (menus, written policies/procedures, documentation of staff training, etc.) will be maintained:

Serious Deficiency Process – Termination

If the serious deficiency (SD) corrective action plan (CAP) submitted by the family day care home (FDCH) or group home provider is deemed inadequate, and/or is not received by the due date, or a follow-up on-site visit demonstrates that limited or no corrections have been made, the sponsoring organization (SO) must issue a notice proposing to terminate the provider's agreement for cause.

The proposed termination notice must explain the home's opportunity for an appeal of the proposed termination in accordance with 7CFR§226.6(I). A copy of the sponsor's appeal procedures must be in the notice of proposed termination. The SO must provide a copy of the notice to the SA FDCH Manager within ten days for approval before sending the proposed termination notice to the FDCH provider. At the same time the notice is issued to the home provider, the SO must provide a copy of the proposed termination letter to the SA FDCH Manager.

The notice must:

- Inform the home provider that it may continue to participate and receive program reimbursement for eligible meals served until the administrative review of its appeal is concluded.
- Inform the home provider that termination of the home's agreement will result in the home's termination for cause and disqualification.
- Inform the home provider that if they seek to voluntarily terminate its agreement after receiving the notice to propose to terminate (i.e., provider stops claiming or license status changes), the home, the provider, and the responsible principals and responsible individuals will still be placed on the National Disqualified List (NDL).

The SO must continue to pay any claims for reimbursement for eligible meals served until the serious deficiency(ies) is corrected, or the home's agreement is terminated, including the period of any administrative review of an appeal.

The SO must immediately terminate the home's agreement and disqualify the home when the administrative review official upholds the SO's proposed termination and proposed disqualification or when the home's opportunity to request an appeal expires. The SO must provide a copy of the termination and disqualification letter to the SA FDCH Manager within ten days for approval before terminating and disqualifying the home and the home provider. At the same time the notice is issued to the home, the sponsoring organization must provide a copy of the termination and disqualification letter to the State agency.

What Can Be Appealed

During the course of the contract with an institution, Community Food and Nutrition Assistance (CFNA) may make determinations with which the institution may not agree. For any actions impacting the institution, the CFNA will advise the institution of the grounds on which the CFNA based its action. The notice of required action shall be sent by certified mail, faxed, or e-mailed to the institution's executive director, chairman of the board of directors, and the responsible principals/individuals. Also included will be a statement that the institution has the right to appeal the action.

An independent institution or sponsoring organization (SO) may appeal decisions made by CFNA. Actions that may be appealed are those that affect the participation of an institution in the program or the institution's claim for reimbursement. Actions that may be appealed include:

- Denial of an institution's application for participation.
- Denial of an application submitted by an SO on behalf of a facility.
- Notice of proposed termination of the participation of an institution or facility.
- Notice of proposed disqualification of a responsible principal or responsible individual.
- Suspension of an institution's participation for health or safety reasons or submission of a false or fraudulent claim.
- Denial of an institution's application for start-up or expansion payments.
- Denial of a request for advance payments.
- Recovery of all or part of an advance in excess of the claim for the applicable period.
- Denial of all or part of a claim for reimbursement.
- Demand for the remittance of an overpayment.
- Denial by the Department of Health and Senior Services (DHSS) to forward to the Food and Nutrition Service (FNS) an exception request by the institution or SO for payment of a late claim or a request for an upward adjustment to a claim, or demand for remittance of an overclaim.
- Any other action of the State agency affecting an institution's participation or its claim for reimbursement.

Actions not subject to appeal include:

- A decision by FNS to deny an exception request by an institution for payment of a late claim or for an upward adjustment to a claim.
- A determination that an institution is seriously deficient.
- Disqualification and placement on the National Disqualified List (NDL).
- Termination of a participating institution's contract based on the disqualification of the institution by another state agency or FNS.
- A determination that corrective action was not complete and permanent.
- A decision that corrective action is inadequate for NDL removal.
- The state agency's refusal to consider an application if the institution or principal is on the NDL or an application submitted on behalf of a facility on the NDL.

Payments During Administrative Review

During the administrative review period, the Department of Health and Senior Services (DHSS) is prohibited from taking action to collect or offset an overpayment. However, DHSS must assess interest, beginning with the initial demand for remittance of the overpayment and continuing through the administrative review period, unless the administrative review official overturns DHSS's action.

During the administrative review, DHSS must continue its efforts to recover advances in excess of the claim for reimbursement for the applicable period. The recovery can be through a demand for full payment or an adjustment of subsequent payments.

Unless participation has been suspended, DHSS must continue to pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred until the time for requesting an administrative review has expired or when the administrative review official makes the determination.

DHSS is prohibited from paying any claims for reimbursement from a new institution for eligible meals served or allowable administrative expenses incurred until the department has approved the institution's application and the institution and DHSS have signed a program agreement.

