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sponsoring organization's notice to parents.

[47 FR 36527, Aug. 20, 1982, as amended at 52 FR 36907, Oct. 2, 1987; 53 FR 52591, Dec. 28, 1988; 54 FR 26724, June 26, 1989; Amdt. 22, 55 FR 1378, Jan. 14, 1990; 61 FR 25554, May 22, 1996; 62 FR 23619, May 1, 1997; 63 FR 9729, Feb. 26, 1998; 64 FR 72261, Dec. 27, 1999; 67 FR 43493, June 27, 2002]

§ 226.18 Day care home provisions.

(a) Day care homes shall have current Federal, State or local licensing or approval to provide day care services to children. Day care homes which cannot obtain their license because they lack the funding to comply with licensing standards may request a total limit per home of \$300 in administrative funds from a sponsoring organization to assist them in obtaining their license. Day care homes that, at the option of their sponsoring organization, receive administrative funds for licensing-related expenses must complete documentation requested by their sponsor as described in § 226.16(k) prior to receiving any funds. The agreement must be signed by the sponsoring organization and the provider and must include the provider's full name, mailing address, and date of birth. Day care homes which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates that renewal will be denied. If licensing or approval is not available, a day care home may participate in the Program if:

(1) The right of the sponsoring organization, the State agency, the Department, and other State and Federal officials to make announced or unannounced reviews of the day care home's operations and to have access to its meal service and records during its normal hours of child care operations. For day care homes participating July 29, 2002, the sponsoring organization must amend the current agreement no later than August 29, 2002;

(2) It demonstrates compliance with CACFP child care standards or applicable State or local child care standards to the State agency.

(b) Day care homes participating in the program shall operate under the

auspices of a public or private non-profit sponsoring organization. Sponsoring organizations shall enter into a written agreement with each sponsored day care home which specifies the rights and responsibilities of both parties. This agreement shall be developed by the State agency, unless the State agency elects, at the request of the sponsor, to approve an agreement developed by the sponsor. At a minimum, the agreement shall embody:

(1) The right of the sponsoring organization, the State agency, and the Department to visit the day care home and review its meal service and records during its hours of child care operations;

(2) The responsibility of the sponsoring organization to train the day care home's staff in program requirements;

(3) The responsibility of the day care home to prepare and serve meals which meet the meal patterns specified in § 226.20;

(4) The responsibility of the day care home to maintain records of menus, and of the number of meals, by type, served to enrolled children;

(5) The responsibility of the day care home to promptly inform the sponsoring organization about any change in the number of children enrolled for care or in its licensing or approval status;

(6) The meal types approved for reimbursement to the day care home by the State agency;

(7) The right of the day care home to receive in a timely manner the full food service rate for each meal served to enrolled children for which the sponsoring organization has received payment from the State agency. However, if, with the home provider's consent, the sponsoring organization will incur costs for the provision of program foodstuffs or meals in behalf of the home, and subtract such costs from Program payments to the home, the particulars of this arrangement shall be specified in the agreement;

(8) The right of the sponsoring organization or the day care home to terminate the agreement for cause or, subject to stipulations by the State agency, convenience;

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(9) A prohibition of any sponsoring organization fee to the day care home for its Program administrative services;

(10) If the State agency has approved a time limit for submission of meal records by day care homes, that time limit shall be stated in the agreement;

(11) The responsibility of the sponsoring organization to inform tier II day care homes of all of their options for receiving reimbursement for meals served to enrolled children. These options include: electing to have the sponsoring organization attempt to identify all income-eligible children enrolled in the day care home, through collection of free and reduced price applications and/or possession by the sponsoring organization or day care home of other proof of a child or household's participation in a categorically eligible program, and receiving tier I rates of reimbursement for the meals served to identified income-eligible children; electing to have the sponsoring organization identify only those children for whom the sponsoring organization or day care home possess documentation of the child or household's participation in a categorically eligible program, under the expanded categorical eligibility provision contained in §226.23(e)(1), and receiving tier I rates of reimbursement for the meals served to these children; or receiving tier II rates of reimbursement for all meals served to enrolled children;

(12) The responsibility of the sponsoring organization, upon the request of a tier II day care home, to collect applications and determine the eligibility of enrolled children for free or reduced price meals;

(13) The State agency's policy to restrict transfers of day care homes between sponsoring organizations;

(14) The responsibility of the day care home to notify their sponsoring organization in advance whenever they are planning to be out of their home during the meal service period. The agreement must also state that, if this procedure is not followed and an unannounced review is conducted when the children are not present in the day care home, claims for meals that would have been served during the unannounced review will be disallowed;

(15) The day care home's opportunity to request an administrative review if a sponsoring organization issues a notice of proposed termination of the day care home's Program agreement, or if a sponsoring organization suspends participation due to health and safety concerns, in accordance with §226.6(1)(2); and

(16) If so instructed by its sponsoring organization, the day care home's responsibility to distribute to parents a copy of the sponsoring organization's notice to parents.

