

shall use attendance area information that it has obtained, or verified with appropriate school officials to be current, within the last school year. Determinations of a day care home's eligibility as a tier I day care home shall be valid for one year if based on a provider's household income, three years if based on school data, or until more current data are available if based on census data. However, a sponsoring organization, State agency, or FNS may change the determination if information becomes available indicating that a home is no longer in a qualified area. The State agency shall not routinely require annual redeterminations of the tiering status of tier I day care homes based on updated elementary school data.

(g) *Claims submission.* Each institution shall submit claims for reimbursement to the State agency in accordance with § 226.10.

(h) *Program agreement.* Each institution shall enter into a Program agreement with the State agency in accordance with § 226.6(f)(1).

(i) *Commodities.* Each institution receiving commodities shall ensure proper commodity utilization.

(j) *Special Milk Program.* No institution may participate in both the Child and Adult Care Food Program and the Special Milk Program at the same time.

(k) *Elderly feeding programs.* Institutions which are school food authorities (as defined in part 210 of this chapter) may use facilities, equipment and personnel supported by funds provided under this part to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*).

[47 FR 36527, Aug. 20, 1982, as amended at 48 FR 21530, May 13, 1983; 50 FR 8580, Mar. 4, 1985; 52 FR 15298, Apr. 28, 1987; 52 FR 36907, Oct. 2, 1987; 53 FR 52590, Dec. 28, 1988; 54 FR 26724, June 26, 1989; Amdt. 22, 55 FR 1378, Jan. 14, 1990; 56 FR 58174, Nov. 16, 1991; 61 FR 25554, May 22, 1996; 62 FR 903, Jan. 7, 1997; 62 FR 23619, May 1, 1997; 63 FR 9105, Feb. 24, 1998; 64 FR 72260, Dec. 27, 1999; 67 FR 43490, June 27, 2002]

#### § 226.16 Sponsoring organization provisions.

(a) Each sponsoring organization shall comply with all provisions of § 226.15.

(b) A sponsoring organization is prohibited from submitting an application on behalf of a facility if either the facility or any of its principals is on the National disqualified list. Each sponsoring organization shall submit to the State agency all information required for its approval and the approval of all child care and adult day care facilities under its jurisdiction, including:

(1) A sponsoring organization management plan and administrative budget, in accordance with § 226.6(f)(2), which includes information sufficient to document the sponsoring organization's compliance with the performance standards set forth at § 226.6(b)(18). As part of its management plan, a sponsoring organization of day care homes must document that, to perform monitoring, it will employ the equivalent of one full-time staff person for each 50 to 150 day care homes it sponsors. As part of its monitoring plan, a sponsoring organization of centers must document that, to perform monitoring, it will employ the equivalent of one full-time staff person for each 25 to 150 centers it sponsors. It is the State agency's responsibility to determine the appropriate level of staffing for monitoring for each sponsoring organization, consistent with the specified ranges and the factors established by the State agency in accordance with § 226.6(f)(2). The monitoring staff equivalent may include the employee's time spent on scheduling, travel time, review time, follow-up activity, and report writing. Sponsoring organizations that are participating in the Program on July 29, 2002 must submit a management plan or plan amendment that meets the monitoring staffing requirement no later than July 29, 2003. For sponsoring organizations of centers, the portion of the administrative costs to be charged to the Program as shown on the administrative budget and the actual administrative costs charged to the Program may not exceed 15 percent of the meal reimbursements estimated or actually earned during the budget year, unless the State agency grants a

## § 226.16

## 7 CFR Ch. II (1-1-03 Edition)

waiver in accordance with § 226.6(f)(3). A sponsoring organization of centers must include in its administrative budget all administrative costs, whether incurred by the sponsoring organization or its sponsored centers. If at any point a sponsoring organization determines that the meal reimbursements estimated to be earned during the budget year will be lower than that estimated in its administrative budget, the sponsoring organization must amend its administrative budget to stay within the 15 percent limitation (or any higher limit established pursuant to a waived granted under § 226.6(f)(3)) or seek a waiver. Failure to do so will result in appropriate fiscal action in accordance with § 226.14(a).