Unless participation has been suspended, DHSS must continue to pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred until the serious deficiency(ies) is corrected or the institution's agreement is terminated, including the period of any administrative review.

DHSS is prohibited from paying any claims for reimbursement submitted by a suspended institution. However, if the suspended institution prevails in the administrative review of the proposed termination, the DHSS must pay any claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period. However, if the institution suspended for the submission of false or fraudulent claims is a sponsoring organization, DHSS must ensure that sponsored facilities continue to receive reimbursement for eligible meals served during the suspension period. If the suspended institution prevails in the administrative review of the proposed termination, DHSS must pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

Types of Appeals

Sponsoring organization appeals are conducted before a duly appointed administrative hearings officer.

Administrative review is an in-person, verbal hearing at which the participant and the Department of Health and Senior Services (DHSS) submit testimony and evidence.

Abbreviated administrative review is a review of written material only. Written evidence is submitted to the Hearings Officer for consideration in the appeal. An appellant cannot request an administrative review after the abbreviated administrative review has taken place.

Abbreviated administrative reviews are the only option available to appellants under the following conditions:

- Submission of false information on the application.
- The institution or one of its principals or facilities is on the national disqualified list.
- The institution or one of its principals or facilities is ineligible to participate.
- The institution or one of its principals or facilities has been convicted for any activity that indicates a lack of business integrity.

Appeal Request

A sponsoring organization (SO) can appeal by filing a written request for appeal.

Filing the Request

The SO has 15 days to request an administrative review. The 15 days allotted for the request begins on the fifth day after the date of mailing of the state agency notice or on the date the institution receives the notice of findings, whichever is earliest.

The appeal **must** be a written request sent to:

Hearings Officer (address provided with correspondence) and
Missouri Department of Health and Senior Services
Bureau of Community Food & Nutrition Assistance
P.O. Box 570
Jefferson City, MO 65102

A request for an appeal must be submitted to both parties listed above.

The appeal request must:

- Have the name, phone number, and mailing address of your institution.
- Clearly identify the findings being appealed, the basis of the appeal, and the remedy sought.
- Have written information to support the appeal (abbreviated review only).
- Have a copy of the notice from the State agency that gives rise to the review request.
- State whether or not the participant is requesting an in-person, oral hearing, or an abbreviated administrative review. A party or entity requesting a review may elect to have an abbreviated administrative review even though entitled to a full hearing.
- Be signed by the authorized representative of the institution and have the name and the title of the person who signed the request, if other than the authorized representative.

Notification and Scheduling

- You will receive a docketing letter with the date, time, and location of the administrative hearing by mail within ten calendar days of receipt of the request.
- The Department of Health Senior Services (DHSS) or the party requesting the review may thereafter seek a continuance (rescheduling) of the hearing. Such requests must be in writing and should state the reason for the continuance request. The continuance request must be sent to the Hearings Officer and the State agency. Note: A request for a continuance by the appealing party may waive the right to a decision within 60 days of the Department of Health and Senior Services notice.
- The Hearings Officer will notify both parties as to whether or not the continuance is granted or denied. If it is denied, the hearing will be held as initially scheduled. If it is granted, a new hearing date will be sent by the Hearings Officer. It is extremely helpful if a request for a continuance also contains a statement as to what dates for a new hearing are not available to the party requesting the continuance.
- DHSS has the right to file an objection to the continuance.
- The institution can request copies of the information in the SO or Community Food and Nutrition Assistance's files upon which the adverse action was based.
- Representation by an attorney: Missouri state law prohibits employees of a corporation from acting as an attorney on behalf of the employing corporation. An employee may participate in an administrative review on behalf of a corporation, but participation is limited to testimony about

the relevant facts related to the appeal. A non-attorney may **not** file motions or briefs, make legal arguments, or examine witnesses.

- DHSS will have legal counsel representation at any in-person oral hearing.
- If the appellant fails to appear at the scheduled date, time, and place, the Hearings Officer will proceed to render a final determination based on available written information.

All submissions of written material must be submitted by mail. Requests for continuances may be submitted by fax to the Hearings Officer.

Hearings Officer Determination

The Hearings Officer shall make a written determination based upon written information submitted by Community Food and Nutrition Assistance (CFNA), written information submitted by the institution in support of its position, additional information as may be obtained by the Hearings Officer from any other person or persons having relevant and pertinent information, and information presented orally at the hearing.

The Hearings Officer will make a determination on the action under appeal within 60 calendar days from the date of notice of the adverse action in accordance with the regulations governing the Child and Adult Care Food Program (CACFP). This determination is the final administrative decision on the matter. It is not subject to further administrative review or reconsideration.

The Hearings Officer's determination will be sent by certified mail, return receipt requested, to the appellant institution or its representative. A copy will also be sent to the CFNA. It will take effect immediately upon receipt by the appellant institution or its representative.