(c) Each day care home shall serve one or more of the following meal types:

- (1) Breakfast,
- (2) Lunch,
- (3) Supper and
- (4) Supplemental food.

Reimbursement shall not be claimed for more than two meals and one supplement provided daily to each child.

(d) Each day care home participating in the program shall serve the meal types specified in its approved application in accordance with the meal pattern requirements specified in §226.20. Menu records shall be maintained to document compliance with these requirements. Meals shall be served at no separate charge to enrolled children;

(e) Each day care home shall maintain daily records of the number of children in attendance and the number of meals, by type, served to enrolled children. Each tier II day care home in which the provider elects to have the sponsoring organization identify enrolled children who are eligible for free or reduced price meals, and in which the sponsoring organization employs a meal counting and claiming system in accordance with §226.13(d)(3)(i), shall maintain and submit each month to the sponsoring organization daily records of the number and types of meals served to each enrolled child by name. Payment may be made for meals served to the provider's own children only when (1) such children are enrolled and participating in the child care program during the time of the meal service, (2) enrolled nonresident children are present and participating in the child care program and (3) providers' children are eligible to receive

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free or reduced-price meals. Reimbursement may not be claimed for meals served to children who are not enrolled, or for meals served at any one time to children in excess of the home's authorized capacity or for meals served to providers' children who are not eligible for free or reduced-price meals.

(f) The State agency may not require a day care home or sponsoring organization to maintain documentation of home operating costs.

(g) Each day care home shall comply with the recordkeeping requirements established in § 226.10(d) and in this section. Failure to maintain such records shall be grounds for the denial of reimbursement.

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§ 226.19 Outside-school-hours care center provisions.

(a) Outside-school-hours 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 nonprofit centers shall not be eligible to participate in the Program under the auspices of a for-profit sponsoring organization. Outside-school-hours care centers participating as independent centers shall comply with the provisions of § 226.15.

(b) All outside-school-hours care centers, independent or sponsored, shall meet the following requirements:

(1) Outside-school-hours care centers shall have current Federal, State or local licensing or approval to provide organized child care services to enrolled school-age children outside of school hours. The main purpose of the Program shall be the care and supervision of children. Outside-school-hours care centers which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates the renewal will be denied. If licensing or ap-

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proval is not available, an outside-school-hours care center may participate in the Program if:

(i) It receives title XX funds for providing child care; or

(ii) It demonstrates compliance with CACFP child care standards or any applicable State or local child care standards to the State agency.

(2) Except for proprietary title XX centers, outside-school-hours care centers shall be public, or have tax-exempt status under the Internal Revenue Code of 1986.

(3) Nonresidential public or private nonprofit schools which provide organized child care programs for school children may participate in the Program as outside-school-hours care centers if:

(i) Children are enrolled in a regularly scheduled child care program which meets the criteria of paragraph (b)(1) of this section. The program is organized for the purpose of providing child care services and is distinct from any extracurricular programs organized primarily for scholastic, cultural, and athletic purposes; and

(ii) Separate Program records are maintained.

(4) Outside-school-hours care centers shall be eligible to serve one or more of the following meal types: breakfasts, supplements and suppers. In addition, outside-school-hours care centers shall be eligible to serve lunches to enrolled children during periods of school vacation, including weekends and holidays, and to enrolled children attending schools which do not offer a lunch program. Notwithstanding the eligibility of outside-school-hours care centers to serve Program meals to children on school vacation, including holidays and weekends, such centers shall not operate under the Program on weekends only.

(5) Each outside-school-hours care center participating in the Program shall claim only the meal types specified in its approved application and served in compliance with the meal pattern requirements of § 226.20. Reimbursement shall not be claimed for more than two meals and one supplement provided daily to each child, except that reimbursement may be