(2) An application for participation, or renewal materials, for each child care and adult day care facility accompanied by all necessary supporting documentation;

(3) Timely information concerning the eligibility status of child care and adult day care facilities (such as licensing/approval actions);

(4) For sponsoring organizations applying for initial participation on or after June 20, 2000, if required by State law, regulation, or policy, a bond in the form prescribed by such law, regulation, or policy;

(5) A copy of the sponsoring organization's notice to parents, in a form and, to the maximum extent practicable, language easily understandable by the participant's parents or guardians. The notice must inform them of their facility's participation in CACFP, the Program's benefits, the name and telephone number of the sponsoring organization, and the name and telephone number of the State agency responsible for administration of CACFP;

(6) If the sponsoring organization chooses to establish procedures for determining a day care home seriously deficient that supplement the procedures in paragraph (1) of this section, a copy of those supplemental procedures. If the State agency has made the sponsoring organization responsible for the administrative review of a proposed termination of a day care home's agreement for cause, pursuant to § 226.6(1)(1), a copy of the sponsoring organization's administrative review pro-

cedures. The sponsoring organization's supplemental serious deficiency and administrative review procedures must comply with paragraph (1) of this section and § 226.6(1);

(7) A copy of their outside employment policy. The policy must restrict other employment by employees that interferes with an employee's performance of Program-related duties and responsibilities, including outside employment that constitutes a real or apparent conflict of interest; and

(8) For sponsoring organizations of day care homes, the name, mailing address, and date of birth of each provider.

(c) Each sponsoring organization shall accept final administrative and financial responsibility for food service operations in all child care and adult day care facilities under its jurisdiction.

(d) Each sponsoring organization must provide adequate supervisory and operational personnel for the effective management and monitoring of the program at all facilities it sponsors. Each sponsoring organization must employ monitoring staff sufficient to meet the requirements of paragraph (b)(1) of this section. At a minimum, Program assistance must include:

(1) Pre-approval visits to each child care and adult day care facility for which application is made to discuss Program benefits and verify that the proposed food service does not exceed the capability of the child care facility;

(2) Staff training for all child care and adult day care facilities in Program duties and responsibilities prior to beginning Program operations;

(3) Additional training sessions, to be provided not less frequently than annually; and

(4) Reviews of food service operations to assess compliance with meal pattern, recordkeeping, and other Program requirements.

(i) *Reviews of sponsored centers.* Reviews must be made at least three times each year at each center. In addition:

(A) At least two of the three reviews must be unannounced;

(B) At least one unannounced review must include observation of a meal service;

## Food and Nutrition Service, USDA

## § 226.16

(C) At least one review must be made during the center's first six weeks of Program operation; and

(D) Not more than six months may elapse between reviews.

(ii) *Reviews of day care homes.* Reviews must be made at least three times each year at each day care home, except as described at paragraph (d)(4)(iii) of this section. In addition:

(A) At least two of the three reviews must be unannounced;

(B) At least one unannounced review must include observation of a meal service;

(C) At least one review must be made during the day care home's first four weeks of Program operation; and

(D) Not more than six months may elapse between reviews.

(iii) *Variation for sponsoring organizations of day care homes.* If the State agency believes that improved efficiency and more effective management will result, and subject to FNSRO approval, the State agency may allow a sponsoring organization to conduct reviews an *average* of at least three times each year per day care home, provided that:

(A) Each day care home receives at least two unannounced reviews;

(B) At least one review is made during each day care home's first four weeks of Program operations; and

(C) No more than six months elapse between reviews;

(iv) *Follow-up reviews.* If, in a review of a facility, a sponsoring organization detects one or more serious deficiency, the next review of that facility must be unannounced. Serious deficiencies are those set forth at paragraph (1)(2) of this section, regardless of the type of sponsored facility.

(v) *Notification.* Sponsoring organizations must provide each sponsored center written notification of the right of the sponsoring organization, the State agency, the Department, and other State and Federal officials to make announced or unannounced reviews of their operations during the center's normal hours of child or adult care operations, and must also notify sponsored centers that anyone making such reviews must show photo identification that demonstrates that they are employees of one of these entities. For

sponsored centers participating July 29, 2002, the sponsoring organization must provide this notice sent no later than August 29, 2002. For sponsored centers that are approved after July 29, 2002, the sponsoring organization must provide the notice before meal service under the Program begins. Sponsoring organizations must provide day care homes notification of unannounced visits in accordance with § 226.18(b)(1).

(vi) *Other requirements pertaining to unannounced reviews.* Unannounced reviews must be made only during the facility's normal hours of child or adult care operations, and monitors making such reviews must show photo identification that demonstrates that they are employees of the sponsoring organization.

(e) Each sponsoring organization shall comply with the recordkeeping requirements established in §§ 226.10(d) and 226.15(e) and any recordkeeping requirements established by the State agency in order to justify the administrative payments made in accordance with § 226.12(a). Failure to maintain such records shall be grounds for the denial of reimbursement.

(f) The State agency may require a sponsoring organization to enter into separate agreements for the administration of separate types of facilities (child care centers, day care homes, adult day care centers, and outside-school-hours care centers).