In the case of a denial of an institution or facility's application to participate in the program, the determination of the Hearings Officer will either sustain the denial or shall direct that the institution or facility be approved for participation.

In the case of a denial of all or part of a claim for reimbursement, advance payment, or demand for a refund of an overpayment, the determination of the Hearings Officer will either sustain the action under appeal or specify the amount of the claim for reimbursement, advance payment, or refund of an overpayment to be paid.

In the case of the termination of an institution or facility's participation in the program, the determination of the Hearings Officer shall either sustain the termination or direct that the institution or facility be permitted to continue participation in the program.

If an appeal and request for administrative review involves any doubtful questions of law, the Hearings Officer will obtain the advice of the Office of General Counsel, Department of Health and Senior Services.

Civil Rights Complaint Procedure

Any person alleging discrimination based on race, color, national origin, sex, age, or disability has a right to file a complaint within 180 days of the alleged discriminatory action.

Include in the complaint:

- Name, address, and telephone number or other means of contacting the complainant.
- The specific location and name of the entity delivering the service or benefit.
- The nature of the incident or action that led the complainant to feel discrimination was a factor or an example of the method of administration that is having a disparate effect on the public, potential participants, or participants.
- The basis on which the complainant feels discrimination exists.
- The names, titles, and business addresses of persons who may have knowledge of the discriminatory action.
- The date during which the alleged discriminatory actions occurred, or if continuing, the duration of such actions.

USDA Nondiscrimination Statement

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation.

The completed AD-3027 form or letter must be submitted to USDA by:

mail:

U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410; or

fax:

(833) 256-1665 or (202) 690-7442; or

email:

Program.Intake@usda.gov

This institution is an equal opportunity provider.

Administrative Review

Family day care homes (FDCHs) or group homes that are dropped for cause must be given an opportunity for an administrative review of the proposed termination. The appeal process will be administered by the sponsoring organization (SO).

Actions subject to administrative review include a notice of intent to terminate their agreement for cause or a suspension of their participation. Neither the Department of Health and Senior Services (DHSS) nor the SO is required to offer an administrative review for other reasons. Each SO must develop procedures for offering and providing administrative reviews. The administrative review procedures must be provided:

- Annually to all FDCHs and group homes.
- To an FDCH or group home when the SO takes any action subject to an administrative review.
- Any other time upon request.

The following procedures must be followed when an FDCH requests an administrative review of an appealable action:

- The procedures must be uniform and apply to all homes.
- The home provider may retain legal counsel or testify on their own behalf.
- The home provider H may review the record on which the decision was based and refute the action in writing.
- The administrative review official is not required to hold a hearing.
- The administrative review official must be independent and impartial. This means that they must 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 must make a determination based on the information provided by the SO and the home and on federal and state laws, regulations, policies, and procedures governing the program.
- The administrative review official must inform the SO and home of the outcome of the administrative review within the period of time allotted in the SO's administrative review procedures. This timeframe is an administrative requirement for the SO and may not be used as a basis for overturning the termination if a decision is not made within the specified timeframe.
- The determination made by the administrative review official is the final administrative determination to be afforded the home and is not subject to further administrative review or consideration.

The SO must continue to pay any claims for reimbursement for eligible meals served until the home's agreement is terminated, including the administrative review period.

Sponsoring Organization Combined Administrative Review

The Department of Health and Senior Services (DHSS) must conduct the administrative review of the proposed disqualification of the responsible individuals and responsible principals as part of the administrative review of the application denial, proposed termination, and/or proposed disqualification of the organization with which the responsible principals or responsible individuals are associated. However, at the administrative review official's discretion, separate administrative reviews may be held if the organization does not request an administrative review or if the organization, the responsible principal, or the responsible individual demonstrates that their interests conflict.

Abbreviated Administrative Review

The Department of Health and Senior Services (DHSS) must limit the administrative review to a review of written submissions concerning the accuracy of DHSS's determination if the application was denied or the state agency (SA) proposes to terminate the organization's agreement due to the following:

- The information submitted on the application was false.
- The organization, one of its sponsored facilities, or one of the principals of its organization or its facilities is on the National Disqualified List.
- The organization, one of its sponsored facilities, or one of the principals of its organization or its facilities is ineligible to participate in any other publicly funded program because of a violation of the program's requirements.
- The organization, one of its sponsored facilities, or one of the principals of its organization or its facilities has been convicted for any activity that indicates a lack of business integrity.

Actions Not Subject to Administrative Review

The Department of Health and Senior Services (DHSS) is prohibited from offering administrative reviews for the following actions:

- FNS decisions on claim deadline exceptions and requests for upward adjustments to a claim.
- Determination of serious deficiency.
- Disqualification of an institution or a responsible principal or responsible individual, and the subsequent placement on the SA list and the National Disqualified List.
- Termination.

