

Food and Nutrition Service, USDA

§ 226.14

enrolled children by type, and by category (tier I and tier II) as determined in accordance with paragraphs (d)(2) and (d)(3) of this section. However, the sponsoring organization may withhold from Program payments to each home an amount equal to costs incurred for the provision of Program foodstuffs or meals by the sponsoring organization on behalf of the home and with the home provider's written consent.

(d) As applicable, each sponsoring organization for day care homes shall:

(1) Require that tier I day care homes submit the number of meals served, by type, to enrolled children.

(2) Require that tier II day care homes in which the provider elects not to have the sponsoring organization identify enrolled children who are eligible for free or reduced price meals submit the number of meals served, by type, to enrolled children.

(3) Not more frequently than annually, select one of the methods described in paragraphs (d)(3) (i)–(iii) of this section for all tier II day care homes in which the provider elects to have the sponsoring organization identify enrolled children who are eligible for free or reduced price meals. In such homes, the sponsoring organization shall either:

(i) Require that such day care homes submit the number and types of meals served each day to each enrolled child by name. The sponsoring organization shall use the information submitted by the homes to produce an actual count, by type and by category (tier I and tier II), of meals served in the homes; or

(ii) Establish claiming percentages, not less frequently than semiannually, for each such day care home on the basis of one month's data concerning the number of enrolled children determined eligible for free or reduced-price meals. Sponsoring organizations shall obtain one month's data by collecting either enrollment lists (which show the name of each enrolled child in the day care home), or attendance lists (which show, by days or meals, the rate of participation of each enrolled child in the day care home). The State agency may require a sponsoring organization to recalculate the claiming percentage for any of its day care homes before the required semiannual calculation if the

State agency has reason to believe that a home's percentage of income-eligible children has changed significantly or was incorrectly established in the previous calculation. Under this system, day care homes shall be required to submit the number of meals served, by type, to enrolled children; or

(iii) Determine a blended per-meal rate of reimbursement, not less frequently than semiannually, for each such day care home by adding the products obtained by multiplying the applicable rates of reimbursement for each category (tier I and tier II) by the claiming percentage for that category, as established in accordance with paragraph (d)(3)(ii) of this section. The State agency may require a sponsoring organization to recalculate the blended rate for any of its day care homes before the required semiannual calculation if the State agency has reason to believe that a home's percentage of income-eligible children has changed significantly or was incorrectly established in the previous calculation. Under this system, day care homes shall be required to submit the number of meals served, by type, to enrolled children.

[47 FR 36527, Aug. 20, 1982, as amended at 62 FR 903, Jan. 7, 1997; 62 FR 5519, Feb. 6, 1997; 63 FR 9105, Feb. 24, 1998; 69 FR 53544, Sept. 1, 2004]

§ 226.14 Claims against institutions.

(a) State agencies shall disallow any portion of a claim for reimbursement and recover any payment to an institution not properly payable under this part. State agencies may consider claims for reimbursement not properly payable if an institution does not comply with the recordkeeping requirements contained in this part. The State agency may permit institutions to pay overclaims over a period of one or more years. However, the State agency must assess interest beginning with the initial demand for remittance. Further, when an institution requests and is granted an administrative review of the State agency's overpayment demand, the State agency is prohibited from taking action to collect or offset the overpayment until the administrative review is concluded. The

State agency must maintain searchable records of funds recovery activities. If the State agency determines that a sponsoring organization of centers has spent more than 15 percent of its meal reimbursements for a budget year for administrative costs (or more than any higher limit established pursuant to a waiver granted under § 226.7(g)), the State agency must take appropriate fiscal action. In addition, except with approval from the appropriate FNSRO, State agencies shall consider claims for reimbursement not payable when an institution fails to comply with the recordkeeping requirements that pertain to records directly supporting claims for reimbursement. Records that directly support claims for reimbursement include, but are not limited to, daily meal counts, menu records, and enrollment and attendance records, as required by § 226.15(e). State agencies shall assert overclaims against any sponsoring organization of day care homes which misclassifies a day care home as a tier I day care home unless the misclassification is determined to be inadvertent under guidance issued by FNS. However, the State agency shall notify the institution of the reasons for any disallowance or demand for repayment, and allow the institution full opportunity to submit evidence on appeal as provided for in § 226.6(k). Minimum State agency collection procedures for unearned payments shall include:

(1) Written demand to the institution for the return of improper payments; (2) if, after 30 calendar days, the institution fails to remit full payment or agree to a satisfactory repayment schedule, a second written demand for the return of improper payments sent by certified mail return receipt requested; and (3) if, after 60 calendar days, the institution fails to remit full payment or agree to a satisfactory repayment schedule, the State agency shall refer the claim against the institution to appropriate State or Federal authorities for pursuit of legal remedies.

(b) In the event that the State agency finds that an institution which prepares its own meals is failing to meet the meal requirements of § 226.20, the State agency need not disallow pay-

ment or collect an overpayment arising out of such failure if the institution takes such other action as, in the opinion of the State agency, will have a corrective effect. However, the State agency shall not disregard any overpayments or waive collection action arising from the findings of Federal audits.

(c) If FNS does not concur with the State agency's action in paying an institution or in failing to collect an overpayment, FNS shall notify the State agency of its intention to assert a claim against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning the action taken. The State agency shall be liable to FNS for failure to collect an overpayment, unless FNS determines that the State agency has conformed with this part in issuing the payment and has exerted reasonable efforts to recover the improper payment.

[47 FR 36527, Aug. 20, 1982; 47 FR 46072, Oct. 15, 1982, as amended at 50 FR 8580, Mar. 4, 1985; 53 FR 52590, Dec. 28, 1988; 62 FR 903, Jan. 7, 1997; 64 FR 72260, Dec. 27, 1999; 67 FR 43490, June 27, 2002; 69 FR 53544, Sept. 1, 2004]

Subpart E—Operational Provisions

§ 226.15 Institution provisions.

(a) *Tax exempt status.* Except for for-profit centers and sponsoring organizations of such centers, institutions must be public, or have tax exempt status under the Internal Revenue Code of 1986.

(b) *New applications and renewals.* Each institution must submit to the State agency with its application all information required for its approval as set forth in § 226.6(b) and 226.6(f). Such information must demonstrate that a new institution has the administrative and financial capability to operate the Program in accordance with this part and with the performance standards set forth in § 226.6(b)(1)(xvii), and that a renewing institution has the administrative and financial capability to operate the Program in accordance with this part and with the performance standards set forth in § 226.6(b)(2)(vii).

(c) *Responsibility.* Each institution shall accept final administrative and