(g) Each sponsoring organization electing to receive advance payments of program funds for day care homes shall disburse the full amount of such payments within five working days of receipt from the State agency. If the sponsor requests the full operating advance to which it is entitled, the advances to day care homes shall be the full amount which the sponsor expects the home to earn based on the number of meals projected to be served to enrolled children during the period covered by the advance multiplied by the applicable payment rate as specified in § 226.13(c). If a sponsor elects to receive only a part of the operating advance to which it is entitled, or if the full operating advance is insufficient to provide a full advance to each home, the advance shall be disbursed to its homes in a manner and an amount the sponsor

deems appropriate. Each sponsor shall disburse any reimbursement payments for food service due to each day care home within five working days of receipt from the State agency. Such payment shall be based on the number of meals served to enrolled children at each day care home, less any payments advanced to such home. However, the sponsoring organization may withhold from Program payments to each home an amount equal to food service operating costs incurred by the sponsoring organization in behalf of the home and with the home provider's written consent. If payments from the State agency are not sufficient to provide all day care homes under the sponsoring organization's jurisdiction with advance payments and reimbursement payments, available monies shall be used to provide all due reimbursement payments before advances are disbursed.

(h) Sponsoring organizations shall make payments of program funds to child care centers, adult day care centers or outside-school-hours care centers within five working days of receipt from the State agency, on the basis of the management plan approved by the State agency, and may not exceed the Program costs documented at each facility during any fiscal year; except in those States where the State agency has chosen the option to implement a meals times rates payment system. In those States which implement this optional method of reimbursement, such disbursements may not exceed the rates times the number of meals documented at each facility during any fiscal year.

(i) Disbursements of advance payments may be withheld from child and adult day care facilities which fail to submit reports required by § 226.15(e).

(j) A for-profit organization shall be eligible to serve as a sponsoring organization for proprietary title XIX or title XX centers which have the same legal identity as the organization, but shall not be eligible to sponsor proprietary title XIX or title XX centers which are legally distinct from the organization, day care homes, or public or private nonprofit centers.

(k) Before sponsoring organizations expend administrative funds to assist family day care homes in becoming li-

censed, they shall obtain the following information from each such home: a completed free and reduced price application which documents that the provider meets the Program's income standards; evidence of its application for licensing and official documentation of the defects that are impeding its licensing approval; and a completed CACFP application. These funding requests are limited to \$300 per home and are only available to each home once.

(1) *Termination of agreements for cause.*  
(1) *General.* The sponsoring organization must initiate action to terminate the agreement of a day care home for cause if the sponsoring organization determines the day care home has committed one or more serious deficiency listed in paragraph (1)(2) of this section.

(2) *List of serious deficiencies for day care homes.* Serious deficiencies for day care homes are:

(i) Submission of false information on the application;

(ii) Submission of false claims for reimbursement;

(iii) Simultaneous participation under more than one sponsoring organization;

(iv) Non-compliance with the Program meal pattern;

(v) Failure to keep required records;

(vi) Conduct or conditions that threaten the health or safety of a child(ren) in care, or the public health or safety;

(vii) 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; or

(viii) Any other circumstance related to non-performance under the sponsoring organization-day care home agreement, as specified by the sponsoring organization or the State agency.

(3) *Serious deficiency notification procedures.* If the sponsoring organization determines that a day care home has committed one or more serious deficiency listed in paragraph (1)(2) of this section, the sponsoring organization must use the following procedures to provide the day care home notice of the serious deficiency(ies) and offer it an opportunity to take corrective action. However, if the serious deficiency(ies) constitutes an imminent threat to the health or safety of participants, or the day care home has engaged in activities that threaten the public health or safety, the sponsoring organization must follow the procedures in paragraph (1)(4) of this section instead of those in this paragraph (1)(3).

(i) *Notice of serious deficiency.* The sponsoring organization must notify the day care home that it has been found to be seriously deficient. The sponsoring organization must provide a copy of the serious deficiency notice to the State agency. The notice must specify:

- (A) The serious deficiency(ies);
- (B) The actions to be taken by the day care home to correct the serious deficiency(ies);
- (C) The time allotted to correct the serious deficiency(ies) (as soon as possible, but not to exceed 30 days);
- (D) That the serious deficiency determination is not subject to administrative review.
- (E) That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in the institution's proposed termination of the day care home's agreement and the proposed disqualification of the day care home and its principals; and
- (F) That the day care home's voluntary termination of its agreement with the institution after having been notified that it is seriously deficient will still result in the day care home's formal termination by the State institution and placement of the day care home and its principals on the National disqualified list.

(ii) *Successful corrective action.* If the day care home corrects the serious deficiency(ies) within the allotted time and to the sponsoring organization's satisfaction, the sponsoring organiza-

tion must notify the day care home that it has rescinded its determination of serious deficiency. The sponsoring organization must also provide a copy of the notice to the State agency.

