

## Food and Nutrition Service, USDA

## § 226.17

(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 overturns 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.

(m) Sponsoring organizations of family day care homes must not make payments to employees or contractors solely on the basis of the number of homes recruited. However, such employees or contractors may be paid or

evaluated on the basis of recruitment activities accomplished.

[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; 69 FR 53544, Sept. 1, 2004; 71 FR 5, Jan. 3, 2006]

### § 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

(1) Child care centers shall have Federal, State, or local licensing or approval to provide day care services to children. Child 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 that renewal will be denied. If licensing or approval is not available, a center may participate if:

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

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

(2) Except for for-profit centers, child care centers shall be public, or have tax exempt status under the Internal Revenue Code of 1986.

(3) Each child care center participating in the Program shall serve one or more of the following meal types: (i) Breakfast, (ii) lunch, (iii) supper, and (iv) supplemental food. Reimbursement shall not be claimed for more than two meals and one supplement provided daily to each child.

(4) Each child care center participating in the Program shall claim only the meal types specified in its approved application in accordance with the

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meal pattern requirements specified in § 226.20. For-profit child care centers may not claim reimbursement for meals served to children in any month in which less than 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced price meals or were title XX beneficiaries. Menus and any other nutritional records required by the State agency shall be maintained to document compliance with such requirements.

(5) A child care center with preschool children may also be approved to serve a breakfast, supplement, and supper to school-age children enrolled in an outside-school-hours care program meeting the criteria of § 226.19(b) which is distinct from its day care program for preschool-age children. The State agency may authorize the service of lunch to such enrolled children who attend a school which does not offer a lunch program provided the limit of not more than two meals and one supplement per child per day is not exceeded. If the majority of children served by the center are participating in an outside-school-hours care program, the center shall comply with reporting requirements of § 226.19 and, if it is a facility, shall be monitored by the sponsoring organization at the frequency specified in § 226.16(d)(4)(iii).

(6) A child care center may utilize existing school food service facilities or obtain meals from a school food service facility, and the pertinent requirements of this part shall be embodied in a written agreement between the child care center and school. The center shall maintain responsibility for all Program requirements set forth in this part.

(7) Child care centers shall collect and maintain documentation of the enrollment of each child, including information used to determine eligibility for free and reduced price meals in accordance with § 226.23(e)(1). In addition, Head Start participants need only have a Head Start statement of income eligibility, or a statement of Head Start enrollment from an authorized Head Start representative, to be eligible for free meal benefits under the CACFP. Such documentation of enrollment must be updated annually, signed by a

parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care.

(8) Each child care center must maintain daily records of time of service meal counts by type (breakfast, lunch, supper, and snacks) served to enrolled children, and to adults performing labor necessary to the food service.

(9) Each child care center must require key staff, as defined by the State agency, to attend Program training prior to the center's participation in the Program, and at least annually thereafter, on content areas established by the State agency.

(c) Each child care center shall comply with the recordkeeping requirements established in § 226.10(d), in paragraph (b) of this section and, if applicable, in § 226.15(e). Failure to maintain such records shall be grounds for the denial of reimbursement.

(d) If so instructed by its sponsoring organization, a sponsored center must distribute to parents a copy of the 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; 69 FR 53546, Sept. 1, 2004; 70 FR 43262, July 27, 2005]

### § 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