(iii) *Proposed termination of agreement and proposed disqualification.* If timely corrective action is not taken to fully and permanently correct the serious deficiency(ies) cited, the sponsoring organization must issue a notice proposing to terminate the day care home's agreement for cause. The notice must explain the day care home's opportunity for an administrative review of the proposed termination in accordance with § 226.6(1). The sponsoring organization must provide a copy of the notice to the State agency. The notice must:

- (A) Inform the day care home that it may continue to participate and receive Program reimbursement for eligible meals served until its administrative review is concluded;
- (B) Inform the day care home that termination of the day care home's agreement will result in the day care home's termination for cause and disqualification; and
- (C) State that if the day care home seeks to voluntarily terminate its agreement after receiving the notice of intent to terminate, the day care home will still be placed on the National disqualified list.

(iv) *Program payments.* The sponsoring organization must continue to pay any claims for reimbursement for eligible meals served until the serious deficiency(ies) is corrected or the day care home's agreement is terminated, including the period of any administrative review.

(v) *Agreement termination and disqualification.* The sponsoring organization must immediately terminate the day care home's agreement and disqualify the day care home when the administrative review official upholds the sponsoring organization's proposed termination and proposed disqualification, or when the day care home's opportunity to request an administrative review expires. At the same time the notice is issued, the sponsoring organization must provide a copy of the termination and disqualification letter to the State agency.

§ 226.17

7 CFR Ch. II (1-1-03 Edition)

(4) *Suspension of participation for day care homes.*

(i) *General.* If State or local health or licensing officials have cited a day care home for serious health or safety violations, the sponsoring organization must immediately suspend the home's CACFP participation prior to any formal action to revoke the home's licensure or approval. If the sponsoring organization determines that there is an imminent threat to the health or safety of participants at a day care home, or that the day care home has engaged in activities that threaten the public health or safety, and the licensing agency cannot make an immediate on-site visit, the sponsoring organization must immediately notify the appropriate State or local licensing and health authorities and take action that is consistent with the recommendations and requirements of those authorities. An imminent threat to the health or safety of participants and engaging in activities that threaten the public health or safety constitute serious deficiencies; however, the sponsoring organization must use the procedures in this paragraph (1)(4) (and not the procedures in paragraph (1)(3) of this section) to provide the day care home notice of the suspension of participation, serious deficiency, and proposed termination of the day care home's agreement.

(ii) *Notice of suspension, serious deficiency, and proposed termination.* The sponsoring organization must notify the day care home that its participation has been suspended, that the day care home has been determined seriously deficient, and that the sponsoring organization proposes to terminate the day care home's agreement for cause, and must provide a copy of the notice to the State agency. The notice must:

(A) Specify the serious deficiency(ies) found and the day care home's opportunity for an administrative review of the proposed termination in accordance with § 226.6(1);

(B) State that participation (including all Program payments) will remain suspended until the administrative review is concluded;

(C) Inform the day care home that if the administrative review official over-

turns the suspension, the day care home may claim reimbursement for eligible meals served during the suspension;

(D) Inform the day care home that termination of the day care home's agreement will result in the placement of the day care home on the National disqualified list; and

(E) State that if the day care home seeks to voluntarily terminate its agreement after receiving the notice of proposed termination, the day care home will still be terminated for cause and disqualified.

(iii) *Agreement termination and disqualification.* The sponsoring organization must immediately terminate the day care home's agreement and disqualify the day care home when the administrative review official upholds the sponsoring organization's proposed termination, or when the day care home's opportunity to request an administrative review expires.

(iv) *Program payments.* A sponsoring organization is prohibited from making any Program payments to a day care home that has been suspended until any administrative review of the proposed termination is completed. If the suspended day care home prevails in the administrative review of the proposed termination, the sponsoring organization must reimburse the day care home for eligible meals served during the suspension period.

[47 FR 36527, Aug. 20, 1982; 47 FR 46072, Oct. 15, 1982, as amended at 48 FR 21530, May 13, 1983; 50 FR 8580, Mar. 4, 1985; 50 FR 26975, July 1, 1985; 53 FR 52591, Dec. 28, 1988; 63 FR 9729, Feb. 26, 1998; 64 FR 72260, Dec. 27, 1999; 67 FR 43490, June 27, 2002]

§ 226.17 Child care center provisions.

(a) Child care centers may participate in the Program either as independent centers or under the auspices of a sponsoring organization; provided, however, that public and private non-profit centers shall not be eligible to participate in the Program under the auspices of a for-profit sponsoring organization. Child care centers participating as independent centers shall comply with the provisions of § 226.15.

(b) All child care centers, independent or sponsored, shall meet the following requirements